

RESERVE
KFM
9035
1973
.A245a

RESERVE

MONTANA ADMINISTRATIVE REGISTER

STATE LAW LIBRARY
MAR 22 1996
OF MONTANA

DOES NOT
CIRCULATE

1996 ISSUE NO. 6
MARCH 21, 1996
PAGES 703-829



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-2-262 (State Tax Appeal Board) Notice of Proposed Amendment - Orders of the State Tax Appeal Board. No Public Hearing Contemplated. 703-704

2-2-263 Notice of Proposed Repeal - Insurance Requirements for Independent Contractors. No Public Hearing Contemplated. 705-706

COMMERCE, Department of, Title 8

8-70-11 (Building Codes Bureau) Notice of Proposed Amendment - Incorporation by Reference of Uniform Building Code. No Public Hearing Contemplated. 707-709

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

12-2-227 Notice of Proposed Amendment - Water Safety on Johnson and South Sandstone Reservoirs. No Public Hearing Contemplated. 710-711

12-2-228 Notice of Public Hearing on Proposed Amendment - Restriction of Motor-Propelled Water Craft on the Clark Fork River. 712-713

TRANSPORTATION, Department of, Title 18

18-77 Notice of Public Hearing on Proposed Amendment and Repeal - Motor Carrier Services Program. 714-724

Page Number

LABOR AND INDUSTRY, Department of, Title 24

24-29-88 Notice of Public Hearing on Proposed
Adoption and Repeal - Exemption of Independent
Contractors from Workers' Compensation Coverage. 725-730

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-23 Notice of Public Hearing on Proposed
Amendment - Low Income Weatherization Program. 731-733

37-24 Notice of Public Hearing on Proposed
Adoption - Retirement Home Licensing Requirements. 734-742

37-25 Notice of Proposed Repeal - Purchased
Services through Title XX Block Grants. No Public
Hearing Contemplated. 743-745

RULE SECTION

STATE AUDITOR, Title 6

AMD Limitation of Presumption of Reasonableness
of Credit Life and Disability Rates. 746-747

COMMERCE, Department of, Title 8

TRANS (Professional and Occupational Licensing
AMD Bureau) Fire Prevention and Investigation.
REP
NEW 748-762

AMD (Board of Horse Racing) Definitions -
General Provisions - Claiming. 763-764

(Board of Outfitters) Corrected Notice of
Adoption - Moratorium - Operations Plan
Review. 765

AMD (Board of Investments) Municipal Finance
REP Consolidation Program - Montana Cash
NEW Anticipation Financing Program. 766-767

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

AMD Licensing Matters. 768

LIVESTOCK, Department of, Title 32

AMD	Circumstances Under Which Raw Milk May be Sold for Human Consumption.	769-770
-----	-----------------------------------------------------------------------	---------

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

TRANS	Leasing or Other Use of State Lands - Sale of State Lands - Schedule of Fees - Homesite and Farmyard Leases - Antiquities on State Lands - Ownership Records for Non School Trust Land.	771
-------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

AMD	Referendums for Creating or Changing Conservation District Boundaries - Conservation District Supervisor Elections.	772
-----	---------------------------------------------------------------------------------------------------------------------	-----

AMD	(Board of Land Commissioners) Fire Management.	773
-----	------------------------------------------------	-----

REP	(Board of Land Commissioners) Christmas Tree Cutting - Control of Timber Slash and Debris.	774
-----	--------------------------------------------------------------------------------------------	-----

AMD	Reclamation and Development Grants Program.	775
-----	---------------------------------------------	-----

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD	Medicaid Reimbursement for Residential Treatment Services.	776-783
-----	------------------------------------------------------------	---------

SECRETARY OF STATE, Title 44

(Commissioner of Political Practices)

NEW	Designation of Contributions - Aggregate Contribution Limits for Write-in Candidates - Definition of Personal Benefits.	784-786
-----	-------------------------------------------------------------------------------------------------------------------------	---------

AMD	Contribution Limitations.	787-788
-----	---------------------------	---------

NEW	Overlapping Work Hours - Multiple Salaries from Multiple Public Employees.	789
-----	----------------------------------------------------------------------------	-----

INTERPRETATION SECTION

Opinions of the Attorney General.

13	Cities and Towns - Authority of Self-governing Local Government to Require Garbage Haulers to Contract with Local Government before Collecting Garbage within City Limits - Contracts - Local Government - Solid Waste - Public Service Commission - Authority of Self-governing Local Government to Require Garbage Haulers with Certificates of Public Convenience and Necessity to Contract with Local Government before Collecting Garbage within City Limits.	790-795
----	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	796
How to Use ARM and MAR.	797
Accumulative Table.	798-812
Boards and Councils Appointees.	813-819
Vacancies on Boards and Councils.	820-829

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PROPOSED AMENDMENT OF
amendment of a rule) 2.51.307 ORDERS OF THE BOARD
pertaining to orders)
of the board) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 20, 1996, the State Tax Appeal Board proposes to amend the above-stated rule.

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

2.51.307 ORDERS OF THE BOARD (1) will remain the same.

(2) A signed copy of a board's order shall be mailed to the applicant and to the property assessment division of the department of revenue ~~and additional copies made available to the county clerk, the county treasurer, and the county assessor~~ within ~~30~~ 3 days following the signing of the order.

(3) and (4) remain the same.

AUTH: Sec. 15-2-201, MCA. IMP: 15-15-103 (1), MCA

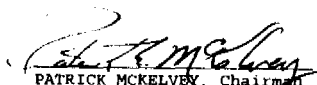
REASON: This proposed amendment is necessary to make the rule consistent with Section 15-15-103(1), MCA.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the State Tax Appeal Board, 1209 8th Avenue, P.O. Box 200138, Helena, Montana 59620-0138, by facsimile to (406) 444-3103, by State Bulletin Board or Internet at the address of nelsonatmt.gov to be received no later than 5:00 p.m., April 18, 1996.

4. If a person who is directly affected by the proposed amendment 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 State Tax Appeal Board, 1209 8th Avenue, P.O. Box 200138, Helena, Montana 59620-0138, or by facsimile to (406) 444-3103, to be received no later than 5:00 p.m., April 18, 1996.

5. If the Board receives requests for a public hearing on

the proposed amendment from either 10% percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative code committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 6 based on the number of county tax appeal boards.


Rule Reviewer
PATRICK MCKELVEY, Chairman
State Tax Appeal Board

Certified to the Secretary of State on March 1, 1996.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED REPEAL
proposed repeal of	)	NO PUBLIC HEARING
Rule 2.6.101 Insurance	)	CONTEMPLATED
Requirements)	

TO: All Interested Persons.

1. On April 20, 1996, the Department of Administration proposes to repeal rule 2.6.101 which lists insurance requirements for Independent Contractors.

2. Rule 2.6.101, the rule proposed to be repealed, is on page 2-201 of the Administrative Rules of Montana. (Auth: Sec. 2-9-201 MCA; IMP, 2-9-201 MCA.)

3. The repeal of Rule 2.6.101 is necessary because these insurance requirements no longer apply and have been superseded by MOMS Volume I, Year 90, Number 4-2.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Department of Administration, Risk Management and Tort Defense Division, P.O. Box 200124, Helena, MT 59620-0124. Any comments must be received no later than April 18, 1996.

5. If a person who is directly affected by the proposed repeal 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 Department of Administration, Risk Management and Tort Defense Division, P.O. Box 200124, Helena, MT 59620-0124. A written request for hearing must be received no later than April 18, 1996.

6. If the agency receives requests for public hearing on the proposed repeal from either 10% or 100, 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 500 persons based on an estimated number of contracts entered into annually by state agencies.

Lois Menzies, Director
Department of Administration

By: 

Dal Smilie, Chief Legal Counsel
And Rule Reviewer

By: 

Certified to the Secretary of State on March 11, 1996.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 20, 1996, the Building Codes Bureau proposes to amend the above-stated rule.

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

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

(d) Subsections 107.2 and 107.3 of section 107 of the Uniform Building Code, 1991 Edition, are amended to read as follows:

Subsection 107.2 Permit fees. The fee for each permit shall be as set forth in Table No. 13-A of the Uniform Building Code, 1991 Edition.

Subsection 107.3 Plan review fees. When submittal documents are required by Section 106.3.2, a plan review fee shall be paid. Said plan review fee shall be 25% percent of the building permit fee as set forth in Table No. 13-A of the Uniform Building Code, 1991 Edition. When only plan review services are provided, the plan review fee shall be 65% of the building permit fee as set forth in Table No. 13-A of the Uniform Building Code, 1991 Edition.

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

bureau may, for public buildings or projects that exceed \$25,000 in building value, use firm bids for establishing the building valuation as an alternative to using "Building Valuation Data" table when such bids include all construction work associated with the building as described earlier in this section and the bidding process is determined as having been open and competitive. Valuation of projects may also be based on firm total project contract amounts if the entire project is contracted and such contracts cover all construction work associated with the building as described earlier in this section, provided this contracted valuation is less than 75% of the valuation as determined by use of "Building Valuation Data" table. Valuation of remodel and/or addition projects, where use of "Building Valuation Data" table is not appropriate, will be based on use of typical and reasonable construction costs. When only plan review fees are charged, the building valuation for determining fees will be based on the design professional's preliminary cost estimate, if such estimate is available or "Building Valuation Data" table, if such estimate is not available. For purposes of calculation of fees, the building valuation shall be rounded off to the nearest \$1,000 and any calculated building and plan review fees shall be rounded off to the nearest \$1. As provided in ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation. During the period ending on June 30, 1996 1997, the building permit fee above shall be reduced to a sum equal to 85% of the sum calculated above and no plan review fee shall be applied, except where plan review services only are provided the plan review fee shall remain 65% of the building permit fee as set forth in Table No. 3-A of the Uniform Building Code, 1991 Edition.

(1)(e) though (30) will remain the same."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-201, 50-60-203, MCA

REASON: On February 9, 1996, the 1994 edition of the Uniform Building Code was incorporated by reference into the State Building Code under ARM 8.70.101(1). Table No. 1-A, the building permit fee schedule of the 1994 edition of the Uniform Building Code requires building permit fees which are considerably greater than the fees set forth in the Table No. 3-A of the previously repealed 1991 edition of the Uniform Building Code. Because the increased building permit fees allowed under the 1994 edition of the Uniform Building Code will exceed the administration and enforcement costs of the state's building code program; because excess revenues are continuing; and because the statewide building boom is still underway, the Department of Commerce is amending ARM 8.70.101(1)(d) to repeal the building permit fee schedule of Table No. 1-A of the 1994 edition of the Uniform Building Code and replace it with the building permit fee schedule which appears in Table No. 3-A of the 1991 edition of the Uniform

Building Code. In addition, the Department of Commerce is amending ARM 8.70.101(1)(d) to extend the temporary building permit fee reduction of 15 percent, which expires on June 30, 1996, until June 30, 1997. The rationale for extending the temporary building permit fee reduction is identical to the rationale for restoring the building permit fee schedule set forth in Table No. 3-A of the 1991 edition of the Uniform Building Code.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Building Codes Bureau, 1218 E. Sixth, P.O. Box 200517, Helena, Montana 59620-0517, or by facsimile to (406) 444-4240, to be received no later than 5:00 p.m., April 18, 1996.

4. If a person who is directly affected by the proposed amendment 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 Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517, or by facsimile to (406) 444-4240, to be received no later than 5:00 p.m., April 18, 1996.

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

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 11, 1996.

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

In the matter of proposed)	NOTICE OF PROPOSED
amendment of ARM 12.6.901)	AMENDMENT OF RULE
relating to water safety on)	
Johnson and South Sandstone)	NO HEARING
Reservoirs.)	CONTEMPLATED

To: All Interested Persons.

1. On May 10, 1996, the Fish, Wildlife and Parks Commission (commission) proposes to amend ARM 12.6.901 changing the water safety regulations on South Sandstone Reservoir from a closure to boats propelled by machinery of over 10 horsepower to limiting waters to a controlled no wake speed, and limiting Johnson Reservoir to manually powered or electric powered boats.

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

12.6.901 WATER SAFETY REGULATIONS (1) and (1)(a) remain the same.

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) remains the same.

(ii) other waters of the state as follows:

Hill County remains the same.

~~Fallon County: South Sandstone Reservoir~~

Lincoln County remains the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County through Daniels County remain the same.

~~Fallon County: South Sandstone Reservoir~~

Fergus County through (e) remain the same.

(f) The following waters are limited to manually operated boats and boats powered by electric motors:

~~Dawson County: (A) Johnson Reservoir~~

Fergus County through (2) remain the same.

AUTH: 87-1-303, 23-1-106(1), MCA

IMP: 87-1-303, 23-1-106(1), MCA

3. Rationale: South Sandstone Reservoir has been restricted to boats propelled by motors of 10 horsepower or less because of safety concerns. Anglers who have boats propelled by larger motors have requested this change. By restricting the reservoir to no wake speed, the same level of safe operation can be maintained and yet provide more persons the opportunity to use the reservoir for fishing.

Johnson Reservoir was rebuilt in 1995, and fish will be planted in 1996. The maximum surface area of the reservoir is approximately 30 acres. We expect heavy use at times, and there is not sufficient room for safe motorized boating.

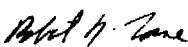
4. Interested persons may present their data, views or arguments concerning the proposed amendment in writing no later than April 22, 1996, to Phil Stewart, Department of Fish, Wildlife and Parks, P.O. Box 1630, Miles City, MT 59301.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Phil Stewart, Department of Fish, Wildlife and Parks, P.O. Box 1630, Miles City, MT 59301. A written request for hearing must be received no later than April 22, 1996.

6. If the commission 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 based on the potential number of recreationalists on Johnson and South Sandstone Reservoirs.

RULE REVIEWER

FISH, WILDLIFE & PARKS COMMISSION


Robert N. Lane


Patrick Graham, Secretary

Certified to the Secretary of State on March 11, 1996.

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

In the matter of the proposed)	NOTICE OF PUBLIC
amendment of ARM 12.6.901)	HEARING ON PROPOSED
relating to the restriction of)	AMENDMENT OF RULE
motor-propelled water craft on)	12.6.901
the Clark Fork River.)	

To: All Interested Persons.

1. On April 23, 1996, the Fish, Wildlife & Parks Commission (commission) will hold a public hearing to consider the amendment of rule 12.6.901 as proposed in this notice. The hearing will be conducted at 7:00 p.m. at Ruby's Reserve Street Inn, 4825 North Reserve, Missoula, Montana.

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

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish, wildlife and parks commission.

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

Missoula County:

(A) Frenchtown Pond

(B) Harpers Lake

(C) Bitterroot River from the Ravalli county line to its confluence with the Clark Fork River. Exceptions: (1) Any motorized craft may be used from May 1 through June 30 on the portion of the Bitterroot River from the Florence Bridge in Ravalli County downstream to the Clark Fork River. (2) Motorized craft powered by 15 horsepower or less may operate anywhere on the Bitterroot River from October 1 through January 31.

(D) The Blackfoot River and its tributaries from Missoula county line to the Stimson Lumber Mill Dam at Bonner.

(E) The Clark Fork River and tributaries from the Granite

county line to the Milwaukee Bridge abutments on Milltown Reservoir.

(F) The Clark Fork River from the Bandmann Flats Bridge at East Missoula to the confluence of the Clark Fork River with the Bitterroot River at Kelly Island.

Powell County through (b) remain the same.

AUTH: 87-1-303, 23-1-106, MCA

IMP: 87-1-303, 23-1-106, MCA

3. The rationale for the proposed amendment is as follows: This proposed amendment to ARM 12.6.901 is to address safety of motorized watercraft users relative to four irrigation diversion structures and old submerged bridge structures in this portion of the river, and to address the growing non-motorized use on the Clark Fork River from Bandmann Flats Bridge, through the city of Missoula, to the confluence of the Clark Fork with the Bitterroot River.


The commission was petitioned by legislators in the Missoula area to initiate this rulemaking prohibiting all motor-propelled water craft from Bandmann Flats Bridge to the confluence with the Bitterroot River. The petition also requested a no wake speed zone from Milltown Dam to Bandmann Flats. The commission is declining to initiate rulemaking for the no wake restriction because it does not have evidence of any real safety issue at this time.


4. Interested persons may present their data, views or arguments either orally at the hearing or in writing. Written data, views or arguments may also be submitted to Rich Clough, Region Two Supervisor, Montana Fish, Wildlife & Parks, 3201 Spurgin Road, Missoula, Montana 59801, and must be received no later than April 26, 1996.

5. Rich Clough, or another hearing examiner designated by the department will preside over and conduct the hearing.

RULE REVIEWER

FISH, WILDLIFE AND PARKS
COMMISSION


Robert N. Lane


Stan Meyer, Chairman

Certified to the Secretary of State on March 11, 1996.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PUBLIC
of rules 18.8.101, 18.8.304,	)	HEARING ON PROPOSED
18.8.415, 18.8.428, 18.8.501,	)	AMENDMENT AND REPEAL
18.8.502, 18.8.504, 18.8.509,)	
18.8.511A, 18.8.511B, 18.8.513,)	
18.8.514, 18.8.517, 18.8.519,)	
18.8.601, 18.8.602, 18.8.801,)	
18.8.1002 and 18.8.1101, and)	
the repeal of rules 18.8.201,)	
18.8.701 and 18.8.1008)	
concerning the Motor Carrier)	
Services program)	

TO: All Interested Persons.

1. On April 23, 1996, at 9 a.m., a public hearing will be held in the auditorium of the Department of Transportation building, 2701 Prospect Avenue, Helena, Montana, to consider the amendment of rules 18.8.101, 18.8.304, 18.8.415, 18.8.428, 18.8.501, 18.8.502, 18.8.504, 18.8.509, 18.8.511A, 18.8.511B, 18.8.513, 18.8.514, 18.8.517, 18.8.519, 18.8.601, 18.8.602, 18.8.801, 18.8.1002 and 18.8.1101, and the repeal of rules 18.8.201, 18.8.701 and 18.8.1008 concerning the Motor Carrier Services program.

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

18.8.101 DEFINITIONS (1)(a) remains the same.

~~(b) Tandem axle consists of two axles more than forty (40) inches and less than 96 inches apart center of axle to center of axle. For weights, see G.V.W. form 30-B, which is available from the motor carrier services division.~~

(1)(c) through (e) remain the same, but are renumbered (1)(b) through (d).

~~(f) A quarter or calendar quarter shall be any consecutive three months.~~

(e) Unless otherwise provided for in statute, or these rules, a quarter or calendar quarter shall be a period of three consecutive months ending March 31, June 30, September 30, or December 31.

AUTH: Sec. 61-3-716, 61-10-155 MCA; IMP: Sec. 61-3-711 through 61-3-733, 61-10-107, 61-10-121 and 61-10-125 MCA.

REASON: It is proposed that subsection (b) be eliminated because it duplicates a statute (§ 61-10-107(1), MCA). New subsection (e) was added to clarify section 61-3-721(3)(a)

through (d), MCA, for those carriers not under the international registration plan.

18.8.304 VEHICLES OWNED BY GOVERNMENTAL AGENCIES (1) ~~All vehicles owned and operated into or through the state of Montana by the following are exempt from the payment of G.V.W. fees or temporary trip permits: United States government, all states of the United States, any political subdivision of any state, Canadian government, all provinces of Canada, and all political subdivisions of all provinces of Canada. All government vehicles leased to commercial enterprises must license in Montana or purchase trip permits for interstate travel.~~

AUTH: 61-3-716 MCA; IMP: 61-3-711 through 61-3-733 MCA

REASON: The proposed amendment is necessary to repeal duplicate language contained in statute, and to provide clarification of section 61-10-714(4), MCA.

18.8.415 MONTHLY - QUARTERLY G.V.W. FEES (1) The quarter fee shall be one fourth of the fee set forth in 61-10-201 and 61-10-203, MCA, if the gross weight exceeds 24,000 pounds. ~~For purposes of (1) through (4) of this rule, a~~ quarter shall be any consecutive three-month period.

(2) through (7) remain the same.

AUTH: 61-10-155 MCA; IMP: 61-10-209 MCA

REASON: The proposed amendment is necessary to provide for clarification.

18.8.428 FERTILIZER VEHICLES (1) ~~Fertilizer spreader trucks used exclusively to transport and apply fertilizer to agricultural fields and plots must fully license and may pay gross weight fees as required in sections 61-10-201 and 61-10-206, MCA.~~

(2) ~~The applicant under the fertilizer exception must show a valid fertilizer dealer license issued by the department of agriculture as provided in 61-10-202, MCA.~~

(3) and (4) remain the same, but are renumbered (1) and (2).

AUTH: 61-10-155 MCA; IMP: 61-1-104, 61-3-431, 61-10-206 and 61-10-201 MCA

REASON: The proposed amendments are necessary due to legislation enacted by the 54th Legislature which allows fertilizer vehicles to license as special mobile equipment under section 61-1-104(2), MCA.

18.8.501 SPECIAL PERMIT (DIMENSIONS OR WEIGHT - EXCEEDING STATUTORY LIMITS) ~~(Dimensions Exceeding~~

~~statutory limits.~~ (1) Special permit (hereafter referred to as ~~an overdimensional~~ a special permit) may be issued for either width, height, ~~or length or weight~~ in excess of the statutory limits, or a combination of ~~any of the three dimensions width, height, length and weight.~~ An overdimensional A special permit shall be issued for an irreducible load only, except when otherwise expressly set forth in the rules and regulations. The duration of ~~an overdimensional~~ a special permit may be either a single trip or a term permit.
AUTH: 61-10-155 MCA; IMP: 61-10-121, 61-10-122, 61-10-124, 61-10-125 and 61-10-127 MCA

REASON: The proposed changes are necessary for clarification.

18.8.502 SINGLE TRIP

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

(c) ~~overdimensional~~ permit is transmitted by telegram, telecopier, telex, or communication service, except mail.
AUTH: 61-10-155 MCA; IMP: 61-10-121 and 61-10-124 MCA

REASON: The proposed change is necessary for clarification.

18.8.504 DURATION OF PERMIT (1) The duration of a single trip ~~overdimensional~~ special permit is the length of time for the specified move as indicated by the effective date and the expiration date shown on the permit. ~~The duration of an overdimensional term permit is for the period of the G.V.W. fees.~~

(2) Term permits issued ~~to vehicles licensed in other jurisdictions on financial stationery~~ are valid from January 1 through December 31. Term permits issued on the apportioned registration (cab card) to Montana based vehicles licensed under the International Registration Plan (IRP), expire with the registration.

AUTH: 61-10-155 MCA; IMP: 61-10-101 through 61-10-148 MCA

REASON: The proposed changes in subsection (1) are for clarification. Language in subsection (2) ensures uniform effective dates for special permits which will aid motor carriers and state officials in determining compliance with statutory requirements regardless of methods of licensing or jurisdiction of license.

18.8.509 GENERAL PERMIT RESTRICTIONS (1) Unless otherwise specified, ~~an overdimensional~~ a special permit is subject to the following conditions:

(a) remains the same.

(b) Vehicles or vehicles with a load 10 feet wide, or 100 feet long without overhang, or ~~75~~ 80 feet long with

overhang, or 14 feet 6 inches high may travel continuously on interstate highways only and within a 2 5 mile radius of an interstate interchange.

(c) Vehicles or loads which do not exceed the dimensions and requirements of (1)(a) and (b) may travel on holidays and holiday weekends.

(c) remains the same, but is renumbered (d).

~~(d)(e)~~ Vehicles or vehicle combinations with a non-built-up load to and including ~~± 18~~ 18 feet wide, or 120 feet long, or 16 feet high may travel during daylight hours, 7 days a week, excluding holidays and holiday weekends, on all highways except those indicated on "red route restrictions" map.

~~(e)(f)~~ Vehicles or vehicle combinations with a non-built-up load exceeding ~~± 18~~ 18 feet wide, or 120 feet long, or 16 feet high may travel during daylight hours, Monday through Friday. No travel is allowed Saturday, Sunday, holidays, or holiday weekends. No travel after 3 p.m. on Friday until sunrise on Monday on routes indicated on "red route restrictions" map.

(f) remains the same, but is renumbered (g).

(2) through (4) remain the same.

~~(5) Overdimensional movement is prohibited when adverse conditions make travelling hazardous. Adverse conditions are defined as conditions caused by snow, ice, sleet, fog, mist, rain, dust, smoke, or maintenance and construction of the roadway or any other condition which adversely affects visibility, traction of the permitted load, or affects the safety of the travelling public. Extreme caution in the operation of a motor vehicle shall be exercised when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust or smoke adversely affect visibility or traction. Speed shall be reduced when such conditions exist. The driver of any vehicle equipped with vehicular hazard warning lights may activate such lights whenever necessary to warn the operators of following vehicles of the presence of a traffic hazard ahead of the signaling vehicle, or to warn the operators of other vehicles that the signaling vehicle may itself constitute a traffic hazard. When conditions become sufficiently dangerous, the company or the operator shall discontinue operations, and operations shall not be resumed until the vehicle can be safely operated. No travel is allowed when a route has been placed under emergency travel conditions as determined by the department of transportation. The department of transportation road report is available between November 1 and May 1, 24 hours a day by calling (800) 332-6171.~~

(6) through (10) remain the same.

AUTH: 61-10-155 MCA; IMP: 61-10-101 through 61-10-148 MCA

REASON: The proposed amendment to subsection (1) is necessary to correct a clerical error. Subsection (1)(b) will allow motor carriers access to their terminals or an area where overdimensional loads can be safely secured when travel is restricted. Subsection (1)(c) is added for clarification. Subsection (5) is amended to provide clarification and specific guidelines for safe travel with permitted loads during inclement weather.

18.8.511A WHEN FLAG VEHICLES ARE REQUIRED (1) Flag vehicles are required at the rear of a vehicle on interstate highways if the load or the vehicle exceeds 16.5 feet in width.

(2) ~~A flag vehicle~~ is required at the front on all highways except interstate highways when ~~the main body of the~~ load or the vehicle exceeds 12 feet in width.

(3) Flag vehicles are required at the front and at the rear on all highways except interstate highways when ~~the main body of the load or the vehicle exceeds 14 16.5 feet in width or if the overall width including appurtenances exceeds 15 feet.~~

(4) through (6) remain the same.

AUTH: 61-10-155 MCA; IMP: 61-10-101 through 61-10-148 MCA

REASON: It is necessary to amend subsections (1) and (3) to ease the requirements of flagging overwidth loads for the motor carrier industry and to continue to provide safety for the traveling public. Required flashing lights and signs provide adequate warning to the traveling public and reduce traffic congestion by requiring fewer flag vehicles. In subsection (2), proposed changes are for clarification. Subsection (3) is amended to provide a uniform method of determining the width of a load.

18.8.511B CONVOY MOVES OF OVERSIZE VEHICLES

(1) Overdimensional and overweight vehicles which require flag escorts may be moved in a convoy under the following restrictions--

(a) Overwidth vehicles may not exceed ~~14 16.5 feet wide for the main body of the load, or 15 feet wide including appurtenances.~~

(b) through (d) remain the same.

(e) One properly equipped escort vehicle is required at the front and rear of the convoy. In addition to the equipment required in ARM 18.8.510A, each escort vehicle shall be equipped with a sign stating "Oversize Load Convoy Follows ~~(Number of) Vehicles, as applicable.~~"

(f) remains the same.

AUTH: 61-10-155 MCA; IMP: 61-10-121 and 61-10-122 MCA

REASON: It is necessary to amend subsections (1)(a) and (e) to ease the requirements of flagging overwidth loads for the motor carrier industry and to continue to provide safety for the traveling public. Subsection (a) is also amended to provide a uniform method of determining the width of a load.

18.8.513 WIDTH

(1) through (3) remain the same.

(4) Single trip or term permits for non-reducible loads to and including 10 feet wide may be issued for travel on interstate highways only and within a ~~two~~ five mile radius of an interstate interchange at night, Saturdays, Sundays, and holidays, provided lights are displayed the full width and length of the vehicle and/or load.

AUTH: 61-10-155 MCA, IMP: 61-10-121 through 61-10-148 MCA

REASON: It is necessary to amend subsection (4) to allow motor carriers access to their terminals, or to an area where overdimensional loads can be safely secured when travel is restricted.

18.8.514 LENGTH (1) ~~A term length permit may be issued to a single powered vehicle, including load, up to and including 55 feet in length for continuous travel provided full length and width of vehicle and load is lighted.~~

(2) A single trip overdimensional permit may be issued to a single vehicle including its load in excess of 55 feet with the following restrictions:

(2) (a) remains the same, but is renumbered (1)(a).

~~(b) Travel is not allowed from 3 p.m. Friday to sunrise Saturday and from 12 noon on Sunday to sunrise on Monday on the highways designated on the "red route restrictions" map.~~

(3) through (7) remain the same, but are renumbered (2) through (6).

AUTH: 61-10-155 MCA; IMP: 61-10-104, 61-10-121 through 61-10-148 MCA

REASON: It is necessary to amend the rule because the 54th Legislature enacted legislation which increased the legal length of a single power unit to 55 feet. § 61-10-104(1), MCA. Vehicles not exceeding 55 feet are no longer subject to permit restrictions.

18.8.517 SPECIAL VEHICLE COMBINATIONS

(1) through (18) remain the same.

(19) Application for permits may be obtained from the Department of Transportation, Motor Carrier Services Division, ~~Licensing Bureau~~, Box 4639, Helena, MT 59604, during regular business hours, ~~7:30 a.m. to 5:00 p.m. on Monday through Friday~~, except on legal holidays observed by the state of

Montana.

(20) Complaints concerning operation of special vehicle combinations may be reported to the administrator of the Department of Transportation, Motor Carrier Services Division, Licensing Bureau, Box 4639, Helena, MT 59604.
AUTH: 61-10-129 MCA; IMP: 61-10-124 MCA

REASON: The proposed amendments are necessary to more clearly reflect the internal structure of the Department.

18.8.519 WRECKERS AND/OR TOW VEHICLE REQUIREMENTS

(1)(a) remains the same.

(b) The wrecker or tow vehicle may tow the vehicles or vehicle combination from the emergency scene to its place of business or operator's yard if it is within 100 miles of the emergency scene and provided the licensed gross weight or actual gross weight of the power unit does not exceed 26,000 pounds. If the licensed gross weight or actual gross weight of the power unit exceeds 26,000 pounds, the disabled vehicle combination may be removed from the emergency scene to the first place where the disabled vehicle combination can be safely reduced to a single unit.

(c) through (g) remain the same.

AUTH: 61-10-155 MCA; IMP: 61-10-121 and 61-10-141 MCA

REASON: The proposed amendment is necessary to provide a uniform method of determining the weight of a disabled vehicle combination. Safety for the traveling public is assured while at the same time operators of small vehicles or vehicle combinations are not burdened with unnecessary regulation.

18.8.601 OVERWEIGHT SINGLE TRIP PERMITS

(1) and (2) remain the same.

(3) The following definition applies to non-interstate highways only. A non-divisible load is a load which cannot be readily or reasonably dismantled and which is reduced to a minimum practical size and weight. Portions of a load can be detached and reloaded on the same hauling unit provided that the separate pieces are necessary to the operation of the machine or equipment which is being hauled, if the arrangement does not exceed permissible limits.

(4) The following definition applies to interstate highways only. Non-divisible means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(a) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(c) Require more than 8 work hours to dismantle using appropriate equipment. The applicant for a non-divisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(d) Emergency response vehicles and casks designed and used for the transport of spent nuclear materials may be considered non-divisible vehicles or loads.

(4) remains the same, but is renumbered (5).

~~(5)~~ (6) Overweight permits issued without speed restrictions imposed upon vehicles when crossing bridges to vehicles with maximum dimensions of ~~75~~ 80 feet in length, or 9 feet in width, or 14 feet, 6 inches in height, shall be issued for continuous travel.

(6) and (7) remain the same, but are renumbered (7) and (8).

(9) The department may require an overweight vehicle or load to operate at less than the posted speed limit, but not as restrictive as conditions imposed by ARM 18.8.602 (DW-21 Conditions).

AUTH: 61-10-155 MCA; IMP: 61-10-121 through 61-10-148 MCA

REASON: Subsections (3) and (4)(a) through (d) are amended to incorporate the federal definition of a non-divisible load. The Federal Highway Administration has mandated that Montana use the federal definition of a non-divisible load when permitting overweight loads and vehicles traveling on the Interstate system. Subsection (9) is added to allow more flexibility for overweight vehicles and/or loads which exceed regular overweight maximums but are not subject to maximum conditions for weight.

18.8.602 CONDITIONS IMPOSED FOR MAXIMUM WEIGHT (1) When required by weight analysis, a maximum speed limit of 55 miles per hour on the interstate and 45 miles per hour on two-lane highways is imposed unless a slower speed is required. The department may restrict speed as a condition of the permit in cases of extreme overweight.

(2) When required by weight analysis, where speed is restricted across an interstate structure, on interstate highways, unless specifically noted on the overweight permit, loads may maintain a maximum speed of 55 mph unless otherwise posted for a lower speed. The vehicle may remain in its own traffic lane and normal traffic will be allowed to pass. Only one overweight vehicle may be allowed on the structure at a time.

(3) On non-interstate primary and secondary highways, two flag vehicles or one flag vehicle and one flag person, equipped with orange vest high visibility clothing and proper signs hand-signaling devices, are required when speed restrictions over structures are imposed. For purposes of

this subsection, high visibility clothing shall be a flagger's vest, shirt, or jacket, orange, yellow, strong yellow green or fluorescent versions of these colors. Hand-signaling devices shall be a stop/slow paddle 18 inches wide and octagonal in shape, with letters at least 6 inches high. The background of the stop face shall be red with white letters and border.

(4) Before crossing any non-interstate structure or structures, ~~except interstate structures,~~ the hauling unit shall come to a complete stop approximately 50 feet from the end of the structure. After flag vehicles or flag persons have stopped all traffic onto the structure, the overweight vehicle shall proceed at a speed not to exceed 5 miles per hour with the center of the unit directly over the centerline of the roadway of the structure. There shall be no alteration of the speed (changing of gears) while on the structure or approach. Flag vehicles or flag persons shall not permit any other traffic on the structure until the overloaded vehicle is off the structure.

(5) and (6) remain the same.

AUTH: 61-10-155 MCA; IMP: 61-10-121 and 61-10-122, MCA

REASON: The proposed amendment is necessary to provide uniformity for the safe transportation of excessively overweight loads for the motor carrier and the traveling public, to insure protection of Montana's bridges and roadways, and for clarification.

18.8.801 INSURANCE

(1) remains the same.

~~(2) Carriers with I.C.C. authority may show their I.C.C.M.C. number in lieu of the above insurance requirements.~~

~~(3) Carriers with public service commission authority may show their public service commission authority number on the permit in lieu of the above insurance requirement.~~

AUTH: 61-10-155 MCA; IMP: 61-10-121, 61-10-122, and 61-10-124 MCA

REASON: The amendment is necessary because the 54th Legislature enacted legislation which eliminates such filing for most intrastate carriers. §§ 61-3-708 through 710, MCA.

18.8.1002 MOBILE HOME TOWING UNIT (TOTER) REQUIREMENTS

~~(1) A mobile home not exceeding 8 feet in width with a combined length over 60 feet shall have towing unit (toter) with minimum capacity of 3/4 ton equipped with dual tires. A mobile home towing unit (toter) shall be equipped with one or more dual-wheel drive axle and have a wheel base a minimum of 100 inches.~~

~~(2) A mobile home not exceeding 10 feet in width and a combined length not exceeding 65 feet shall have a towing unit~~

~~(toter) with a minimum capacity of 3/4 ton equipped with a dual tires. The rated gross vehicle weight of the tow vehicle is determined by the base width of the manufactured housing which is being transported:~~

<u>Mfg. House Width</u>	<u>Minimum GVW Rating</u>
<u>8.5 feet to 10 feet</u>	<u>6,000 pounds</u>
<u>Over 10 feet to 12 feet</u>	<u>8,000 pounds</u>
<u>Over 12 feet</u>	<u>9,000 pounds</u>

~~(3) A mobile home not exceeding 10 feet in width with a combined length exceeding 65 feet in length shall have a towing unit (toter) with a minimum capacity of 1 ton equipped with dual tires.~~

~~(4) A mobile home 12 feet in width and any length combination shall have a towing unit (toter) with a minimum capacity of 2 tons equipped with a dual tires.~~

AUTH: 61-10-155 MCA; IMP: 61-10-101 through 61-10-148 MCA

REASON: Subsection (1) is amended for clarification. Subsection (2) is amended to provide modular and manufactured housing transporters uniform guidelines for interstate travel. The new requirements for mobile home towing vehicles are the same as the requirements established in the WASHTO Guide for Uniform Laws and Regulations Governing Truck Size and Weight Among the WASHTO States (Western Association of State Highway and Transportation Officials).

18.8.1101 MOVEMENT OF HOUSES, BUILDINGS, EXTREMELY HEAVY MACHINERY, AND OTHER LARGE AND UNUSUAL OBJECTS

(1) remains the same.

(2) When a manufactured home, double wide mobile home, modular home, or modular building has been assembled, ~~has become one unit, and has been used for the purpose for which it was designed, the department may allow the building it may~~ to be moved as one unit, with housemoving equipment, as a building, under a special permit.

(3) Application shall be made upon an G-V-W M.C.S. form 32-J or other form specified by the department of transportation. These forms are available from the Motor Carrier Services Division, Box 4639, Helena, Montana 59604, (406)444-6130, (2701 Prospect Avenue).

(4) through (8) remain the same.

~~(9) All necessary authority shall be obtained from the state of Montana public service commission.~~

(10) remains the same, but is renumbered (9).

AUTH: 61-10-155 MCA; IMP: 61-10-101 through 61-10-148 MCA

REASON: Subsection (2) has been amended to include all types of manufactured housing and to assure uniform application of permit requirements for the transportation of manufactured housing. Subsection (9) is being eliminated because the

Public Service Commission authority has been eliminated.

3. Rule 18.8.201, which can be found on page 18-273 of the Administrative Rules of Montana, is proposed to be repealed because it was determined that the material contained in the rule was unnecessary.

AUTH: 61-3-716 MCA; IMP: 61-3-711 through 61-3-733 MCA

Rule 18.8.701, which can be found on page 18-313 of the Administrative Rules of Montana, is proposed to be repealed because it is duplicated in statute, § 61-10-107, MCA.

AUTH: 61-10-155 MCA; IMP: 61-10-101 through 61-10-148 MCA

Rule 18.8.1008, which can be found on page 18-320 of the Administrative Rules of Montana, is proposed to be repealed because the information is redundant.

AUTH: 61-10-155 MCA; IMP: 61-10-121 and 61-10-122 MCA


6. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Dave Galt, Motor Carrier Services Division, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5 p.m. on April 23, 1996.

7. Katherine Orr has been designated to preside over and conduct the hearing.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State March 8, 1996.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of 5 new rules	)	THE PROPOSED ADOPTION OF FIVE
and the proposed repeal of	)	NEW RULES AND THE PROPOSED
ARM 24.29.706, related to the	)	REPEAL OF ONE EXISTING RULE
exemption of independent)	
contractors from workers')	
compensation coverage)	

TO ALL INTERESTED PERSONS:

1. On April 12, 1996, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building (Highway Patrol Building), 303 North Roberts Street, Helena, Montana, to consider the amendment and adoption of rules related to exemptions for independent contractors for workers' compensation and other purposes.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 8, 1996, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to adopt new rules as follows:

RULE 1. APPLICATION FOR INDEPENDENT CONTRACTOR EXEMPTION

(1) As provided by 39-71-401(3), MCA, a sole proprietor, working member of a partnership, or working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound by the provisions of a workers' compensation plan but may apply for an exemption from the Workers' Compensation Act. In order to obtain an independent contractor exemption, an applicant must:

(a) submit a department application affidavit form bearing the applicant's notarized signature in which the applicant swears or affirms under oath that the statements contained in the form are true and accurate to the best of their ability; and

(b) pay a fee, if required by [RULE III].

(2) The department application affidavit form requires the applicant to provide their correct name and social security number and to make the following representations for each trade, occupation, profession or business for which the applicant is

seeking an independent contractor exemption:

(a) that the applicant is engaged in an independently established trade(s), occupation(s), profession(s) or business(es) which are specifically identified;

(b) that the applicant currently files or, if a new business is formed, will be filing the appropriate federal and state tax returns for the year in which the exemption is in effect and pays self-employment taxes on the income earned as an independent contractor;

(c) that the applicant has or will have a contract or accepted bid proposal;

(d) that the applicant has documents such as printed invoices, business cards, current business licenses, permits, advertisements, etc., which support a finding of an independently established trade, occupation, profession or business;

(e) that the applicant supplies all of the tools and equipment necessary for the performance of the contract;

(f) that the applicant controls the details of how to perform the contracted for services and that the employer retains only the control necessary to ensure the bargained for end result; and

(g) that the applicant understands and agrees that if the independent contractor exemption is granted, the applicant is not eligible for workers' compensation benefits or unemployment insurance benefits for work performed as an independent contractor for which the exemption is granted.

(3) An application that is approved and for which the exemption certificate is issued, shall be in effect for one year unless the department revokes the exemption certificate or is notified in writing prior to the expiration date that the exemption holder wishes to have the exemption revoked.

AUTH: Sec. 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-71-120, 39-71-401 and 39-71-409 MCA

RULE II RENEWAL OF INDEPENDENT CONTRACTOR EXEMPTION

(1) A person holding a current independent contractor exemption issued by the department may renew the exemption by submitting to the department all of the following:

(a) a completed department independent contractor renewal application affidavit form bearing the applicant's notarized signature, in which the applicant swears or affirms under oath that all of the statements (including the statements as to the applicant's correct name and social security number) contained in the form are true and accurate to the best of their ability; and

(b) the fee provided by [RULE III].

AUTH: Sec. 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-71-120 and 39-71-401 MCA

RULE III APPLICATION FEE FOR INDEPENDENT CONTRACTOR EXEMPTION (1) For the purposes of this rule, the following definitions apply:

(a) "Initial application" means a person's first-time application for exemption as an independent contractor in a particular trade(s), occupation(s), profession(s) or business(es). For example, if a person holds an exemption for general carpentry, and that person wishes to become exempt as a mechanic, the application for exemption as a mechanic will be considered an initial application.

(b) "Renewal application" means an application for annual renewal of an existing independent contractor exemption held by that person.

(c) "Subsequent application" means:

(i) an application submitted for reconsideration following the department's denial of an initial application or renewal application;

(ii) an application submitted during a current exemption period requesting the deletion, revision or addition of the trades, occupations, professions, or businesses for which the current exemption was issued; and

(iii) an application to reinstate an independent contractor exemption that has been suspended, revoked or terminated.

(2) There is no application fee for an initial application.

(3) There is a \$25.00 fee for each renewal application.

(a) For persons holding valid independent contractor exemptions as of June 30, 1995, the \$25 fee is waived for the first renewal application during fiscal year 1996.

(4) The department may charge a \$25.00 fee for each subsequent application.

(5) If a person is concurrently registering with the department as a construction contractor pursuant to Title 39, chapter 9, MCA, and rules adopted to implement that chapter, the initial renewal application fee for an independent contractor exemption is waived.

AUTH: Sec. 39-9-103, 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-9-206, 39-71-120 and 39-71-401 MCA

RULE IV. SUSPENSION OR REVOCATION OF INDEPENDENT CONTRACTOR EXEMPTION

(1) An independent contractor exemption may be suspended or revoked by the department for any of the following reasons:

(a) the department determines the certificate holder is not acting as an independent contractor due to an employing unit's failure to treat the certificate holder as an independent contractor;

(b) the department determines the certificate holder made misrepresentations in the application affidavit form, or renewal application form, to obtain the independent contractor exemption certificate;

(c) the department determines the certificate holder altered or amended the application affidavit form, renewal application form or independent contractor certificate in a deceitful fashion; or

(d) any other reason the department determines sufficiently egregious to warrant suspension or revocation of

the exemption certificate.

(2) Certificate holders may appeal from a department suspension or revocation of the certificate in the same manner as that provided for denial of an application pursuant to 39-71-401, MCA.

(3) As used in this rule, the following definitions apply:

(a) "Revoked" and "revocation" mean that the independent contractor exemption is no longer in force or effect.

(b) "Suspended" or "suspension" mean that the independent contractor exemption is not applicable to a particular job or to a series of jobs for a particular employing unit.

AUTH: Sec. 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-71-120 and 39-71-401 MCA

RULE V GUIDELINES FOR DETERMINING WHETHER AN INDEPENDENT CONTRACTOR EXEMPTION IS NEEDED (1) The independent contractor exemption from the coverage requirements of the Workers' Compensation Act is available only to individual persons, not to business entities such as corporations or partnerships. The independent contractor exemption relieves the person holding the independent contractor exemption from having to be personally covered by workers' compensation insurance. The independent contractor exemption does not relieve the owner(s) of a business from having to provide workers' compensation coverage for all of the employees of the business.

(2) Notwithstanding this rule, any person who wishes to obtain an independent contractor exemption and meets the requirements for having an independent contractor exemption may obtain one.

(3) As used in this rule, "owner" means a sole proprietor, working member of a partnership, or working member of a member-managed limited liability company.

(4) The following owners of business operations generally do not need to obtain the independent contractor exemption provided in 39-71-401(3), MCA:

(a) any owner who is covered by a workers' compensation insurance policy for the work performed;

(b) owners who provide their own fixed regular commercial business location out of which they render services to the public at large;

(c) owners who use their home as their fixed regular commercial business location, only if the owner is able to meet the IRS criteria to claim a business deduction for their home business location on their federal and state tax returns; and

(d) owners who practice in the traditional learned professions such as medicine, law and accounting, who provide their own business location but may periodically be called upon to render services to their customers at the customer's location.

(5) The following owners generally do need to obtain the independent contractor exemption provided in 39-71-401(3), MCA:

(a) any owner of a business who represents to the public that the owner is an independent contractor, regardless of whether the owner has any other employees;

(b) an owner of a business, not falling within the provisions of (4), where the owner primarily provides personal services for commercial customers at the customer's place of business; and

(c) an owner of a business, not falling within the provisions of (4), where the owner primarily provides personal services for commercial customers, where the services provided are substantially similar to the customer's business operations.

AUTH: Sec. 39-71-203 and 39-71-401 MCA

IMP: Sec. 39-71-120 and 39-71-401 MCA

REASON: There is reasonable necessity to adopt the proposed rules in order to implement the changes contained in section 30 of Chapter 500, Laws of 1995 (SB 354) and section 6 of Chapter 516, Laws of 1995 (HB 200). In addition, pursuant to MAR Notice 24-29-75 (published on July 27, 1995, issue of the Montana Administrative Register) the Department held a public hearing in August 1995 concerning proposed changes to ARM 24.29.706 and proposed new rules. As a result of the public comments generally opposing those proposals, the Department has decided to revise its independent contractor exemption application process and has proposed these new rules to implement the new application process. The Department has, wherever feasible, taken the previous public comments into account when drafting the proposed new rules.

4. The Department of Labor and Industry proposes to repeal ARM 24.29.706 in its entirety. The rule proposed for repeal is found at pages 24-2096 and 24-2097 of the Administrative Rules of Montana. Authority to repeal the rule is 39-71-203 and 39-71-401, MCA. The rule proposed for repeal implements 39-71-401, MCA. There is reasonable necessity for the proposed repeal because the Department is revising its process for granting independent contractor exemptions in light of the changes contained in section 30 of Chapter 500, Laws of 1995 (SB 354) and section 6 of Chapter 516, Laws of 1995 (HB 200).


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

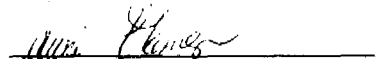
Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., April 19, 1996.

6. The Department proposes to make the new rules and repeal effective June 7, 1996. The Department reserves the right to adopt only portions of the rules, or to adopt some or all of the rules at a later date.

7. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.


David A. Scott
Rule Reviewer


Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 11, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rule 46.14.401	)	ON THE PROPOSED AMENDMENT
pertaining to the low income	)	OF A RULE
weatherization program)	
)	
)	

TO: All Interested Persons

1. On April 11, 1996, at 10:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.14.401 pertaining to the low income weatherization program.

The Department of Public Health and Human 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 April 1, 1996, to advise us of the nature of the accommodation that you need. 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:

46.14.401 PRIORITYIZATION ELIGIBILITY FOR SERVICE;
PRIORITIES (1) weatherization services will be provided to
households according to the following priority:

(a) Households in each of the governor's substate planning
districts with the highest energy use shall be given the highest
priority.

(b) The excess energy use of households containing a
member who is either 60 years of age or older or handicapped as
determined by the federal social security administration under
Title II or Title XVI of the Social Security Act will be
multiplied by 1.25 for purposes of prioritization.

(c) Dwellings which have been weatherized after
September 30, 1985, with federal department of energy funds, and
with non department of energy funds after April 1, 1992, are not
eligible for weatherization.

(1) Dwellings which have been weatherized after September
30, 1985, with U.S. department of energy funds or with funds
from sources other than the U.S. department of energy after
January 1, 1996 are not eligible for weatherization services.

(2) If there exists a weatherization related imminent
threat to the health or safety of an eligible household, their
home may be designated a higher priority. To be so designated,
it is the obligation of the household to provide proof of an
imminent threat to the health or safety of the household to the
local contractor who must request emergency designation from the
department.

(3) Remains the same in text but is renumbered (2).

(3) In determining which eligible households will receive
weatherization services and in what order, households in each of
the governor's substate planning districts shall be ranked

according to energy use. Households with the highest energy use shall be given the highest priority and households with the lowest energy use shall be given the lowest priority.

(a) The energy use, as defined in ARM 46.14.301, of households containing a member who is either 60 years of age or older or handicapped as determined by the federal social security administration under Title II or Title XVI of the Social Security Act will be multiplied by 1.25 for purposes of prioritization.

(4) If there exists a weatherization related imminent threat to the health or safety of an eligible household, their home may be given a higher priority than that dictated by energy use. It is the obligation of the household to provide proof of an imminent threat to the health or safety of the household to the local contractor. The local contractor must request that the department give the household's dwelling a higher priority.

(4) and (4)(a) Remain the same in text but are renumbered (5) and (5)(a).

(5) (6) Eligible homes, scheduled to receive partial weatherization from any other agency, may be prioritized higher given a higher priority than that dictated by energy use to allow coordination and avoid duplication of weatherization services.

(6) Remains the same in text but is renumbered (7).

AUTH: Sec. 53-2-201 and 90-4-201, MCA

IMP: Sec. 53-2-201, 90-4-201 and 90-4-202, MCA

3. The Low Income Weatherization Assistance Program provides funding for energy conservation measures such as the installation of insulation and the sealing of ducts for the dwellings of low income families. ARM 46.14.401 sets forth eligibility requirements and criteria for determining in what order low income families will be served. Currently ARM 46.14.401 provides that dwellings which have been weatherized after September 1, 1985 with U.S. Department of Energy funds or which have been weatherized after April 1, 1992 with funds from sources other than the U.S. Department of Energy are not eligible for weatherization services.

The department proposes to amend ARM 46.14.401 to provide that dwellings which have been weatherized after January 1, 1996 with funds from sources other than U.S. Department of Energy are not eligible for weatherization service. This amendment is necessary to permit dwellings which have been weatherized between April 1, 1992 and January 1, 1996 to benefit from new energy conservation technologies such as mobile home ceiling and wall insulation, heating system diagnostics, dense pack insulation and duct sealing. Additionally, this change will allow weatherization contractors to make more extensive use of Montana Power Company funds for weatherization of low income dwellings. MPC operates a weatherization program for low income families which follows the department's rules on eligibility. ARM 46.14.401 as currently written often precludes installation of cost effective utility conservation measures with MPC funds because a dwelling has received weatherization services after April 1, 1992.

The department also proposes to delete the word "excess" in the term "excess energy use" in ARM 46.14.401 (1)(b). This is necessary because it is "energy use" as defined in ARM 46.14.301

which is used to set priorities, not "excess energy use." This change in the rule does not represent a change in policy. The department has always used energy use to set priorities, but the term "excess energy use" was mistakenly used in the rule.

Other changes have been made in the organization and wording of ARM 46.14.401 for stylistic reasons and to make the rule more comprehensible. These changes do not represent any change in policy.

4. The department proposes to apply these amendments retroactive to January 1, 1996. This date is necessary to coincide with the starting date of the contract between Montana Power Company (MPC) and the department to provide weatherization services to low income individuals. Under the terms of the contract, MPC uses the eligibility requirements set forth in ARM 46.14.401 et seq. It is desirable that the amended eligibility requirements be used as of the starting date of the MPC contract to avoid the confusion of changing eligibility requirements in the course of the contract.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than April 18, 1996.

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

Dawn Sliva
Rule Reviewer

Michael J. Ballung
Director, Public Health and
Human Services

Certified to the Secretary of State March 11, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of Rules I through XIII) ON THE PROPOSED ADOPTION
pertaining to retirement home) OF RULES
licensing requirements)

TO: All Interested Persons

1. On April 11, 1996, 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 rules I through XIII pertaining to retirement home licensing requirements.

The Department of Public Health and Human 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 April 1, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, Montana 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE 1] RETIREMENT HOMES: DEFINITIONS In addition to those definitions in 50-5-101, MCA, the following definitions apply to this sub-chapter:

(1) "Bedding" means mattresses, box springs, mattress covers, mattress pads, sheets, pillow slips, pillows, pillow covers, blankets, comforters, quilts and bedspreads.

(2) "Building authority" means the Building Codes Bureau, Montana Department of Commerce, or a local government building inspector enforcing a local building code enforcement program certified by the Department of Commerce.

(3) "Fire authority" means the state fire marshal or the state fire marshal's authorized agent.

(4) "Fixtures" means a shower, bathtub, toilet, toilet seat, urinal, lavatory, kitchen sink, janitor and custodial sink, utensil sink and all exposed plumbing integral to them.

(5) "Floors" means sub-flooring and floor coverings of all rooms including stairways, hallways, and lobbies.

(6) "Furnishings" includes, but is not limited to, cups, glasses, pitchers, utensils, draperies, curtains, blinds, light fixtures, lamps and lamp shades, chairs, tables, desks, shelves, books, magazines, bookcases, dressers, bedsteads, mattress springs other than box springs, towels, wash cloths, soap,

toilet tissue, radios, television sets, coffee makers, water heaters, pictures, mirrors, cabinets, closets and refrigerators.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE II] RETIREMENT HOMES: APPLICATION OF OTHER RULES

(1) To the extent that other licensure rules in ARM title 16, chapter 32, sub-chapter 3, conflict with the terms of this sub-chapter, the terms of this sub-chapter will apply to retirement homes.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE III] RETIREMENT HOMES: FIRE AND BUILDING CODES APPROVAL (1) The construction of or alteration, addition, or renovation to a retirement home must:

(a) meet all applicable local and state building and fire codes;

(b) be approved in writing by the building authority; and

(c) be approved in writing by the fire authority.

(2) A retirement home must be inspected and certified on an annual basis for compliance with the local and state fire codes by the fire authority. A retirement home must maintain a record of such inspection and certification for at least 1 year following the date of the inspection.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE IV] RETIREMENT HOMES: SWIMMING POOLS AND SPAS

(1) The construction and operation of any swimming area, swimming pool, hot springs pool, or spa which serves a retirement home must comply with the licensing procedures and requirements of Title 50, chapter 53, MCA, and ARM Title 16, chapter 10, sub-chapters 13 and 15.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE V] RETIREMENT HOMES: PHYSICAL REQUIREMENTS

(1) A retirement home must comply with the local and state building code and fire code.

(2) A retirement home must comply with the following physical requirements:

(a) There must be at least one storage room sufficient in size for the storage of extra bedding and furnishings.

(b) There must be adequate and convenient janitorial facilities including a sink and storage area for equipment and chemicals.

(c) Floors and walls in toilet and bathing rooms, laundries, janitorial closets, and other rooms subject to large

amounts of moisture, must be smooth and non-absorbent.

(d) The floor mounted and wall mounted furnishings must be easily moveable to allow for cleaning or mounted in such a manner as to allow for cleaning around and under such furnishings.

(e) Bathing facilities must be equipped with:

(i) anti-slip surfaces; and

(ii) handicapped grab bars, capable of supporting a concentrated load of 250 pounds.

(3) Each bedroom in a retirement home must include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) at least one operable window;

(d) access to a toilet room without entering through another resident's room; and

(e) an adequate closet or wardrobe, bureau or dresser or its equivalent, and at least 1 arm chair, for every 2 residents.

(4) Traffic to and from any room shall not be through a resident's bedroom.

(5) No occupied room shall have as its means of access a trap door, ladder, or folding stairs.

(6) No required path of travel to the outside shall be through rooms that are subject to locking or otherwise controlled by a person other than the person seeking to escape.

(7) No more than four residents may reside in a single bedroom.

(8) Exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each single bedroom must contain at least 100 square feet, and each multi-bedroom must contain at least 80 square feet per bed.

(9) With respect to any conditions in existence prior to [the adoption of this rule], any requirement of [Rule V] may be waived at the discretion of the department if:

(a) physical limitations of the retirement home would require disproportionate expense or effort to comply with a requirement, with little or no increase in the level of safety to the residents and staff; or

(b) compliance with a requirement would involve unreasonable hardship or unnecessary inconvenience, with little or no increase in the level of safety to the residents and staff.

(10) With respect to any conditions in existence prior to [the adoption of this rule], the specific requirements of [Rule V] may be modified by the department to allow alternative arrangements that will provide the same level of safety to the residents and staff, but in no case shall the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in [Rule V].

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE VI] RETIREMENT HOMES: ENVIRONMENTAL CONTROL

(1) Hand cleansing soap or detergent and individual towels must be available at each sink in food preparation areas and commonly shared areas of the facility. Towels for common use are not permitted.

(2) A waste receptacle must be located near each sink.

(3) A minimum of 10 foot candles of light must be available in all rooms, with the following exceptions:

(a) All reading lamps must have a capacity to provide a minimum of 30 foot candles of light;

(b) All toilet and bathing areas must be provided with a minimum of 30 foot candles of light;

(c) General lighting in food preparation areas must be a minimum of 30 foot candles of light; and

(d) Hallways must be illuminated at all times by at least a minimum of 5 foot candles of light at the floor.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE VII] RETIREMENT HOMES: WATER SUPPLY SYSTEM

(1) The department hereby adopts and incorporates by reference ARM 16.20.207, stating maximum microbiological contaminant levels for public water supply systems, and the following circulars establishing construction, operation, and maintenance standards for spring, surface water, wells and cisterns:

(a) Circular WQB-1 entitled "Montana Department of Health and Environmental Sciences Standards for Water Works" (1992 Edition);

(b) Circular WQB-3 entitled "Montana Department of Health and Environmental Sciences Standards for Small Water Systems" (1992 Edition);

(c) Circular #17 entitled "Cisterns for Water Supplies." Copies of ARM 16.20.207 and circulars WQB-1, WQB-3 and #17 may be obtained from the Water Quality Bureau (WQB), Department of Environmental Quality (DEQ), Metcalf Building, 1520 East 6th Avenue, Helena, Montana 59620.

(2) A retirement home must provide an adequate and potable supply of water. The retirement home must:

(a) connect to a public water supply system approved by the department of environmental quality; or

(b) if the retirement home is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents, and an adequate public water supply system is not accessible, utilize a nonpublic system whose construction and operation meet those standards established in one of the following circulars:

(1) Circular WQB-1 entitled "Montana Department of Health and Environmental Sciences Standards for Water Works" (1992

Edition);

(ii) Circular WQB-3 entitled "Montana Department of Health and Environmental Sciences Standards for Small Water Systems" (1992 Edition);

(iii) Circular #17 entitled "Cisterns for Water Supplies."

(3) If a nonpublic water supply system is used in accordance with (2)(b), a retirement home must:

(a) submit a water sample at least quarterly to a laboratory licensed by the department of environmental quality to perform microbiological analysis of water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 16.20.207.

(4) A retirement home must replace or repair the water supply system serving it whenever the water supply:

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 16.20.207; or

(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.

(5) Handsinks and bathing facilities must be provided with water at a temperature of at least 100°F and not more than 120°F.

(6) Ice must be:

(a) obtained from a licensed supplier if it is not made from the retirement home's water supply;

(b) manufactured, stored, handled, transported and served in a manner which is approved by the department or local health authority as preventing contamination of the ice.

(7) Where open bin ice storage is provided, an ice scoop must be readily available for use by residents or the management and stored either inside the bin or in a closed container protected from contamination.

(8) Ice storage bins may not be connected directly to any trap, drain, receptacle sink or sewer which discharges waste or to any other source of contamination. A minimum of a 4" air gap is required between the ice storage bin drain and any waste discharge.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE VIII] RETIREMENT HOMES: SEWAGE SYSTEM (1) The department hereby adopts and incorporates by reference ARM Title 16, chapter 17, sub-chapter 1, on-site subsurface wastewater treatment systems. A copy of ARM Title 16, chapter 17, sub-chapter 1 may be obtained from the Water Quality Bureau, Department of Environmental Quality, Metcalf Building, 1520 East 6th Avenue, Helena, Montana 59620.

(2) In order to ensure sewage is safely and completely disposed of, a retirement home must:

(a) connect to a public water supply system approved by the department of environmental quality; or

(b) if the retirement home is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents, and an adequate public sewage system is not available, utilize a nonpublic system whose construction and use meet the construction and operation standards in ARM Title 16, chapter 17, sub-chapter 1;

(c) replace or repair a failed system as defined by ARM 16.17.103(6).

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE IX] RETIREMENT HOMES: LAUNDRY FACILITIES

(1) Laundry facilities operated in conjunction with, or utilized by, a retirement home must be provided with:

(a) a mechanical washer and hot air tumble dryer. Manual washing and line drying of bed linen, towels and washcloths is prohibited. Dryers must be properly vented to prevent maintenance problems;

(b) a hot water supply system capable of supplying water at a temperature of 54°C (130°F) to the washer during all periods of use, or if a temperature of 54°C (130°F) cannot be attained or maintained, manufacturer documentation showing the cleansing products effectiveness at lower water temperatures by exponentially increasing the time laundry is exposed to the product;

(c) a separate area for sorting and storing soiled laundry and folding and storing clean laundry;

(d) separate carts for transporting soiled and cleaned laundry; and

(e) hand washing facilities including a sink, soap, and disposable towels. A soak sink may double as a hand washing sink.

(2) Sheets, pillow covers, towels and washcloths must be dried in a hot air tumble dryer or ironed at a minimum temperature of 150°C (300°F).

(3) Facility staff handling laundry must cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE X] RETIREMENT HOMES: HOUSEKEEPING AND MAINTENANCE

(1) A retirement home must provide daily housekeeping and maintenance services and ensure that:

(a) each janitor room is clean, ventilated and free from odors;

(b) mop heads, when used, are changed frequently using laundered replacements;

(c) toilets, bathtubs, lavatories, and showers are not used for washing and rinsing of mops, brooms, brushes, or any other cleaning devices;

(d) the transporting, handling and storage of clean bedding is performed in such a manner as to preclude contamination by soiled bedding or from other sources;

(e) any cleaner used in cleaning bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats, and floors contains fungicides or germicides;

(f) deodorizers and odor-masking agents are not used unless the room in which the agent is used is clean to sight and touch;

(g) cleaning devices used for lavatories, showers and bathtubs are not used for any other purpose;

(h) dry dust mops and dry dust cloths are not used for cleaning purposes. Dusting and cleaning must be accomplished using treated mops, wet mops, treated cloths, or moist cloths to prevent the spread of soil from one place to another;

(i) the retirement home is free of insects, rodents and other vermin;

(j) all bedding, towels, and wash cloths provided by management are clean and in good repair. At least weekly, clean bed linens must be made available to each resident. Clean wash cloths and towels must be made available to each resident on a daily basis;

(k) all furnishings, fixtures, floors, walls, and ceilings are clean and in good repair;

(l) cleaning compounds and pesticides are stored, used, and disposed of in accordance with the manufacturer's instructions;

(m) glasses, pitchers, ice buckets, and other utensils used for food or drink and provided in units for use by residents are not washed or sanitized in any lavatory or janitor sink. Approved facilities for washing, rinsing, and sanitizing glasses, pitchers, ice buckets, and other utensils must be provided by the retirement home. In the absence of approved washing facilities, single service utensils must be used; and

(n) all utensils used for food or drink and provided in units for use by residents are stored, handled, and dispensed in a manner which precludes contamination of the utensil prior to use by a resident.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE XI] RETIREMENT HOMES: FOOD SERVICE REQUIREMENTS

(1) The department hereby adopts and incorporates by reference ARM Title 16, chapter 10, sub-chapter 2 which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 16, chapter 10, sub-chapter 2 may be obtained from the Communicable Disease Control and Prevention Bureau, Department of Public Health and Human

Services, Cogswell Building, 1400 Broadway, Helena, Montana 59620.

(2) Where a food service is operated as an integral part of a retirement home, compliance with ARM Title 16, chapter 10, sub-chapter 2, is required.

(3) If the food service is available only to residents and staff of the retirement home, licensure as a food service establishment is not required, but compliance with ARM Title 16, chapter 10, sub-chapter 2, is required.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE XII] RETIREMENT HOMES: SOLID WASTE (1) In order to ensure that solid waste is safely stored and disposed of, a retirement home must:

(a) store all solid waste between collections in containers which have lids and are corrosion resistant, flytight, watertight, and rodent proof;

(b) utilize exterior collection stands for the storage containers, which prevent them from being tipped, protect them from deterioration, and allow easy cleaning below and around them;

(c) clean all solid waste containers frequently; and

(d) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to an approved landfill site in a covered vehicle or in covered containers.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

[RULE XIII] RETIREMENT HOMES: RESIDENT REGISTER (1) A retirement home must maintain a register of all residents residing at the retirement home, noting for each resident, at a minimum, the resident's:

(a) room assignment;

(b) date of admission;

(c) date of departure; and

(d) forwarding address.

AUTH: 50-5-103, MCA

IMP: 50-5-103 and 50-5-214, MCA

3. The 1995 legislature, through House Bill 301, added retirement homes to that list of health care facilities in 50-5-101(17), MCA, which are required to be licensed by the Quality Assurance Division of the Department of Public Health and Human Services. A health care facility is defined under 50-5-101(17), MCA, to include a residential care facility, which in turn, is defined under 50-5-101(40), MCA, to include a retirement home. The adoption of new rules I through XIII is necessary to

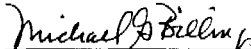
specify the licensing requirements and procedures for retirement homes.

4. The proposed retirement home rules, specifically Rules VII and VIII, incorporate by reference certain Department of Environmental Quality (DEQ) rules, using DEQ's existing Title 16 rule numbering system. Pursuant to MAR Notice No. 17-016, DEQ has published its notice of transfer and proposed amendment of Title 16, including renumbering of its rules from the old Title 16 to the new Title 17, in the Montana Administrative Register. It is the intention of the department to use and adopt the new Title 17 numbering in lieu of the old Title 16 numbering for the internal DEQ ARM references in these proposed rules, upon the adoption by DEQ of its proposed transfer and amendment of rules to Title 17.

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

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than, April 18, 1996.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State March 11, 1996.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED REPEAL
of rules 11.22.101, and	)	OF RULES
11.22.103 through 11.22.110)	
pertaining to purchased)	
services through title XX)	
block grants)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On May 28, 1996, the Department of Public Health and Human Services proposes to repeal rules 11.22.101, and 11.22.103 through 11.22.110 pertaining to purchased services through Title XX Block Grants.

2. The rules to be repealed are:

11.22.101 SERVICES PROVIDED BY CONTRACT, found on page 11-989 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.103 ELIGIBILITY REQUIREMENTS, found on page 11-989 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.104 CONTRACTING FOR SERVICES, found on page 11-990 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.105 LEGAL SERVICES, found on page 11-990 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.106 APPLICATION, found on page 11-990 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.107 PROTECTION OF RIGHTS OF CLIENTS, found on page 11-991 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.108 EXPENDITURES, found on page 11-991 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.109 PAYMENTS, found on page 11-993 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

11.22.110 FISCAL AND ACCOUNTING PROCEDURES, found on page 11-993 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-20-407, MCA

3. The rules to be repealed formerly implemented block grant programs funded under Title XX of the Social Security Act. The department no longer receives funds under Title XX, and the rules are no longer needed. Therefore, they should be repealed.

4. Repeal of these rules is pursuant to House Joint Resolution No. 5 of the 1995 Legislature.

5. Interested persons may submit their data, views, or arguments concerning the proposed repeals in writing to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than April 18, 1996.

6. If a person who is directly affected by the proposed repeals wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than April 18, 1996.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed repeals, 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 are directly affected, a hearing will be held at a later date. Ten percent of those directly affected has been determined to be 0 based on the number of individuals affected by rules pertaining to purchased services through title XX block grant. (As explained in paragraph 3, these rules formerly implemented a program no longer in existence.)

Dawn Hara
Rule Reviewer

Michael B. Billing
Director, Public Health and
Human Services

Certified to the Secretary of State March 11, 1996.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
Rule 6.6.1104 pertaining to the)
limitation of presumption of)
reasonableness of credit life and)
disability rates.)

TO: All Interested Persons.

1. On January 11, 1996, the state auditor and commissioner of insurance of the state of Montana published notice of proposed amendment of rule 6.6.1104. The notice was published at page 7 of the 1996 Montana Administrative Register, issue number 1.

2. The agency has amended rule 6.6.1104 exactly as proposed.

3. The Department has thoroughly considered the written comment received on the proposed rule amendment. The following is a summary of the comment received along with the Department's response to the comment:

COMMENT: Veronica S. Chang, Staff Attorney, Corporate Law & Government Affairs of Universal Underwriters Group, submitted two written comments on the proposed rule amendment. Ms. Chang's first comment urged the Department to reconsider eliminating the reasonable prudent person standard. Her second comment offered the use of the "reasonable licensed medical professional standard" in lieu of eliminating the reasonable prudent person standard. Ms. Chang suggested that the "medical profession standard" could be a reasonable compromise and would serve to discourage fraudulent claims.

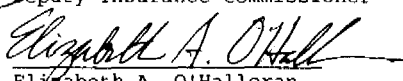
RESPONSE: With respect to Ms. Chang's comment to reconsider eliminating the reasonable prudent person standard, the Department's response is that the language of the rule contradicts 33-22-110, MCA. With respect to Ms. Chang's suggestion that the department use the term "reasonable licensed medical professional" in lieu of eliminating the reasonable prudent person standard, the Department responds as follows: Potential credit life and disability applicants cannot be expected to always know if a medical professional would recommend treatment for a given condition and the term "reasonable licensed medical professional" is not defined in code.

Therefore, the Department respectfully declines to change the proposed rule amendment.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Coté
Deputy Insurance Commissioner


Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 11th day of March,
1996.

BEFORE THE PROFESSIONAL AND OCCUPATIONAL
LICENSING BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the transfer	)	NOTICE OF TRANSFER AND
and amendment, repeal	)	AMENDMENT, REPEAL
and adoption of rules pertain-	)	AND ADOPTION OF RULES
ing to fire prevention and	)	PERTAINING TO FIRE PREVENTION
investigation	)	AND INVESTIGATION

TO: All Interested Persons:

1. On September 28, 1995, the Department published a notice of transfer and proposed amendment, repeal and adoption of rules pertaining to fire prevention and investigation at page 1825, 1995 Montana Administrative Register, issue number 18. The Department published an amended notice of ARM 8.19.112 at page 2087, 1995 Montana Administrative Register, issue number 19.

2. The Department has transferred the rules as proposed. The Department has amended ARM 8.19.116, repealed ARM 8.19.101, 8.19.102, 8.19.104 through 8.19.106, 8.19.109, 8.19.113 and 8.19.115 and adopted new rule II (8.19.118) exactly as proposed. The Department is not going to repeal ARM 8.19.110 as proposed in the original notice. Instead, the Department will adopt and amend the rule as noted below. The Department has amended ARM 8.19.108, 8.19.111, 8.19.112 (as amended in amended notice in issue number 19), and adopted new rules I (8.19.117) and III (8.19.119) as proposed, but with the following changes: (The authority and implementing sections will remain the same as proposed in the original notice, except as noted)

"8.19.108 CONTINUING EDUCATION (1) will remain the same as proposed.

(2) An endorsee shall obtain a minimum of 8 hours (60 minutes per hour) annually and submit copies of continuing education certificates with the application for renewal. Up to 8 hours earned in excess of the 8 hours required in a licensing year may be carried over into the succeeding year. All applicants for renewal of endorsements shall have completed continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until the endorsee's first full year of endorsement. NICET level II recertification will be accepted in lieu of the continuing education required under this rule, provided that the individual establishes that he or she has completed continuing education for recertification that meets or exceeds the required hours of continuing education under this rule.

(3) through (3)(c) will remain the same as proposed.

(d) videotaped instruction or course work approved by the department;

~~(d)~~ (e) any continuing education which has been obtained in another state that meets the continuing education requirements of ~~that state~~ Montana;

(e) will remain the same as proposed, but will be renumbered (f).

(3)(f)(i) through (iv) will remain the same as proposed."

"8.19.110 WHO MUST OBTAIN AN ENDORSEMENT (1) Except as provided in (2), a person must obtain an endorsement from the department prior to selling, servicing, or installing fire alarm systems, special agent fire suppression systems or fire extinguishing systems.

(2) The following persons need not obtain an endorsement:

(a) a manufacturer filling or charging a fire extinguisher prior to its initial sale;

(b) an apprentice, so long as the person performs the installation or service of fire protection equipment under the immediate personal supervision of a person holding an endorsement;

(c) an owner, manager, or maintenance personnel making monthly inspections on their own facilities of fire extinguishers;

(d) an owner or occupant of a single family residence performing installation of fire protection equipment as long as the authority having jurisdiction approves the installation.

(3) An apprenticeship program must assure that the person completes the program in no longer than:

(a) four years for the service or installation of fire alarm systems;

(b) two years for the service or installation of special agent fire suppression systems;

(c) five years for the service or installation of fire extinguishing systems.

(4) An apprentice will be registered and issued a card each year while in good standing that indicates the individual is in a training position and shall not install, inspect, recharge, repair, service or test fire protection equipment without the direct and immediate supervision of a person endorsed by the department.

(5) An apprentice shall obtain an endorsement within 90 days after completion of the apprentice program.

(6) The following persons or entities are exempt from the licensing requirements imposed by these rules:

(a) Persons or entities that engage only in the routine visual inspection of fire alarm systems, special agent fire suppression systems or fire extinguishing systems owned by the person or entity and installed on property under their control are exempt from obtaining a license or endorsement from the department; however, these persons or entities are not exempt if they service or install fire protection equipment.

(b) A licensed electrical contractor who subcontracts to install smoke detection and fire alarm equipment pursuant to building specifications is exempt from obtaining a license or endorsement under this chapter, provided the installation is inspected and approved by a person endorsed to service or install the fire protection equipment.

(c) An owner or occupant of a single family residence performing installation of fire protection equipment, as long

as the authority having jurisdiction approves the installation.

Auth: Sec. 50-3-102, 50-3-103, 50-39-107, MCA; IMP, Sec. 50-3-102, 50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-105, 50-39-106, 50-39-107, MCA

"8.19.111 PROCESSING FEE AND PRORATED FEES (1) In the year of first application ~~for a license or endorsement~~, the applicant shall pay an application processing fee in the amount of \$100 ~~for a license and \$25 for an endorsement~~. ~~This~~ The processing fee shall be in addition to the annual license and/or endorsement fee, and shall not be prorated.

(2) through (2)(d) will remain the same as proposed."

"8.19.112 EXAMINATION FOR ENDORSEMENT (1) The department shall issue an endorsement for ~~both non-pre-engineered and pre-engineered~~ fire alarm systems, special fire agent suppression systems or fire extinguishing systems to an individual who pays the required fee and submits satisfactory documentation that the applicant satisfies one of the following:

(a) currently holds the equivalent of endorsement in another jurisdiction (state, territory, federal government, federally-recognized tribe, country, or local government), provided that the ~~endorsement or equivalent was obtained by the applicant through passage of an examination approved by the department applicant meets or exceeds the qualifications for endorsement in this state;~~

(b) has passed the following examination elements for a level II certification from NICET, for the system(s) for which endorsement is sought, as specified below:

(i) automatic sprinkler fire extinguishing system (NICET) examination requirements:

<u>13001</u>	<u>construction plans</u>
<u>13002</u>	<u>fire protection plans and symbols</u>
<u>13003</u>	<u>specifications and cost estimates</u>
<u>13005</u>	<u>basics of system layout</u>
<u>13006</u>	<u>classification of occupancies</u>
<u>13007</u>	<u>water supply requirements</u>
<u>13008</u>	<u>system connections</u>
<u>13009</u>	<u>system piping configurations, schedules, and sizes</u>
<u>13010</u>	<u>requirements of spacing</u>
<u>13011</u>	<u>sprinkler location and position</u>
<u>13012</u>	<u>pipe joining techniques and fittings</u>
<u>13013</u>	<u>pipe hangers and hanging</u>
<u>13014</u>	<u>wet and dry systems</u>
<u>13016</u>	<u>underground piping</u>
<u>13017</u>	<u>building codes</u>
<u>13020</u>	<u>common material specifications</u>
<u>13021</u>	<u>system components and limitations</u>
<u>13023</u>	<u>special sprinklers</u>
<u>13024</u>	<u>water flow test</u>
<u>13026</u>	<u>dwelling sprinklers</u>
<u>14002</u>	<u>selection of fire pumps</u>
<u>14004</u>	<u>pump flow test</u>

14005 high piled storage
14006 rack storage
14007 sprinkler system maintenance
14009 standpipe systems
14010 fire pumps and systems
14011 storage tanks
14012 alarms and system supervision
14013 fundamentals of fire extinguishment
14015 seismic bracing;

(ii) fire alarm system endorsement (NICET) examination requirements:

33001 fire protection plans and symbols
33002 basics of system layout
33003 electrical installation standards
33004 basic fire alarm signaling systems
33005 supervision and supervisory service
33006 detection methods
33007 detector spacing
33008 power supplies
33009 system acceptance and periodic tests
33010 construction plans
33011 specifications and cost estimates
33013 building codes
33016 local protective signaling systems
33017 auxiliary protective signaling systems
33018 remote station protective signaling systems
33019 proprietary protective signaling systems
33020 central station signaling systems
33021 manual fire alarm systems and guard's tour service
33022 heat-sensing fire detectors
33023 smoke-sensing fire detectors
33024 flame-sensing fire detectors
33025 sprinkler waterflow and supervisory devices
33026 alarm indicating appliances
33027 basics of signal transmission
34001 emergency voice/alarm communication systems
34002 signal processing
34003 surveys for fire alarm and detection systems
34004 fire alarm system maintenance
34005 fire alarm system wiring
34006 emergency evacuation signals;

(iii) special agent fire suppression system endorsement (NICET) examination requirements:

23101 materials and components
23102 standard symbols
23103 specifications and cost estimates
23104 hazard analysis
23105 detection methods
23106 fundamentals of fire extinguishment
23107 extinguishing agents
23108 heat-sensing detectors
23109 smoke-sensing detectors

<u>23110</u>	<u>flame detectors</u>
<u>23111</u>	<u>fire gas detectors</u>
<u>23112</u>	<u>foam water systems</u>
<u>23113</u>	<u>halon 1301 systems</u>
<u>23114</u>	<u>carbon dioxide systems</u>
<u>23115</u>	<u>dry chemical systems</u>
<u>23116</u>	<u>halon 1211 systems</u>
<u>23117</u>	<u>electrical installation standards</u>
<u>23118</u>	<u>area, volume, and weight calculations</u>
<u>24101</u>	<u>explosion prevention and venting;</u>

(c) has successfully completed an ~~approved~~ apprenticeship program that included ~~successful passage of an examination,~~ approved by the department, ~~as a component of successful completion;~~ or

(d) will remain the same as proposed.

(2) The department shall issue an endorsement for pre-engineered fire alarm systems, special fire agent suppression systems or fire extinguishing systems to an individual who submits proof of manufacturer training on the specific brand and model of such pre-engineered system for which the subsection seeks endorsement. An endorsement granted under this section shall be valid only for the brand and model number specified on the endorsement.

"8.19.117 DEFINITIONS The following definitions apply to the use of the listed terms in Title 50, chapter 39, part 1, MCA, and in these rules:

(1) through (10) (a) will remain the same as proposed.

(b) whether a license should be granted, ~~or denied, or conditionally issued;~~ or

(c) will remain the same as proposed.

(11) "Install" means the technical work that may be performed only by an endorsed individual or an apprentice, in the assembly of a fire alarm system, ~~or special agent fire suppression system or fire extinguishing system.~~ The term does not include the delivery of supplies, ~~or the off-site cutting of or threading of pipe, or the threading of pipe through the use of a threading machine.~~ The term does include the following tasks:

(a) and (b) will remain the same as proposed.

~~(b) (c) any jobsite bending of pipe or electrical conduit as part of the installation;~~

~~(c) (d) jobsite assembly and installation of metal or nonmetal pipe fittings, including but not limited to those made of brass, copper, lead, glass, and plastic;~~

~~(e) jobsite assembly and installation of wiring systems;~~

(d) will remain the same as proposed, but will be renumbered (f).

~~(f) (g) securing of pipe, wire or electrical conduit to the structure by any means, including but not limited to clamps, brackets, hangers, and welds; and~~

~~(g) (h) testing the installed system for electrical or mechanical malfunctions leaks by any means, including but not limited to testing by increasing pressure in pipes and observing gauges attached to pipes for indication of leaks.~~

(12) through (16) will remain the same as proposed."

"8.19.119 APPRENTICES-APPROVED PROGRAMS (1) through (3) will remain the same as proposed.

(a) any program that is approved by the Montana department of labor, pursuant to the provisions of Title 39, chapter 6, part 1, MCA; or

(b) any program that is approved by any state, provided that the program meets the requirements of the National Apprenticeship Act, 29 U.S.C. 50, and CFR sections 29.1 - 29.13; or

~~(c) any program that is approved in any state by the federal bureau of apprenticeship and training.~~

(4) will remain the same as proposed."

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

I. General Comments:

Comment: Eight comments were received from individuals and associations expressing general support for the proposed rules. Of the comments generally supporting the proposed rules, some expressed specific support for provisions within the rules that are detailed below.

Response: The Department notes the support for its proposal, and further notes that some of the proposed rules have been changed as a result of comments addressed below. Supporters of the proposed rules without amendment should take note of the changes below.

Comment: Four comments were received from individuals, agencies, and associations expressing general opposition for the proposed rules. Of the comments expressing general opposition, one association contends that the Department's proposal exceeds statutory authority, and is contrary to the purpose of the licensing requirements. Of the comments generally opposing the proposed rules, some expressed specific opposition for provisions within the rules that are detailed below.

Response: The Department of Commerce's rulemaking authority is limited to rules necessary to implement Title 50, Chapter 39, Part 1, MCA. The Department does not possess rulemaking authority upon which the Department of Justice relied in adopting the rules previously associated with this program. The Department of Commerce assessed the rules previously in place at the Department of Justice, and believes that changes were necessitated by the rulemaking authority of §50-39-107, MCA. The Department of Commerce addresses specific comments in its responses to the comments below.

Comment: One comment was received that suggests that, where the rules provide for approval by the Department of Commerce, that the rules be amended to also provide for approval of the State Fire Marshall, or a representative from the fire prevention bureau, or a panel of representatives from the Department of Labor and Industry.

Response: The rules will remain as originally proposed in this regard. The statutes refer to the Department of Commerce as the agency with administrative authority for this program. See for example §§50-39-101, 50-39-102, 50-39-103, 50-39-104, 50-39-106, and 50-39-107. Each of these sections refers to the Department of Commerce, and does not provide for administration of the program by other Departments. The Department of Commerce does intend, under §50-39-103, MCA, to coordinate enforcement efforts with the Department of Justice, which will be performing inspections. The Department also intends to cooperate with and seek the expertise of the Department of Labor with respect to its apprenticeship program.

II. Specific Comments:

Proposed Rule 8.19.108

Comment: Three comments were received that requested that NICET Level II recertification be accepted in lieu of the continuing education requirement. One of the comments indicate that NICET requires continuing education for recertification that exceeds the required hours of continuing education under the proposed changes to 8.19.108.

Response: The rule will be amended as suggested, with a proviso requiring the licensee to prove that he or she has completed continuing education in the NICET recertification process that meets or exceeds the continuing education hours required under the rule.

Comment: Three comments were received that express opposition to subsection (3)(d), which provides for approval of continuing education that is obtained in another state that meets the continuing education requirements of that state. One of the comments suggests changing the language "that state" to "this state." One of the comments suggests that Montana should accept continuing education from another state only if that state accepts continuing education approved by Montana. One of the comments states that acceptance of continuing education from other states makes Montana's standards for continuing education meaningless.

Response: The rule will be amended as suggested to provide that the continuing education must meet the standards of Montana. With that change, it is unnecessary to provide that continuing education from another state will be approved only if that state accepts continuing education approved by Montana.

Comment: One comment was received that states that continuing education programs should be specific, geographically accessible, and relevant to the specific need.

Response: The Department has amended the rule to provide for videotaped instruction and correspondence course work to better provide for geographic accessibility.

Proposed Rule 8.19.111

Comment: One comment was received that questions the necessity to prorate fees for first-year licensees and endorsees. Two comments were received that state that the license processing fee should only be charged for businesses obtaining licenses, and not for individuals obtaining endorsements. The comments suggest that the proposed \$100.00 application processing fee is excessive, and should be eliminated for endorsements. In addition, one of the comments questions whether businesses will be inspected prior to being licensed, and suggests that the license processing fee be directed only toward funding such inspections.

Response: The Department has lowered the processing fee for endorsements to \$25.00 in response to the comments. The fee is set in order to adequately cover the administrative time spent in processing an application for licensure and/or endorsement. The law, section 50-39-103, MCA, provides for inspection of business facilities. Thus, the Department agrees that the \$100.00 fee should be charged only for the license requiring inspection. The Department will retain the prorated fee structure as originally proposed, as it provides for a fair apportionment of fees for new endorsees and licensees.

Proposed Rule 8.19.112

Comment: Eight (written) comments were received on this rule.

Comment: One comment expressed opposition to the removal of the distinction between pre-engineered and non pre-engineered systems. The agency submitting this comment contends that the distinction is necessary to provide for only qualified individuals to perform the work on non pre-engineered systems. The agency notes that the current version of the rule provides for manufacturer-specific endorsements and licensing, which it has previously offered when the program was under its jurisdiction.

Response: The Department accepts the comment, and has modified the rule as suggested in this comment.

Comment: Four comments expressed opposition to subsection (1)(a), providing for endorsement of individuals holding the equivalent of endorsement in another jurisdiction. These comments state that the rule, as proposed, inappropriately provides for an easier means of obtaining endorsement for individuals from other states than is offered to individuals initially obtaining endorsement from this state.

Response: The Department agrees with the comments to extent that they point out an ambiguity in the language used. The Department did not intend to offer endorsement to any individual licensed in another jurisdiction regardless of that state's qualifications. The Department has amended the rule to provide that the individual seeking endorsement from another state must meet or exceed the qualifications required for endorsement in this state.

Comment: Three comments expressed concern with the Department's proposal in subsection (b) to require passage of all examination elements for a level II certification from NICET. One individual provided a list of eighteen work elements tested under NICET that he believed necessary and adequate for state endorsement on fire extinguishing systems. One individual concurred in the identification of these elements. These elements are as follows:

11002 Layout Simple Designs
11003 NFPA Standards
11004 Basics of Sprinkler Systems
11005 Basic Materials and Components
13002 Fire Protection Plans and Symbols
13005 Basics of System Layout
13006 Classification of Occupancies
13008 System Connections
13010 Requirements of Spacing
13011 Sprinkler Location and Position
13012 Pipe Joining Techniques and Fittings
13013 Pipe Hangers and Hanging
13016 Underground Piping
13023 Special Sprinklers
13024 Water Flow Test
13026 Dwelling Sprinklers
14007 Sprinkler System Maintenance
14015 Seismic Bracing

Other individuals commented that the Department of Justice had never required passage of all examination elements for level II NICET as a condition of endorsement, and expressed their belief that the Department of Commerce is attempting to increase the requirements for endorsement from those previously required by the Department of Justice.

One individual expressed his belief that NICET level II certification is an appropriate standard for endorsement.

Response: The Department acknowledges that the rule is ambiguous as to which examination elements are required for each endorsement. The Department believes that the examination elements previously required by the Department of Justice are appropriate, and has amended the rule to reflect each of these elements for the relevant system.

Comment: Two comments expressed concern with subsection (c). One of the comments suggested that completion of an apprenticeship in the related plumbing and pipefitting trades should be accepted for endorsement on fire extinguishing systems. Another comment suggested that the inclusion of an examination requirement for an individual who has completed an apprenticeship program is redundant because state apprenticeship programs invariably include theoretical instruction.

Response: The Department has removed the reference in subsection (c) to the apprenticeship program including an examination. With respect to the endorsement of individuals who have completed pipefitting and/or plumbing apprenticeships,

the Department declines to amend the rule at this time. An individual experienced in plumbing and pipefitting may not have adequate experience in other aspects of the installation of fire prevention systems. The Department is open, however, to considering further arguments in favor of expanding approval of plumbing and/or pipefitting apprenticeship programs.

Comment: Three comments were received opposing the granting of endorsement to an individual by virtue of licensure as an engineer. The comments indicated that the skills necessary for the two professions differ substantially, and that an engineer is not necessarily qualified to install fire prevention systems.

Response: The Department disagrees with these comments, and notes that the Department of Justice previously authorized endorsement to an individual holding a license as an engineer in the State of Montana, under ARM 23.7.133(2). The Department notes, in addition, that one of the comments contradicts itself by opposing this section when proposed by the Department of Commerce, while urging the Department of Commerce to retain the rules as previously drafted by the Department of Justice, which, as explained herein, also granted endorsement to licensed engineers. The Department will retain this provision as originally proposed, as it relies on the expertise of the Department of Justice in having previously authorized endorsement to engineers.

Proposed Repeal of 23.7.121 (8.19.101)

Comment: One comment was received expressing opposition to the repeal of this rule. The comment notes that subsections (1) through (4) are covered in the Department's proposed new rule 11, Application procedure. The comment suggests, however, that subsection (5) of 23.7.121 needs to be retained to clarify the circumstances that require licensure and endorsement. The comment notes that there are a number of businesses, corporations, hospitals, etc., in Montana that employ maintenance staff for their fire prevention systems, but who do not engage in the "fire protection business". The comment suggests that without this rule, these entities will be required to be licensed.

Response: The Department agrees with the comment to the extent that it references the need to retain subsection (5), and has added previous subsection (5) from this rule to rule 8.19.110 (previously 23.7.131).

Proposed Repeal of 23.7.122 (8.19.102)

Comment: Three comments were received expressing opposition to the repeal of 23.7.122. The comments suggest that the rule is necessary to provide licensees with clear guidance on what violation will result in disciplinary action, and provides necessary information such as the period of suspension and how a suspended license may be reinstated. One of the comments suggests that the rule be retained and amended to provide for an administrative fine for violations as well.

One comment suggests that the Department lacks the authority to enforce the law without this rule.

Response: The rule adds additional grounds for disciplinary action that were not contemplated by the legislature, and which are contrary to section 50-39-104, MCA. This section specifies the grounds for disciplinary action, and also specifies the sanctions that may be imposed. This law does not authorize the Department to assess administrative fines, nor does it authorize the Department to add additional grounds for disciplinary action. The rule will be repealed.

Proposed Repeal of 23.7.124 (8.19.104)

Comment: Two comments were received expressing opposition to the repeal of 23.7.124. One of the comments suggest that the Department lacks authority to deny a license without this rule.

Response: The Department has clear authority to deny a license under section 50-39-104, MCA. The statute authorizes the Department to deny a license or endorsement for any violation of the law or rules adopted pursuant thereto. In addition, the Department, as an administrative agency, has only those powers specified by statute. The statute does not permit the Department to issue licenses to unqualified individuals. Thus, the comment that the Department will be forced into issuing licenses to unqualified individuals is without merit. The rule will be repealed.

Proposed Repeal of 23.7.126 (8.19.106)

Comment: Two comments were received expressing opposition to the repeal of 23.7.126. The comments indicate that the rule should be retained to further enforcement of the other rules implementing the licensing law.

Response: The rule is unnecessary, as section 50-39-103, MCA, gives the Departments of Commerce and Justice clear authority to inspect business facilities. In addition, the Department of Commerce is in the process of negotiating a memorandum of understanding with the Department of Justice that will further enforcement through a thorough inspection process. The rule will be repealed.

Proposed Repeal of 23.7.129 (8.19.109)

Comment: Three comments were received expressing opposition to the repeal of 23.7.129. These comments suggest that without the rule, there is nothing to prohibit an individual from transferring his or her license to an unqualified individual.

Response: The Department believes that the statute clearly authorizes issuance of a license and endorsement only to the individual who obtained such license by qualifying under the law and rules. There is nothing in the law that authorizes an unqualified individual or business to hold a license or endorsement simply because a qualified individual or business chose to transfer it to them. A license or endorsement issued

by the Department under the statutes and rules is non-transferrable with or without a rule specifying the same. The rule will be repealed.

Proposed Repeal of 23.7.131 (8.19.110)

Comment: One comment was received expressing opposition to the repeal of 23.7.131. The comment suggests that the rule is necessary to determine who needs a license or endorsement, and to determine who is exempt.

Response: The Department acknowledges the potential threat to the public health, welfare, and safety that would be caused by repeal of this rule without a separate rule under the authority of the Department of Justice requiring that systems in buildings frequented by the public be installed and serviced only by endorsed individuals. In light of the fact that the Department of Justice has not yet promulgated such a rule, the Department of Commerce will retain this rule as suggested by the Department of Justice. The Department of Commerce has also added in previous subsection (5) from 23.7.121, as noted in response to comments under 8.19.101 above.

Proposed New Rule I

Comment: One comment was received suggesting a change in the definition of "fire alarm system" under (5). The comment indicates that residential smoke detectors in new construction are no longer single station detectors, and that the definition as written would require an endorsement for an electrician to install interconnected smoke detectors in new construction. The comment suggests a revision of the definition that would add language exempting "household smoke detectors that may be interconnected to cause an alarm to sound in all smoke detectors within the dwelling."

Response: The Department rejects the comment. A multi-station, interconnected system is far more complex than the single station previously exempted from the definition by the Department of Justice. The complexity of a multi-station system requires that an endorsed individual complete the installation and service. The rule will remain as proposed.

Comment: Two comments expressed opposition to inclusion of the term "conditionally issued" under definition of inspection (subsection (10)(b)). One of the comments suggests that this language will allow the Department to issue licenses to unqualified individuals, and expresses concern that the Department will use the language to issue licenses to unqualified individuals.

Response: The Department agrees with the comments to the extent that they identify an ambiguity in the language, and will delete reference to "conditionally issued" in the definition of inspection. This will better provide for consistency between the rule and the authority to deny, suspend or revoke a license under section 50-39-104, MCA.

Comment: One comment was received suggesting a change in the definition of "fire extinguishing system" under (7). The comment states that underground piping for water supply, ponds and tanks are not generally installed by fire protection contractors, and should thus be exempt from the endorsement requirement.

Response: If the piping is installed as part of a fire extinguishing system, then an endorsement is required under the law. Thus, the definition will remain as proposed.

Comment: Five comments were received suggesting a change in the definition of "install" under (11). The comments included suggestions that the cutting and threading of pipe should be performed only by endorsed individuals, and that only an endorsed individual should be involved in on site pipe selection, making measurements involved to cut pipe, the operation of specific trade related equipment, the penetration of walls, floors, and beams by use of a cutting torch, welder, core drill, rotor hammer, drill, and other power, mechanical or hand tools as required.

Response: The Department agrees with these comments, and has changed the definition to comply with the suggested changes, as modified by the comment immediately below. With respect to cutting and threading of pipe, the Department does not believe that the term "install" appropriately includes off-site cutting and threading of pipe, and has added language to make this distinction.

Comment: One of the comments indicates that the term "jobsite" needs to be inserted in the definition to avoid requiring an endorsement for individuals designing a system at the factory, or threading or joining pipe at places other than the job site such as in a fabrication shop.

Response: The Department agrees with these comments, and has changed the definition to comply with the suggested changes.

Comment: One comment states that the rule does not address or prohibit the use of "helpers" to conduct unlicensed installations.

Response: The Department disagrees with this comment. The term "install" was never defined by the Department of Justice. As a result, there was no way to determine when an individual needed a license or endorsement to install a system. With a definition of "install", the use of "helpers" to perform work within this definition is now prohibited for the first time. By defining the term "install", the Department has addressed the use of helpers by excluding their use on tasks identified in the definition of the term "install."

Comment: One comment states that the definition does not address fire extinguishing systems, and indicates that the definition needs to do so. Another comment indicates that the definition does not adequately address electrical aspects of installation.

Response: The Department agrees with these comments. With respect to the failure to address the electrical aspects of installation, the Department would have liked to have more suggestions for adding to the definition. The Department has amended the definition to include fire extinguishing systems, and to include the installation of wires, and the bending of conduit as suggested in the comment.

Comment: One comment indicates that the definition will be difficult to enforce, and is so specific that it will set the Department up to be besieged by complaints.

Response: The definition was drafted and will be adopted in order to better provide for the public protection. Without a definition of the term "install", the license and endorsement requirement was meaningless, as it was subject to a variety of interpretations that would have to be litigated on a case-by-case basis. Without the definition of this term, the Department would have to litigate the issue of whether a license or endorsement is required in every circumstance. This is unacceptable. The Department is willing to revise the definition in response to suggestions on necessary improvements, as evidenced by the changes made to the definition herein. The Department believes that it is better to have complaints regarding unlicensed practice over which it can reasonably assert jurisdiction as a result of having a definition of the term "install", than to lack jurisdiction to address a complaint in the first place due to the lack of a definition of the term install.

Proposed New Rule III

Five comments were received on new rule III.

Comment: One comment suggested amending subsection (2) to provide for a minimum and maximum training period for apprenticeship programs.

Response: The authorizing statutes do not create a minimum or maximum training period for programs, and the Department is unwilling to do so by rule without some authority in the statute. The rule will not be amended to provide for minimum and maximum training periods. Of course, any minimum and/or maximum training periods required by an approved apprenticeship program must be met.

Comment: One comment suggested that (3)(b) be amended to reference "Title 29 Code of Federal Regulations Part 29, Labor Standards for the Registration of Apprenticeship Programs." Two comments suggested that (3)(b) should be omitted altogether, while three comments suggested the deletion of (3)(c), and stated that a registered apprentice program is crucial in training the future workforce. One of the comments suggesting deletion of (3)(c), suggested replacement language that would approve a state program that has its apprentices indentured in the Federal Bureau of Apprenticeship and Training(BAT) program, or indentured in a program as stringent or more stringent than the Montana Department of Labor and

Industry Apprenticeship Training Bureau (SAC) State
Apprenticeship Council.

Response: The language of this rule was drafted in reliance on a 9th circuit court of appeals holding regarding a state's ability to approve apprenticeship programs, and upon federal law regarding approval of apprenticeship programs. See, Dillingham Const. N.A., Inc. v County of Sonoma, 57 F.3d 712 (9th Cir. 1995); 29 U.S.C. section 50 et seq.; 29 C.F.R. sections 29.1-29.13. The comment suggesting an amendment to (3)(b) to reference the federal regulations is accepted, and (3)(b) will be amended to reference C.F.R. sections 29.1-29.13. Section (3)(b) will not be omitted, as the Department believes that apprenticeship programs approved by the federal government or other states will be sufficient if in compliance with the National Apprenticeship Act and relevant federal regulations. Section (3)(c) will be omitted, as it is unnecessary with the language in section (3)(b). The Department will not add replacement language using the terminology "indentured in", as the language is unnecessary. An apprentice program, in order to meet continued approval of the Department, must be approved by and functioning in compliance with the requirements of one of the agencies identified in section (3)(b). The Department believes that a program that is functioning in compliance with the requirements of section (3)(b) will adequately train an individual to competently perform the work authorized by an endorsement.

PROFESSIONAL AND OCCUPATIONAL
LICENSING BUREAU
DEPARTMENT OF COMMERCE

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 11, 1996.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to defini-) 8.22.501 DEFINITIONS,
tions, general provisions and) 8.22.601 GENERAL PROVISIONS
claiming) AND 8.22.804 CLAIMING

TO: All Interested Person:

1. On January 25, 1996, the Board of Horse Racing published a notice of proposed amendment of the above-stated rules at page 217, 1996 Montana Administrative Register, issue number 2.

2. The Board has amended 8.22.501 and 8.22.601 exactly as proposed. The Board has amended ARM 8.22.804 as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.22.804 CLAIMING (1) through (3) will remain the same as proposed.

(4) A horse which has been claimed out of a claiming race in which the horse was declared the official winner shall not be eligible to start in any other claiming race for a period of 30 days, exclusive of the day it was claimed, for less than 25% more than the amount for which it was claimed. A horse which has been claimed out of a claiming race in which the horse was not declared the official winner may be eligible to start for any price desired by the claimant. A horse which is declared the official winner in a claiming race, and is claimed out of that race, must start for 25% more than that claiming price for a period of 30 days (excluding the day it was claimed). Any horse which is not declared the official winner of a race, and is claimed from that race, is eligible to start for any price.

(5) through (26) will remain the same as proposed."

3. The Board accepted written comment through February 22, 1996. The Board has thoroughly considered all comments received. Those comments, and the Board's responses thereto are as follows:

COMMENT NO. 1: One comment was received stating 8.22.804(4) seems to have more language than necessary, and is awkwardly written. The comment suggested the rule should read "A horse who is declared the official winner in a claiming race, and is claimed out of that race, must start for 25% more than that claiming price, for a period of 30 days (excluding the day it was claimed). Any horse who is not declared the official winner of a race, and is claimed from that race, is eligible to start for any price."

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

COMMENT NO. 2: One comment was received stating 8.22.804(26) may cause less claims than (4) will generate, as some horses are claimed because of their starter eligibility and the starter allowances they are eligible for. The comment suggested adding (26) at a later date if (4) does generate some claiming activity.

RESPONSE: The Board did not agree with the comment on this issue of re-establishing of eligibility for a claimed horse to enter a starter allowance condition. The Board stated the rule change would standardize the restriction for all Montana tracks, and thus prevent a claimed horse from monopolizing the starter allowance ranks, which may cause shorter fields.

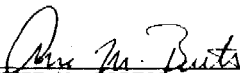
COMMENT NO. 3: One comment was received in support of the proposed rule changes.

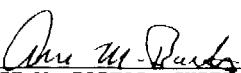
RESPONSE: The Board acknowledges receipt of the comment in support.

COMMENT NO. 4: One comment was received stating 8.22.501(24) and (47) should not be amended as proposed, as the changes are detrimental to the smaller tracks. The comment stated it has been beneficial to the smaller tracks and the horsemen to be able to run their horses at unrecognized tracks to give them an out early in the year, as well as alleviating smaller tracks having to compete head-to-head with larger tracks offering higher purses. The comment suggested a system of rating the race tracks in Montana on a graded basis could be used to define "maiden" and "winner."

RESPONSE: The Board stated the previous system (prior to 1995) with the \$300 amount in the rule for "maiden" wins did work, but the change to the \$600 amount did not work, and caused confusion among horsemen and officials. A change must therefore be made, and a return to the \$300 is not feasible. Additionally, the graded system will not work, as it would still be possible to abuse the system and hurt the smaller tracks. Instead, the Board will adopt the flat rule for "maiden" and "winner" definitions, without dollar amounts, and encourage the larger and smaller tracks to work together to set conditions on races which will benefit both the tracks and the horsemen.

BOARD OF HORSE RACING
JAMES SCOTT, DVM, CHAIRMAN


ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, March 11, 1996.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE OF RULES
and adoption of rules pertain-) PERTAINING TO FEES AND
ing to the outfitting industry) ADOPTION OF NEW RULES ON
) MORATORIUM AND OPERATIONS
) PLAN REVIEW

TO: All Interested Persons:

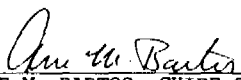
1. On September 14, 1995, the Board of Outfitters published a notice of proposed amendment and adoption of rules pertaining to fees, moratorium and operations plan review, at page 1761, 1995 Montana Administrative Register, issue number 17. On November 9, 1995, the Board published a notice of amendment of ARM 8.39.518 and adoption of new rules I (8.39.801) and II (8.39.802) at page 2388, Montana Administrative Register, issue number 21. The Board published a notice of adoption of new rule III (8.39.803) on December 21, 1995, at page 2797, 1995 Montana Administrative Register, issue number 24. The Board published a notice of adoption of new rule IV (8.39.804) on January 11, 1996, at page 145, 1996 Montana Administrative Register, issue number 1.

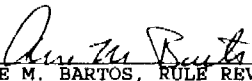
2. The rules were adopted exactly as proposed in the adoption notices. Section 37-47-202(5)(d) was incorrectly cited in ARM 8.39.802(4)(c) in the original notice and should have been changed to 37-47-201(5)(d) in the adoption notice. Section 37-47-202(5)(d) was also incorrectly cited in ARM 8.39.803(1)(a), (1)(d) and (1)(d)(i) and should have been changed to 37-47-201(5)(d) in the adoption notice.

3. Replacement pages for these rules were submitted on December 31, 1995, containing the incorrect citations. Replacement pages with the correct citations will be submitted on the March 31, 1996, filing date.

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, March 11, 1996.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) NOTICE OF AMENDMENT,
repeal and adoption of rules) REPEAL AND ADOPTION OF RULES
pertaining to the Municipal) PERTAINING TO THE BOARD OF
Finance Consolidation Program) INVESTMENTS
and the Montana Cash Anticipa-)
tion Financing Program)

To: All Interested Persons:

1. On February 8, 1996, the Board of Investments published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the Municipal Finance Consolidation Program and the Montana Cash Anticipation Financing Program, at page 360, 1996 Montana Administrative Register, issue number 3.

2. The Board has amended 8.97.715, 8.97.717, 8.97.718, 8.97.719, 8.97.720, 8.97.722, 8.97.724, 8.97.910, 8.97.911, 8.97.912, 8.97.913, 8.97.914, 8.97.915, 8.97.916 and repealed 8.97.721, 8.97.723 and 8.97.920 exactly as proposed. The Board has amended ARM 8.97.917 through 8.97.919 and adopted new rule I (8.97.921) as proposed, but with the following changes:

"8.97.917 INTERCAP PROGRAM - GENERAL OBLIGATION BONDED DEBT - DESCRIPTION - REQUIREMENTS (1) and (1)(a) will remain the same as proposed.

(b) The loan limit may not exceed \$1,000,000, not including the board's origination fee or the reserve requirement, if any."

"8.97.918 INTERCAP PROGRAM - REVENUE OBLIGATION - TAX BACKED REVENUE OBLIGATIONS - DESCRIPTION - REQUIREMENTS

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

(f) The loan amount may not exceed \$500,000, not including the board's origination fee or the reserve requirement, if any, provided, however, that the principal amount of a loan to water and sewer district which has not been authorized by the voters shall not exceed \$50,000, not including the board's origination fee or the reserve requirement, if any.

(g) through (2)(e) will remain the same as proposed.

(f) The loan amount may not exceed \$500,000, not including the board's origination fee or the reserve requirement, if any.

(g) through (h) will remain the same."

"8.97.919 INTERCAP PROGRAM - SPECIAL ASSESSMENT IMPROVEMENT BOND DEBT - DESCRIPTION - REQUIREMENTS (1) through (2)(b) will remain the same as proposed.

(c) The principal amount of any special improvement district bond issue may not exceed \$300,000, not including the board's origination fee or the reserve requirement, if any.

(c) will remain the same, but will be renumbered (d)."

"8.97.921 INTERCAP PROGRAM - OTHER LOANS; LIMITS (1)
will remain the same.

(a) The maximum principal amount of any loan shall not exceed \$500,000, not including the board's origination fee or the reserve requirement, if any, except for loans to the state university system, in which case the principal amount of any single loan shall not exceed \$1,000,000, not including the board's origination fee or the reserve requirement, if any."

3. The additional language is necessary to allow the INTERCAP loan limit to exceed \$500,000 to fund origination fees of the program and any reserve requirement for revenue bonds.

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

COMMENT: One comment was received supporting the Board's proposed notice.

RESPONSE: The Board acknowledges the comment.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, March 11, 1996.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 12.3.104, 12.3.118,)
12.3.123, 12.3.124, and)
12.3.402 all relating to)
licensing matters.)

To: All Interested Persons.

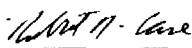
1. On January 25, 1996, the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) published notice of the proposed amendments of the above-captioned rules at page 221, 1996 Montana Administrative Register, issue number 2.

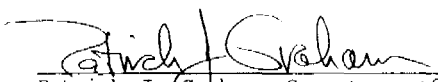
2. The commission and department have amended the rules as proposed.

3. No adverse comments or testimony were received.

RULE REVIEWER

FISH, WILDLIFE AND PARKS
COMMISSION AND DEPARTMENT OF
FISH, WILDLIFE AND PARKS


Robert N. Lane


Patrick J. Graham, Secretary of
the Fish, Wildlife and Parks
Commission and Director of the
Department of Fish, Wildlife
and Parks

Certified to the Secretary of State on March 11, 1996.

BEFORE THE BOARD OF LIVESTOCK
DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of rule 32.8.103)
pertaining to the circumstances)
under which raw milk may be)
sold for human consumption.)

TO: ALL INTERESTED PERSONS:

1. On October 26, 1995, the board of livestock published notice of proposed amendment to rule 32.8.103 at page 2,222 of the 1995 Administrative Register, issue no. 20, as MAR NOTICE 32-2-129.

2. The board has amended the rule as proposed.
AUTH: 81-22-102, MCA
IMP: 81-22-102, MCA

3. Two comments were received.

COMMENT:

A written statement opposing the amendment was received from Bart Campbell of the Montana Legislative Council. He argued that while 81-22-102, MCA, gives the department the power to regulate certain aspects of the production and sale of raw milk, the proposed rule is a prohibition of the sale of raw milk. He questioned the difference between regulation and prohibition and whether prohibition is an extension of the department's rule making authority that is not based on any statutory grant of authority.

RESPONSE:

The comment by Bart Campbell has been seriously considered. His comment that this rule is restrictive has some merit, but the restriction is the result of serious health concerns for the citizens of Montana. Statistics show that raw milk dairies have declined, and we rarely receive inquiries from anyone remotely interested in this type of potential business. If the demand changes in the future, we will seek necessary legislation.

COMMENT:


A written statement opposing the amendment was received from Representative John Cobb who argued that if no new retail dairies were allowed, then an explanation is needed as to why the rule is needed or therefore the rule should not go into effect until such explanation.

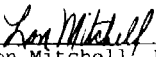
RESPONSE:

The comment by John Cobb is hereby explained: Public health consideration is the only reason for the proposed changes. The Pasteurized Milk Ordinance (adopted by DOL) does not support retail raw milk sales or consumption. Statistics show that raw

milk consumption has been implicated in food borne disease outbreaks of Listeriosis, E. Coli 0157 infections, strep throat, staph infection, campylobacter infections, et al. The vast majority of other states do not permit the licensing and sale of raw milk for human consumption.

BOARD OF LIVESTOCK
JAMES HAGENBARTH

By: 
Marc Bridges, Temp. Executive
Secretary, Board of Livestock
Department of Livestock

By: 
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State March 11, 1996.

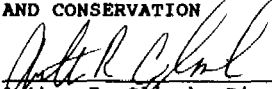
BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

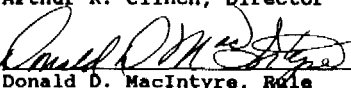
In the matter of the transfer of Rule)	
26.2.201 pertaining to leasing or other	)	NOTICE OF TRANSFER
use of state lands, Rule 26.2.301	)	OF RULES AND
pertaining to sale of state lands,	)	AMENDMENT
Rule 26.2.401 pertaining to schedule)	
of fees, and Rule 26.2.503 pertaining)	
to homesite and farmyard leases,)	
26.2.801 through 26.2.813 pertaining)	
to antiquities on state lands, Rules)	
26.2.901 through 26.2.905 pertaining)	
to ownership records for non school)	
trust land, and the amendment of Rule)	
36.2.1004)	

TO: All Interested Persons.

1. On January 25, 1996, the Department of Natural Resources and Conservation published a notice of transfer of the above referenced rules and the proposed amendment to Rule 36.2.1004, pertaining to homesite and farmyard leases, at page 225, of the 1996 Montana Administrative Register, Issue No. 2.
2. The agency has transferred Rules 26.2.201, 26.2.301, 26.2.401, 26.2.502, 26.2.801 through 26.2.813, and 26.2.901 through 26.2.905 to Title 36, Chapter 2.
3. The agency has amended Rule 36.2.1004 as proposed.
AUTH: 77-6-104, MCA
IMP: 77-1-202, MCA
4. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


Arthur R. Clinch, Director


Donald D. MacIntyre, Rule
Reviewer

Certified to the Secretary of State March 11th 1996.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF
of Rule 36.6.101 and repeal of	)	AMENDMENT AND
Rules 36.6.201 and 36.6.202	)	REPEAL
pertaining to referendums for)	
creating or changing conservation)	
district boundaries and for)	
conservation district supervisor)	
elections)	

To: All Interested Persons.

1. On December 21, 1995, the Department of Natural Resources and Conservation published notice of the proposed amendment to Rule 36.6.101 pertaining to referendums for creating or changing conservation district boundaries and repeal of Rules 36.6.201 and 36.6.202, pertaining to conservation district supervisor elections at page 2755 of the 1995 Montana Administrative Register, issue number 24.

2. The agency has amended Rule 36.6.101 as proposed.

AUTH: 76-15-208, MCA

IMP: 76-15-207 through 209, MCA

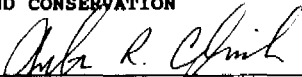
3. No comments were received.

4. The agency has repealed Rules 36.6.201 and 36.6.202, found on pages 36-68 through 36-70 of the Administrative Rules of Montana.

AUTH: 76-15-321, MCA

IMP: 76-15-302 through 304, MCA

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE,
RULE REVIEWER

Certified to the Secretary of State on February 27, 1996.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of amending) NOTICE OF
Rules 36.10.115, 36.10.161,) AMENDMENT
36.10.201, and 36.10.202)
pertaining to Fire Management)

TO: All Interested Persons

1. On December 21, 1995, the department published notice of the proposed amendment of Rules 36.10.115, 36.10.161, 36.10.201, and 36.10.202 pertaining to fire management, at page 2760 of the 1995 Montana Administrative Register, Issue No. 24. The proposed notice of amendment should have been under the Board of Land Commissioners instead of the department.

2. The Board has amended the rules as proposed.

AUTH: 76-13-109, MCA

IMP: 76-13-121, 76-13-126, MCA

3. No comments were received.

BOARD OF LAND COMMISSIONERS
MARC RACICOT, CHAIR

BY:

Bud Clinch
Bud Clinch, Director
Department of Natural Resources
and Conservation

Donald D. MacIntyre
Donald D. MacIntyre, Rule Reviewer

Certified to the Secretary of State March 11th, 1996

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the repeal of Rule)	
36.11.102, pertaining to Christmas	)	NOTICE OF
tree cutting, Rules 36.11.201 through	)	REPEAL
36.11.203, and 36.11.211, pertaining)	
to control of timber slash and debris)	

To: All Interested Persons

1. On January 11, 1996, the agency published a notice of proposed repeal at pages 59-60 of the Montana Administrative Register, Issue No. 1, for the repeal of rule 36.11.102, pertaining to Christmas tree cutting, rules 36.11.201 through 36.11.203, and 36.11.211, pertaining to control of timber slash and debris. On February 8, 1996, the agency published a corrected notice of proposed repeal at page 379 of the Montana Administrative Register, Issue No. 3. Both notices of proposed repeal were published incorrectly under the department, the proposed repeal should have been under the Board of Land Commissioners.

2. The board has repealed the rules as proposed.

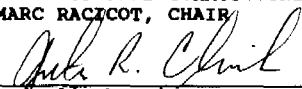
AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

3. No comments were received.

BOARD OF LAND COMMISSIONERS
MARC RACICOT, CHAIR

BY:


Bud Clinch, Director
Department of Natural Resources
and Conservation


Donald D. MacIntyre, Rule Reviewer

Certified to the Secretary of State MARCH 11, 1996.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules)
36.19.101, 36.19.102, 36.19.104,)
36.19.109, 36.19.111, 36.19.201,) NOTICE OF
36.19.202, 36.19.303, and 36.19.304,) AMENDMENT AND
and the repeal of Rules 36.19.103,) REPEAL
36.19.105, 36.19.108, 36.19.110,)
36.19.204, 36.19.301, and 36.19.305)
pertaining to the reclamation and)
development grants program)

To: All Interested Persons.

1. On January 25, 1996, the Department of Natural Resources and Conservation published notice of the proposed amendment of rules 36.19.101, 36.19.102, 36.19.104, 36.19.109, 36.19.111, 36.19.201, 36.19.202, 36.19.303, and 36.19.304, and the proposed repeal Rules 36.19.103, 36.19.105, 36.19.108, 36.19.110, 36.19.204, 36.19.301, and 36.19.305 pertaining to the reclamation and development grants program, at page 228 of the 1996 Montana Administrative Register, Issue No. 2.

2. The department has amended the rules as proposed.

AUTH: 85-2-225, MCA

IMP: 85-2-225, MCA

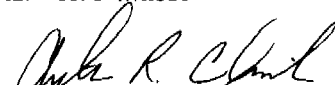
3. The department has repealed the rules as proposed.

AUTH: 90-2-1105, MCA

IMP: 90-2-1105, 90-2-1111, and 90-2-1114, MCA

4. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCK, DIRECTOR


DONALD D. MACINTYRE, RULE REVIEWER

Certified to the Secretary of State March 11th, 1996

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of rules	)	OF RULES
46.12.590, 46.12.591,)	
46.12.592, 46.12.593,)	
46.12.595 and 46.12.599)	
pertaining to medicaid)	
reimbursement for)	
residential treatment)	
services)	

TO: All Interested Persons

1. On January 26, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.590, 46.12.591, 46.12.592, 46.12.593, 46.12.595 and 46.12.599 pertaining to medicaid reimbursement for residential treatment services at page 243 of the 1996 Montana Administrative Register, issue number 2.

2. The Department has amended rules 46.12.590 and 46.12.595 as proposed.

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

46.12.591 RESIDENTIAL TREATMENT SERVICES, PARTICIPATION REQUIREMENTS (1) through (2)(h) Remain as proposed.

(i) provide residential psychiatric care according to the service requirements for individuals under age 21 specified in Title 42 CFR, part 441, subpart D (October 1, 1992), which is a federal regulation which is herein incorporated by reference. A copy of these regulations may be obtained through the Department of Public Health and Human Services, ~~Medicaid Services Division Mental and Addictive Disorders Division~~ ADDICTIVE AND MENTAL DISORDERS DIVISION, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210;

(2)(j) Remains the same.

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

IMP: Sec. ~~53-2-201~~, ~~53-6-101~~, ~~53-6-111~~, ~~53-6-113~~,
53-6-139 and 53-6-141, MCA

46.12.592 RESIDENTIAL TREATMENT SERVICES, REIMBURSEMENT

(1) through (3)(a)(i) Remain as proposed.

(ii) FOR PURPOSES OF SETTING RATES UNDER THIS RULE, THE DEPARTMENT HAS DETERMINED BASE PERIOD COST INFORMATION BASED

UPON AUDITS OF UNSETTLED PROVIDER BASE PERIOD COST REPORTS. UPON FINAL SETTLEMENT OF THE BASE PERIOD COST REPORTS OF AN ESTABLISHED PROVIDER, THE DEPARTMENT WILL ADJUST THE PROVIDER'S RATE RETROACTIVELY BASED UPON THE SETTLED COST INFORMATION IF USE OF THE FINAL INFORMATION WOULD RESULT IN AN INCREASE OF AT LEAST \$.50 PER DIEM IN THE PROVIDER'S RATE.

(3) (b) through (6) Remain as proposed.

(7) The final per diem payment rate for new providers is the lowest per diem payment rate of all established providers for the rate year. \$249.41 FOR SERVICES PROVIDED DURING THE PERIOD APRIL 1, 1996 THROUGH JUNE 30, 1996 AND \$255.00 FOR SERVICES PROVIDED DURING THE PERIOD JULY 1, 1996 THROUGH JUNE 30, 1997. THE NEW PROVIDER RATE FOR SERVICES PROVIDED DURING THE PERIOD JULY 1, 1997 THROUGH JUNE 30, 1998 WILL BE THE AMOUNT OF \$255.00 INDEXED BY THE DRI INDEX. EFFECTIVE BEGINNING JULY 1, 1998, THE FINAL PER DIEM RATE FOR NEW PROVIDERS WILL BE THE STATEWIDE RATE. No retrospective cost settlements will be performed.

(8) through (13) Remain as proposed.

~~(13)~~ (14) The provider must submit to the department's ~~Medicaid services Mental and Addictive Disorders~~ ADDICTIVE AND MENTAL DISORDERS division or its designee a request for a therapeutic home visit bed hold, on the appropriate form provided by the department, within 90 days of the first day a recipient leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with the ~~department's Medicaid services Mental and Addictive Disorders~~ ADDICTIVE AND MENTAL DISORDERS division or its designee.

(15) Remains as proposed.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

46.12.593 RESIDENTIAL TREATMENT SERVICES, ALLOWABLE COST, COST REPORTING AND AUDITS (1) through (4) Remain as proposed.

~~(4)~~ (5) Cost finding means the process of redistributing the data derived from the accounts ordinarily kept by a facility to ascertain its costs of the various services provided. Cost finding is the resolution of the costs by allocation of direct costs and proration of indirect costs. In preparing cost reports, all providers must use the methods of cost finding described at 42 CFR 413.24 (1991) which the department hereby adopts and incorporates herein by reference. 42 CFR 413.24 (1991) is a federal regulation setting forth methods of cost finding. A copy of the regulation may be obtained from the Department of Public Health and Human Services, ~~Medicaid Services Division Mental and Addictive Disorders Division~~ ADDICTIVE AND MENTAL DISORDERS DIVISION, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(6) through (9) Remain as proposed.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113
and 53-6-141, MCA

46.12.599 RESIDENTIAL TREATMENT SERVICES, CERTIFICATION OF
NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE

(1) through (9) Remain as proposed.

(10) If the department's utilization review agent fails to timely review a request for authorization or timely make a determination on an authorization or informal reconsideration request, the provider may make written inquiry to the agent regarding the status of the matter. If the provider does not receive a satisfactory response within a reasonable time, the provider may contact the Department of Public Health and Human Services, ~~Medicaid Services Division Mental and Addictive Disorder Division~~ ADDICTIVE AND MENTAL DISORDERS DIVISION, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 for assistance ~~in~~ obtaining a determination.

(11) and (12) Remain as proposed.

AUTH: Sec. 2-4-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113
and 53-6-141, MCA

4. The Department has thoroughly considered all commentary received:

COMMENT #1: The proposed change from the retrospective cost based system to a prospective system would limit new providers to the lowest rate of any provider in the state, which would be \$208.58. This would make it difficult if not prohibitive for providers to open new facilities. The department should consider paying new facilities a retrospective cost based rate for the first three years of operation, and then switch to the prospective rate based on the average cost for the first three years of operation. This is much like the exception granted to new skilled nursing facilities under medicare. Another alternative would be to negotiate a prospective rate based upon the rates for similar-sized residential treatment centers currently operated in Montana.

RESPONSE: The department has reconsidered the proposed rule which would reimburse new facilities at the lowest rate for a facility currently participating in the Montana Medicaid Program. The department intends to implement prospective reimbursement for all Montana residential treatment facilities. The department does not believe that a cost based methodology for new providers is appropriate. Cost based reimbursement tends to increase costs with fewer incentives to contain costs. Further, we believe that the cost levels of existing facilities provide a reasonable and adequate basis upon which to determine a new provider rate. Upon further consideration, we do believe

that an average statewide rate would be more appropriate as a new provider rate. The department has added language to the final rule to provide a new provider rate based upon the statewide bed weighted average rate of the three instate facilities currently participating in the program. Effective April 1, 1996, the new provider rate will be \$249.41. This rate will be indexed forward on July 1 based upon the DRI index. This adjustment would increase the new provider rate to \$255.00 in fiscal 1997. Beginning July 1, 1998, new providers will receive the statewide rate. We believe the revised rule provides a reasonable rate that will encourage economic and efficient facilities to participate in the program.

COMMENT #2: In ARM 46.12.591(2)(i), the department refers to 42 CFR, part 441, subpart D as the requirements imposed on providers for participation as residential treatment providers. It is inequitable to require that providers follow the rules for an acute medical model for staffing, services provided, accreditation, licensing and utilization review and then to utilize the DRI index for rate setting that is published for nursing.

RESPONSE: The incorporation of the federal regulations at 42 CFR, part 441, subpart D is not new. These regulations apply to all providers of inpatient psychiatric services for individuals under age 21, whether provided in a hospital or a residential treatment facility. There are numerous additional requirements that apply to all hospitals. Residential treatment facilities are required to meet the requirements of the cited federal regulations but are not subject to numerous other requirements applicable to hospitals. Moreover, nursing facilities are subject to a much more extensive set of federal requirements than the cited regulations that apply to residential treatment facilities. The department does not agree with the premise of the comment, i.e., that residential treatment facilities are subject to the same requirements or the same degree of regulation as are hospitals or nursing facilities. The cited regulation merely defines mandatory program requirements for the provision of psychiatric care for individuals under 21. These regulations include the requirements relating to certificate of need for services, the team certifying the need for services, active treatment, and the individual plan of care. The department believes that residential treatment facility services are more comparable to services provided by long term care nursing facilities. The department does not believe that residential treatment facilities provide acute care services which would justify the use of a inpatient hospital index. Such an index would be overstated by the amount included for a technical component which is used to adjust for changes in equipment items which are not used by residential treatment facilities. The department believes that the use of the nursing home index is appropriate for residential treatment facilities. We believe that the DRI index for nursing facilities will

provide an index that reasonably and adequately recognizes inflation in the residential treatment services industry.

COMMENT #3: The department's proposed bundling adjustment in ARM 46.12.592(3)(a)(i) is too low. This adjustment did not include the cost of pharmacy or lab services which were not included in the 1994 cost reports.

RESPONSE: The department notes that no costs in these areas were reported in the commentor's 1994 cost report. However, when Abt Associates developed the bundling adjustment, they performed an abstract for all of the Medicaid residents in the facility from the paid claims tapes, which includes all claims paid to all providers. This abstracting process accounts for the costs that were not reported. This became the basis for the bundling adjustment which increases the facility's rate for pharmacy and lab services. The adjusted bundled rate was then indexed forward to account for inflation. The department is confident that the bundling for lab and pharmacy services along with the subsequent indexing for inflation will adequately account for these costs.

COMMENT #4: The 1994 cost report contains old data that does not reflect increases in costs due to numerous changes in the utilization review process. Facilities have seen a dramatic rise in costs due to a more complex and costly process implemented by the department for utilization review.

RESPONSE: The department believes that the cost related to any changes to the utilization review process are relatively small and will be addressed adequately by the inflation indexes that will be applied to base period costs. The Managing Resources Montana (MRM) program was implemented in fiscal 1994 and modified somewhat the structure of the utilization review process. The changes included review by the managing resource specialist to determine if the youth's needs could be met in a less restrictive setting and an informal review process as an alternative to the administrative conference and fair hearing process. The department does not believe that these changes have had a significant impact upon operating costs. The utilization review was implemented several years earlier and was already an integral part of the state's process during fiscal year 1994. The department does not believe that changes in a provider's practices with regard to utilization review warrant an upward adjustment in rates and no additional changes to the proposed rates will be made.

COMMENT #5: The bundling adjustment does not take into account the increased acuity of children treated as a result of the elimination of medicaid coverage of inpatient free-standing psychiatric hospital services.

RESPONSE: The department does not believe an upward adjustment in the proposed rates is warranted for changes in acuity. Medicaid coverage of freestanding inpatient psychiatric
Montana Administrative Register 6-3/21/96

hospitals for individuals under age 21 was eliminated on June 30, 1993. The providers' 1994 cost reports were used for determining rates and thus, to the extent that higher acuity individuals were served after June 30, 1993, those costs are already reflected in the cost reports. The department specifically requested information from the commentor to document a change in acuity from FY 94 to FY 95 and none was provided during the rule comment period. No adjustment will be made to the proposed rates on this basis.

COMMENT #6: ARM 46.12.592(3)(c) defines the blended rate that is used to average the statewide prospective rate. The blended rate is not equitably applied and penalizes the provider for being an efficient and low cost provider by paying at the blended rate and limiting reimbursement to the adjusted 1993/1994 rate. All residential psychiatric treatment providers should be treated the same under the new rules.

RESPONSE: The department anticipates that the proposed rate system will, over the three year phase in period, bring a greater degree of consistency to reimbursement under the residential treatment program. The department recognizes that different philosophies among providers result in different resource allocations, which are reflected in the current wide range of reimbursement rates for the three instate facilities. The comment suggests that providers are being penalized for being a low cost provider. But the comment does not take into account historical costs or measurable rates of inflation. The comment does not reflect the fact that the other two instate facilities will be required to reduce their costs significantly over the phase in period for the new rate system. The department believes that the proposed system will do precisely what the commentor requests, i.e., treat all of the three instate facilities in the same manner. The goal of the new rate system is to reimburse all of the facilities on a more equitable basis after the phase in period is completed. The department believes that the proposed reimbursement system is reasonable, and that the proposed phase in of statewide rates will permit all instate facilities an adequate opportunity to adjust before the implementation of a single statewide rate.

COMMENT #7: The proposed rule does not address issues concerning the unsettled disallowance of costs from the 1994 base period cost reports. The commentor requests a base period rate adjustment that reflects the increased costs not included in the 1993/1994 cost report.

RESPONSE: All of the commentor's costs, with the exception of depreciation, should already be accurately reported in the 1994 cost report as adjusted through the recent audit. This issue may impact cost settlements for several fiscal years and the department does not believe it is necessary to further delay implementation of prospective reimbursement to await resolution of this issue. If it is determined after the settlement of base

period cost that the provider's rate would increase by at least \$.50, the department will adjust the provider's rate retroactively. The department has added language to the final rule to reflect this decision.

COMMENT #8: In ARM 46.12.592(8), the word "psychiatric" could be used to prevent a facility from billing medicaid for services other than RTC services provided to medicaid eligible patients placed by the state's family services program or department of corrections where medical necessity criteria for RTC services are not met. Under the rules of the current provider reimbursement manual, each provider of services at the facility would need to apply for a provider number as a facility based provider. The rules should allow the facility to bill medicaid for medically necessary professional services provided to medicaid recipients that are admitted to the RTC but not paid for under the residential treatment services program.

RESPONSE: In such cases, medicaid will reimburse for other covered treatment services and items that are medically necessary. Such services would include services provided by psychiatrists, psychologists, social workers and licensed professional counselors. These services would be covered in accordance with the administrative rules which apply to each of the respective services.

COMMENT #9: ARM 46.12.593(1) incorporates by reference the HCFA-PUB. 15 provider reimbursement manual. Section 2803 (transmittal 312) and section 3000 (transmittal 379) of the manual both state that psychiatric services are excluded from prospective payment except under certain circumstances. The commentator would like assurances from the department or HCFA that implementing this rule would not place providers at risk of recovery of federal funds at a future date.

RESPONSE: HCFA-PUB. 15, part 1, section 2803 excludes certain hospital facilities, including psychiatric hospitals, from prospective payment. This section applies only to hospitals and certain specified hospital units. In addition, it should be noted that transmittal 312 dated 12-83 was superseded by transmittal 319 dated 2-85. HCFA-PUB. 15, part 2, section 3000 refers to the completion of cost reports for skilled nursing facilities. Neither of these two sections apply to reimbursement of residential treatment facilities and we find no basis to believe that a facility would be subject to recovery of federal funds under these manual sections.

COMMENT #10: ARM 46.12.593(6)(a) requires that cost reports be filed within 90 days of the federal fiscal year end. The new federal regulations state that the cost report must be submitted within 150 days of the fiscal year end.

RESPONSE: The department already has amended this rule section to adopt the 150-day period for filing of costs reports. The Montana Administrative Register 6-3/21/96


initial notice of the proposed change was published in the Montana Administrative Register on December 21, 1995 and the notice of adoption of this rule change was published in the Montana Administrative Register on or about February 8, 1996. The change applies to fiscal periods ending on or after June 27, 1995.

COMMENT #11: Why are out-of-state facilities reimbursed differently than in-state providers?

RESPONSE: Montana facilities will be reimbursed under the prospective rate system with capped limits while out-of-state facilities will be reimbursed based on the facility's cost to charge ratio. There are several important reasons for continuing payment to out-of-state facilities based on a cost to charge ratio. The number of patient's referred to out-of-state facilities is extremely small. Only those patients whose needs cannot be met by Montana facilities will be referred to out-of-state facilities. These patients generally are individuals who are extremely violent or who have mental disabilities which cannot be addressed in a traditional residential treatment setting. Further, the geographic distribution of out-of-state facilities makes it difficult if not impossible to compare with Montana facilities because of the varying costs which each facility must incur to operate within its locality. The cost to charge ratio method of reimbursement appropriately allows for the very wide range in geographic areas and economic conditions. We believe that this reimbursement method for out-of-state facilities is appropriate for the foreseeable future. However, nothing precludes the department from changing reimbursement for out-of-state facilities in the future.

5. The adopted rule amendments will apply to services provided on or after April 1, 1996.

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


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State March 11, 1996.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION
of new rules I through III)	
designation of contributions,)	
aggregate contribution limits)	
for write-in candidates and)	
definition of personal benefits)	

TO: All Interested Persons.

1. On January 11, 1996, the Commissioner of Political Practices published notice of the proposed adoption of new rules I, II, and III at page 129 of the 1996 Montana Administrative Register, Issue No. 1.

2. The Commissioner has adopted new Rules I, II and III with the following changes:

RULE I (44.10.330) DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) ~~Combined Aggregate~~ contributions for each election in a campaign are limited according to 13-37-216, MCA. An "election" in a campaign, for the purposes of 13-37-216, MCA, is defined as either a primary election or a general election.

(2) For purposes of applying combined aggregate contribution limits per election the following apply:

(a) ~~Combined Aggregate~~ contribution limits for each election, as set forth in 13-37-216, MCA, apply to a primary election and to a general election as defined in ARM 44.10.334;

(b) Time periods for filing reports of contributions and expenditures are set forth in 13-37-226 and 13-37-228, MCA. ~~All~~ As a general rule, contributions received by a candidate prior to and including on the day of a primary election are designated for the primary election and are subject to the combined aggregate contribution limits for the primary election; however, a candidate in a contested primary may receive contributions designated for the general election during the primary election period subject to the contribution limits for the general election; ~~Candidates shall not accept contributions designated for the general election during the primary election period specified in this rule;~~

~~(c) All contributions received by a successful primary election candidate after the day of the primary election are designated as general election contributions and are subject to the combined contribution limit for the general election;~~

~~(c) General election contributions received prior to the primary election must be maintained in a separate account and shall not be used until after the primary election;~~

~~(d) An unsuccessful candidate in a contested primary election may continue to receive contributions to pay campaign debts subject to the combined contribution limits for that election;~~

(d) All contributions received by a candidate after the day of the primary election are designated as general election contributions and are subject to the aggregate contribution limit for the general election, except that a candidate may continue to receive contributions designated for the primary election subject to the limits after that election only for the purpose of paying primary election debts. General election contributions shall not be used to pay primary election debt.

(e) A primary election candidate who is not involved in a contested primary as defined in ARM 44-10-334, may not continue to receive contributions subject to the uncontested primary election limits in 13-37-216, MCA.

AUTH: 13-37-114, MCA

IMP : 13-37-216, MCA

RULE II (44.10.337) COMBINED AGGREGATE CONTRIBUTION LIMITS FOR WRITE-IN CANDIDATES (1) For purposes of the limitations on contributions established in 13-37-216, MCA, and these rules, the term "election" is defined in 13-37-216, MCA, and the term "candidate" is defined in 13-1-101, MCA. Pursuant to 13-10-211, MCA, a write-in candidate must file a declaration of intent. A candidate who is unsuccessful in a contested primary election, but who complies with applicable statutes to qualify as a write-in candidate for the general election, is subject to the combined aggregate contribution limits for both the primary election and the general election.

AUTH: 13-37-114, MCA

IMP: 13-37-216, MCA

RULE III (44.10.336) PERSONAL BENEFIT (1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of surplus campaign funds that only benefit only the candidate and/or a member of the candidate's immediate family. Nothing in this rule prohibits the distribution of surplus campaign funds to a group of individuals or an organization to which the candidate and/or a member of the candidate's immediate family belongs, as long as the candidate and/or a member of the candidate's immediate family do not control how the group or organization spends the surplus campaign funds received by the group or organization, and the candidate and/or a member of the candidate's immediate family receive only a benefit that is only incidental to their membership or participation within the group or organization.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

3. COMMENT:

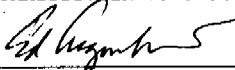
At the public hearing, representatives of the Montana Republican Party and Democratic Party presented joint written comments to the verbiage of new Rules I, II, and III. Party organization leadership, Republican Jack Light, and Democrat Brad Martin, presented oral testimony and argued that candidates should be able to accept general contributions prior to the primary election, so long as the candidates did not spend the

general election contributions during the primary election period. The party organizations also submitted written comment requesting that the word "aggregate" replace "combined" throughout the rules.

RESPONSE:

The arguments presented by the party leadership have merit. Accordingly, the Commissioner has revised proposed Rules I, II, and III. The Commissioner instituted an accounting measure which requires candidates to keep the contributions for each election separate and prohibits expenditures of general election contributions prior to the primary election. The term "aggregate" mirrors the statutory language and is appropriately inserted in place of "combined."

Ed Argenbright, Ed.D.
COMMISSIONER OF POLITICAL PRACTICES


(Rule Reviewer)

Certified to the Secretary of State, March 11, 1996.

RESPONSE:

Russell Hill's comment has merit. Accordingly, the rule has been modified.

Ed Argenbright, Ed.D.
COMMISSIONER OF POLITICAL PRACTICES





(Rule Reviewer)

Certified to the Secretary of State, March 11, 1996.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of Rule I, overlapping work hours,)
multiple salaries from multiple)
public employees.

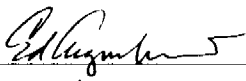
TO: All Interested Persons.

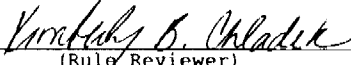
1. On January 11, 1996 the Commissioner of Political Practices published notice of the proposed adoption of new Rule I, concerning overlapping work hours, multiple salaries from multiple public employers at page 125 of the 1996 Montana Administrative Register, Issue No. 1.

2. The Commissioner has adopted new rule I (44.10.601) as proposed.

3. No comments or testimony were received.

Ed Argenbright, Ed.D.
COMMISSIONER OF POLITICAL PRACTICES





(Rule Reviewer)

Certified to the Secretary of State, March 11, 1996.

VOLUME NO. 46

OPINION NO. 13

CITIES AND TOWNS - Authority of self-governing local government to require garbage haulers to contract with local government before collecting garbage within city limits;
CONTRACTS - Authority of self-governing local government to require garbage haulers to contract with local government before collecting garbage within city limits;
LOCAL GOVERNMENT - Authority of self-governing local government to require garbage haulers to contract with local government before collecting garbage within city limits;
PUBLIC SERVICE COMMISSION - Authority of self-governing local government to require garbage haulers with certificates of public convenience and necessity to contract with local government before collecting garbage within city limits;
SOLID WASTE - Authority of self-governing local government to require garbage haulers to contract with local government before collecting garbage within city limits;
ADMINISTRATIVE RULES OF MONTANA - Rules 38.3.1201 to 38.3.1207;
MONTANA CODE ANNOTATED - Sections 7-1-111 to -114, 7-14-4105(2), 69-12-201, -314(2), -323(2), -501 to -503,
MONTANA CONSTITUTION - Article XI, section 6;
OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 34 (1992), 43 Op. Att'y Gen. No. 53 (1990), 43 Op. Att'y Gen. No. 41 (1989), 37 Op. Att'y Gen. No. 68 (1977).

HELD: A self-governing city has the authority to establish conditions for garbage collection companies within its city limits, unless the city's conditions are established in a manner that: (1) is prohibited by constitution or charter, (2) prohibits the grant or denial of a certificate of public convenience and necessity, or (3) is inconsistent with state law or regulation.

February 28, 1996

Mr. William A. Schreiber
Belgrade City Attorney
5 North Broadway
Belgrade, MT 59714

Dear Mr. Schreiber:

You have requested my opinion on the following question:

Does a self-governing city have the authority to regulate the business of a garbage collection company within the city limits if the collection company has been issued a certificate of public convenience and necessity by the Public Service Commission?

The City of Belgrade (City) adopted a self-government charter effective July 1, 1987. The city charter contains no mention of garbage collection. On July 1, 1992, the City executed a nonexclusive contract with Waste Management Partners of Bozeman, Ltd. (WMP) for garbage collection in the City. You state that it is the City's policy to contract with only those garbage collection companies which enter into contracts with the City that have terms comparable to or more favorable than those set forth in the contract with WMP. Under the policy, companies that have no contract with the City are prohibited from collecting or hauling garbage within the Belgrade city limits.

The contract with WMP contains clauses which: (1) specify rates and procedures for increasing rates; (2) permit WMP to bill customers directly; (3) require WMP to indemnify the City from any of WMP's willful or negligent acts or omissions; (4) require WMP to maintain policies for worker's compensation, automobile, and liability insurance at specified levels; and (5) require WMP to furnish a performance bond in the amount of \$250,000.

On December 12, 1994, the Montana Public Service Commission issued Customized Services (CS) a certificate of public convenience and necessity authorizing the collection of garbage in parts of Madison and Gallatin counties, including the City. CS has refused to sign a contract with the City, but has acquired customers within the City. The City is now considering action to prohibit CS from operating in the City until it signs a contract with the City, and has asked for my opinion regarding the legality of this action, and the contract upon which it is based. While an Opinion of the Attorney General cannot interpret the particular clauses of a contract, it is within the scope of my authority and the scope of your question to examine the powers granted by the statutes to self-governing cities such as Belgrade, and give my opinion on their lawful exercise.

Any discussion of the authority of a city with self-government powers to establish conditions of this nature for garbage collection within its city limits must take place against the background of the discussion of the Montana Supreme Court in D & F Sanitation Service v. City of Billings, 219 Mont. 437, 713 P.2d 977 (1986). That case clarified many fundamental distinctions that have formed the basis for a number of Opinions of the Attorney General cited below.

All cities have the power to regulate the "disposition and removal" of garbage "in any street or alley, on public grounds, or on any premises" within their city limits. Mont. Code Ann. § 7-14-4105(2). Furthermore, the Montana Supreme Court has said that under Mont. Const. art. XI, § 6, "the assumption is that local government [with self-government powers] possesses the power, unless it has been specifically denied." D & F Sanitation Serv. v. City of Billings, 219 Mont. at 445, 713 P.2d at 981-82. In determining whether a self-government power is authorized, previous opinions from this office have engaged in a three-part analysis:

1) consult the charter and consider constitutional ramifications; 2) determine whether the exercise is prohibited under the various provisions of [Mont. Code Ann. tit. 7, ch. 1, pt. 1] or other statute specifically applicable to self-government units; and 3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control as defined by section [7-1-113].

44 Op. Att'y Gen. No. 34 (1992); 43 Op. Att'y Gen. No. 41 at 130, 132 (1989), citing 37 Op. Att'y Gen. No. 68 at 272, 274 (1977).

With respect to the first factor, neither the charter nor the constitution prevents the City from prohibiting garbage collection companies that refuse to contract with the City from operating within the City. The city charter has placed no restrictions (beyond recognizing those that may exist in state and federal law) on the City's power to establish conditions for garbage collection. Similarly, I find no constitutional provision that would be implicated by a self-governing city exercising authority to establish conditions for the business of garbage collection within its city limits.

The second part of the three-part analysis calls for an examination of the relevant statutes to determine if the actions being considered by the City are prohibited by law. The major limitations on the powers of local governments with self-government powers are listed in Mont. Code Ann. §§ 7-1-111 to -114. The issue that presents itself here concerns the relative powers of a city with self-government powers and those of the Montana Public Service Commission (PSC), which is charged by statute with the duty to supervise and regulate every motor carrier in the State of Montana, Mont. Code Ann. § 69-12-201. The specific prohibition on local government units with self-government powers is stated as follows:

A local government unit with self-government powers is prohibited from exercising the following:

...

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

Mont. Code Ann. § 7-1-111. It is my opinion that neither of these prohibitions applies. Concerning the limitation stated in (4) above, the argument might be made that regardless of how the City describes its action, the effect is to deny a certificate of public convenience and necessity within the corporate limits of the City. I disagree; the voters of the City have determined that the City should establish conditions for garbage haulers operating within the city limits, and my review of those conditions (especially the

indemnity, insurance, and bonding requirements) leads me to conclude that the conditions do not conflict with the PSC's certificate of authority and do not have the effect of preventing properly certificated companies from operating within the city limits of Belgrade, nor allowing non-certificated companies to operate in the City.

The conditions under which garbage may be transported are not pervasively regulated through the PSC certificate of convenience process. The factors that the PSC must consider in granting or denying a certificate of public convenience and necessity are:

(a) . . . the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency[,] . . . the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

(b) For purposes of Class D certificates, a determination of public convenience and necessity may include a consideration of competition.

Mont. Code Ann. § 69-12-323(2). These limited factors leave ample room for local regulation of rates, routes, and services which must be provided by garbage collectors within a local jurisdiction. The City considered its interests and established conditions for garbage haulers seeking to operate within the City. The conditions do not have the effect of completely precluding a certificated carrier from serving the area. To the contrary, Belgrade's policy apparently will allow any certificated carrier to compete for the business of local residents as long as the carrier meets the required conditions of service.

A certificate of public convenience and necessity simply grants a carrier the right to haul over the roadways of the certificated service area. Barney v. Board of R.R. Comm'rs, 93 Mont. 115, 138, 17 P.2d 82, 88 (1932). In the context of garbage hauling, a certificate has not been construed by the Montana Supreme Court to guarantee the carrier the right to compete for hauling business throughout the area for which the carrier is certificated. In D & F Sanitation, the Montana Supreme Court upheld a local ordinance, adopted under the same class of self-government powers exercised by the City here, that had the effect of excluding a certificated carrier from competing for a portion of the service to be provided in the area where the carrier was allowed to haul under its certificate. D & F Sanitation compels the conclusion that the City's policy does not prohibit the grant or denial of a certificate of public convenience and necessity in violation of Mont. Code Ann. § 7-1-111(4).

Considering the second limitation stated in (5) above, the Montana Public Service Commission does not possess any power to establish a rate for the transportation of garbage, Mont. Code Ann. §§ 69-12-501 to -503. Therefore, subsection (5) will not be violated by the actions being considered by the City. I find no other section of the law constraining cities with self-government powers to be implicated by the conditions which the City is considering here, and conclude that this exercise of self-government power is not prohibited by any statute limiting the exercise of local self-government powers.

The final part of the three-part analysis comes directly from Mont. Code Ann. § 7-1-113, and in the words of a previous Opinion of the Attorney General,

this statute "allows a local government with self-government powers to enact any ordinance unless the ordinance (1) is inconsistent with state law or regulation **and** (2) concerns an area affirmatively subjected by law to state control."

44 Op. Att'y Gen. No. 34 (1992), citing 43 Op. Att'y Gen. No. 53 at 184, 186-87 (1990), citing 43 Op. Att'y Gen. No. 41 at 130, 134 (1989) (emphasis in original).

Examining the first element of this test, the statute explains:

The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

Mont. Code Ann. § 7-1-113(2). The requirements established by the City are certainly not "lower or less stringent" than those imposed by state law. Many of the requirements deal with matters for which state law imposes no conditions at all. Indeed, the problem here has arisen because the City's indemnity, insurance, and bonding requirements are **more** stringent than any imposed by the PSC. I conclude that the action being considered by the City is not inconsistent with state law.

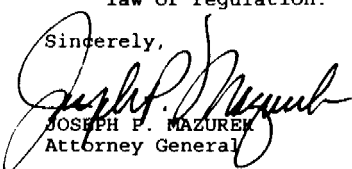
Regarding the second element of the test, Mont. Code Ann. § 7-1-113(3) explains that an area is affirmatively subjected to state control "if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency." The only state regulations dealing with the transportation of garbage deal with the statutory requirement that garbage haulers must engage in the business of hauling garbage "on a regular basis as part of the motor carrier's usual business operation." Mont. Code Ann. § 69-12-314(2). See Mont. Admin. R. 38.3.1201 to .1207. The Montana statutes establish no standards or requirements for matters covered by the City's contract. I find neither element of the final part of the three-part analysis. In

sum, as long as local governments with self-government powers do not contravene any of the parts of the three-part test of authorized powers, the presumption is that they may exercise powers.

THEREFORE, IT IS MY OPINION:

A self-governing city has the authority to establish conditions for garbage collection companies within its city limits, unless the city's conditions are established in a manner that: (1) is prohibited by constitution or charter, (2) prohibits the grant or denial of a certificate of public convenience and necessity, or (3) is inconsistent with state law or regulation.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/rfs/bjh

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1995. This table includes those rules adopted during the period January 1, 1996 through March 31, 1996 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 December 31, 1995, 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 1995 and 1996 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of
 the Montana Administrative Register, p. 2239, 2694

ADMINISTRATION, Department of, Title 2

- I and other rules - State Purchasing, p. 1371, 1788
2.5.118 and other rules - State Purchasing, p. 1723, 2241
2.5.403 Application of Preferences to Contracts Involving
 Federal Funds in State Purchasing, p. 1466, 1931
2.11.101 and other rule - Solicitation - Access Limitations,
 p. 1, 544
2.21.507 Jury Duty and Witness Leave, p. 2313, 131
2.21.1101 and other rules - The Education and Training Policy,
 p. 2317, 132
2.21.1601 and other rules - The Alternate Work Schedules
 Policy, p. 2321, 134
2.21.1711 and other rule - Overtime and Nonexempt Compensatory
 Time, p. 2544, 404

- 2.21.1802 and other rules - Exempt Compensatory Time, p. 2546, 405
- 2.21.3006 Decedent's Warrants, p. 2319, 136
- 2.21.3703 and other rules - Recruitment and Selection, p. 2553, 406
- 2.21.3901 and other rules - The Employee Exchange/Loan Policy, p. 2315, 137
- 2.21.4906 and other rules - The Moving and Relocation Expenses Policy, p. 2311, 139
- 2.21.5006 and other rules - Reduction in Work Force, p. 2548, 407

(Public Employees' Retirement Board)

- I Service Purchases by Inactive Vested Members, p. 1721, 2386
- 2.43.411 and other rules - Service in the National Guard - Job Sharing - Retirement Incentive Program, p. 2323, 408
- 2.43.606 Conversion of an Optional Retirement Upon Death or Divorce from the Contingent Annuitant, p. 1289, 1791
- 2.43.808 Mailing Information on Behalf of Non-profit Organizations, p. 481

(Teachers' Retirement Board)

- 2.44.301A and other rules - Creditable Service for Members after July 1, 1989 - Calculation of Age - Installment Purchase - Value of Housing - Direct Transfer or Rollover - Reporting of Termination Pay - Payment for Service--Calculation of Retirement Benefits - Definitions - Membership of Teacher's Aides and Part-time Instructors - Transfer of Service Credit from the Public Employees' Retirement System - Eligibility Under Mid-term Retirements - Computation of Average Final Compensation - Adjustment of Benefits - Limit on Earned Compensation - Adjustment of Disability Allowance for Outside Earnings - Membership of Part-time and Federally Paid Employees - Interest on Non-payment for Additional Credits - Purchase of Credit During Exempt Period - Calculation of Annual Benefit Adjustment - Eligibility for Annual Benefit Adjustment, p. 977, 2122

(State Compensation Insurance Fund)

- I and other rule - Policy Charge - Minimum Yearly Premium, p. 1067, 1792
- 2.55.321 and other rules - Premium Rate Setting, p. 2558, 410

AGRICULTURE, Department of, Title 4

- I and other rule - Spread of Late Blight Disease of Potatoes - Civil Penalties - Matrix, p. 3
- I and other rule - Incorporation by Reference of Model Feed and Pet Food Regulations, p. 243, 1321, 2126

- 4.3.401 and other rules - Registration Requirements - Applicator Classifications and Requirements - Student Loans - Wheat and Barley Food and Fuel Grants - Restriction of Pesticide Rules - Endrin - 1080 Livestock Protection Collars - Registration and Use of M-44 Sodium Cyanide Capsules and M-44 Devices - Rodenticide Surcharge and Grants - Montana Agricultural Loan Authority - Agriculture Incubator Program, p. 2714, 545, 667
- 4.12.1221 and other rules - Alfalfa Leaf-Cutting Bees - Registration - Fees - Standards - Certification - Sale of Bees, p. 1292, 1793
- 4.12.1428 Assessment Fees on All Produce, p. 2712, 546
- 4.12.3402 Seed Laboratory Analysis Fees, p. 2084, 262

STATE AUDITOR, Title 6

- I Supervision, Rehabilitation and Liquidation of State Regulated Employer Groups, p. 1470, 2134, 2468
- I-IV Long Term Care - Standards for Marketing - Appropriate Sale Criteria - Nonforfeiture Requirements - Forms, p. 1729, 2242, 143
- I-V Regulation of Managed Care Community Networks, p. 1819, 2675
- I-XIV Medicare Select Policies and Certificates, p. 9
- 6.6.401 and other rules - College Student Life Insurance, p. 2573, 264
- 6.6.1104 Limitation of Presumption of Reasonableness of Credit Life - Disability Rates, p. 7
- 6.6.1506 Premium Deferral and Cash Discounts, p. 2722, 413
- 6.6.2001 and other rules - Unfair Trade Practices on Cancellations, Non-renewals, or Premium Increases of Casualty or Property Insurance, p. 2720, 414
- 6.6.2301 and other rules - Montana Insurance Assistance Plan, p. 2448, 265
- 6.6.2901 and other rules - Prelicensing Education Program, p. 2444, 266
- 6.6.3201 and other rules - Pricing of Noncompetitive or Volatile Lines, p. 2446, 267
- 6.6.3802 and other rule - Trust Agreement Conditions - Conditions Applicable to Reinsurance Agreements, p. 2718, 415
- 6.6.4001 Valuation of Securities other than those Specifically Referred to in Statutes, p. 2575, 268
- 6.6.4102 and other rule - Insurance Licensee Continuing Education Fees - Continuing Education Program Administrative Rule Definitions, p. 2325, 2793
- 6.6.5001 and other rules - Small Employer Health Benefit Plans and Reinsurance, p. 1472, 2127, 141
- 6.6.5101 and other rules - Plan of Operation for the Small Employer Health Reinsurance Groups, p. 1468, 1932
- 6.10.102 and other rules - Securities Regulation, p. 2724
- 6.10.122 Securities Regulation - Broker-Dealer Books and Records, p. 15

(Classification Review Committee)

- 6.6.8001 and other rules - Informal Advisory Hearing Procedure - Agency Organization - Adoption of Model Rules - Definitions - Administrative Appeal of Classification Decision - General Hearing Procedure - Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Edition, p. 985, 2138, 2682
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1996 ed., p. 2728, 547

COMMERCE, Department of, Title 8

- 8.2.207 General Rules of the Department - Process Servers - Polygraph Examiners - Private Employment Agencies - Public Contractors, p. 2175, 2794
- 8.2.208 Renewal Dates, p. 346

(Professional and Occupational Licensing Bureau)

- I Renewal Dates, p. 1600, 2140

(Board of Alternative Health Care)

- I Vaginal Birth After Cesarean (VBAC) Delivery, p. 348
- 8.4.505 and other rule - High Risk Pregnancy - Conditions Which Require Physician Consultation, p. 1377, 2684

(Board of Clinical Laboratory Science Practitioners)

- 8.13.304 and other rules - Practice of Clinical Laboratory Science, p. 350

(Board of Cosmetologists)

- 8.14.802 Emergency Amendment - License Examinations, p. 416

(Professional and Occupational Licensing Bureau)

- 8.15.103 and other rules - Construction Blasters and Hoisting and Crane Operators - Standard Forms - Boiler Engineers, p. 1603, 2247

(Board of Dentistry)

- 8.16.405 and other rule - Fee Schedules, p. 1823, 2686
- 8.16.408 and other rules - Applications to Convert Inactive Status Licenses to Active Status Licenses - Dental Hygienists - Definitions - Use of Auxiliary Personnel and Dental Hygienists - Dental Auxiliaries, p. 1380, 2469, 2795

(Professional and Occupational Licensing Bureau)

- 8.19.101 and other rules - Transfer from the Department of Justice - Fire Prevention and Investigation, p. 1825, 2087

(Board of Horse Racing)

- 8.22.501 and other rules - Definitions - General Provisions - Claiming, p. 217

- 8.22.703 and other rules - Horse Racing Industry, p. 2178, 2796

(Board of Medical Examiners)

- 8.28.401 and other rules - Physician - Acupuncturist - Emergency Medical Technician - Physician Assistant - Certified - Podiatrist - Nutritionist Licensure, p. 1736, 2480, 144, 269
8.28.911 and other rule - Nutritionists, p. 616

(Board of Nursing)

- I Temporary Practice Permits for Advanced Practice Registered Nurses, p. 2450, 419
8.32.304 and other rules - Advanced Practice Registered Nursing - Licensure by Examination - Re-examination - Licensure by Endorsement - Foreign Nurses - Temporary Permits - Inactive Status - Conduct of Nurses - Fees - Duties of President - Approval of Schools - Annual Report, p. 2181, 418
8.32.413 Conduct of Nurses, p. 353

(Board of Outfitters)

- 8.39.202 and other rules - Outfitting Industry, p. 2327, 668
8.39.518 and other rules - Fees - Moratorium - Operations Plan Review, p. 1761, 2388, 2797, 145

(Board of Pharmacy)

- 8.40.404 and other rules - Fees - Dangerous Drugs - Transmission of Prescriptions by Facsimile, p. 1834, 2689
8.40.1601 and other rules - Out-of-State Mail Service Pharmacies, p. 2339, 220

(Board of Physical Therapy Examiners)

- 8.42.402 and other rules - Examinations - Fees - Renewals - Temporary Licenses - Licensure by Endorsement - Exemptions - Foreign-Trained Applicants - Unprofessional Conduct - Disciplinary Actions, p. 1837, 2483

(Board of Plumbers)

- 8.44.402 and other rules - Definitions - Fees - Medical Gas Piping Installation Endorsements, p. 1842, 2798

(Board of Psychologists)

- I Licensure of Senior Psychologists, p. 2452, 151
8.52.616 Fee Schedule, p. 1607, 2143

(Board of Radiologic Technologists)

- 8.56.402 and other rules - Radiologic Technologists, p. 618

(Board of Realty Regulation)

- 8.58.406A and other rules - Realty Regulation, p. 1609, 2397, 2799

(Board of Sanitaricians)

8.60.401 and other rules - Sanitaricians, p. 626

(Board of Passenger Tramway Safety)

I & II Inspections - Conference Call Meetings, p. 1767
8.63.504 and other rule - Registration of New, Relocated or
Major Modification of Tramways - Conference Call
Meetings, p. 633

(Board of Veterinary Medicine)

8.64.402 and other rule - Fees - Licensees from Other States,
p. 2189, 2800

(Building Codes Bureau)

8.70.101 Emergency Amendment - Building Permit Fees, p. 676
8.70.101 and other rules - Building Codes, p. 2342, 420
8.70.1402 and other rule - Transfer to Professional and
Occupational Licensing Bureau - Fireworks Wholesaler
Permits, p. 1934

(Weights and Measures Bureau)

8.77.107 and other rules - Fees - Commodities - Random
Inspection of Packages - Petroleum Products - Metric
Packaging of Fluid Milk Products, p. 1845, 2486

(Banking and Financial Institutions Division)

8.80.108 Limitations on Loans, p. 355

(Board of Milk Control)

8.86.301 Elimination of Minimum Wholesale and Retail Prices -
Producer Price Formulas, p. 2192, 2691

(Local Government Assistance Division)

I Incorporation by Reference of Rules for
Administering the 1995 CDBG Program, p. 993, 1794
I & II and other rules - 1996 Federal Community Development
Block Grant Program - 1996 Treasure State Endowment
(TSEP) Program - 1987 and 1988 Federal Community
Development Block Grant Programs, p. 2454

(Board of Investments)

8.97.715 and other rules - Municipal Finance Consolidation
Program - Montana Cash Anticipation Financing
Program, p. 360
8.97.1301 and other rules - Definitions - Forward Commitment
Fees and Yield Requirements for All Loans -
Investment Policy, Criteria, and Preferences -
Interest Rate Reduction for Loans to For-profit
Borrowers funded from the Coal Tax Trust -
Infrastructure Loans, p. 1070, 1796

(Economic Development Division)

I-XIII Implementation of the Job Investment Act, p. 1075,
1666

- 8.99.401 and other rules - Microbusiness Advisory Council, p. 636

(Board of Housing)

- 8.111.303 and other rules - Financing Programs - Qualified Lending Institutions - Income Limits - Loan Amounts, p. 2202, 2801
- 8.111.305 and other rules - Lending Institutions - Loan Servicers, p. 2577, 679

(Board of Science and Technology Development)

- 8.122.601 Application Procedures for a Seed Capital Technology Loan - Submission and Use of Executive Summary, p. 2204, 548

EDUCATION, Title 10

(Board of Public Education)

- I Class 7 American Indian Language and Culture Specialist, p. 2089, 2803
- 10.57.211 Test for Certification, p. 2457, 680
- 10.57.218 Teacher Certification: Renewal Unit Verification, p. 995, 2144
- 10.57.403 and other rule - Class 3 Administrative Certificate - Class 5 Provisional Certificate, p. 1769, 2802
- 10.57.405 Class 5 Provisional Certificate, p. 2377, 2802

(State Library Commission)

- 10.102.5102 and other rule - Allocation of Funding Between Federations and Grant Programs - Arbitration of Disputes Within Federations, p. 19

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- I Application Process and Criteria for a Scientific Collectors Permit, p. 373
- 12.6.701 Wearable Personal Floatation Devices for Each Person Aboard Any Motorboat or Vessel Launched Upon the Waterways of Montana, p. 1495, 2251

(Fish, Wildlife, and Parks Commission)

- 12.6.801 Boating Closure on the Upper End of Hauser Reservoir from October 15 through December 15 Each Year, p. 1386, 1935
- 12.6.901 Creating a No Wake Speed Zone near Rock Creek Marina in Fort Peck Reservoir, p. 2459, 270

(Fish, Wildlife, and Parks Commission and Department of Fish, Wildlife, and Parks)

- I Teton-Spring Creek Bird Preserve Boundary, p. 1772, 2252
- I-XII and other rule - Future Fisheries Program - Categorical Exclusions, p. 1866, 153
- 12.3.104 and other rules - Licensing, p. 221

- 12.4.202 and other rules - Hunter Access and Landowner Incentives Under the Block Management Program, p. 483
- 12.9.208 Abandonment of the Skalkaho Game Preserve, p. 2731, 549

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I-VII Aboveground Tanks - Minimum Standards for Aboveground Double-walled Petroleum Storage Tank Systems, p. 1087, 2491
- 16.45.402 and other rule - Underground Storage Tanks - Minimum Standards for Underground Piping, p. 1081, 2488
- 16.45.1101 and other rule - Underground Storage Tanks - Minimum Standards for Double-walled UST Systems, p. 1084, 2489

(Board of Health and Environmental Sciences)

- 16.8.1907 Air Quality - Increasing Fees for the Smoke Management Program, p. 1004, 1669
- 16.20.603 and other rules - Water Quality - Surface and Groundwater Quality Standards - Mixing Zones - Nondegradation of Water Quality, p. 743, 1098, 1798, 2256
- 16.20.612 Water Quality - Water Use Classifications on Indian Reservations, p. 530, 1799

ENVIRONMENTAL QUALITY, Department of, Title 17

- 16.14.101 and other rules - Solid Waste - Transfer from Department of Health and Environmental Sciences - Solid Waste Management, p. 2253
- 16.40.101 and other rules - Occupational Health - Transfer from Department of Health and Environmental Sciences - Radiation Control - Occupational Health, p. 433, 681
- 16.44.101 and other rules - Hazardous Waste - Transfer from Department of Health and Environmental Sciences - Hazardous Waste Management, p. 2416
- 16.44.102 and other rules - Incorporations by Reference of Federal Regulations - Definitions - Regulatory Requirements Governing Hazardous Waste and Used Oil - Prohibiting Used Oil as Dust Suppressant, p. 1402, 1936
- 16.45.101A and other rules - Underground Storage Tanks - Transfer from Department of Health and Environmental Sciences - Underground Storage Tanks, p. 2257
- 17.54.102 and other rules - Updating Federal Incorporations by Reference, p. 20

(Board of Environmental Review)

- I Water Quality - Temporary Water Standards for Daisy Creek, Stillwater River, Fisher Creek, and the Clark's Fork of the Yellowstone River, p. 1652, 1872, 2211

- 16.8.701 and other rules - Air Quality - Volatile Organic Compounds Definitions, p. 1645, 2410
- 16.8.705 and other rule - Air Quality - Replacing Equipment Due to Malfunctions, p. 1640, 2411
- 16.8.1107 Air Quality - Public Review of Air Quality Preconstruction Permit Applications, p. 488
- 16.8.1301 and other rule - Air Quality - Open Burning in Eastern Montana, p. 1634, 2412
- 16.8.1402 and other rule - Air Quality - Particulate Emission Limits for Fuel Burning Equipment and Industrial Processes, p. 1636, 2413
- 16.8.1414 Air Quality - Sulfur Oxide Emissions from Lead Smelters, p. 1644, 2414
- 16.8.1903 and other rule - Air Quality - Air Quality Operation Fees - Air Quality Permit Application Fees, p. 1648, 2415
- 16.18.301 and other rules - Water Quality - Wastewater Treatment Works Revolving Fund - Loans for Certain Solid Waste Management and Stormwater Control Projects, p. 2206
- 16.20.603 and other rules - Water Quality - Surface and Groundwater Water Quality Standards - Mixing Zones - Nondegradation of Water Quality, p. 2212, 555
- 26.2.641 and other rules - MEPA - Montana Environmental Policy Act for the Department of State Lands, p. 491

(Department of Environmental Quality and Board of Environmental Review)

- 16.16.101 and other rules - Water Quality - Transfer from Department of Health and Environmental Sciences - Water Quality, p. 493

TRANSPORTATION, Department of, Title 18

- I and other rules - Establishing Refund Percentages for PTO or Auxiliary Engines - Motor Fuels, p. 2733
- I-IV Staggered Registration of Motor Carriers with Multiple Fleets of Vehicles, p. 1773, 2422
- 18.6.202 and other rules - Outdoor Advertising Regulations, p. 39

(Transportation Commission)

- 18.6.211 Application Fees for Outdoor Advertising, p. 2091, 158

CORRECTIONS, Department of, Title 20

(Board of Pardons and Parole)

- 20.25.101 and other rules - Revision of the Rules of the Board of Pardons and Parole, p. 2461

JUSTICE, Department of, Title 23

Notice of Application for Certificate of Public Advantage by the Columbus Hospital and Montana

- Deaconess Medical Center, Great Falls, Montana, p. 2579
- I-VIII Operation, Inspection, Classification, Rotation and Insurance of Tow Trucks, p. 503
- I-VIII Specifying the Procedure for Review, Approval, Supervision and Revocation of Cooperative Agreements between Health Care Facilities or Physicians - Issuance and Revocation of Certificates of Public Advantage, p. 1006, 1296, 1938
- I-X and other rules - Adoption of the 1994 Uniform Fire Code and the 1994 Edition of the Uniform Fire Code Standards, p. 1497, 439
- 23.4.201 and other rules - Administration of Preliminary Alcohol Screening Tests - Training of Peace Officers Who Administer the Tests, p. 2093, 2805
- 23.5.101 and other rules - Adoption of Subsequent Amendments to Federal Rules Presently Incorporated by Reference - Motor Carrier and Commercial Motor Vehicle Safety Standard Regulations, p. 2380, 2807
- (Board of Crime Control)
- 23.14.405 Peace Officers with Out-of-State Experience Who Seek Certification in Montana, p. 2745, 556
- 23.14.423 and other rules - Training and Certification of Non-Sworn Officers and Coroners, p. 1873, 271
- 23.14.802 and other rules - Peace Officer Standards and Training Advisory Council - Revocation and/or Suspension of Peace Officer Certification, p. 1883, 2811

LABOR AND INDUSTRY, Department of, Title 24

- I and other rules - Operation of the Uninsured Employers' Fund and the Underinsured Employers' Fund, p. 1099, 1668
- I-III Operation of the Contractor Registration Program, p. 1548, 2146
- I-IV Personal Assistants - Application of Certain Labor Laws, p. 1627, 2145
- I-XVII and other rules - Workers' Compensation Plan Number One [Plan 1] Requirements and Eligibility, p. 512
- 24.11.606 and other rules - Unemployment Insurance Taxes, p. 1388, 1950
- 24.12.201 and other rules - New Horizons Program, p. 2747, 560
- 24.14.101 and other rules - Maternity Leave, p. 2749, 561
- 24.21.414 Wage Rates for Certain Apprenticeship Programs, p. 1887, 2812
- 24.28.101 and other rules - Workers' Compensation Mediation, p. 2216, 2818
- 24.29.704 and other rules - Workers' Compensation Matters - State Compensation Insurance Fund, p. 1395, 1953
- 24.30.102 and other rules - Occupational Safety and Health Standards for Public Sector Employment - Logging Safety for Public Sector Employment, p. 2581, 273

- 24.30.2542 and other rules - Safety Culture Act - Safety Committee, p. 1542, 445
24.31.101 and other rules - Crime Victims Compensation Program, p. 2751, 562

(Workers' Compensation Judge)

- 24.5.316 and other rules - Procedural Rules, p. 50, 557

(Human Rights Commission)

- 24.9.102 and other rules - Procedures Before the Human Rights Commission, p. 1525, 2264

STATE LANDS, Department of, Title 26

(Department State Lands and Board of Land Commissioners)

- 26.6.411 Nonexport Agreement for Timber Sales from State Lands, p. 1104, 1803, 2153

(Board of Land Commissioners and Board of Environmental Review)

- 26.4.161 Requirement for an Operating Permit for Hard Rock Mills that are not Located at a Mine Site and that use Cyanide, p. 1102, 2498
26.4.410 and other rules - Renewal of Strip Mine Operating Permits - Regulation of Coal and Uranium Prospecting p. 1106, 2263

LIVESTOCK, Department of, Title 32

- 8.79.101 and other rules - Transfer of Milk Control Bureau and Board of Milk Control Rules to the Department of Livestock, p. 456

(Milk Control Bureau)

- 8.79.101 and other rules - Definitions for the Purchase and Resale of Milk - Transactions Involving the Resale of Milk - Regulation of Unfair Trade Practices, p. 2585, 455

(Board of Milk Control)

- 8.86.301 Wholesale Prices for Class I, II and III Milk, p. 641
8.86.301 Elimination of Minimum Wholesale and Retail Prices - Producer Price Formulas, p. 2192, 2691
32.3.121 and other rules - Disease Control - Animal Feeding, Slaughter, and Disposal - Fluid Milk and Grade A Milk Products - General Licensing and Provisions - Marketing of Livestock - Branding and Inspection, p. 376
32.8.103 Circumstances Under Which Raw Milk May be Sold for Human Consumption, p. 2222

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Reject, Modify, or Condition Permit Applications in the Sixmile Creek Basin, p. 1893, 2693

- 26.2.101 Department of State Lands Model Procedural Rule, p. 1777, 274
- 26.2.201 and others rules - Leasing or Other Use of State Lands - Sale of State Lands - Schedule of Fees - Homesite and Farmyard Leases - Antiquities on State Lands - Ownership Records for Non School Trust Land, p. 225
- 26.2.628 and other rules - Repeal of Department of State Lands Rules - Implementing the Montana Environmental Policy Act, p. 2098, 275
- 26.2.628 and other rules - Repeal of Department of State Lands Rules - Implementing the Montana Environmental Policy Act, p. 1954--This Notice of Repeal was incorrectly published and will not be effective.
- 26.2.701 and other rule - Transfer from Department of State Lands - Citizen Participation in Agency Decisions, p. 1955
- 26.2.703 and other rules - Repeal of Department of State Lands Rules - Citizen Participation in Agency Decisions, p. 2099
- 26.2.703 and other rules - Repeal of Department of State Lands Rules - Citizen Participation in Agency Decisions, p. 1957--This Notice of Repeal was incorrectly published and will not be effective.
- 26.6.101 and other rules - Transfer from Department of State Lands - Forestry, p. 1958
- 26.6.402 and other rules - Christmas Tree Cutting - Control of Timber Slash and Debris - Fire Management and Forest Management, p. 2758, 59, 379
- 36.2.201 Board Model Procedural Rule, p. 1776, 276
- 36.2.608 Fees for Environmental Impact Statements, p. 1891, 2692
- 36.6.101 and other rules - Referendums for Creating or Changing Conservation District Boundaries - Conservation District Supervisor Elections, p. 2755
- 36.10.115 and other rules - Fire Management, p. 2760
- 36.11.102 and other rules - Christmas Tree Cutting - Control of Timber Slash and Debris, p. 59, 379
- 36.12.1101 Establishing Procedures for Collecting Processing Fees for Late Claims, p. 2763, 563
- 36.19.101 and other rules - Reclamation and Development Grants Program, p. 228
- 36.20.102 and other rules - Weather Modification, p. 381
- 36.24.101 and other rules - Wastewater Treatment Revolving Fund Act, p. 1778, 2423
- (Board of Oil and Gas Conservation)
- 36.22.305 and other rules - Naming of Pools - Illegal Production - Restoration of Surface - Regulations to Implement the Natural Gas Policy Act, p. 232
- 36.22.1401 and other rules - Underground Injection, p. 649

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I Conditions for Contracts Funded with Federal Maternal and Child Health Block Grant Funds, p. 525
- I-V and other rules - Chemical Dependency Educational Courses, p. 391
- I-VII Medicaid Self-Directed Personal Care Services, p. 1656, 2823
- I-XI and other rules - Medicaid Coverage - Reimbursement of Therapeutic Family Care, p. 1302, 2501, 159
- I-XXXV and other rules - AFDC, Food Stamps and Medicaid Assistance Under the FAIM Project, p. 2591, 284, 566
- I-XL and other rules - Traditional JOBS Program - FAIM JOBS Program - FAIM Employment and Training, p. 2619, 277, 564
- 11.7.103 and other rules - Children in Foster Care, p. 2462, 458
- 11.7.510 Goal for Reducing the Percentage of Children in Foster Care for Two or More Years, p. 2224, 2792
- 11.14.105 Licensure of Day Care Facilities, p. 656
- 11.16.128 and other rule - Licensure of Adult Foster Care Homes, p. 529
- 16.10.702A Reduction of the Required Height of Water Risers in Trailer Courts, p. 2384, 161
- 16.10.1501 and other rules - Swimming Pool Licensing Requirements, p. 2642
- 16.24.104 Children's Special Health Services - Eligibility Requirements for the Children's Special Health Services, p. 1413, 1804
- 16.32.399K Utilization Review in Medical Assistance Facilities, p. 234, 682
- 20.14.104 and other rules - Mental Health Nursing Care Centers, p. 658
- 46.6.405 and other rules - Vocational Rehabilitation Financial Needs Standards, p. 2779
- 46.10.108 and other rules - AFDC Monthly Reporting - Budgeting Methods, p. 1898, 2499
- 46.10.512 and other rule - AFDC Earned Income Disregards, p. 1661, 2154
- 46.11.112 and other rules - Food Stamp Budgeting Methods - Monthly Reporting Requirements, p. 1895, 2500
- 46.12.505 and other rules - Medicaid Cost Report Filing Deadlines - Physician Attestation for Certain Providers, p. 2787, 459
- 46.12.506 and other rule - Medicaid Reimbursement for Outpatient Hospital Emergency, Clinic and Ambulatory Surgery Services, p. 237
- 46.12.508 Medicaid Reimbursement for Outpatient Hospital Imaging and Other Diagnostic Services, p. 1560, 1961
- 46.12.590 and other rules - Medicaid Reimbursement for Residential Treatment Services, p. 243
- 46.12.605 Medicaid Coverage and Reimbursement of Dental Services, p. 1553, 1968
- 46.12.805 and other rule - Medicaid Coverage and Reimbursement of Durable Medical Equipment, p. 1563, 1970

- 46.12.1919 and other rule - Targeted Case Management for High Risk Pregnant Women, p. 532
- 46.12.1930 and other rules - Targeted Case Management for the Mentally Ill, p. 535
- 46.13.303 and other rules - Low Income Energy Assistance Program, p. 1557, 2157
- 46.30.507 and other rules - Child Support Enforcement Distribution of Collections - Non-AFDC Services, p. 2765

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-XXIX Affiliated Interest Reporting Requirements - Policy Guidelines - Minimum Rate Case Filing Standards for Electric, Gas, Water and Telephone Utilities, p. 1903
- 38.3.1101 and other rules - Motor Carriers of Property, p. 663
- 38.5.1301 and other rules - Telephone Extended Area Service, p. 1017, 2038
- 38.5.2202 and other rules - Pipeline Safety, Including Drug and Alcohol Testing, p. 1631, 2425

REVENUE, Department of, Title 42

- I and other rules - Real Property, p. 107
- I Itemized Deductions for Health Insurance, p. 2100, 2848
- I-III Infrastructure User Fee Credit, p. 538
- 42.11.103 and other rules - Liquor Privatization Rules, p. 66
- 42.15.101 and other rules - Biennial Review of Chapter 15 - Composite Returns, p. 78
- 42.15.316 Extensions - Late Pay Penalty, p. 1927, 2507
- 42.15.401 and other rules - Medical Savings Account, p. 61
- 42.15.416 and other rules - Recycling Credit, p. 2109, 2850
- 42.15.506 Computation of Residential Property Tax Credit for Elderly, p. 1925, 2851
- 42.17.101 and other rules - Withholding and Old Fund Liability Taxes, p. 97
- 42.19.401 and other rules - Low Income Property Rules - Income and Property Tax Relief Rules, p. 87
- 42.21.106 and other rules - Personal Property, p. 2653
- 42.22.1311 and other rule - Industrial Property, p. 2230, 162
- 42.22.1311 Industrial Machinery - Equipment Trend Factors, p. 1921, 2508
- 42.23.111 and other rules - General and Special Provisions for Corporation License Tax, p. 68
- 42.23.302 and other rule - Corporate Tax Returns - Deductions, p. 2226, 2852
- 42.31.101 and other rules - Cigarette and Tobacco, p. 2114, 2853
- 42.31.2101 and other rules - Contractor Gross Receipts, p. 2103, 2854
- 42.34.101 and other rules - Dangerous Drug Taxes, p. 2228, 2856
- 42.35.101 and other rules - Inheritance Tax Rules, p. 91

42.36.101 and other rules - Inheritance Taxes, p. 70

SECRETARY OF STATE, Title 44

1.2.419 Filing, Compiling, Printer Pickup and Publication of
the Montana Administrative Register, p. 2239, 2694

44.5.107 and other rules - Fees for Limited Liability
Companies and Limited Liability Partnerships,
p. 1551, 2158

(Commissioner of Political Practices)

I Overlapping Work Hours - Multiple Salaries from
Multiple Public Employees, p. 125

I-III Designation of Contributions - Combined Contribution
Limits for Write-in Candidates, p. 129

I-VI and other rule - Campaign Contribution Limitations -
Surplus Campaign Funds, p. 1298, 2048

I-VIII Code of Ethics Complaint Procedures, p. 540

44.10.331 and other rule - Contribution Limitations, p. 127

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

I-V Medicaid Estate Recoveries and Liens, p. 1109, 2837

I-XVI Health Maintenance Organizations, p. 895, 1974, 2155

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, 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 2-15-108, MCA, is 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 effective in February 1996, appear. Vacancies scheduled to appear from April 1, 1996, through June 30, 1996, are listed, as are current 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 necessary qualifications.

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 March 5, 1996.

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 APPOINTERS FROM FEBRUARY, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Personnel Appeals (Labor and Industry)			
Rep. Jim Rice	Governor	McKeon	2/2/1996
Helena			1/1/2000
Qualifications (if required): labor/management experience and an attorney			
Board of Public Education (Education)			
Mr. Storrs Bishop	Governor	reappointed	2/1/1996
Ennis			2/1/2003
Qualifications (if required): Republican from District 2			
Capital Finance Advisory Council (Administration)			
Mr. Ralph Peck	Governor	not listed	2/27/1996
Helena			2/27/1998
Qualifications (if required): Director of the Department of Agriculture			
Mr. Marvin Dye	Governor	not listed	2/27/1996
Helena			2/27/1998
Qualifications (if required): Director of the Department of Transportation			
Mr. Bob Thomas	Governor	not listed	2/27/1996
Stevensville			2/27/1998
Qualifications (if required): member of the Montana Board of Housing			
Mr. Jim Kaze	Governor	not listed	2/27/1996
Havre			2/27/1998
Qualifications (if required): member of the Board of Regents			
Mr. Dave Lewis	Governor	not listed	2/27/1996
Helena			2/27/1998
Qualifications (if required): Director of the Office of Budget and Program Planning			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capital Finance Advisory Council (Administration) cont.			
Dr. Amos R. Little, Jr.	Governor	not listed	2/27/1996
Helena			2/27/1998
Qualifications (if required):	member of the Montana Health Facilities Authority		
 Ms. Lois A. Menzies	Governor	not listed	2/27/1996
Helena			2/27/1998
Qualifications (if required):	Director of the Department of Administration		
 Rep. Ray Peck	Governor	not listed	2/27/1996
Havre			2/27/1998
Qualifications (if required):	state representative		
 Mr. Jon Noel	Governor	not listed	2/27/1996
Helena			2/27/1998
Qualifications (if required):	Director of the Department of Commerce		
 Low Income Energy Advisory Council (Public Health and Human Services)			
Mr. Peter Blouke	Governor	not listed	2/13/1996
Helena			2/13/1998
Qualifications (if required):	representing the Department of Public Health and Human Services		
 Mr. Jay T. Downen	Governor	not listed	2/13/1996
Great Falls			2/13/1998
Qualifications (if required):	representing an energy-related enterprise		
 Ms. Nancy McCaffree	Governor	not listed	2/13/1996
Helena			2/13/1998
Qualifications (if required):	representing the Montana Public Service Commission		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
Low Income Energy Advisory Council (Public Health and Human Services) cont.			
Mr. Jack Haffey	Governor	Gannon	2/23/1996
Anaconda			2/13/1998
Qualifications (if required):	representing an energy-related enterprise		
Mr. Bob Gannon	Governor	not listed	2/13/1996
Butte			2/13/1998
Qualifications (if required):	representing an energy-related enterprise		
Mr. Mark A. Simonich	Governor	not listed	2/13/1996
Helena			2/13/1998
Qualifications (if required):	representing the Department of Environmental Quality		
Rep. Sheila Rice	Governor	not listed	2/13/1996
Great Falls			2/13/1998
Qualifications (if required):	representing an energy-related enterprise		
Montana Health Facility Authority Board (Commerce)			
Mr. Sidney K. Brubaker	Governor	reappointed	2/20/1996
Terry			1/1/1999
Qualifications (if required):	public member		
Ms. Dallyce K. Flynn	Governor	reappointed	2/20/1996
Townsend			1/1/1999
Qualifications (if required):	public member		
Mr. Greg Hanson	Governor	reappointed	2/20/1996
Missoula			1/1/1999
Qualifications (if required):	attorney		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Multistate Tax Commission Advisory Council (Revenue)			
Ms. Judy Paynter	Director	not listed	2/9/1996
Helena			3/1/1998
Qualifications (if required): none specified			
Ms. Lynn Chenoweth	Director	not listed	2/9/1996
Helena			3/1/1998
Qualifications (if required): none specified			
Mr. David W. Woodgerd	Director	not listed	2/9/1996
Helena			3/1/1998
Qualifications (if required): none specified			
Peace Officers Standards and Training Advisory Council (Justice)			
Mr. Jack Lynch	Governor	reappointed	2/15/1996
Butte			2/15/1998
Qualifications (if required): city mayor			
Ms. Marilyn Zimmerman	Governor	reappointed	2/15/1996
Poplar			2/15/1998
Qualifications (if required): public member			
Sheriff Lee Edmisten	Governor	reappointed	2/15/1996
Virginia City			2/15/1998
Qualifications (if required): sheriff			
Sen. Delwyn Gage	Governor	reappointed	2/15/1996
Cut Bank			2/15/1998
Qualifications (if required): member of the Crime Control Board			
Mr. Dennis McCave	Governor	reappointed	2/15/1996
Billings			2/15/1998
Qualifications (if required): jail administrator			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.			
Mr. Greg Noose	Governor	reappointed	2/15/1996
Bozeman			2/15/1998
Qualifications (if required):	administrator of the Law Enforcement Academy		
Mr. Gary Boyer	Governor	reappointed	2/15/1996
Great Falls			2/15/1998
Qualifications (if required):	educator		
Ms. Surry Latham	Governor	reappointed	2/15/1996
Missoula			2/15/1998
Qualifications (if required):	dispatcher		
Mr. Christopher Miller	Governor	reappointed	2/15/1996
Deer Lodge			2/15/1998
Qualifications (if required):	county attorney		
Mr. Troy W. McGee, Sr.	Governor	reappointed	2/15/1996
Helena			2/15/1998
Qualifications (if required):	police officer		
Chief Robert Jones	Governor	reappointed	2/15/1996
Great Falls			2/15/1998
Qualifications (if required):	police chief		
Mr. Donald R. Houghton	Governor	reappointed	2/15/1996
Bozeman			2/15/1998
Qualifications (if required):	deputy sheriff		
Colonel Craig Reap	Governor	reappointed	2/15/1996
Helena			2/15/1998
Qualifications (if required):	Montana Highway Patrol representative		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 1996

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Risk Management Advisory Council (Administration)			
Mr. Forest Farris	Governor	not listed	2/21/1996
Helena			6/22/1996
Qualifications (if required):	representing the Department of Environmental Quality		
Mr. Randy Mosley	Governor	Smith	2/21/1996
Helena			6/22/1996
Qualifications (if required):	representing the Department of Natural Resources and Conservation		
Ms. Ann Gilkey	Governor	Probasco	2/21/1996
Helena			6/22/1996
Qualifications (if required):	representing the Department of Health and Human Services		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Corrections and Criminal Justice Policy (Corrections and Human Services)		
Ms. Candyce Neubauer, Deer Lodge	Governor	4/28/1996
Qualifications (if required): none specified		
Ms. Linda Hickman, Harlowton	Governor	4/28/1996
Qualifications (if required): none specified		
Justice Jim Nelson, Helena	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Steve McArthur, Butte	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. John P. Connor, Jr., Helena	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Frank DiPonzo, Sidney	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. John Strandell, Great Falls	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Michael A. Lavin, Helena	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Ted O. Lympus, Kalispell	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Mike Salvagni, Bozeman	Governor	4/28/1996
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Corrections and Criminal Justice Policy (Corrections and Human Services) Cont.		
Mr. Bud Walsh, Butte	Governor	4/28/1996
Qualifications (if required): none specified		
Lieutenant Jim Cashell, Bozeman	Governor	4/28/1996
Qualifications (if required): none specified		
Judge Jeffrey Sherlock, Helena	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. William J. "Bill" LaBrie, Whitefish	Governor	4/28/1996
Qualifications (if required): none specified		
Ms. Dana Donahue, Warm Springs	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Earl Peace, Bozeman	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Bill Smith, Deer Lodge	Governor	4/28/1996
Qualifications (if required): none specified		
Advisory Council on Disability (Administration)		
Mr. James Meldrum, Helena	Governor	6/16/1996
Qualifications (if required): none specified		
Mr. Peter Leech, Missoula	Governor	6/16/1996
Qualifications (if required): none specified		
Ms. Sherri Anderson, Helena	Governor	6/16/1996
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Disability (Administration) cont. Mr. John Shea, Anaconda Qualifications (if required): none specified	Governor	6/16/1996
Ms. Anne MacIntyre, Helena Qualifications (if required): ex-officio member	Governor	6/16/1996
Ms. Mary Morrison, Missoula Qualifications (if required): none specified	Governor	6/16/1996
Mr. Michael Regnier, Missoula Qualifications (if required): none specified	Governor	6/16/1996
Mr. Bill Roberts, Helena Qualifications (if required): none specified	Governor	6/16/1996
Board of Athletics (Commerce) Mr. John Kinna, Bozeman Qualifications (if required): public member	Governor	4/25/1996
Board of Hail Insurance (Agriculture) Ms. Rebecca McCabe, Ekalaka Qualifications (if required): none specified	Governor	4/18/1996
Board of Nursing Home Administrators (Commerce) Ms. Fern Prather, Big Timber Qualifications (if required): member of public organization	Governor	5/28/1996
Board of Optometrists (Commerce) Mr. Larry J. Bonderud, Shelby Qualifications (if required): optometrist	Governor	4/3/1996

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Plumbers (Commerce) Mr. Thor A. Jackola, Kalispell Qualifications (if required): mechanical engineer	Governor	5/4/1996
Board of Real Estate Appraisers (Commerce) Mr. Patrick Asay, Cardwell Qualifications (if required): licensed appraiser	Governor	5/1/1996
Board of Realty Regulation (Commerce) Ms. Marcia Allen, Helena Qualifications (if required): realty business and Democrat from Western Congressional District	Governor	5/9/1996
Board of Regents of Higher Education (Education) Mr. Michael Green, Malta Qualifications (if required): student representative	Governor	6/1/1996
Board of Veterans' Affairs (Military Affairs) Mr. Thaddeus Mayer, Missoula Qualifications (if required): honorably discharged from military service	Governor	5/18/1996
Executive Board of Montana College of Mineral Science and Technology (University System) Ms. Constance B. Lord, Phillipsburg Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of Eastern Montana College (University System) Mr. James Sites, Billings Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of Montana State University (University System) Mr. Rory D. Abraham, Kalispell Qualifications (if required): none specified	Governor	4/15/1996

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

Board/current position holder	Appointed by	Term end
Executive Board of Northern Montana College (University System) cont. Mr. David G. Rice, Havre Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of Western Montana College (University System) Ms. Agnes Helle, Dillon Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of the University of Montana (University System) Colonel Sam A. Roberts, Missoula Qualifications (if required): none specified	Governor	4/15/1996
Family Services Advisory Council (Family Services) Ms. Jeri Snell, Miles City Qualifications (if required): public member	Governor	4/15/1996
Ms. Barbara Sample, Billings Qualifications (if required): public member	Governor	4/15/1996
Ms. Joan-Nell Macfadden, Great Falls Qualifications (if required): public member	Governor	4/15/1996
Ms. Jani McCall, Billings Qualifications (if required): public member	Governor	4/15/1996
Ms. Patricia Coats, Whitefish Qualifications (if required): public member	Governor	4/15/1996

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mental Health Managed Care Advisory Group (Social and Rehabilitation Services)		
Mr. Dan Anderson, Helena	Governor	4/28/1996
Qualifications (if required): Department of Corrections and Human Services		
Mr. Peter Blouke, Helena	Governor	4/28/1996
Qualifications (if required): Department of Social and Rehabilitation Services		
Mr. Pat Pope, Helena	Governor	4/28/1996
Qualifications (if required): consumer		
Ms. Kelly Moore, Helena	Governor	4/28/1996
Qualifications (if required): advocate		
Dr. Debra Sanchez, Helena	Governor	4/28/1996
Qualifications (if required): psychologist		
Rep. Mike Foster, Townsend	Governor	4/28/1996
Qualifications (if required): legislator		
Mr. Howard W. Gipe, Kalispell	Governor	4/28/1996
Qualifications (if required): county government		
Ms. Linda Hatch, Great Falls	Governor	4/28/1996
Qualifications (if required): community mental health center		
Dr. Nathan Munn, Helena	Governor	4/28/1996
Qualifications (if required): physician		
Mr. Bill Diers, Kalispell	Governor	4/28/1996
Qualifications (if required): hospitals		
Mr. Jack Kober, Helena	Governor	4/28/1996
Qualifications (if required): advocate		

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mental Health Managed Care Advisory Group (Social and Rehabilitation Services) cont.		
Ms. Sandra Mihelish, Helena Qualifications (if required): family member	Governor	4/28/1996
Ms. Donna Hale, Helena Qualifications (if required): social worker	Governor	4/28/1996
Ms. Kathy Standard, Helena Qualifications (if required): consumer	Governor	4/28/1996
Mr. Ray Venzke, Helena Qualifications (if required): licensed professional counselor	Governor	4/28/1996
Sen. Mignon Waterman, Helena Qualifications (if required): legislator	Governor	4/28/1996
Mr. Carl Keener, Warm Springs Qualifications (if required): state hospital	Governor	4/28/1996
Public Employees' Retirement Board (Administration)		
Ms. Carol Lambert, Hammond Qualifications (if required): member at large	Governor	4/1/1996
Risk Management Advisory Committee (Administration)		
Ms. Geraldyn Driscoll, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Ralph Peck, Helena Qualifications (if required): none specified	Governor	6/22/1996
Captain Thomas Muri, Helena Qualifications (if required): none specified	Governor	6/22/1996

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Advisory Council (Administration) cont.		
Mr. Pat Chenovick, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Janie Wunderwald, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Forest Farris, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Cheryl Bozdog, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Laura Calkin, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Karen Munro, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Randy Mosley, Helena Qualifications (if required): representing the Department of Natural Resources and Conservation	Governor of Natural Resources and	6/22/1996
Mr. John Skufca, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Mike Zahn, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Ann Gilkey, Helena Qualifications (if required): none specified	Governor	6/22/1996

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

Board/current position holder	Appointed by	Term end
Risk Management Advisory Council (Administration) cont.		
Mr. Michael Buckley, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Donna Campbell, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Thomas H. Gibson, Bozeman Qualifications (if required): none specified	Governor	6/22/1996
Ms. Barb Charlton, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Gary Managhan, Helena Qualifications (if required): none specified	Governor	6/22/1996
Mr. Bruce Swick, Helena Qualifications (if required): none specified	Governor	6/22/1996
Ms. Marci Lynn, Helena Qualifications (if required): represents Department of Administration	Governor	6/22/1996
State Library Commission (Education)		
Ms. Anne Hauptman, Billings Qualifications (if required): public member	Governor	5/22/1996
Ms. Myrna Z. Lundy, Fort Benton Qualifications (if required): public member	Governor	5/22/1996

VACANCIES ON BOARDS AND COUNCILS -- April 1, 1996 through June 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Western Interstate Commission on Higher Education (University System)		
Mr. Francis J. Kerins, Helena	Governor	6/19/1996
Qualifications (if required): public member		
 Dr. Jeff Baker, Helena	Governor	6/19/1996
Qualifications (if required): Commissioner of Higher Education		