

RESERVE
KFM
9035
1973
.A245a

RESERVE

STATE LAW LIBRARY

JUN 24 1997

OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

**DOES NOT
CIRCULATE**

1997 ISSUE NO. 12
JUNE 23, 1997
PAGES 1005-1102



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

AGRICULTURE, Department of, Title 4

4-14-93 Notice of Proposed Amendment Conditions
Governing Importation of Mint and Mint Rootstock.
No Public Hearing Contemplated. 1005-1007

COMMERCE, Department of, Title 8

8-11-1 (Chemical Dependency Counselors
Certification Program) Notice of Proposed Adoption
- Fees. No Public Hearing Contemplated. 1008-1009

8-58-48 (Board of Realty Regulation) Notice of
Proposed Repeal - Foreign Land Sales Practices Act.
No Public Hearing Contemplated. 1010-1011

8-62-16 (Board of Speech-Language Pathologists and
Audiologists) Notice of Proposed Amendment - Fees.
No Public Hearing Contemplated. 1012-1013

8-87-22 (Banking and Financial Institutions
Division) Notice of Public Hearing on Proposed
Amendment and Adoption - Application Procedures to
Establish a New Branch Bank - Procedural Rules for
a Banking Board Hearing. 1014-1020

LABOR AND INDUSTRY, Department of, Title 24

24-29-102 Notice of Public Hearing on Proposed
Amendment - Workers' Compensation Data Base System. 1021-1022

Page Number

RULE SECTION

AGRICULTURE, Department of, Title 4

NEW License Fees for Commodity Dealers/Public Warehouse Operators. 1023-1025

COMMERCE, Department of, Title 8

AMD (Board of Realty Regulation) Grounds for License Discipline - General Provisions - Unprofessional Conduct. 1026

AMD (Local Government Assistance Division) State of Montana Single Audit Act. 1027

AMD (Board of Investments) INTERCAP Revolving Program. 1028

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

(Fish, Wildlife, and Parks Commission)

AMD Restriction of Motor-propelled Water Craft on Hauser Lake. 1029-1030

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Solid Waste Management) Conform with EPA
NEW Flexibility - Allow Reduces Regulatory Requirements for Certain Wastes. 1031-1033

TRANSPORTATION, Department of, Title 18

AMD Motorist Information Signs. 1034

Corrected Notice of Amendment - Motor Carrier Services Program - Movement of Houses, Buildings, Extremely Heavy Machinery, and Other Large and Unusual Objects. 1035

JUSTICE, Department of, Title 23

(Board of Crime Control)

AMD Definition of "Uncertifiable Officer". 1036

LABOR AND INDUSTRY, Department of, Title 24

AMD Prevailing Wage Rates - Service Occupations and Certain Bricklayer Rates. 1037-1040

Page Number

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

NEW	Laboratory Analysis Fees.	
REP		1041
AMD	Home Health Services.	1042-1043
AMD	Medicaid Nursing Facility Services Reimbursement.	1044-1061

PUBLIC SERVICE REGULATION, Department of, Title 38

AMD	Motor Carrier Insurance Endorsements (applicable to Large Motor Coaches).	1062
-----	--	------

INTERPRETATION SECTION

Opinions of the Attorney General.

3	Clerks - Authority of Clerk of District Court to Charge Nonparty State Agencies for Copying and Certification of District Court Records - County Officers and Employees - Courts - Fees.	1063-1066
---	--	-----------

SPECIAL NOTICE AND TABLE SECTION

	Functions of the Administrative Code Committee.	1067
	How to Use ARM and MAR.	1068
	Accumulative Table.	1069-1078
	Boards and Councils Appointees.	1079-1085
	Vacancies on Boards and Councils.	1086-1102

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 4.12.1508) AMENDMENT
pertaining to the conditions)
governing importation of mint)
and mint rootstock)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 23, 1997, the Montana Department of Agriculture proposes to amend ARM 4.12.1508 pertaining to the importation of mint and mint rootstock.

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

4.12.1508 CONDITIONS GOVERNING IMPORTATION OF MINT AND MINT ROOTSTOCK (1) thru (1)(a)(ii)(A) remain the same.

(I) Each ~~2.5~~ 5 acres shall have ~~1~~ 2 samples taken just prior to harvest; sample sites shall include areas of plant stress or damage suspected to be due to mint wilt or mint pests. Each sample site shall include 1 square foot of soil and roots to a depth of 2 inches. The ~~3~~ 2 samples shall be mixed and screened in the field and placed in a berlese funnel to collect the larvae. These shall be collected at appropriate times in the life cycle of the mint root borer, mint flea beetle, strawberry root weevil, mint stem borer, and wire worms to assure detection in the stolons if the pests are present.

(II) Based on the field inspection the samples shall be free of mint wilt, mint stem borer, strawberry root weevil or mint flea beetle (0 tolerance). The 0 tolerance for these pests applies to the life of the mint field. The level of pests detected shall be recorded and provided on the phytosanitary certificate for mint root borer and wire worm.

(III) ~~During the fall of the year, a random sample of feeder roots shall be analyzed for the root knot nematode and root lesion nematode for each 2.5 acres. The samples shall be free of root knot nematode (0 tolerance). The level of root lesion nematode shall be recorded on the phytosanitary certificate. It is the responsibility of the exporting state to assure that inspections have occurred at appropriate times, and early July, August or early September, randomly probe feeder roots in a healthy field or identify stressed areas and probe feeder roots around the perimeter of these areas. Twenty core samples shall be combined into one sample for each 20 acre field or division thereof. The feeder roots shall be analyzed for the root knot nematode and root lesion nematode. The samples shall be free of the root knot nematode (0 tolerance). The level of root lesion nematode shall be recorded on the phytosanitary certificate. It is the~~

responsibility of the exporting state to assure that inspections have occurred at appropriate times; and

(iii) thru (2)(a) remain the same.

(b) The legal description down to quarter section of the field location(s) where the mint or mint rootstock originated from; and a map (such as an ASCS map) of the mint field(s) which identifies (by number or letter or a combination of both) which field(s) the mint or mint rootstock originated from;

(c) thru (e) remain the same.

(f) Each importing Montana grower will receive a copy of the phytosanitary certificate which contains the information in (2)(e) for each field from which mint rootstock was taken. When possible these copies shall be provided to Montana growers prior to importation.

(3) thru (4) remain the same.

AUTH: 80-11-405, MCA IMP: 80-11-401, MCA


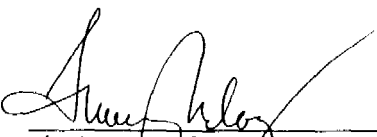
REASON: The Montana Mint Committee and growers determined that the number of samples taken and the number of acres to be sampled for the various mint pests should be similar to those required by other mint producing states. The changes in (1)(a)(ii)(A)(I) and (III) address this issue. In addition, better documentation of where mint rootstock originated from is being required in (2)(b). A phytosanitary certificate which contains information on the various mint pests is being required for imported mint rootstock in (2)(f).

3. Interested persons may submit their written data, views, or arguments concerning the proposed action(s) to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, FAX (406)444-5409, or E-Mail: AGR@MT.GOV, no later than July 21, 1997.

4. If a party who is directly affected by the proposed action(s) wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, FAX (406)444-5409, or E-Mail: AGR@MT.GOV no later than July 21, 1997.

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

Ten percent of those persons directly affected has been determined to be five persons based on the 50 members of the Montana Mint Growers Association.


W. Ralph Peck, Director
DEPARTMENT OF AGRICULTURE
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State this 9th day of June
1997.

BEFORE THE CHEMICAL DEPENDENCY
COUNSELORS CERTIFICATION PROGRAM
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED ADOPTION
adoption of a rule pertaining) OF A RULE PERTAINING TO FEES
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 23, 1997, the Chemical Dependency Counselors Certification Program, Department of Commerce, proposes to adopt a rule pertaining to fees.

2. The proposed rule will read as follows:

"I FEES

(1) Application	\$125
(2) Renewal	100
(3) Late renewal	150
(4) Oral examination/re-examination	75
(5) Written examination	65
(6) Certificate replacement	20"

Auth: 37-1-134, Sec. 3, Ch. 507, L. 1997; IMP, Sec. 5, 6, Ch. 507, L. 1997

REASON: The chemical dependency counselors certification program was transferred to the Department of Commerce from the Department of Public Health and Human Services by House Bill 399. The Department of Commerce must establish fees commensurate with program area costs and has determined that the above costs will meet that goal.

3. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Chemical Dependency Counselors Certification Program, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 21, 1997.


4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Chemical Dependency Counselors Certification Program, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 21, 1997.

5. If the program receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code

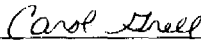
Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 50 based on the 500 licensees in Montana.

CHEMICAL DEPENDENCY COUNSELORS
CERTIFICATION PROGRAM

BY:



ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE



CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, June 9, 1997.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF REPEAL OF ARM 8.58.410
repeal of a rule pertaining to) FOREIGN LAND SALES PRACTICES
foreign land sales) ACT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 23, 1997, the Board of Realty Regulation proposes to repeal the above-stated rule. Text of the rule is located at pages 8-1604.2 and 8-1604.3, Administrative Rules of Montana. The authority sections are 37-1-131, 37-51-203, 76-4-1203 and the implementing sections are 76-4-1203, 76-4-1211, MCA.

REASON: The Board is repealing the rule because the authorizing statute was repealed during the 1997 legislative session.

2. Interested persons may submit their data, views or arguments concerning the proposed repeal in writing to the Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 21, 1997.

3. If a person who is directly affected by the proposed repeal wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 21, 1997.

4. If the Board receives requests for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed repeal, 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. No licensees will be affected by the proposed repeal of the above-stated rule.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

BY:



ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE



CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, June 9, 1997.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.62.413 FEES
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 23, 1997, the Board of Speech-Language Pathologists and Audiologists proposes to amend the above-stated rule.

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

"8.62.413 FEES (1) The initial application for speech-language pathologist and/or audiologist license shall be accompanied by a fee of ~~\$40.00~~ 5, which is non-refundable (separate fee for temporary license, see (7) below).

(2) will remain the same.

(3) The initial license fee for a speech-language pathologist shall be ~~\$25.00~~ 5.

(4) The initial license fee for an audiologist shall be ~~\$25.00~~ 5.

(5) The initial fee for a combined speech-language pathology/audiology license shall be ~~\$25.00~~ 5.

(6) The initial fee for a probationary speech-language pathology and/or audiology license shall be ~~\$25.00~~ 5.

(7) through (12) will remain the same."

Auth: Sec. ~~37-1-134~~, 37-15-202, MCA; IMP, Sec. ~~37-15-307~~, 37-15-308, MCA

REASON: The rule is being amended to lower the cash balance of the Board's budget.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Speech-Language Pathologists and Audiologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 21, 1997.

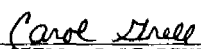
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Speech-Language Pathologists and Audiologists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 21, 1997.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 35 based on the 353 licensees in Montana.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
LYNN HARRIS, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, June 9, 1997.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING ON
amendment and adoption of)	THE AMENDMENT OF ARM 8.87.204
rules pertaining to)	AND 8.87.701 AND ADOPTION OF
application procedures to)	NEW RULES I AND II FOR THE
establish a new branch bank)	APPLICATION PROCEDURES TO
and procedural rules for a)	ESTABLISH A NEW BRANCH BANK
banking board hearing)	AND PROCEDURAL RULES FOR A
)	BANKING BOARD HEARING

TO: All Interested Persons:

1. On July 15, 1997, at 10:00 a.m., a public hearing will be held at the Federal Reserve Bank, 100 Neill Avenue, Van Nuys Board Room, Helena, Montana 59620, to consider the amendment and adoption of rules pertaining to the application procedures to establish a new branch bank and procedural rules for a banking board hearing.

2. The Division is proposing to amend ARM 8.87.204 and 8.87.701. Those amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.87.204 PROCEDURAL RULES FOR DISCOVERY AND HEARING

(1) The state banking board and division adopt and incorporate the attorney general's model rules dated June 30, 1992 by reference, as stated in ARM 1.3.101 through 1.3.234~~3~~, with the exceptions set forth in ARM 8.2.104 through 8.2.106. Prehearing discovery procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time period established in discovery may be shortened at the discretion of the board.

(2) will remain the same.

(3) The division of banking and financial institutions and the state banking board adopt the following rules for hearings on applications for certificates of authorization for new banks and protests of applications for the formation, relocation, closure or sale of a branch bank or for the consolidation, merger or relocation of a bank if the application is approved by the division and if the board determines that there is a substantial basis for the protest. The division also may request a hearing before the board.

(4) A notice of filing for a hearing on the application for a certificate of authorization for a new bank must be mailed to all banks within 100 miles of the proposed location, measured in a straight line. The notice of hearing on applications approved by the division in which the board determines there is a substantial basis for the protest must also be mailed to all banks within 100 miles of the proposed location, measured in a straight line. All of the rights and procedures of contested case proceedings apply to a person or bank filing a written protest with the board.

(5) A written protest must be filed with the division no later than ten working days following the notice of the filing of an application for a certificate of authorization for a new bank. A written protest on all other applications must be filed no later than 10 working days upon the filing of the application with the division.

(6) A substantial basis for the protest as determined by the board shall include, but not be limited to:

(a) failure to inform and advise all ownership interests, including shareholders, of the determination to submit an application for the proposed decision;

(b) the proposed application threatens the solvency and financial integrity of the institution;

(c) the proposed application changes the ownership and management of the institution so as to affect the financial integrity of the institution; or

(d) other reasons that may be considered by the board that the proposed application would not be in the public interest."

Auth: Sec. 32-1-205, 32-1-203, MCA; IMP, Sec. 32-1-205, 32-1-203, MCA

"8.87.701 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION APPROVAL TO ESTABLISH A NEW BRANCH BANK

(1) An existing state-chartered bank shall file with the division of banking and financial institutions an application to the state banking board for certificate of authorization for approval to establish and operate a new branch bank.

(2) The applicant shall publish notice of intent to establish a branch bank. This notice shall be published in a newspaper of general circulation in the community or communities where the main office of the bank and proposed branch bank are located, or, if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for five consecutive weeks, and when published in a daily newspaper, one additional publication shall be made on the 30th day from the date of the first publication. The application shall be mailed or delivered to the division of banking and financial institutions not more than 30 days subsequent to the first publication of notice.

(3) The application shall contain the following information:

(a) the exact corporate name and address of the applicant bank;

(b) the exact location of the proposed branch site, including street address (unless one has not been assigned the location);

(c) the name of the proposed managing officer, if known, with resume of qualifications, banking experience and personal history in compliance with ARM 8.87.302(1) and (2);

(d) a summary of the evidence demonstrating a persuasive showing or reasonable public necessity and demand for a banking facility at the proposed location as required by ARM 8.87.301;

~~(e) an estimated operating statement, deposit volume, and loan volume in the branch at the end of each of the first three years;~~

~~(f) a statement of proposed expenditures for premises, fixtures, furniture and equipment;~~

~~(g) a detailed list of banking services that will be offered the community to be served by the new branch; a similar list of banking services offered at the main banking house, and the branch's proposed hours of operation;~~

~~(h) details concerning any involvement in the proposal by an insider (a director, an officer, or a shareholder who directly or indirectly controls 5 or more percent of the applicant's outstanding voting stock, or the associates or interests of any such person) of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing or property and construction contracts;~~

~~(i) the name and address of and the date of publication in the newspaper which the required notice is published.~~

~~(4) An application fee of two thousand dollars (\$2,000) shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.~~

~~(5) In the event that an application is incomplete in any respect, or if additional information is required, the applicants will be so notified by the division of banking and financial institutions and allowed up to 30 days in which to perfect the application or provide additional information. An extension of this 30 day period may be obtained from the division of banking and financial institutions by showing good cause why it should be so extended. The state banking board may delay processing, including extending the comment period, for good cause. Processing will be completed no earlier than the 15th day, or generally not later than the 45th day, following the date of the last required publication.~~

~~(6) The state banking board will consider all comments received relevant to the application and may take final action by a duly noticed telephone conference call with a quorum of the board participating.~~

~~(7) The form for applying for a certificate of authorization may be obtained from the Commissioner of Banking and Financial Institutions, 1520 East Sixth Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512, Helena, Montana 59620-0512.~~

~~(8) This rule will be effective January 1, 1990.~~

(2) Applications shall be submitted on a form acceptable to the division of banking and financial institutions. Information on the application format shall be obtained from the Division of Banking and Financial Institutions, P.O. Box 200546, 846 Front Street, Helena, Montana 59620-0546. (406) 444-2091.

(3) The applicant shall publish its notice of intent to establish a new branch bank using the following procedure:

(a) if the application for a new branch bank also requires the approval of either the federal reserve system or the federal deposit insurance corporation, the notice shall be

published at the times and in the format required by the federal agency, except that the notice shall include the following phrase: "Comments regarding this application should be forwarded in writing to the Commissioner of Banking and Financial Institutions, P.O. Box 200546, 846 Front Street, Helena, Montana 59620-0546. The application may be reviewed, during the comment period, at the above address by calling the commissioner's office at (406) 444-2091 and requesting an appointment".

(b) if the applicant does not fall under the regulatory jurisdiction of either the federal reserve system or the federal deposit insurance corporation, or if the publication requirement of the federal regulator has been eliminated, the publication requirement shall be as follows: (i) The notice shall be published, following a format obtained from the division, in a newspaper of general circulation in the community or communities where the main office of the bank and proposed branch bank are located. If there is no such newspaper in the community, then the notice shall be published in the newspaper of general circulation published nearest thereto. Publication shall be made at least once a week on the same day for two consecutive weeks.

(4) All written comments concerning the application must be received by the division of banking and financial institutions no later than 30 days following the date of the last publication of the notice of intent. Comments received more than 30 days after the date of the last publication will not be considered in the decision to approve or deny the application. Oral comments will not be considered, except for oral testimony that may be offered in the event of a public hearing.

(5) The application shall be mailed or delivered to the division of banking and financial institutions not more than 10 days subsequent to the first publication of notice.

(6) Applications for new branch banks must be accompanied by a nonrefundable fee of \$600 for each new branch bank application."

Auth: Sec. 32-1-202, 32-1-203, 32-1-218, MCA; IMP, Sec. 32-1-203, 32-1-218, MCA

3. The proposed new rules will read as follows:

"I. REVIEW PROCEDURE FOR APPLICATIONS FOR APPROVAL TO ESTABLISH A NEW BRANCH BANK (1) Applications for new branch banks will be processed in the order in which they are received by the division of banking and financial institutions. If an application is incomplete the applicant will be notified by telefax or mail. An application will not be considered to have been received until it is in a complete form. An application is complete when all information required by the application form has been submitted and received. The division may request additional information from an applicant even if the application is considered complete.

(2) Factors that will be considered when determining

whether to approve an application to establish a new branch bank include, but are not limited to, the following:

(a) the financial history and condition of the applicant;
(b) the capital levels and capital structure of the applicant;

(c) the quality, financial and banking experience and depth of management of the applicant and the proposed branch bank;

(d) the convenience and needs of the community to be served at the proposed location of the new branch bank;

(e) earnings prospects of the applicant after establishing the new branch bank; and

(f) any other factors the division considers that could adversely affect the safety and soundness of the applicant or the viability of the new branch bank.

(3) For applications that do not require a public hearing, the division of banking and financial institutions shall issue its order approving or denying the application within 45 days after:

(a) the date of the last publication of the notice of intent to establish a new branch bank; or

(b) the date on which a complete application is received, whichever is later;

(c) the 45-day deadline may be extended by the division when review of the complete application raises questions or concerns that require additional information from the applicant or any other entity or person.

(4) For applications that require a hearing, as provided for by 32-1-202(3) and 32-1-204(2), MCA, a final decision to approve or deny the application will be issued by the state banking board at a time after the completion of the hearing.

(5) The division of banking and financial institutions may request a hearing before the state banking board to consider an application to establish a new branch bank if:

(a) persons or entities who have submitted written comment to the application have raised significant legal, public policy or competitive issues that cannot be properly deliberated by the division. Adverse comments that the board determines do not raise significant issues, are frivolous, are filed primarily as a means of delaying action on the application, or that raise concerns that have been satisfactorily resolved will not result in a hearing;

(b) the board determines that any other reasons require a hearing on the application.

(6) When the division of banking and financial institutions or board approves an application to establish a new branch bank, it will provide written notification to the applicant and the appropriate federal regulatory agency(s). The notification will include any conditions subject to the approval. Summary notification of the decision will be mailed to all persons or entities that have submitted written comment to the application.

(7) When the division of banking and financial institutions denies an application to establish a new branch

bank it will provide written notification to the applicant, the appropriate federal regulator(s) and all persons or entities that have submitted written comment to the application. The written notification to the applicant will include the reasons for the denial."

Auth: Sec. 32-1-218, MCA; IMP, Sec. 32-1-218, MCA

"II PROCEDURE FOLLOWING APPROVAL OF AN APPLICATION TO ESTABLISH A NEW BRANCH BANK (1) For applications approved by the board or division of banking and financial institutions, the applicant bank within 18 months from the date of approval must establish and open the new branch bank for regular business. Upon written request by the applicant and a finding of good cause by the division, the 18 month period may be extended by the division for a maximum of an additional six months.

(2) During the formation and establishment of the new branch bank, the applicant must inform the division of significant changes affecting any of the commitments, representations or projections contained in the original application. Significant changes including, but not limited to, the location of the new branch bank, the services to be offered by the new branch bank, the staffing or management of the new branch bank, the costs to be incurred during the construction, furnishing and fitting of the new branch bank, or the projected operating costs of the new branch bank may be sufficient to void the board or division's approval.

(3) No later than 10 business days before the new branch bank is opened for business, the applicant shall certify to the division of banking and financial institutions that all conditions imposed with the division's approval have been met and inform the division of the proposed opening date. The division will then issue a final order authorizing the new branch bank to open for business."

Auth: Sec. 32-1-218, MCA; IMP, 32-1-218, MCA

REASON: The proposed amendments and the proposed new rules will implement changes mandated by the passage of HB 262 which is chapter 117, laws of 1997.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Division of the Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, no later than July 23, 1997.

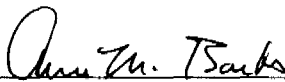
5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., July 11, 1997, to advise us of the nature of the accommodation that you need. Please contact Chris Olson, Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546; telephone

(406) 444-2091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4186. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Chris Olson.

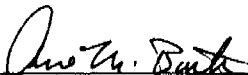
6. Annie M. Bartos, Chief Legal Counsel, has been designated to preside over and conduct the hearing.

DIVISION OF BANKING AND
FINANCIAL INSTITUTION

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 9, 1997.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON THE
amendment of ARM 24.29.4314,) PROPOSED AMENDMENT OF ARM
related to the workers') 24.29.4314
compensation data base system)

TO ALL INTERESTED PERSONS:

1. On July 18, 1997, at 1:30 p.m., a public hearing will be held in the Dan Rickman conference room (basement) of the Walt Sullivan Building (Dept. of Labor building), 1327 Lockey, Helena, Montana, to consider the amendment of ARM 24.29.4314, related to the workers' compensation data base established by 39-71-225, MCA.

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., July 14, 1997, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Mr. John Weida, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-4661; TTD (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 Mr. Weida.

2. The Department of Labor and Industry proposes to amend ARM 24.29.4314 as follows: (new matter underlined, deleted matter interlined)

24.29.4314 ELECTRONIC REPORTING (1) and (2) Remain the same.

(3) (a) Electronic Until June 30, 1998, electronic reporting for the first report of injury and the subsequent report may be done pursuant to either the IAIABC flat file format or the American national standards institute (ANSI) electronic reporting standards X.12 format. The department will not accept electronic reports submitted in any other formats.

(b) Beginning July 1, 1998, electronic reporting may be done pursuant only to the American national standards institute (ANSI) electronic reporting standards X.12 format. The department will not accept electronic reports submitted in any other formats.

(4) Remains the same.
AUTH: 39-71-203, MCA
IMP: 39-71-225, MCA

REASON: The proposed amendment to ARM 24.29.4314 is reasonably necessary to allow insurers and others filing electronic reports sufficient lead time (approximately one year) to adapt to the

discontinuance of the flat file reporting format. The insurance industry in general, and the workers' compensation industry in particular, has generally embraced the ANSI format for electronic reporting as the *de facto* standard for electronic reporting. Discontinuance of the use of the flat file format will decrease the costs associated with accepting two non-compatible formats for the data base system, promote standardized reporting, decrease the costs of submission of data, and make Montana data more directly comparable with other states and industry sources.

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

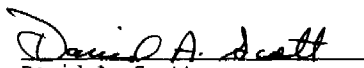
John W. Weida, Bureau Chief
Workers' Compensation Claims Assistance Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

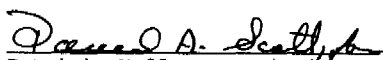
and must be received by no later than 5:00 p.m., July 25, 1997.

4. The Department proposes to amend this rule effective as soon as feasible.

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

6. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Legal/Centralized Services Division, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTD (406) 444-0532.


David A. Scott
Rule Reviewer


Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 9, 1997.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rule I (ARM 4.12.1024))
pertaining to license fees)
for commodity dealers/public)
warehouse operators)

TO: All interested persons:

1. On May 5, 1997, the Department of Agriculture published a notice of public hearing on the proposed adoption of the above stated new rule (ARM 4.12.1024) at page 741 of the 1997 Montana Administrative Register, issue number 9.

2. On May 27, 1997, at 1:30 p.m. a public hearing was held in conference room #225 of the Department of Agriculture, Scott Hart Building concerning the proposed new rule.

3. The department has considered all comments and testimony received. The comments are as follows:

COMMENT: The Montana Grain Elevator Association by and through its representative, Pam Langley, and under a written statement submitted by Bryan Jones, its president, opposed the increase for the following reasons:

(a) That in the 1997 legislative deliberation on HB2, (the Budget bill), the legislature approved a department budget based on the current license fees;

(b) that the increase is particularly unfair to the independent and coop grain elevators who carry both state commodity dealer and warehouse licenses;

(c) that the license fees should only be spent on the licensing process and not on other department programs.

(d) The \$464 fee for each license is higher than the highest in surrounding states.

RESPONSE: (a) The 1997 legislative Free Conference Committee amended HB 2, the State Appropriation Act, in which they deleted all the general funds for the Agricultural Warehouse, Commodity Dealer and Grain Standards program and allowed the department to increase the license fees to replace the loss of general fund monies. Both the Senate and the House subsequently passed HB2, as amended. (b) Yes, there is a financial impact on certain grain elevators who require both a commodity dealer license and a warehouse license. These are two separate licenses that serve two separate functions. The department's responsibilities under this act and its two primary functions serve to provide protection to people producing agricultural commodities who sell these commodities to dealers or store such commodities in warehouses. (c) The license fees are not spent on other department programs, they only support the administration of this act. The 16.9% quoted by the Montana Grain Elevator

Association in their letter only represents the personnel costs needed to issue, mail and file the licenses and related materials. The other department responsibilities before actual issuance of the license require proper insurance and bonding of the facilities and may require auditing or investigating in support of licensing. After licensing, during compliance visits to the facilities the auditor checks daily position records, warehouse receipts and contracts to determine if grain stocks exceed producer obligations. All of these functions are part of the department's overall licensing responsibilities. (d) Each state's grain program is designed and funded differently. Several Midwestern states currently have warehouse license fees that exceed \$2,000. Oregon's fee was recently raised to \$500 per facility and Washington's fee is \$900 for a sub-terminal facility and, as indicated, several neighboring states have lower fees than Montana's proposed fees.

COMMENT: K.W. Feed and Grain stated that the license fee should be based on bushels purchased or stored so that the companies would be charged based on the extent of their activity.

RESPONSE: While it is possible to license warehouse or dealer facilities based upon the amount of commodities purchased or stored, the present act establishes a minimum license fee for each type of license of \$232 and a maximum of \$500. The existing minimum and maximum fee established by statute is not conducive to an effective graduated fee system based upon volume coupled with maintaining an operational budget to accomplish the required responsibilities of the department under this act.

The department has agreed to work on this issue in cooperation with the agricultural commodity producers and the industry, based upon a request of the Natural Resources Appropriations-Finance and Claims Joint Subcommittee in 1997. We will pursue this issue in fiscal year 1998-1999 in preparation for the 1999 legislature.

COMMENT: Central Montana Cooperative stated that it was the legislative intent, as expressed in the deliberations on HB2, to keep license fees at current levels and that any increase in fees as a result of loss of general funding should be borne by the growers.

RESPONSE: Neither the Agricultural Commodities Act or action taken by the 1997 legislature allows the department to charge growers for the licensing fees.

COMMENT: Timeless Seeds stated that the license fees for small businesses should be based on a sliding scale at the level of purchasing.

RESPONSE: Reference response to K.W. Feed and Grain comment.

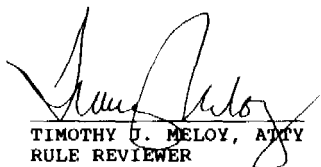
COMMENT: Busch Agricultural Resources stated that fee increases should be accompanied by an increase in department of agriculture services rather than as a means for making up a loss of general funding which went to other non-agricultural programs.

RESPONSE: The proposed increase in fees replace dollar for dollar the loss of general funds mandated by the legislature. The fee increase is not for expansion of the program, but for maintaining the existing level of operations.

4. The department has adopted the rule as proposed.



RALPH PECK, DIRECTOR
DEPARTMENT OF AGRICULTURE



TIMOTHY J. MELOY, ATTY
RULE REVIEWER

Certified to the Secretary of State office this 9th day of June 1997.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of a rule pertaining to unpro-) 8.58.419 GROUNDS FOR LICENSE
fessional conduct) DISCIPLINE - GENERAL PRO-
) VISIONS - UNPROFESSIONAL
) CONDUCT

TO: All Interested Persons:

1. On March 10, 1997, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 467, 1997 Montana Administrative Register, issue number 5.

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

3. No comments or testimony were received.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, June 9, 1997.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of rules pertaining to the) 8.94.4101, 8.94.4102,
State of Montana Single Audit) 8.94.4103, 8.94.4104,
Act) 8.94.4105, 8.94.4106,
) 8.94.4109 AND 8.94.4111
) PERTAINING TO THE STATE OF
) MONTANA SINGLE AUDIT ACT

TO: All Interested Persons:

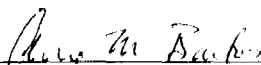
1. On May 5, 1997, the Local Government Assistance Division published a notice of proposed amendment of the above-stated rules at page 743, 1997 Montana Administrative Register, issue number 9.

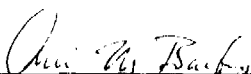
2. The Division has amended the rules exactly as proposed.

3. No comments or testimony were received.

LOCAL GOVERNMENT ASSISTANCE

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 9, 1997.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

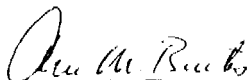
In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of rules pertaining to the) 8.97.910, 8.97.914, 8.94.916,
InterCap Revolving Program) 8.97.917, 8.97.918, 8.97.919,
) AND 8.97.921 PERTAINING TO
) THE INTERCAP REVOLVING
) PROGRAM

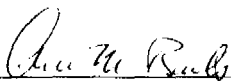
TO: All Interested Persons:

1. On May 5, 1997, the Board of Investments published a notice of proposed amendment of the above-stated rule at page 750, 1997 Montana Administrative Register, issue number 9.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF INVESTMENTS

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 9, 1997.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF
of ARM 12.6.901 relating to the) RULE 12.6.901
restriction of motor-propelled)
water craft on Hauser Lake.)

To: All Interested Persons.

1. On April 21, 1997, the Fish, Wildlife and Parks Commission (commission) published notice at page 669 in the 1997 Montana Administrative Register, issue number 8, of public hearing and its intent to consider the amendment of a rule regarding water safety regulations.

2. On May 12, 1997, a public hearing was held in Helena. Written comments were accepted through May 23, 1997.

3. After consideration of the comments received on the proposed amendment, the commission has amended the rule as proposed.

AUTH: 87-1-303, MCA IMP: 87-1-303, MCA

4. A total of four comments were received on the proposed amendment to the water safety regulations in 12.6.901. Two comments supported the proposed amendment and one opposed it. The following is a summary of the comments received along with the commission's responses to those comments:

COMMENT 1: I am opposed to any restrictions of this nature on the main body of the lake because it is hard to enforce, and those persons unfamiliar with such zones may inadvertently violate the law. I would encourage the department not to place anymore restrictions on boaters than they absolutely have to.

RESPONSE 1: The no wake zone would not extend into the main body of the lake, but rather be set up approximately 500 feet into Spokane Creek Bay. The zone would not affect boaters using the main body of Hauser Lake. The commission believes that this is an appropriate and necessary restriction on this bay of Hauser Lake.

COMMENT 2: I would like to be able to slow the bigger boats down. It's the fast boats that seem to be a hazard here, especially to the children that are swimming in the area.

RESPONSE 2: The commission concurs and believes the placement of a no wake zone in the bay will help accomplish this.

COMMENT 3: The most hazardous part of the Spokane Creek Bay area is the shallow water and I recommend some way to designate the rapid shallows.

RESPONSE 3: By implementing a no wake zone in the bay, the commission believes that damage to boats, particularly in the shallow area, will be greatly reduced.

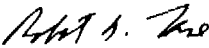
COMMENT 4: Ninty-five percent of the boating public today ignores these markers (buoys.) I have never seen a citation issued on this on-going problem.

RESPONSE 4: Considering the location of the area, the commission believes that a zone in Spokane Creek Bay would be an effective means of providing for public safety. Statewide in 1995, department game wardens issued fifteen reckless boating citations and fifteen citations for violations of no wake zones. At this point, with 1996 information incomplete, Montana wardens issued seventeen reckless boating and seven no-wake citations.

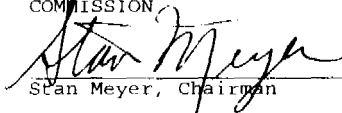
5. The rule has been reviewed and approved by the Department of Public Health and Human Services as required by 87-1-303(2), MCA, with a determination that the rule would not have an adverse impact on public health or sanitation.

RULE REVIEWER

FISH, WILDLIFE AND PARKS
COMMISSION



Robert N. Lane



Stan Meyer, Chairman

Certified to the Secretary of State on June 9, 1997.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF
rules 17.50.412, 17.50.502-506,)	AMENDMENT AND
508, 511, 530, 17.50.701 and 708,)	ADOPTION OF RULES
and new rule I, to conform with)	
EPA flexibility and allow reduced)	
regulatory requirements for)	
certain wastes.)	

(Solid Waste Management)

To: All Interested Persons

1. On April 21, 1997, the department published notice of the proposed amendment of the above-captioned rules and the adoption of new rule I at page 671 of the 1997 Montana Administrative Register, issue number 8.

2. The department has amended and adopted the rules as proposed with the following changes: (new material is underlined; material to be deleted is interlined):

17.50.412 ANNUAL REPORTING; COMPOSTING; SPECIAL WASTES
Same as proposed.

17.50.502 DEFINITIONS In addition to the terms defined in 75-10-203, MCA, as used in this subchapter, the following terms shall have the meanings or interpretations shown below:

(1)-(11) Same as proposed.

(12) "Construction and demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures, once municipal, household, commercial and industrial wastes have been removed ~~to the greatest extent practicable.~~

(13)-(57) Same as proposed.

17.50.503 WASTE GROUPS Same as proposed.

17.50.504 DISPOSAL FACILITY CLASSIFICATIONS (1)-(2) (b) Same as proposed.

(c) Facilities licensed as Class IV landfills may accept only Group III or Group IV wastes. Conditionally exempt small quantity generator hazardous waste that is generated as a part of a construction or demolition project and that cannot practicably be removed from the ~~construction and demolition waste~~ may be included in waste disposed of in Class IV units.

17.50.505 STANDARDS FOR SOLID WASTE MANAGEMENT FACILITIES
Same as proposed.

17.50.506 DESIGN CRITERIA FOR LANDFILLS Same as proposed.

17.50.508 APPLICATION FOR SOLID WASTE MANAGEMENT SYSTEM

LICENSE Same as proposed.

17.50.511 SPECIFIC OPERATIONAL AND MAINTENANCE REQUIREMENTS--SOLID WASTE MANAGEMENT SYSTEMS (1)-(3) (a) Same as proposed.

(b) The plan of operations at Class IV landfill units must exclude Group II waste, ~~and conditionally~~ Conditionally exempt small quantity generator wastes ~~must be removed~~ to the greatest extent practicable. Liquid paints, solvents, glues, resins, dyes, oils, pesticides, and other household hazardous waste ~~and conditionally exempt small quantity generator waste~~ must be removed from buildings prior to demolition.

(c) Same as proposed.

(4)-(6) Same as proposed.

17.50.530 CLOSURE REQUIREMENTS FOR LANDFILLS Same as proposed.

17.50.701 PURPOSE AND APPLICABILITY Same as proposed.

17.50.708 SAMPLING AND ANALYSIS PLAN Same as proposed.

RULE I (17.50.542) FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS IV LANDFILLS Same as proposed.

3. Seven persons submitted comments to the department concerning the notice; a summary of each comment and the department's response to them follows.

Comment: One person requested that the department establish fees sufficient to fund a program whereby department inspectors would be present to inspect all waste received in closed containers at Class IV landfills or alternatively, to set fees at Class IV facilities at least equal to Class II.

Response: The department declined to adopt the inspection program proposed because it would impose an unjustified regulatory burden on the operators of Class IV landfills. Operators of Class IV landfills will only be allowed to accept Group IV waste. In the event that the department finds, through its regular inspection program, that a facility is receiving unacceptable wastes, the department has sufficient enforcement ability to correct the problem at the funding level proposed. The department is required to set fees at a level that reflects the cost of license review and inspection. The department's analysis of the effort required to license Class IV landfills is similar to Class III rather than Class II landfills and inspection costs at Class IV landfills would be greater than Class III but less than Class II. The fees as proposed reflect this level of effort by the department.

Comment: The department received three adverse comments on the change to the definition of construction and demolition waste to include the phrase "removed to the greatest extent practicable." The commentators argued that the phrase weakens enforceability by

providing a vague definition and implying that construction waste, mixed with municipal waste (required to be placed in a Class II facility), was acceptable at Class IV landfills.

Response: The department agrees and has changed the language.

Comment: Three comments were received objecting to the fact that conditionally exempt small quantity generator wastes (CESQG wastes) were allowable at these facilities. The wording of the rule also appeared to allow for the placement of CESQG wastes not associated with the construction or demolition in a Class IV landfill.

Response: CESQG wastes are an integral constituent of this waste stream and are deemed proper for disposal in these types of facilities by the EPA, provided that site specific ground water monitoring is conducted and, if the environment is impacted, corrective actions are required. The language has been changed to reflect the fact that the CESQG waste acceptable at Class IV landfills must have been generated in association with the construction or demolition project. The rule has also been modified to require that CESQG waste must be removed whenever possible.

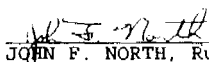
Comment: Two commentors requested that unlined Group IV units not be allowed at Class II facilities, even if monitored, unless they met the "no-migration" requirements. They requested changes to ARM 17.50.506(19) to reflect this.

Response: This change would be more stringent than the EPA rule which only requires ground water monitoring at these types of facilities and grants the department the ability to define ground water monitoring requirements on a case-by-case basis. The general requirements for pollution prevention are contained in sections (17) and (18) of ARM 17.50.506. The department believes that the three sections, taken together, will insure that Class IV units at Class II landfills will be adequately designed and monitored.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Reviewed by:


CURT CHISHOLM, Deputy Director


JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State June 9, 1997.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules 18.7.301 through)
18.7.303, 18.7.305, 18.7.306,)
18.7.307, 18.7.320, 18.7.322,)
18.7.323, and 18.7.332 relating)
to motorist information signs.)


TO: All Interested Persons.

1. On April 21, 1997, the Department of Transportation published notice of the proposed amendment of the above-referenced rules relating to motorist information signs, at page 679 of the 1997 Montana Administrative Register, issue number 8.
2. The agency has amended the rules as proposed.
3. No comments or testimony were received.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State June 2, 1997

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment)
of rules 18.8.509 and 18.8.1101) CORRECTED NOTICE OF
concerning the Motor Carrier) AMENDMENT
Services program)

TO: All Interested Persons.

1. On March 24, 1997, the Department of Transportation published notice of amendment of the above-noted rules at page 546 of the 1997 Montana Administrative Register, issue number 6.

2. Following publication of the notice, it was discovered that subsection (12)(a) of rule 18.8.1101 should have been amended to reflect an increase in width from 32 feet to 34 feet. This was in response to testimony received from members of the housemoving industry during the hearing conducted on December 20, 1996. The Department agreed that the width could be increased with no adverse impact on safety. The change was made in subsection (13)(a) of the rule, but not in subsection (12)(a). The corrected rule reads as follows:

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

(1) through (11) remain as amended.

(12) Class one dimensions and moving requirements consist of the following:

(a) Dimensions may not exceed ~~32~~ 34 feet wide, 24 feet high, 120 feet overall length;

(12)(b) through (13)(g) remain as amended.

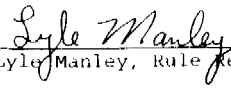
AUTH: 61-10-155, MCA; IMP: 61-10-101 through 61-10-148, MCA

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on June 30, 1997.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State June 2, 1997

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the)
amendment of rule 23.14.801)
to include a definition of) NOTICE OF AMENDMENT
"Uncertifiable Officer")
)

TO: All Interested Persons


1. On March 24, 1997, the Montana Board of Crime Control published notice of the proposed amendment of rule 23.14.801 at page 536 of the 1997 Montana Administrative Register, issue no. 6.

2. No comments were submitted on the proposed amendment.

3. The board has amended rule 23.14.801 as proposed.

MONTANA BOARD OF CRIME CONTROL:

By:


Ellis E. Kiser, Executive Director


Rule Reviewer

Certified to the Secretary of State June 6, 1997.

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

In the matter of Montana's)	NOTICE OF AMENDMENT OF
prevailing wage rates,)	PREVAILING WAGE RATES-
ARM 24.16.9007)	SERVICE OCCUPATIONS AND
)	CERTAIN BRICKLAYER RATES

TO ALL INTERESTED PERSONS:

1. On April 7, 1997, the Department published notice at pages 621 through 623 of the 1997 Montana Administrative Register, Issue No. 7, to consider the amendment of the above-captioned rule.

2. On May 2, 1997, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of May 9, 1997.

3. The Department has thoroughly considered the comments and testimony received on the proposed prevailing wage rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Mr. Ron Senger, Business Manager, Sheetmetal Workers Local #103, asked if the material handler occupation applied to both services and building construction. He stated the concern that employers could use this lower-paid occupation in building construction jobs instead of using a general laborer or apprentices, which would do the same type of work.

Response 1: The Department will change the material handler description to reflect that this description does not apply to building construction contracts. The description will read as follows:

Material Handler - D.O.T. 929.687-030

Loads, unloads, and moves materials within or near plant, yard, or worksite either by hand or using mechanical means. This occupation does not apply to building construction work.

Comment 2: Chuck Cashell, Business Agent, International Union of Operating Engineers Local #400, submitted copies of their collective bargaining agreements. He also submitted data from signatory employers to be considered in calculating the final prevailing wage rates.

Response 2: The Department considered the collective bargaining agreements in setting revised fringe benefit rates. The fringe benefit rates increased. The Department also added information from employers to the calculation of the prevailing rates for janitor-building maintenance, janitorial services supervisor, groundskeeper, garbage collector, and mechanic-construction equipment. As a result, prevailing wage

rates and fringe benefits for these occupations were either raised or lowered.

Comment 3: Additional data was submitted to the Department by employers during the comment period.

Response 3: As a result of the additional data received, prevailing wage rates and fringe benefits for certain occupations were raised and others were lowered.

4. After consideration of the comments received on the proposed amendments, the Department adopts and incorporates by reference the prevailing rates of wages contained in the publication entitled "State of Montana Prevailing Wage Rates" for service occupations and for heavy and highway construction, dated July 1, 1997. The service occupation rates are adopted as proposed, but with changes in the standard prevailing rate of wages for following occupations:

Wage increases due to additional data:

Appliance Service Representative: District 1, 2, 3, 5, 7, 9, 10
Janitor-Building Maintenance: District 2
Janitorial Services Supervisor: District 2
Material Handler: District 1, 7, 9
Mechanic, Automotive: District 1, 2, 6, 7
Mechanic, Construction Equipment: District 2, 3, 4, 5, 6, 7, 8, 9
Security Guard: District 2, 7, 9, 10

Wage decreases due to additional data:

Cleaner/Janitor: District 1, 2, 4, 8
Cook: District 2, 4, 6, 9
Food Service Worker: District 2
Groundskeeper: District 2, 7
Janitor-Building Maintenance: District 5, 6, 8
Janitorial Services Supervisor: District 4
Mechanic, Automotive: District 3, 8
Mechanic, Construction Equipment: District 10
Snow-plow Operator: District 1

~~Wage decreases preliminary rates higher than collective bargaining agreement:~~

Janitor-Building Maintenance: District 4

Fringe benefit increases:

Cleaner/Janitor:
District 2 (health/welfare, pension)
Cook:
District 3 (pension)
District 4 (pension)

Food Service Worker:
 District 2 (health/welfare, pension)
Janitor-Building Maintenance:
 District 2 (health/welfare, pension, vacation)
 District 6 (pension)
 District 7 (pension)
 District 8 (health/welfare, pension)
Janitorial Services Supervisor:
 District 2 (health/welfare, pension, vacation)
 District 4 (health/welfare, pension)
 District 7 (health/welfare, pension)
Mechanic, Automotive:
 District 8 (vacation)
Mechanic, Construction Equipment:
 District 2 (health/welfare, pension)
 District 3 (health/welfare, pension)
 District 4 (health/welfare, pension, vacation)
 District 5 (health/welfare, pension)
 District 6 (health/welfare, pension)
 District 7 (health/welfare, pension)
 District 8 (health/welfare, pension, vacation)
 District 9 (health/welfare, pension)
 District 10 (health/welfare, pension)
Security Guard:
 District 2 (vacation)

Fringe benefit decreases:

Cleaner/Janitor:
 District 2 (vacation)
 District 5 (vacation)
Cook:
 District 2 (vacation)
 District 6 (vacation)
 District 9 (vacation)
Food Service Worker:
 District 2 (vacation)
Janitorial Services Supervisor:
 District 4 (vacation)
Mechanic, Automotive:
 District 1 (vacation)
 District 5 (vacation)
 District 7 (vacation)
 District 10 (vacation)
Mechanic, Construction Equipment:
 District 6 (vacation)
 District 10 (vacation)

AUTH: 18-2-431 and 2-4-307, MCA

IMP: 18-2-401 through 18-2-432, MCA

5. The Department did not receive any comments on the proposed changes to the 1996 edition of "State of Montana Prevailing Wage Rates - Building Construction" for District 1

and 2 for Tile Setter, Bricklayer Foreperson, Bricklayer and Stonemason. The Department has amended those rates exactly as proposed.

6. The amendments, including the standard prevailing rate of wages, are effective July 1, 1997.

David A. Scott
David A. Scott
Rule Reviewer

David A. Scott, for
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 9, 1997.

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

In the matter of the adoption)	NOTICE OF ADOPTION AND
of Rule I and the repeal of)	REPEAL
16.38.301 through 16.38.304 and)	
16.38.306 pertaining to)	
laboratory analysis fees)	
)	
)	

TO: All Interested Persons

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed adoption of Rule I and the repeal of 16.38.301 through 16.38.304 and 16.38.306 pertaining to laboratory analysis fees at page 823 of the 1997 Montana Administrative Register, issue number 9.

2. The Department has adopted Rule I (16.38.307) LABORATORY FEES FOR ANALYSES and repealed 16.38.301 through 16.38.304 and 16.38.306 as proposed.

3. No comments or testimony were received.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State June 9, 1997.

In the matter of the) NOTICE OF AMENDMENT
amendment of rules 46.12.550,) OF RULES
46.12.551 and 46.12.552)
pertaining to home health)
services)

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.550, 46.12.551 and 46.12.552 pertaining to home health services at page 771 of the 1997 Montana Administrative Register, issue number 9.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

Response: The Department has discussed with providers the possibilities of including social work activities under home health services. These discussions have given the Department a better awareness of how such services could be utilized. The Department may consider adding these services at a later date, after a cost-benefit analysis can be completed.

Response: The Department is concerned about the adequacy of reimbursement provided for services. Rates, however, also must be set within the parameters of the overall goals of the program, inclusive of the mix of necessary and desirable services and the monies available.

Response: The Department does not intend to implement the provider rate increase until first quarter paid claims data can be reviewed to determine if the rate increase will fall within the budgetary growth rate mandated by the legislature. The

department is being held to a 15% growth rate in FY 98 and 10% in FY 99. The program currently grows at a rate of 14%. If the growth rate should fall within the legislated limits, the provider increase will be paid retroactively to July 1, 1997.

Comment #4: A commentor stated that the proposed rate does not effectively cover the cost for therapy services. A more reasonable method to organize the fee structure should be researched.

Response: In discussions with the provider association, the Department has indicated that it is willing to review alternative reimbursement methodologies.

Comment #5: A commentor asked why visits by a nurse for evaluating the needs of a recipient or to review the provision of services by a home health aide or a licensed practical nurse were not covered.

Response: The Department considers the cost of these visits to be a part of the normal cost of doing business that are encompassed within the current provider rates.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State June 9, 1997.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of 46.12.1229,) OF RULES
46.12.1231 and 46.12.1237,)
pertaining to medicaid)
nursing facility services)
reimbursement)
)

TO: All Interested Persons

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of 46.12.1229, 46.12.1231 and 46.12.1237, pertaining to medicaid nursing facility services reimbursement at page 805 of the 1997 Montana Administrative Register, issue number 9.

2. The Department has amended rule 46.12.1237 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.1229 OPERATING COST COMPONENT (1) through (3)(a) remain as proposed.

(4) The operating cost limit is ~~102%~~ 103% of median operating costs.

(5) If the provider's inflated base period per diem operating cost is less than the operating cost limit calculated in accordance with (4), the provider's operating cost component shall include an incentive allowance equal to the lesser of 10% of median operating costs or ~~20%~~ 27% of the difference between the provider's inflated base year per diem operating cost and the operating cost limit.

(5)(a) remains as proposed.

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

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

46.12.1231 DIRECT NURSING PERSONNEL COST COMPONENT

(1) through (3) remain as proposed.

(4) The direct nursing personnel cost limit is ~~104%~~ 109% of the statewide median average wage, multiplied by the provider's most recent average patient assessment score, determined in accordance with ARM 46.12.1232.

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

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

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: We support the rebasing of costs from the current use of 1994 cost data to the proposed use of 1996 cost data. The periodic updating of base period costs for rate setting purposes is necessary to assure that cost data is sufficiently representative of inflation and of provider costs. The department should use the most current cost reports available.

RESPONSE: The department agrees that periodic rebasing is desirable, and believes that other variables in the rate methodology must be adjusted as part of and incident to rebasing.

COMMENT #2: The proposed rule amendments as a whole fail to provide funding which meets the federal Boren amendment standard of being reasonable and adequate to meet the costs that efficiently and economically operated facilities must incur to meet federal and state health and safety standards. According to the department's own figures, 74% of facilities will receive a rate that fails to meet the cost of care in those facilities, and average rates will be \$9.37 less per patient day than costs. In addition, 45% of facilities receive actual rate decreases. The department's rates have been developed based solely upon budgetary considerations, rather than in an effort to comply with legal requirements. The state has no legitimate definition of an "efficiently and economically operated facility" other than one that can operate within the legislative appropriation.

Exactly what legal requirements are being addressed by these changes, and precisely how will quality patient care and access to services be enhanced by these proposed changes? Extensive studies must have been conducted in order to assure that the methodology will generate rates which meet requirements, and we would like to request that the department include in its response detailed information delineating the exact methodologies, data, time frames and subsequent analyses relating to these studies. If studies that the department conducted were used to determine the exact facility rates necessary to meet all of the requirements, why would legislative funding increases or decreases be relevant? The department notes in its explanatory note in the first notice that the legislature appropriated a 1.5% provider rate increase and a 1% caseload or bed day growth for 1998. Why would the department consider this information to be relevant if rates are indeed based on meeting legal requirements and the department's objectives related to quality patient care and access to services?

RESPONSE: The department disagrees with the comments suggesting

that the rates have been developed based solely upon budgetary considerations, that the level of appropriations available to fund the rate system is inadequate or that the department has no legitimate standards for rate setting. The department also disagrees with the suggestion in the comments that rates must cover the actual costs of facilities or that the law prohibits rate decreases. These are not the standards by which the legal adequacy of the rates is measured. The department has developed the rates to comply with legal requirements and its analysis demonstrates that all requirements have been met or exceeded.

Medicaid nursing facility rates must meet both federal and state requirements. Under federal law, the department must establish rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide care in accordance with requirements. Under state law, the department is authorized to establish rates in accordance with federal requirements, taking into account various factors, including the availability of appropriated funds. Neither federal nor state law require "enhancement" of quality care or access to services, "extensive" studies or any particular analytical methodologies. Rates may not be established based solely upon budgetary considerations, but budgetary factors are relevant and may be considered. Federal law authorizes the state to determine its own standards and methodologies by which to establish and evaluate the adequacy of rates.

Since the establishment of the current rate system in 1991, the department has used the same methodology and standards to evaluate whether the rates established under the rate system comply with legal requirements. The methodology and standards are contained in the department's "lowest quartile" analysis. The department has performed this analysis with respect to the rates generated by the rate methodology as finally adopted in this notice. As indicated in this notice, the operating component cap percentage has been increased from 102% to 103% of median operating costs and the operating incentive has been increased from 20% to 27% of the difference between inflated base year cost and the operating cost limit. The direct nursing cost component cap percentage has been increased from 104% to 109% of the statewide median average wage. The results of the analysis indicate that the rates as finally adopted comply with applicable legal standards.

COMMENT #3: It appears that the State has lowered the caps for the operating and nursing component caps without conducting a finding on whether certain portions of the state, or groups of providers, will be adversely affected and access to care become problematic. It appears the adjustment of the caps is the result of efforts to not overspend the appropriation rather than based on an economic analysis. How is it that the level

determined needed to reimburse an economically and efficiently run facility changes from year to year in conjunction with changes in the appropriations? We recommend that State adopt the original caps of 125% for nursing and 115% for the operating component.

How did the department determine that a cap of 102% on the operating cost median from the 1996 cost reports is the appropriate number which allows facilities to provide quality of care in accordance with all applicable statutes and regulations? How does the department know that some other percentage is not more appropriate? How did the department determine that a cap of 107% of the nursing cost median from the 1996 cost reports is the appropriate number which allows facilities to provide quality care in accordance with all applicable statutes and regulations? How did the department determine that an incentive factor of 24% of the difference between a provider's operating costs and the operating cost limit is appropriate? Unless the department is able to supply all of the information we can only assume that the fiscal year 1998 rates determined through application of these proposed rules are entirely arbitrary and capricious, and bear no relationship whatsoever to the quality of care or access to services. The history of the cap percentages shows that these percentages have moved down each year, which shows that the percentages are arbitrary and irrational.

The operating costs of almost 60% of facilities exceed the cap and those facilities therefore will not receive a rate that covers their operating costs. The direct nursing costs of almost 50% of facilities exceed the cap and those facilities therefore will not receive a rate that covers their actual nursing costs. The nursing cap decrease exacerbates other problems in the rate system, such as decreasing occupancy rates and increasing acuity, a decrease in the licensed to nonlicensed ratio, the "totally fictitious" nature of the average hourly wage, the reclassification of significant expenses from nursing to operating and a failure to take inflation into account.

The proposed cuts in the various components of the reimbursement rate are arbitrary and without reasonable basis, and do not meet standards for agency actions and rulemaking set forth in the Montana Administrative Procedure Act (MAPA).

RESPONSE: The department disagrees with the comment both with respect to the rate methodology as proposed and as finally adopted. The commentators support the rebasing of rates, yet oppose the changes that are necessary to adjust the methodology in light of the new base period cost data. When facility costs have increased at a rate greater than the rate of inflation, as they did between the previous base period of 1994 and the new base period of 1996, the percentages applied to determine the

cost caps must be decreased. Otherwise, the methodology would recognize all of the cost increases that exceed inflation, which in the department's view would encourage and reward unnecessary spending. Reduction of the cap percentages is necessary to limit the extent to which the rates will recognize costs which have increased at a rate greater than inflation. The department does not agree that the caps are arbitrary or irrational or that the caps can be evaluated in isolation from other rate features or in reference to actual facility costs.

In addition, the department necessarily must consider the availability of appropriations to fund the rate methodology adopted. The department believes that the three rate variables proposed to be changed determine the extent to which the department will provide a cushion of cost recognition over and above the bare minimum level of costs that must be incurred. However, in setting the percentages the department does not consider only the level of appropriations available. In fact, the legislature provided a funding increase of 1.5%, but the rate methodology as finally adopted in this notice provides for rates that increase by an average of 2.78% before application of the private pay limit. The department also must evaluate the rates resulting from the proposed percentages against its rate standards through the lowest quartile analysis to assure that the rates meet federal requirements. Quality of care and access to services are specifically addressed and evaluated through the lowest quartile analysis and additional analysis performed as part of the findings process. Providers are adding beds through new construction and remodeling, and the department finds no reason to believe there are access problems. There is no precise mathematical formula by which to determine the percentages chosen. Through consideration of all of these factors, the department must balance the various concerns and assure that the rates are reasonable and adequate to meet legal requirements while at the same time the rates are not set at a level that would exceed available appropriations.

The department disagrees that the licensed to non-licensed ratio is arbitrary. This ratio is calculated based upon aggregated actual cost data from all facilities. It is not arbitrary at all. All facilities' rates are calculated using the same ratio. Similarly, the average hourly wage is not fictitious at all. It is calculated based upon aggregated actual cost data from all facilities. The department believes these rate factors are reasonable and appropriate for use in the rate setting process. The department disagrees that the nursing cap decrease somehow combines with these or other factors to create inappropriate rate effects.

As indicated in this notice, the operating component cap percentage has been increased from 102% to 103% of median operating costs and the operating incentive has been increased

from 20% to 27% of the difference between inflated base year cost and the operating cost limit. The direct nursing cost component cap percentage has been increased from 104% to 109% of the statewide median average wage. The department believes that the rule changes adopted in the final rule are consistent with and reasonably necessary to implement state medicaid statutes, and that the rules meet all MAPA requirements.

COMMENT #4: Reductions in rate components reduce the amount of dollars available to provide proper services to the residents. It does not make any sense to reduce rates under direct nursing at a time when the acuity of nursing facility patients as measured through the patient assessment system (PAS) is increasing. The direct effect will be less money to take care of heavier care residents. There are no extra expenditures that can be reduced to make up the difference. The department must be consistent and fair in operating the payment model. Nursing facilities should receive the highest possible rate payable in accordance with the department's appropriation and within the department budget. The department should increase the direct nursing salary cap with any added money.

RESPONSE: The department believes that the available funding and the rates that will be paid under the rule as finally adopted are reasonable and adequate to provide care in accordance with all applicable standards. The increasing acuity of residents has been taken into account through the increased patient assessment scores factored into the individual facility rates.

The department has modified the proposed rule and rate spreadsheet to incorporate more updated information and to recognize current medicaid utilization data, update cost report information in some areas, enter private pay survey information in the reimbursement spreadsheet, and update patient contribution estimates for fiscal year 1998. Based on these changes, the department will adopt the following percentages on the medians for fiscal year 1998: 103% of the operating cost component median, operating incentive at 27% or a cap of 10%, and average hourly wage median percentage cap of 109%. This results in reimbursement for fiscal year 1998 of \$123,495,148 which results in an average rate increase of 2.78% from the fiscal year 1997 average rate.

Rates have increased or decreased as a result of several factors, not simply as a result of the amount of funding increases or the reductions in cap percentages. The cap and incentive percentages, while being lowered because of the changes that are occurring in the reimbursement system from rebasing and updating of rate factors, still serve to further the underlying basic goals of the reimbursement methodology by providing a higher recognition of nursing costs in relation to

operating costs. A lower cap percentage is applied to operating costs. However, the department continues to recognize that an incentive for operating efficiency is of value in the reimbursement system. Capital costs are continued to be recognized and increases are provided up to \$1.86 per day or the \$11.50 cap if costs in this area support an increase. We have updated patient acuity to the most current information that is available and provided increases in funding to the system of reimbursement based upon both the appropriated funding level and projected increases in patient contributions.

The percentages, caps and medians used in setting rate components must be established in conjunction with each other in order to distribute funding in the most equitable and appropriate manner to all providers participating in the medicaid nursing home program. The percentages are not required to be maintained at any particular levels to distribute funding equitably through the reimbursement system. Percentages and caps must be part of a reasoned decision making process that evaluates all of the information in the system globally and cannot be looked at in isolation to determine whether the system meets legal requirements. All reimbursement factors must be considered as a whole to determine the adequacy of reimbursement levels and not isolated to one component of reimbursement.

The department, based upon its analysis and findings, believes that the rates generated by the system as finally adopted are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in accordance with all applicable standards.

COMMENT #5: The reduction in the cap percentages is especially inappropriate in light of the department's efforts to reclassify social services and activities costs to the operating cost center. These costs were reclassified in the 1996 cost reports used in the rebasing. As a result of adding these costs to the operating component, the median operating cost increased by more than the rate of inflation. This was not a general inflationary increase, but attributable to the reclassification of costs. The effect of reducing the operating cost cap percentage is to fail to recognize these legitimate costs and also to fail to recognize inflation, which the department projects to be approximately 3%. Moreover, failure to adequately fund the operating component is inappropriate because there is a current regulatory emphasis on quality of life issues, which translates into increased costs in the activities and social services areas. It is unconscionable for one division of the department (Senior and Long Term Care) to provide less funding in the quality of life area while another division (Quality Assurance) cites facilities for being out of compliance in this area. Moreover, many facilities will receive actual rate decreases.

RESPONSE: Many providers will see decreases in their rates because providers improperly reported operating costs as direct nursing costs in prior years cost reports. The department has reclassified social service and activity costs that were reported incorrectly by providers as direct nursing costs, rather than in the operating cost center as required under the cost reporting rules. These cost reclassifications impacted the medians as they were computed for rate setting purposes. The average hourly wage median decreased from \$10.98 in FY 1997 to \$10.73 in FY 1998. However, the operating cost median increased from \$39.68 in FY 1997 to \$42.99 in FY 1998.

The department disagrees with the commentor that the cap percentage reduction results in a failure to recognize the social services and activities costs or inflation. The reclassified costs were included in the operating costs that were inflated by the DRI index and then used to calculate the medians. In fact, the actual operating cost median amount increased from \$39.68 in FY 1997 to \$42.99 in FY 1998, an increase of about 8%. Total operating costs are subject to the cap because a particular provider's operating costs, including the reclassified social services and activities costs, tend to exceed the level of operating costs incurred by other providers. The caps operate in relation to the cost experience of other providers, rather than in relation to the provider's level of 1994 costs or a previous year's rate.

Rates in prior years were based upon cost data that significantly overstated direct nursing costs and understated operating costs. As a result, many rates were higher than they would have been if costs had been reported correctly by providers. Therefore, rates that appear to be decreased from the prior year may in fact be rate increases when compared to the rate the facility should have received in the prior year.

It is also important to note that in determining the levels of costs that must be incurred for purposes of the department's lowest quartile analysis, the department does not rely upon cost data from providers with significant quality of care problems. The levels of costs that must be incurred are determined based upon the demonstrated ability of providers meeting quality of care standards to provide services at the specified cost levels. The department believes, based upon its analysis and findings, that the rates generated under the rate system as adopted in the final rule are reasonable and adequate to reimburse efficient and economic operating costs, including costs in the "quality of life" area.

COMMENT #6: The proposed rates do not take into consideration the need to increase staff salaries or the need to increase staffing to remain in compliance with federal and state regulations.

RESPONSE: There have not been any changes in federal or state requirements related to staffing, and the department believes the 1996 base period costs are representative of facility staffing costs. The department has applied the DRI inflation index to the 1996 base period costs. The extent to which a particular provider's rate will cover its costs will depend to a large extent upon how the facility's costs compare to the costs of other facilities. Facilities' costs are not simply compared to some fixed reference, but rather are compared with the costs of other providers. This provides an incentive for facilities to be competitive in avoiding unnecessary cost increases.

COMMENT #7: In reviewing proposed rates relative to patient assessment scores, some of the larger increases facilities receive make little sense. In all but one instance, the acuity level of those facilities is lower to significantly lower than our facility and yet the formula yields them anywhere from \$10.00 to \$13.73 per day increase while our facility takes a \$4.50 decrease. The legislature passed a 1.5% increase in medicaid nursing facility rates. If our patient assessment score (PAS) remains the same we should see a 1.5% increase in our rates. If the PAS increases, we should see an increase in our rate. Yet we are seeing rate decreases under the proposed rates. How can the rate decrease when the patient assessment score increases? Each year the formula is adjusted in some way or another to the point it no longer may have as much credibility. In visiting with legislators after receiving the draft rate sheet, the end result in not what legislators intended to happen with the money they gave the department. Their impression was everyone would be getting about that percentage not recognizing or understanding how the formula works.

RESPONSE: The comment reflects a misunderstanding of how the complete reimbursement system operates. A provider's rate may increase or decrease depending on several different variables, not only based upon the PAS. For example, if the provider's costs increased significantly more than other providers, not all increased costs would necessarily be recognized. Also, if the provider had improperly reported operating costs as direct nursing costs in previous cost reports, the proposed rate may appear to be a decrease from the current rate only because the current rate is higher than it should be. There may be other explanations, depending upon the particular circumstances of the individual provider in relation to other providers. The department believes that the rules as finally adopted are consistent with legislative intent as expressed in Montana statutes and the 1997 appropriations bill. The department does not believe that it would be appropriate to provide rate increases in all cases regardless of data indicating that a provider's costs do not support an increase.

COMMENT #8: Inflation is a fact of life in health care. Cutting our reimbursement rate forces us to handle inflation of costs with lower income. The reimbursement received last year did not cover actual costs and this year's rates are lower. The formula as adjusted creates a loss in revenue to 43 of 98 facilities. That affects close to fifty percent of the providers. There is no doubt the legislature provided an inadequate amount of money in the budget to fund the long term care industry, which only makes the distribution of available funds even more critical if providers are to survive. What information does the department have which would indicate that these 43 facilities were overpaid from July 1, 1996 to the present time? What information does the department utilize to demonstrate that these 43 facilities will be able to provide quality care in accordance with all applicable statutes and regulations subsequent to their July 1997, decreased rates?

RESPONSE: The department acknowledges that many providers will receive rate decreases. However, these rate decreases are based upon changes that have occurred in the costs incurred by these facilities, changes in patient acuity at that facility, reallocation of costs to the appropriate cost categories and adjustments in the statewide medians which are representative of the costs that were incurred in the base period cost reports. The department disagrees with the suggestion that rates are being decreased because funding levels are inadequate. Even if a 3 - 4% funding increase had been provided by the legislature, over one third of facilities would receive a rate decrease. This is because of the variety of factors identified above. The total reimbursement for fiscal year 1998 will be \$123,495,148 which results in an average per day rate increase of 2.78% over FY 1997 average rates. This amount exceeds the 1.5% increase in state and federal funds appropriated by the legislature for fiscal year 1998. 56% of the facilities with rate decreases still have rates above the FY 1998 statewide average and median rates. The department took into account all relevant information, including the funding available from patient contribution and the lowest quartile analysis to arrive at rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide care in accordance with applicable standards.

COMMENT #9: We recommend that the state drop the distinction between the operating component and the nursing component due to how many aspects of quality care are now classified in the operating component.

RESPONSE: The department disagrees. While we agree that many costs incurred by facilities to enhance quality of care are included in the operating cost component, we also believe that greater emphasis should be placed on direct nursing costs than operating costs and that rates should recognize patient acuity

differences. The department took great efforts to insure that providers separate these costs as defined in the administrative rules into the appropriate cost centers on the cost reports for rate setting purposes this year. The greater percentages on the medians that are allowed for nursing also indicate that the department will recognize a greater amount of these costs because they tend to enhance direct nursing care to residents. Based on the comments received, providers generally place a greater value on the direct nursing costs. The department will not adopt this recommendation.

COMMENT #10: There are concerns that hospital based nursing facilities are paid via a formula which judges their efficiency through faulty measurements. The department establishes payment rates by ranking actual costs at dissimilar facilities, comparing hospital based facilities to freestanding facilities. We believe that a great deal of the differences in ranking a facility depends on the type and size of the facility rather than on its relative efficiency. As the department continues to reduce the caps, the payment system based upon ranking costs is difficult to support. The cap on operating costs is nearly at the median cost value while the cap on nursing salaries has dropped from 140% to 107% of the median. The basic problem is that the department has not asked for nor have they been provided with the correct appropriation. The caps on the median cost values are now driven by medicaid budget amounts rather than by an expression of department goals and facility efficiency. The department testified at the rule hearing that this proposed rule is consistent with department goals regarding nursing home payments, but the goals as reflected in the Myers and Stauffer study are not reflected in the proposed rules. The department should consider modifying the payment formula by ranking like facilities to determine what cost an efficiently operated facility should expect to incur. The department could then base its payments as well as its budget request on those dollar values.

COMMENT #11: In the past two years the number of occupied resident days have dropped significantly. Due to our size, as a small rural facility any decrease in residents will dramatically increase the cost per day borne to each resident because of the fixed overhead. Since the cost per day has dramatically increased, due to lower occupancy, it is unequitable to the rural facilities spread throughout the state that are not reimbursed for costs that are virtually mandated. The cost per day increase in our facility is not due to overspending, but was due to a decrease in the number of residents. A very large percentage of small rural hospital based nursing facilities exceed the maximum allowable operating cost per day threshold. Since the median calculation is centered around the number of licensed beds during the base period, the operating cost per day is not representative of

small facilities. Therefore, most large facilities will be receiving an operating incentive that is being subsidized by the small facilities.

RESPONSE TO #10 AND 11: The department has received comments before concerning the differences in provider types and the impact that these differences has on the way costs are incurred differently in the different types of facilities. We have responded in past comments and responses to the peer grouping idea for reimbursement to certain provider types. We continue to believe that the department should not make distinctions between the types of providers for establishing reimbursement levels. All facilities must meet the requirements for provision of long term care services to receive reimbursement in the medicaid program. The department believes that the rate system does provide a reasonable degree of leeway for all provider types to participate in the system. In fact, the department's analysis shows a great degree of variety in the types and sizes of facilities that receive incentives and that receive rates equaling or exceeding costs.

COMMENT #12: Data provided in facility cost reports is not standardized, and therefore calculations taken from them do not necessarily provide an accurate picture for statistical analysis from which to make a decision.

RESPONSE: The cost reporting rules are based upon medicare reimbursement principles and are uniform for all facilities. The department provides consistent advice to all facilities regarding cost finding and reporting. It is certainly possible that some providers do not follow the applicable rules. However, the department periodically audits cost reports and will tend to discover and correct errors in cost reporting through this process. For example, the department has discovered and corrected a widespread practice of incorrect classification of social services and activities costs. This should serve to encourage providers to carefully follow the cost reporting rules. The department acknowledges that absolute uniformity will not be achieved in the real world. But the department believes that the cost reports provide reasonably consistent cost data that is adequate for rate setting purposes.

COMMENT #13: The department continues to provide for incentive payments while limiting payment to facilities whose actual costs are reasonable. Incentive payments may play an important role in holding down future cost growth, but incentive payments are the least important part of the current payment formula. We would prefer reimbursement of actual costs at efficiently and economically operated facilities before paying incentive payments.

COMMENT #14: The opportunity to earn an incentive is reduced

once by reducing the operating cap percentage and again by reducing the incentive factor. This makes no sense. Facilities that operate at less than the caps are hurt by this reduction. The purpose of the incentive is to encourage facilities to keep costs down. The reduction renders the incentive ineffective. These low cost facilities are the ones most likely to need to increase costs to remain in compliance with standards. The history of the incentive caps shows decreases in the percentage amount, which shows that it is arbitrarily and irrationally set.

RESPONSE TO #13 AND 14: The department believes that the medicaid rates do reimburse the actual economic and efficient costs of providers. The incentive component has lower priority than some of the other components of the reimbursement system, but we believe it continues to have value in encouraging or rewarding providers for maintaining operating costs below the median. We are conservative in the level of the incentive, because too high an incentive could encourage providers not to spend for necessary items. The purpose of the incentive is not to encourage providers to forego compliance with standards. The incentive is not an entitlement, but rather is an entirely discretionary aspect of the reimbursement system, since it pays providers beyond the level of actual cost. Arguably, the providers that receive an incentive are the facilities in the best position to have reserves available to spend to remain in compliance because they have been reimbursed in excess of cost. The incentive level must be set in balance with all other rate variables. We believe with the percentages adopted in the final rule that the incentive will continue to meet the department's goals.

COMMENT #15: We continue to recommend that the department consider a special rate provision for heavy care patients. Heavy care patients may include patients with special treatment needs like ventilator support, IV drips and other nursing or technology intensive services.

RESPONSE: The department modified the administrative rules several years ago to provide a mechanism for additional reimbursement for necessary services to ventilator dependent individuals in nursing facilities. This additional reimbursement is used for several residents in nursing facilities in the state at the present time. We continue to reimburse separately for ancillary supplies above the per diem rate established for each facility. We believe that there are already mechanisms in place to recognize the services that are provided to heavy care residents. We also included in the Request for Proposal (RFP) that the department has issued regarding the resident acuity measurement system for nursing facilities a set of questions to study heavy care residents and ancillary supplies to determine whether modifications are necessary based upon the system of acuity measurement that may be recommended by the contractor that is awarded this contract.

COMMENT #16: One provider objected to the use of a six month cost report due to a change in ownership. They believe that this does not give the whole picture for the entire rate period of one year. The PAS score to be used for calculating the rate should be used from October of the previous year to March of the next year. The six month review does not take into account fluctuations in resident census. This provider asks the department to use a full year cost report for rate setting purposes.

RESPONSE: The use of a six month cost report is required under current rules. No changes to the interim rate rule provisions were proposed. The comment is beyond the scope of the proposed changes that are being considered for fiscal year 1998.

COMMENT #17: The patient assessment system does not adequately measure patient care needs or the state's requirements to care for residents. The state has required that nursing facilities eliminate the use of chemical and physical restraints and that bed sores be prevented (which requires more turning and positioning than the state gives us management minutes for). The quality monitoring, nutritional assessments, designing of care plans, and other items that relate to the care of the resident are in the operating component. These items are not indexed based on resident needs. The state is creating a system where more requirements are put on the facility yearly, yet the caps are decreased and management minutes are not given for the increased requirements. More items of care are being shifted to the operating component, yet that component is not increased to cover the additions. Salaries are going up, yet the state is lowering the nursing cap and shifting costs from the nursing component to the operating component so that no increases are given in the nursing component. We recommend that the state place a floor on how much a facility's rate can fall in any one year to avoid these situations. We also recommend that the state drop the abstract system and instead rely on the federal MDS system for rate setting.

COMMENT #18: By law we must staff at a level sufficient to meet the needs of nursing facility residents. It is of great concern that the proposed reimbursement methodology imposes limitations on reimbursement that will not allow for the cost of the additional care needs of residents. Although our PAS has increased our overall reimbursement only increases a small amount with only a small portion of that increase coming in the nursing cost area. If the state expects high quality care the state must appropriately reimburse providers that, using the state's acuity measurement methodology, demonstrate that the care needs of its residents justify additional reimbursement.

COMMENT #19: The calculated licensed to nonlicensed ratio is based on weighted averages, used in computing the patient

assessment score for rate year 1998. Based on the information provided by the State, the individual ratio calculated for my facility is 2.069 while the statewide average is 1.758. We are being severely penalized because the ratio used is 17.7% less than our actual situation. Obviously, we do not account for a large percentage in the overall computation of the statewide averaged licensed to nonlicensed ratio, but we are still subsidizing a facility whose ratio is below the average. Since the ratio is relatively simple to calculate and represents budget neutrality, each facility should use their own ratio that is accurate and representative of their situation.

RESPONSE TO #17, 18 AND 19: The department has commented about the validity of the current methodology regarding the calculation of the direct nursing component and the use of the patient assessment information above and also extensively in prior years' comments and responses. The department believes that the PAS, which is a measurement of the relative acuity and care needs of resident served by facilities, is a reasonable approach to determining efficient and economical nursing costs. Moreover, we believe that the mix of information used in the current calculation will tend to encourage providers to staff carefully based upon resident needs rather than on reimbursement impacts, because understaffing or overstaffing will have a balanced rate result under the methodology. The department does agree that this approach does not always provide a precise indication of staffing needs during the corresponding period and that further consideration is warranted to determine whether an approach could be developed that would achieve better results. The department has issued an RFP to consider the development of a new resident acuity measurement system for nursing facility providers. The department will continue to explore the possibility of adjusting the acuity measurement in conjunction with the computerization of the minimum data set (MDS) and its use as an assessment tool in the next few years. The computerization requirement will assist the department in converting to a new acuity measure for reimbursement which will use MDS information and eliminate duplication for providers. The development and implementation of a new system of acuity measurement may also provide additional options to address the concerns that have been raised regarding the nursing wage computation, the licensed to nonlicensed ratio calculation and the minimum staffing requirements.

COMMENT #20: One provider recommended that the department change the rules on PAS to accommodate smaller facilities for minimum staffing requirements. State survey staff required that we schedule additional nursing personnel in our facility to insure the safety of our residents. The minimum staffing requirements based on our PAS score should be correlated to the number of residents and the number of days in the month to determine the appropriate staffing levels.

RESPONSE: The proposed change is outside the scope of the proposed rule changes that are being considered at this time. Facilities are required to staff to meet the level of care that is required for the residents that are living in the facility.

COMMENT #21: We understand the department's methodology for projecting medicaid facility days for FY 1998 is questionable. The department may have overestimated the number of bed days used to establish payment rates. If too many bed days are forecast in the formula, the average payment rate is slightly understated, and the department will underspend its budget. We recommend that the department reconcile its method of estimating bed days to more current utilization data. We suggest that the department consider additional funding in proposed days that are budgeted. The change between 1997 annualized Medicaid days on the rate sheet and proposed appropriated days equals a 3% increase of current days when at the present time there is zero day growth. We believe that the state has within its power the ability to transfer funds previously earmarked for anticipated increases in statewide case load growth and direct those funds to increased rates. If the department declines to exercise that authority, the department should consider agreeing to a later rate hike to retroactively award the full appropriation for nursing facilities if the department has incorrectly forecast spending patterns.

RESPONSE: The department disagrees that the bed day calculation is flawed for FY 1998. The logic for this computation is consistent with past practice for projecting caseload growth in this program. The case load increase was computed from fiscal year 1997 projected days as of April 1997 and was indexed by a 1% increase for each year of the biennium. While it is true that case load and occupancy appears to be dropping in nursing homes, we do not have a long enough track record to determine whether this is a pattern that will sustain itself over several months or years or whether bed days will begin to increase or stabilize itself over the next year. Fiscal year 1998 has not even begun and no claims have yet been filed and processed. The department does not have sufficient data to conclude that any excess funding will be available, and it would be premature to spend funds in reliance upon bed day savings.

The department agrees that it does have the authority language included in House Bill 2 to "supplement funds appropriated to rebase nursing home rates with funds appropriated for increased nursing home bed days in order to avoid inappropriate decreases in the department's current nursing home reimbursement formula and to comply with federal law as long as total program expenditures do not exceed the appropriation for nursing homes". At the present time the department does not know if there is excess case load growth available to provide for increases in this program, nor does the department believe that this funding

is necessary in order to comply with federal law or to avoid inappropriate decreases in the department's current nursing home reimbursement formula.

The department will continue to monitor bed day usage patterns in order to determine if in fact excess bed day funding may be available. However, any funding available must be considered in light of the legislatively implemented and mandated caps on overall medicaid expenditures of 5% in FY 1998 and 3% in FY 1999, which will limit the expenditures for the department in overall medicaid growth. Potentially, the department could be required to use any excess funding to fund other service categories in order to meet the overall medicaid caps. The department believes it would be premature to transfer the bed day funding at this time.

COMMENT #22: We support the department's decision to provide some payment increase for property costs. We are concerned that the department has not completed its long promised study on alternative payment approaches for property costs. Many nursing facilities continue to age and they will ultimately require replacement or substantial modernization. There are new facilities that receive property payment below their actual costs. The department should develop a long range plan to address property reimbursement.

COMMENT #23: Providers want a "fair market value" system for property. Providers cannot build for \$11.50 per day and the property cap does not come close to covering fixed property costs.

RESPONSE TO #22 AND 23: The department continues to recognize rate adjustments for new construction or remodeling up to the \$11.50 cap. Increases are available up to \$1.86 per day in this component. While this is not a fair rental value or market value system, the department notes that in the aggregate rates meet or exceed the costs in this area of the reimbursement system. The adequacy of the current property methodology may be questioned by some providers. However, this has not stopped providers from pursuing certificates of need or from undertaking new construction or remodeling of existing physical plants. The department did undertake a property study, but has not implemented a new property methodology. The department has not committed to a fair rental value system or any specific property methodology for the future. Providers continue to advocate changes in the property component without considering that property rates may be calculated upon an entirely different basis than under the present system and that property rates are likely to shift considerably up or down for many facilities under a new methodology. These changes may impact the increases received in this year's or prior year's property rates significantly. The department will continue to monitor the

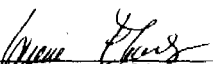
property reimbursement system in conjunction with other changes being considered for reimbursement in the area of MDS and patient acuity adjustments to insure that all components of the reimbursement system work in conjunction with each other.

COMMENT #24: Several commentors requested information and copies of documents related to the ratesetting process.

RESPONSE: Requests for information and documentation should be directed in writing to the department's Senior and Long Term Care Division, P.O. Box 4210, 111 N. Sanders, Helena, MT 59604-4210.

5. The changes will apply to nursing facility services provided on or after July 1, 1997.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State June 9, 1997.

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

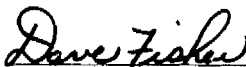
In the Matter of Amendment to a) NOTICE OF AMENDMENT
Rule Pertaining to Motor Carrier) TO ARM 38.3.706
Insurance Endorsements (applicable)
to Large Motor Coaches))

TO: All Interested Persons

1. On April 7, 1997 the Department of Public Service Regulation published notice of a proposed amendment to a rule pertaining to motor carrier insurance endorsements applicable to large motor coaches at pages 624 and 625, issue number 7 of the 1997 Montana Administrative Register.

2. The Department has amended 38.3.706 as proposed.

3. Comment: One comment to the proposed amendment was received jointly from several large motor coach carriers (Beach, G&L, Hall, Karst, Rimrock, Rocky Mountain, and Tucker). These carriers suggest that the federal requirements at 49 CFR 387.33 be adopted, arguing that the current state requirements are too low and that it would otherwise greatly simplify matters if the requirements were the same. The Commission disagrees with the comment. The amendment as proposed does make the state financial responsibility requirement for large motor coaches the same as at the federal level. However, in regard to smaller vehicles there is no apparent compelling reason for change and, as was also decided in 1990 rulemaking on the same subject, the state's four categories for insurance purposes more equitably recognize distinctions among carriers than the two categories at the federal level.



DAVE FISHER, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 9, 1997.



Reviewed By Robin A. McHugh

VOLUME NO. 47

OPINION NO. 3

CLERKS - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;

COUNTY OFFICERS AND EMPLOYEES - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;

COURTS - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;

FEES - Authority of clerk of district court to charge nonparty state agencies for copying and certification of district court records;

MONTANA CODE ANNOTATED - Sections 2-6-101, -102, 7-4-2511(1), -2516, 25-1-201, 25-10-403, -405;

MONTANA CODES ANNOTATED 1895 - Political Code sections 4606, 4612;

MONTANA LAWS OF 1991 - Chapter 466.

HELD: The clerk of district court is not authorized to charge a nonparty state agency for copies and certification of public district court records.

May 23, 1997

Mr. Brant L. Light
Cascade County Attorney
121 Fourth Street North
Great Falls, MT 59401

Dear Mr. Light:

You have asked my opinion on the following question:

Is the clerk of district court entitled to charge a nonparty state agency for copies and certification of public district court records?

Your question has arisen because officials of the Montana Department of Transportation have expressed concern to Cascade County officials about certain practices of the Cascade County Clerk of District Court. The Clerk charges the Department,

Montana Administrative Register

12-6/23/97

which is not a party to the cases in question, copying fees when the Department requests copies of district court pleadings and judgments affecting public rights-of-way, as it routinely does.

In answering your question, I look first to the statutes establishing the nature of court records. Montana law clearly establishes court records as "public writings." Mont. Code Ann. § 2-6-101. As such:

(1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 or 22-3-807 and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

Mont. Code Ann. § 2-6-102.

Examining the statutes controlling access to and fees for copying court documents, I find the following pertinent language:

Each salaried county officer must charge and collect . . . *all fees now or hereafter allowed by law*, paid or chargeable in all cases, except as provided in 25-10-403.

Mont. Code Ann. § 7-4-2511(1) (emphasis added). This statute is limited in two ways: by qualifying language ("allowed by law"), and by an exception ("except as provided in 25-10-403"). These two limitations on the statute are important and will be discussed further below. It is clear, then, that access to and fees for copying public court records are not absolute and are controlled by statute.

The fees "allowed by law" for the clerk of district court are enumerated in Montana Code Annotated § 25-1-201. The collection of these fees is mandatory, and fees for preparing copies and for certification of documents (the fees at issue here) are specified. Mont. Code Ann. § 25-1-201(1)(d), (e).

However, there is a statute that limits the fees that are "allowed by law" to be collected:

No fees must be charged the state, any county, or any subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.

Mont. Code Ann. § 7-4-2516. Both this statute and § 7-4-2511, which requires county officers to charge and collect fees allowed by law, were in the Political Code of 1895 (§§ 4612 and 4606 respectively). This is a clear indication that the exemption of the state and counties from paying fees was well in the contemplation of the legislature when it required the collection of fees. Belote v. Bakken, 139 Mont. 43, 46, 359 P.2d 372, 373 (1961). Agencies of state and county government are thus as a general rule exempt from paying official fees.

However, at this point, it is important to emphasize that your question is addressed specifically to nonparty state agencies who request copies and certification of district court records. This is because, in 1991, the Montana legislature amended another statute which deals with a specific type of official fee that litigating governmental agencies may be charged, Montana Code Annotated § 25-10-405. The statute enacting this amendment provided:

Section 1. Section 25-10-405, MCA, is amended to read:

"25-10-405. Governmental entities not required to prepay fees -- exceptions. The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge and all fees for photocopies, postage and handling, authentications, and record searches.

1991 Mont. Laws, ch. 466 (emphasis added). A 1993 amendment added "certifications" to the list of exceptions.

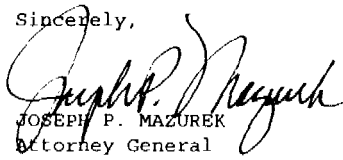
Your letter states that the Cascade County Clerk of District Court contends that this amendment authorizes the collection of copying and certification fees from nonparty state agencies. However, I find no evidence that the legislature intended to do more than authorize the collection of fees from the state, a county, or a municipality that was a party to an action. The statutory language clearly limits the reach of § 25-10-405 to cases in which the agency is "prosecuting or defending an action." By its terms, it can have no effect in cases in which the agency is not a party to the action. Such cases are left to the general law found in Montana Code Annotated § 7-4-2516, which clearly exempts the State and its agencies from payment of fees.

The legislature is presumed to be aware when it acts of all existing laws, Blythe v. Radiometer America, 262 Mont. 464, 475, 866 P.2d 218, 225 (1993). In this case I am presented, on the one hand, with statutory authority forbidding the charging of fees to state or county officials. On the other hand, Montana Code Annotated § 25-10-405 expanded the group of litigation parties who must pay certain fees to the clerks of district court to include government agencies. By its terms, this statute does not apply to nonparties. Your inquiry is specifically directed to nonparties, and the answer is therefore clear.

THEREFORE, IT IS MY OPINION:

The clerk of district court is not authorized to charge a nonparty state agency for copies and certification of public district court records.

Sincerely,



JOSEPH P. MAZUREK
Attorney General

jpm/rfws/lrb

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 March 31, 1997. This table includes those rules adopted during the period April 1, 1997 through June 30, 1997 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 March 31, 1997, 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 1996 and 1997 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.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 2574, 3154

ADMINISTRATION, Department of, Title 2

- 2.4.136 State Accounting - Reimbursement for Receiptable Lodging, p. 3095, 191
2.5.401 and other rules - State Purchasing, p. 3097, 193
2.21.122 and other rules - Sick Leave, p. 971
2.21.216 and other rules - Annual Vacation Leave, p. 966
2.21.619 and other rules - Holidays, p. 962
2.21.3603 and other rules - Veterans' Employment Preference, p. 956
2.21.3802 and other rules - Probation, p. 952
2.21.5006 and other rule - Reduction in Work Force, p. 946
2.21.8011 and other rules - Grievances, p. 949
2.21.8107 and other rule - Equal Employment Opportunity, p. 964

(State Compensation Insurance Fund)

- 2.55.321 and other rules - Premium Rates, p. 2627, 194

AGRICULTURE, Department of, Title 4

- I License Fees for Commodity Dealers/Public Warehouse Operators, p. 741
- I Use of Pesticides in Alfalfa Seed Crops, p. 616, 985
- 4.5.109 and other rules - Noxious Weed Trust Fund Procedures, p. 974

STATE AUDITOR, Title 6

- 6.6.4001 Valuation of Securities, p. 371, 688
- (Classification Review Committee)
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 369, 664

COMMERCE, Department of, Title 8

- (Board of Architects)
- 8.6.405 and other rules - Practice of Architecture, p. 2060, 2476, 3210
- (Board of Barbers)
- 8.10.403 and other rules - Barbers, Barber Shops and Barber Schools, p. 1432, 3114
- (Board of Chiropractors)
- 8.12.601 and other rules - Chiropractors, p. 974, 2844, 3212
- (Board of Dentistry)
- 8.16.402 and other rules - Dentists - Dental Hygienists - Denturists - Practice of Dentistry and Denturistry, p. 2478, 3118
- 8.16.408 and other rules - Inactive to Active Status Licenses for Dentists and Dental Hygienists - General Standards - Denturist Examination - Denturist Inactive to Active Status License - Reinstatement of Denturist Licenses, p. 848
- (State Electrical Board)
- 8.18.401 and other rules - Electrical Industry, p. 2065, 3039, 34
- (Board of Hearing Aid Dispensers)
- 8.20.401 and other rules - Hearing Aid Dispensers, p. 3009, 832
- (Board of Horse Racing)
- 8.22.502 and other rules - Parimutuel Wagering - Fees - Permissible Medication, p. 526, 889
- (Board of Landscape Architects)
- 8.24.403 and other rules - Landscape Architects - Applications - Seals - Examinations - Renewals -

Replacement Licenses - Fee Schedule - Unprofessional
Conduct, p. 2944, 35

(Board of Medical Examiners)

- I Physicians - Inactive License, p. 2635, 3213

(Board of Nursing)

- 8.32.413 and other rules - Conduct of Nurses - Survey and
Approval of Schools - Annual Report - Definitions -
Registered Nurse's Responsibility to the Nursing
Process - Standards for Schools of Nursing -
Standards for IV Therapy - Charge Nurse for Licensed
Practical Nurses, p. 2638, 626

(Board of Nursing Home Administrators)

- 8.34.404A and other rules - Nursing Home Administrators,
p. 3174, 1, 237

(Board of Optometry)

- 8.36.406 and other rules - General Practice Requirements -
Unprofessional Conduct - Fees - Disciplinary Actions
- Continuing Education Concerning the Practice of
Optometry, p. 2238, 2654, 305

(Board of Outfitters)

- 8.39.512 and other rule - Licensure - Inactive - Fees for
Outfitter, Operations Plan and Guide or Professional
Guide, p. 530, 667

(Board of Physical Therapy Examiners)

- 8.42.402 and other rules - Examinations - Fees - Temporary
Licenses, p. 852
8.42.402 and other rules - Licensure of Physical Therapists -
Physical Therapist Assistants - Foreign-Trained
Physical Therapists, p. 2245, 38

(Board of Professional Engineers and Land Surveyors)

- 8.48.401 and other rules - Practice of Professional Engineers
and Land Surveyors, p. 2085, 196

(Board of Private Security Patrol Officers and Investigators)

- 8.50.423 and other rules - Private Security Patrol Officers
and Investigators, p. 2656, 633

(Board of Psychologists)

- 8.52.402 and other rules - Practice of Psychology, p. 3, 538,
637

(Board of Public Accountants)

- 8.54.402 and other rules - Practice of Public Accounting,
p. 3018, 540

(Board of Radiologic Technologists)

- 8.56.602C and other rules - Permit Examinations - Permit Fees
- Inspections - Continuing Education - Continuing
Education--Waiver, p. 977

(Board of Real Estate Appraisers)

- 8.57.403 and other rules - Real Estate Appraisers, p. 2665,
308
8.57.411 Continuing Education, p. 532

(Board of Realty Regulation)

- 8.58.419 Grounds for License Discipline - General Provisions
- Unprofessional Conduct, p. 467
8.58.419 Grounds for License Discipline - General Provisions
- Unprofessional Conduct, p. 3101, 399

(Board of Respiratory Care Practitioners)

- 8.59.402 and other rules - Respiratory Care Practitioners,
p. 8, 542

(Board of Social Work Examiners and Professional Counselors)

- 8.61.403 and other rules - Practice of Social Work and
Licensed Professional Counseling, p. 239, 986

(Board of Speech-Language Pathologists and Audiologists)

- 8.62.413 and other rules - Practice of Speech-Language
Pathology and Audiology, p. 2103, 2976

(Board of Passenger Tramway Safety)

- 8.63.503 and other rules - Passenger Tramway Safety Industry,
p. 2952, 401

(Board of Veterinary Medicine)

- 8.64.402 and other rule - Fee Schedule - Examination for
Licensure, p. 2679, 3214

(Building Codes Bureau)

- 8.70.101 and other rule - Uniform Building Code - Boiler
Inspection, p. 855
8.70.101 and other rules - Uniform and Model Codes - Plumbing
and Electrical Requirements - Recreational Vehicles
- Boiler Safety - Swimming Pools, p. 2682, 44

(Weights and Measures Bureau)

- 8.77.302 NIST Handbook 130 - Uniform Laws and Regulations,
p. 2957, 45

(Local Government Assistance Division)

- 8.94.3705 and other rules - Federal Community Development
Block Grant (CDBG) Program, p. 19
8.94.4101 and other rules - State of Montana Single Audit Act
- Report Filing Fee Schedule, p. 743

(Board of Investments)

- 8.97.910 and other rules - INTERCAP Revolving Program, p. 750
8.97.1301 and other rules - General Requirements for All
Investments in Mortgages and Loans, p. 859

(Economic Development Division)

- 8.99.401 and other rules - Microbusiness Advisory Council,
p. 636, 2166, 2580, 2978

(Hard-Rock Mining Impact Board)

- 8.104.203A Administration of the Hard-Rock Mining Impact Act,
p. 981

(Travel Promotion and Development Division)

- I Tourism Advisory Council, p. 619, 987

EDUCATION, Title 10

(Office of Public Instruction)

- 10.7.103 and other rules - School Transportation, p. 2689,
203
10.16.1101 Protection in Evaluation Procedures, p. 373, 892

(Board of Public Education)

- 10.55.603 Accreditation - Curriculum Development and
Assessment, p. 756, 871
10.56.101 Student Assessment, p. 754, 870
10.57.107 Teacher Certification - Emergency Authorization of
Employment, p. 2961, 312
10.57.211 Teacher Certification - Test for Certification,
p. 757, 872
10.57.211 and other rule - Test for Certification - Minimum
Scores on the National Teacher Examination Core
Battery, p. 2416, 2979
10.57.215 Teacher Certification - Renewal Requirements,
p. 759, 873
10.58.505 Teacher Education Programs - Business Education,
p. 2962, 313
10.66.101 Adult Secondary Education - Requirements Which Must
Be Met in Order to Receive High School Equivalency
Diplomas, p. 2959, 46

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

(Fish, Wildlife, and Parks Commission)

- 12.6.101 Regulations for Ice Fishing Shelters, p. 247, 638
12.6.901 Restriction of Motor-propelled Water Craft on Hauser
Reservoir, p. 669
12.6.901 Restriction of Motor-propelled Water Craft on
Various Lakes in the Seeley Lake Area and Beavertail
Pond, p. 131, 639

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.36.110 Subdivisions - Emergency Amendment - Certification of Plat Approval, p. 543
- 17.36.303 Subdivisions - Authority of the Department to Allow Use of Alternative Water Systems in Subdivisions, p. 375
- 17.40.201 and other rules - Operator Certification - Revising Water and Waste Water Operator Certification Rules, p. 3182, 545
- 17.50.412 and other rules - Solid Waste Management - Conform with EPA Flexibility - Allow Reduced Regulatory Requirements for Certain Wastes, p. 671
- 17.50.530 and other rule - Solid Waste Management - Class II Landfill Requirements, p. 377, 689
- 17.54.102 and other rules - Waste Management - Federal Regulations for the Hazardous Waste Program, p. 2711, 208
- 26.4.101A and other rules - Reclamation - Transfer from the Department of State Lands - Reclamation, p. 2852, 3042

(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, 1049, 2502, 534
- 16.8.1906 and other rules - Air Quality - Rules Regarding Air Quality, p. 2260, 3041
- 17.8.120 Air Quality - Variance Procedures, p. 763
- 17.8.302 and other rule - Air Quality - Incorporating by Reference Federal Regulations and other Materials Related to Air Quality Emission Standards - Standards of Performance for New Stationary Sources of Air Pollution, p. 760
- 17.8.316 Air Quality - Particulate Matter Emissions from Incinerators, p. 874
- 17.30.716 Water Quality - Eliminating a List of Activities Predetermined to be Nonsignificant and Adopting a Category of Nonsignificance for Individual Sewage Systems, p. 3103, 134
- 17.30.1501 and other rules - Water Quality - Permitting of In-Situ Uranium Mining, p. 3199, 402
- 26.4.301 and other rules - Abandoned Mines - Abandoned Mine Reclamation Program, p. 2265, 3050

(Department of Environmental Quality and Board of Environmental Review)

- 16.8.1906 and other rules - Air Quality - Rules Regarding Air Quality, p. 2260, 3041

(Petroleum Tank Release Compensation Board)

- 16.47.101 and other rules - Petroleum Tank Release Compensation Board, p. 1587, 3125

- 17.58.333 Petroleum Board - Designating a Representative for Reimbursement, p. 3197, 403

TRANSPORTATION, Department of, Title 18

- 18.7.301 and other rules - Motorist Information Signs, p. 679
18.8.101 and other rules - Motor Carrier Services Program, p. 714, 1971, 2980
18.8.509 and other rule - Motor Carrier Services Program, p. 2964, 546
18.8.511A Motor Carrier Services Program - When Flag Vehicles are Required, p. 21, 647
18.12.501 and other rules - Aeronautical Powers and Duties, p. 1943, 2983, 47

(Transportation Commission)

- I-XV Railroad Crossing Signalization - Signal Removal - Improved Crossing Surface Installation, p. 3028, 642, 896

JUSTICE, Department of, Title 23

- I-IX Operation, Inspection, Classification, Rotation, and Insurance of Commercial Tow Trucks, p. 2267, 3134
23.16.101 and other rules - Public Gambling, p. 2504, 404

(Board of Crime Control)

- 23.14.401 and other rules - Peace Officers Standards and Training - DARE Trust Fund, p. 1260, 2984
23.14.801 Definition of "Uncertifiable Officer", p. 536

LABOR AND INDUSTRY, Department of, Title 24

- I-XI Workers' Compensation Administrative Assessment, p. 380, 686
24.16.9007 Prevailing Wage Rates - Service Occupations and Certain Bricklayer Rates, p. 621
24.30.102 Occupational Safety and Health Standards for Public Sector Employment, p. 396, 692

LIVESTOCK, Department of, Title 32

(Board of Milk Control)

- 32.24.301 and other rule - Producer Class I Pricing, p. 3201, 434
32.24.501 and other rules - Quota Rules, p. 2718, 3215, 314

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I-XII Administration of the Yellowstone Controlled Groundwater Area, p. 22, 469
36.2.401 and other rules - Minimum Standards and Guidelines for the Streambed and Land Preservation Act, p. 1946, 2366, 48

- 36.17.601 and other rules - Renewable Resources Grant and Loan Program, p. 983

(Board of Land Commissioners and Department of Natural Resources and Conservation)

- 36.25.146 and other rule - State Land Leasing, p. 3110, 315

(Board of Oil and Gas Conservation)

- 36.22.1408 Underground Injection Control - Financial Responsibility, p. 3107, 471

- 36.22.1423 Injection Fees - Well Classification, p. 32, 473

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I and other rules - Laboratory Analysis Fees, p. 823
I and other rules - Medicaid Reimbursement Methodology, p. 775
I Minimum Standards for a Hospital -- Swing Beds, p. 143
I-IX and other rules - Rules in Titles 11 and 46 Pertaining to Mental Health Managed Care Services for Medicaid Recipients and other Eligible Persons, p. 147, 548, 898
I-X and other rules - Targeted Case Management, p. 2755, 496, 898
I-XVIII Montana Telecommunications Access Program, p. 2967, 505
11.2.101 and other rules - Departments of Family Services, Health and Environmental Sciences, and Social and Rehabilitation Services Procedural Rules, p. 2423, 3051
11.5.1002 Day Care Rates, p. 879
11.7.901 Interstate Compact on the Placement of Children, p. 3205, 316
11.14.101 and other rules - Day Care Facilities - Certification for Day Care Benefits, p. 249
11.14.106 and other rules - Excluding Care of Children of a Single Family from Day Care Facility Licensing and Registration Rules - State Payment for Registered or Licensed Day Care and Unregistered Day Care, p. 135, 578
16.10.1507 Area Requirements, Deck Areas, Handholds for Swimming Pools and Spas, p. 145, 580
16.30.102 and other rules - Emergency Medical Services Licensure Requirements and Procedures, p. 801
16.32.320 Minimum Standards for a Hospital - General Requirements, p. 2722, 3216
16.32.922 Inspection Fees for Personal Care Facilities, p. 879
46.6.903 and other rules - Independent Living Program, p. 765
46.12.101 and other rules - General Medicaid Provider Requirements, p. 2724, 474
46.12.204 Copayments and Qualified Medicare Beneficiaries, p. 820
46.12.503 and other rules - Medicaid Coverage - Reimbursement of Hospital Services, p. 833

- 46.12.503 and other rule - Inpatient and Outpatient Hospital Services, p. 2752, 3218
- 46.12.550 and other rules - Home Health Services, p. 771
- 46.12.1222 and other rule - Provider Changes Under the Medicaid Nursing Facility Services Program, p. 3034, 76
- 46.12.1229 and other rules - Medicaid Nursing Facility Services Reimbursement, p. 805
- 46.12.3803 Medically Needy Assistance Standards, p. 2750, 502
- 46.12.4801 and other rules - Health Maintenance Organizations, p. 811
- 46.12.4804 and other rules - Health Maintenance Organizations, p. 2418, 503
- 46.13.302 and other rules - Low Income Energy Assistance Program (LIEAP), p. 2136, 2887, 504

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Recovery of Abandonment Costs in Electric Utility Least-Cost Resource Planning and Acquisition, p. 1962, 78
- I-IX IntraLATA Equal Access Presubscription, p. 299
- I-LVIII Local Exchange Competition and Dispute Resolution in Negotiations between Telecommunications Providers for Interconnection, Services and Network Elements, p. 2528, 319, 651
- 38.3.706 Motor Carrier Insurance Endorsements (applicable to Large Motor Coaches), p. 624
- 38.5.1010 and other rules - Electric Safety Codes - Electric Service Standards - Pipeline Safety (including Drug and Alcohol Testing), p. 2777, 317
- 38.5.2204 Pipeline Safety Incident Reporting Requirements, p. 827

REVENUE, Department of, Title 42

- I Agricultural Improvements from Property Land Classification, p. 3112, 506
- 42.11.243 and other rules - Liquor Regulations for Golf Course and Moveable Devices, p. 2564, 3146
- 42.15.101 and other rules - Biennial Review of Chapter 15 - Composite Returns, p. 2142, 2605, 2985
- 42.15.506 and other rule - Computation of Residential Property Tax Credit, p. 2829, 3148
- 42.18.106 and other rules - Reappraisal Plan Property Rules, p. 2783, 3149
- 42.19.501 Property Tax Exemption for Disabled Veterans, p. 2568, 3150
- 42.19.1203 and other rules - Class 5 Classification Property Tax Rules, p. 2803, 3220
- 42.20.166 and other rule - Forest Land Rules, p. 3208, 507
- 42.21.106 and other rules - Personal Property Rules, p. 2805, 3157
- 42.22.101 and other rules - Industrial Property Rules, p. 2793, 3153

SECRETARY OF STATE, Title 44

- I-III Electronic Storage of Local Government Records,
 p. 2840, 3223
- 1.2.419 Filing, Compiling, Printer Pickup and Publication of
 the Montana Administrative Register, p. 2574, 3154
- 44.3.105 and other rules - Surveys of Polling Places -
 Examination of Voting Devices, p. 2832, 3221
- 44.6.106 and other rules - Uniform Commercial Code Rules,
 p. 2838, 3222
- (Commissioner of Political Practices)
- I-II Lobbying Activities - Reporting of Lobbying Payments
 by Principals, p. 829

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 May 1997, appear. Vacancies scheduled to appear from July 1, 1997, through September 30, 1997, 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 June 6, 1997.

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

BOARD AND COUNCIL APPOINTEES FROM MAY, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Directors of the State Mutual Insurance Fund (State Compensation Insurance Fund)			
Mr. Jack Morgenstern	Governor	Reiter	5/28/1997
Lewistown			4/28/2001
Qualifications (if required): policy holder and representing private enterprise			
Board of Nursing Home Administrators (Commerce)			
Ms. Jaena Richards	Governor	Petro	5/28/1997
Deer Lodge			5/28/2002
Qualifications (if required): representative of an institution concerned with the care of aged patients			
Board of Physical Therapy Examiners (Commerce)			
Ms. Colleen Hatcher	Governor	Glasser	5/30/1997
Miles City			7/1/1998
Qualifications (if required): physical therapist			
Board of Plumbers (Commerce)			
Mr. Richard Knatterud	Governor	Campbell	5/4/1997
Helena			5/4/1999
Qualifications (if required): sanitary engineer			
Mr. Vernon E. (Gene) Mahn	Governor	reappointed	5/4/1997
Lincoln			5/4/2001
Qualifications (if required): public member			
Board of Real Estate Appraisers (Commerce)			
Ms. Jeannie Flechsenhar	Governor	reappointed	5/1/1997
Cascade			5/1/2000
Qualifications (if required): public member			
Mr. A. Farrell Rose	Governor	reappointed	5/1/1997
Helena			5/1/2000
Qualifications (if required): certified real estate appraiser			

BOARD AND COUNCIL APPOINTEES FROM MAY, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Realty Regulation (Commerce)			
Mr. Dale Berry	Governor	Frila	5/9/1997
Hamilton			5/9/2001
Qualifications (if required):	licensed realtor and a republican		
Board of Veterans' Affairs (Military Affairs)			
Mr. George G. Hageman	Governor	reappointed	5/18/1997
Jordan			5/18/2002
Qualifications (if required):	veteran		
Montana Heritage Preservation and Development Commission (Historical Society)			
Ms. Maureen Averill	Governor	not listed	5/27/1997
Bigfork			5/23/2002
Qualifications (if required):	member of the Tourism Advisory Council		
Mr. Mike Gustafson	Governor	not listed	5/27/1997
Billings			5/23/2000
Qualifications (if required):	businessperson		
Mr. John Lawton	Governor	not listed	5/27/1997
Great Falls			5/23/2001
Qualifications (if required):	experienced in community planning		
Rep. Jeanette S. McKee	Governor	not listed	5/27/1997
Hamilton			5/23/2002
Qualifications (if required):	experienced in historic preservation		
Mr. David Mihalic	Governor	not listed	5/27/1997
Columbia Falls			5/23/2000
Qualifications (if required):	experienced in managing facilities catering to tourists		

BOARD AND COUNCIL APPOINTEES FROM MAY, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Heritage Preservation and Development Commission (Historical Society) Cont.			
Mr. Jeffrey J. Safford	Governor	not listed	5/27/1997
Bozeman			5/23/2002
Qualifications (if required):	Montana historian		
Ms. Rosana Skelton	Governor	not listed	5/27/1997
Helena			5/23/2001
Qualifications (if required):	businessperson		
Montana Historical Society Board of Trustees (Historical Society)			
Mr. William R. MacKay	Governor	not listed	5/28/1997
Roscoe			0/0/0
Qualifications (if required):	none specified		
Ms. Lee Rostad	Governor	MacKay	5/5/1997
Martinsdale			7/1/1999
Qualifications (if required):	public member		
Montana State University - Northern Executive Board (Education)			
Ms. Judy Greenwood	Governor	Leeds	5/12/1997
Havre			4/15/2000
Qualifications (if required):	public member		
Montana State Veterans Cemetery Advisory Council (Military Affairs)			
Mr. Herb Ballou	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Mr. Hugh "Tony" Cummings	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES FROM MAY, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State Veterans Cemetery Advisory Council	(Military Affairs)	Cont.	
Ms. Alma Dickey	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Mr. James W. Duffy	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Mr. M. Herbert Goodwin	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Mr. Jim Heffernan	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Mr. James F. Jacobsen	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Mr. Al Kirkeby	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Major Steve Martinka	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		
Mr. Robert C. McKenna	Adjutant General	not listed	5/1/1997
Helena			5/1/1999
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES FROM MAY, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana State Veterans Cemetery Advisory Council		(Military Affairs)	
Mr. Edward Mosier	Adjutant General	not listed	Cont. 5/1/1997 5/1/1999
Missoula			
Qualifications (if required):	none specified		
Mr. Mickey Nelson	Adjutant General	not listed	5/1/1997 5/1/1999
Helena			
Qualifications (if required):	none specified		
Mr. George Paul	Adjutant General	not listed	5/1/1997 5/1/1999
Helena			
Qualifications (if required):	none specified		
Ms. Irma Paul	Adjutant General	not listed	5/1/1997 5/1/1999
Helena			
Qualifications (if required):	none specified		
Mr. Ray Read	Adjutant General	not listed	5/1/1997 5/1/1999
Helena			
Qualifications (if required):	none specified		
Mr. Buddy Reilly	Adjutant General	not listed	5/1/1997 5/1/1999
Helena			
Qualifications (if required):	none specified		
Ms. Rose Marie Storey	Adjutant General	not listed	5/1/1997 5/1/1999
Helena			
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES FROM MAY, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Postsecondary Education Policy and Budget Committee (Legislative Fiscal Analyst)			
Ms. Kris Copenhaver-Landon	Governor	Morris	5/30/1997
Billings			6/30/1999
Qualifications (if required):	student representative		
Mr. Erik Hanson	Governor	Haffey	5/30/1997
Helena			6/30/1999
Qualifications (if required):	representative of the executive branch		
State Library Commission (Education)			
Ms. Rosemary Garvey	Governor	Guthrie	5/22/1997
Butte			5/22/2000
Qualifications (if required):	public member		
Mr. David Johnson	Governor	Gray	5/22/1997
Billings			5/22/2000
Qualifications (if required):	public member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Aging Advisory Council (Governor)</u>		
Ms. Eloise England, Dupuyer	Governor	7/18/1997
Qualifications (if required): representative of District VII		
<u>Ms. Roberta Feller, Stockett</u>		
Qualifications (if required): representative of District X	Governor	7/18/1997
<u>Mr. Dwight MacKay, Billings</u>		
Qualifications (if required): public member	Governor	7/18/1997
<u>Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture)</u>		
Mr. Gill M. Sorg, Wolf Point	Governor	7/1/1997
Qualifications (if required): represents Montana Alfalfa Seed Growers Association		
<u>Alternative Health Care Board (Commerce)</u>		
Ms. Ollie Hamilton, Great Falls	Governor	9/1/1997
Qualifications (if required): direct entry midwife		
<u>Dr. Nancy Dunne, Missoula</u>		
Qualifications (if required): naturopath	Governor	9/1/1997
<u>Ms. Dolly Browder, Missoula</u>		
Qualifications (if required): direct entry midwife	Governor	9/1/1997
<u>Apprenticeship Training Council (Corrections)</u>		
Mr. Rick Day, Helena	Director	8/1/1997
Qualifications (if required): none specified		
<u>Mr. Riley Johnson, Helena</u>		
Qualifications (if required): none specified	Director	8/1/1997
<u>Mr. Gary Curtis, Helena</u>		
Qualifications (if required): none specified	Director	8/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Apprenticeship Training Council (Corrections) Cont. Mr. Ed Leipheimer, Anaconda Qualifications (if required): none specified	Director	8/1/1997
Ms. Ingrid Danielson, Helena Qualifications (if required): none specified	Director	8/1/1997
Ms. Candyce Neubauer, Deer Lodge Qualifications (if required): none specified	Director	8/1/1997
Mr. Alan Kuoppala, Deer Lodge Qualifications (if required): none specified	Director	8/1/1997
Mr. Jack Powers, Deer Lodge Qualifications (if required): none specified	Director	8/1/1997
Mr. Ray Lincoln, Butte Qualifications (if required): none specified	Director	8/1/1997
Mr. David Watkins, Deer Lodge Qualifications (if required): none specified	Director	8/1/1997
Board of Banking (Commerce) Mr. Tom Ryan, Hamilton Qualifications (if required): public member	Governor	7/1/1997
Mr. Jerry Wiedebush, Plentywood Qualifications (if required): state bank officer	Governor	7/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

Board/current position holder	Appointed by	Term end
Board of Cosmetologists (Commerce) Ms. Karen Underwood, Billings Qualifications (if required): licensed cosmetologist	Governor	7/1/1997
Ms. Janet Markle, Glasgow Qualifications (if required): public member	Governor	7/1/1997
Ms. Lynn Campbell, Deer Lodge Qualifications (if required): cosmetologist and manicurist	Governor	7/1/1997
Ms. Verna Dupuis, Bozeman Qualifications (if required): cosmetologist	Governor	7/1/1997
Ms. Geraldine Sorenson, Billings Qualifications (if required): licensed cosmetologist	Governor	7/1/1997
Board of Hearing Aid Dispensers (Commerce) Mr. Dudley Anderson, Missoula Qualifications (if required): hearing aid dispenser	Governor	7/1/1997
Board of Landscape Architects (Commerce) Ms. Pati O'Reilly, Shelby Qualifications (if required): public member	Governor	7/1/1997
Ms. Shelly Engler, Bozeman Qualifications (if required): licensed landscape architect	Governor	7/1/1997
Board of Medical Examiners (Commerce) Dr. Catherine Anne MacLean, Bozeman Qualifications (if required): public member	Governor	9/1/1997
Mr. Randy L. Spear, Worden Qualifications (if required): licensed physician assistant-certified	Governor	9/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Medical Examiners (Commerce) Cont. Ms. Linda Melick, Lewistown Qualifications (if required): licensed nutritionist	Governor	9/1/1997
Ms. Debby Barrett, Dillon Qualifications (if required): public member	Governor	9/1/1997
Dr. Daniel Charles Brooke, Miles City Qualifications (if required): doctor of medicine	Governor	9/1/1997
Board of Morticians (Commerce) Mr. Dale M. Stevenson, Miles City Qualifications (if required): mortician	Governor	7/1/1997
Mr. John A. Anderson, Superior Qualifications (if required): public member	Governor	7/1/1997
Board of Nursing (Commerce) Rep. Charlotte K. "Char" Messmore, Great Falls Qualifications (if required): registered nurse	Governor	7/1/1997
Board of Pharmacy (Commerce) Ms. Judy Coldwell, Jordan Qualifications (if required): public member	Governor	7/1/1997
Board of Physical Therapy Examiners (Commerce) Ms. Charlotte Fannon, Billings Qualifications (if required): physical therapist	Governor	7/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

Board/current position holder	Appointed by	Term end
Board of Private Security Patrol Officers and Investigators (Commerce) Mr. Jeffrey "Jeff" T. Patterson, Missoula Qualifications (if required): licensed private investigator	Governor	8/1/1997
Mr. David C. Ward, Billings Qualifications (if required): represents city police department	Governor	8/1/1997
Sheriff Lee Edmisten, Virginia City Qualifications (if required): represents county sheriff's department	Governor	8/1/1997
Board of Psychologists (Commerce) Pastor Jeff Olsgaard, Rudyard Qualifications (if required): public member	Governor	9/1/1997
Board of Public Accountants (Commerce) Ms. Elizabeth Hallowell, Helena Qualifications (if required): public member	Governor	7/1/1997
Board of Radiologic Technologists (Commerce) Ms. Jane Christman, Dutton Qualifications (if required): radiologic technologist	Governor	7/1/1997
Board of Sanitarians (Commerce) Ms. Denise Moldroski, Superior Qualifications (if required): registered sanitarian	Governor	7/1/1997
Board of Veterinary Medicine (Commerce) Dr. W. Dean Holmes, Harlowton Qualifications (if required): veterinarian	Governor	7/31/1997
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Wes Lindsay, Clancy Qualifications (if required): licensed water well contractor	Governor	7/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

Board/current position holder	Appointed by	Term end
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)		
Mr. Eric Eck, Helena	Governor	7/1/1997
Qualifications (if required): represents Public Service Commission		
Mr. Norm Eck, Helena	Governor	7/1/1997
Qualifications (if required): non-handicapped senior citizen		
Ms. Barbara Ranf, Helena	Governor	7/1/1997
Qualifications (if required): represents largest local exchange company in Montana		
Ms. Sheri Devlin, Billings	Governor	7/1/1997
Qualifications (if required): represents Department of Social and Rehabilitation Services		
Community Services Advisory Council (Governor)		
Ms. Nancy Coopersmith, Helena	Governor	7/1/1997
Qualifications (if required): representing K-12 education		
Ms. Kathy Ramirez, Helena	Governor	7/1/1997
Qualifications (if required): representing private citizens		
Mr. George Dennison, Missoula	Governor	7/1/1997
Qualifications (if required): representing higher education		
Mr. Joseph Lovelady, Helena	Governor	7/1/1997
Qualifications (if required): representing volunteer organizations		
Major Joel Cusker, Helena	Governor	7/1/1997
Qualifications (if required): representing Department of Military Affairs		
Ms. Gertrude Downey, Butte	Governor	7/1/1997
Qualifications (if required): representing private citizens		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electrical Board (Commerce)		
Ms. Louise Glimm, Conrad	Governor	7/1/1997
Qualifications (if required): public member		
Food and Nutrition Advisory Council (Health and Environmental Sciences)		
Ms. Nonie Woolf, Browning	Governor	8/30/1997
Qualifications (if required): Native American representative		
Ms. Bonnie McElroy, Helena	Governor	8/30/1997
Qualifications (if required): representative of the Department of Social and Rehabilitation Services		
Ms. Connie Townsend, White Sulphur Springs	Governor	8/30/1997
Qualifications (if required): representative of the public and knowledgeable in food and nutrition		
Game Farm Advisory Council (Livestock and Fish, Wildlife and Parks)		
Mr. Bill Nyby, Antelope	Governor	7/19/1997
Qualifications (if required): representative of the game farm industry		
Ms. Nancy Espy, Broadus	Governor	7/19/1997
Qualifications (if required): representing the Board of Livestock		
Dr. Anne Johnson, Malta	Governor	7/19/1997
Qualifications (if required): licensed veterinarian		
Mr. Chris Marchion, Anaconda	Governor	7/19/1997
Qualifications (if required): representing sports persons of Montana		
Mr. David Simpson, Hardin	Governor	7/19/1997
Qualifications (if required): representing the Fish, Wildlife and Parks Commission		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Society Board of Trustees (Historical Society) Ms. Jeanne Eder, Dillon Qualifications (if required): historian	Governor	7/1/1997
Mr. Ward Shanahan, Helena Qualifications (if required): public member	Governor	7/1/1997
Ms. Ruby Settle, Wibaux Qualifications (if required): public member	Governor	7/1/1997
Indian Burial Preservation Board (Commerce) Mr. David Schwab, Helena Qualifications (if required): representing the Montana Historical Preservation Office	Governor	8/22/1997
Dr. Randall Skelton, Missoula Qualifications (if required): anthropologist	Governor	8/22/1997
Mr. Francis Auld, Elmo Qualifications (if required): representing the Salish Kootenai Tribe	Governor	8/22/1997
Rep. Jay Stovall, Billings Qualifications (if required): representing the public	Governor	8/22/1997
Mr. Carl Fourstar, Poplar Qualifications (if required): representing the Assiniboine Tribe	Governor	8/22/1997
Mr. Clarence "Curly Bear" Wagner, Browning Qualifications (if required): representing the Blackfeet Tribe	Governor	8/22/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

Board/current position holder	Appointed by	Term end
Interagency Coordinating Council for State Prevention Program (Public Health and Human Services)		
Ms. Marilyn Chakos, Billings	Governor	7/1/1997
Qualifications (if required): involved in a prevention program		
Ms. Robin Morris, Havre	Governor	7/1/1997
Qualifications (if required): involved in a prevention program		
Judicial Standards Commission (Justice)		
Ms. Barbara Evans, Missoula	Governor	7/1/1997
Qualifications (if required): citizen not an attorney		
Long Term Care Reform Advisory Council (Public Health and Human Services)		
Mr. Ed Caplis, Helena	Director	7/1/1997
Qualifications (if required): none specified		
Rep. John Bohlinger, Billings	Director	7/1/1997
Qualifications (if required): none specified		
Ms. Valerie Castle, Helena	Director	7/1/1997
Qualifications (if required): none specified		
Mr. Clyde Daily, Helena	Director	7/1/1997
Qualifications (if required): none specified		
Mr. Charlie Briggs, Helena	Director	7/1/1997
Qualifications (if required): none specified		
Ms. Barb Fabey, Missoula	Director	7/1/1997
Qualifications (if required): none specified		
Dr. Richard Offner, Missoula	Director	7/1/1997
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Long Term Care Reform Advisory Council (Public Health and Human Services) Cont.		
Ms. Gladys Harden, Missoula	Director	7/1/1997
Qualifications (if required): none specified		
Ms. Paula Hassler, Helena	Director	7/1/1997
Qualifications (if required): none specified		
Ms. Janice Connors, Helena	Director	7/1/1997
Qualifications (if required): none specified		
Ms. Barbara Larson, Missoula	Director	7/1/1997
Qualifications (if required): none specified		
Mr. Bob Olson, Helena	Director	7/1/1997
Qualifications (if required): none specified		
Mr. Bill Jones, Great Falls	Director	7/1/1997
Qualifications (if required): none specified		
Ms. Bernice Bjertness, Billings	Director	7/1/1997
Qualifications (if required): none specified		
Ms. Michelle Reed, Billings	Director	7/1/1997
Qualifications (if required): none specified		
Dr. Jonathon Stone, Missoula	Director	7/1/1997
Qualifications (if required): none specified		
Mr. James Anderson, Anaconda	Director	7/1/1997
Qualifications (if required): none specified		
Mr. Fred Patten, Helena	Director	7/1/1997
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Long Term Care Reform Advisory Council (Public Health and Human Services) Cont.	Director	7/1/1997
Ms. Rose Hughes, Helena Qualifications (if required): none specified		
Mr. Doug Blakley, Helena Qualifications (if required): none specified	Director	7/1/1997
Mr. Mike Mayer, Missoula Qualifications (if required): none specified	Director	7/1/1997
Ms. Marsha Vanderhoff, Helena Qualifications (if required): none specified	Director	7/1/1997
Mr. Ron Caldwell, Helena Qualifications (if required): none specified	Director	7/1/1997
Ms. Fern Prather, Big Timber Qualifications (if required): none specified	Director	7/1/1997
Mr. Robert Westerman, Great Falls Qualifications (if required): none specified	Director	7/1/1997
Mr. Phillip Wittekiend, Missoula Qualifications (if required): none specified	Director	7/1/1997
Ms. Mary Alice Rehbein, Lambert Qualifications (if required): none specified	Director	7/1/1997
Dr. Dennis Zollar, Billings Qualifications (if required): none specified	Director	7/1/1997
Sen. Mignon Waterman, Helena Qualifications (if required): none specified	Director	7/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Mint Committee (Agriculture) Mr. Philip Clarke, Columbia Falls Qualifications (if required): mint grower	Governor	7/1/1997
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): mint grower	Governor	7/1/1997
Motorcycle Safety Advisory Committee (Office of Public Instruction) Ms. Anita Drews, East Helena Qualifications (if required): none specified	Attorney General	7/1/1997
Mr. Timothy W. Lindeborg, Bonner Qualifications (if required): represents motorcycle group	Governor	7/1/1997
Mr. Guy Ronald Smith, Sunburst Qualifications (if required): certified motorcycle safety instructor	Director	7/1/1997
Noxious Weed Seed Free Advisory Council (Agriculture) Mr. Robert Carlson, Butte Qualifications (if required): represents weed districts	Director	9/17/1997
Ms. Marjorie Schuler, Carter Qualifications (if required): represents livestock/agriculture	Director	9/17/1997
Mr. Kerry Kovanda, Columbus Qualifications (if required): forage producer	Director	9/17/1997
Regional Correctional Facility Advisory Council (Corrections) Mr. Robert W. Anderson, Helena Qualifications (if required): none specified	Governor	8/1/1997
Mr. John DeVore, Missoula Qualifications (if required): none specified	Governor	8/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Regional Correctional Facility Advisory Council Rep. Ernest Bergesgel, Malta Qualifications (if required): none specified	(Corrections) Cont. Governor	8/1/1997
Lieutenant Jim Cashell, Bozeman Qualifications (if required): none specified	Governor	8/1/1997
Mr. Myron Beeson, Deer Lodge Qualifications (if required): none specified	Governor	8/1/1997
Mr. Ralph DeCunzo, Helena Qualifications (if required): none specified	Governor	8/1/1997
Mr. John E. Kahl, Glendive Qualifications (if required): none specified	Governor	8/1/1997
Captain Dennis McCabe, Billings Qualifications (if required): none specified	Governor	8/1/1997
Mr. Mike Gersack, Great Falls Qualifications (if required): none specified	Governor	8/1/1997
Ms. Ginger Faber, Havre Qualifications (if required): none specified	Governor	8/1/1997
Mr. John Strandell, Great Falls Qualifications (if required): none specified	Governor	8/1/1997
Captain Mike O'Hara, Missoula Qualifications (if required): none specified	Governor	8/1/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Swan River Correctional Training Center Advisory Council	(Corrections)	
Ms. Diane Tripp, Missoula	Director	8/1/1997
Qualifications (if required): none specified		
Mr. Grant Holle, Bigfork	Director	8/1/1997
Qualifications (if required): none specified		
Ms. Nancy Brosten, Swan Lake	Director	8/1/1997
Qualifications (if required): none specified		
Ms. Terry McLeod, Swan Lake	Director	8/1/1997
Qualifications (if required): none specified		
Rep. Bob Keenan, Bigfork	Director	8/1/1997
Qualifications (if required): none specified		
Ms. June Smith, Swan Lake	Director	8/1/1997
Qualifications (if required): none specified		
Mr. George Field, Bigfork	Director	8/1/1997
Qualifications (if required): none specified		
Mr. Jefferson Jones, Swan Lake	Director	8/1/1997
Qualifications (if required): none specified		
Mr. Robert Parcell, Condon	Director	8/1/1997
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Teachers' Retirement Board (Administration) Superintendent Nancy Keenan, Helena Qualifications (if required): Superintendent of Public Instruction	Governor	7/1/1997
Mr. John Kranick, Great Falls Qualifications (if required): retired teacher	Governor	7/1/1997
Ms. Sharon Oftedal, Miles City Qualifications (if required): public member	Governor	7/1/1997
Tourism Advisory Council (Commerce) Mr. Terry Abelin, Bozeman Qualifications (if required): skier	Governor	7/1/1997
Ms. Donna Madson, West Yellowstone Qualifications (if required): public member	Governor	7/1/1997
Mr. Craig Smith, Wolf Point Qualifications (if required): Native American	Governor	7/1/1997
Ms. Hazel Leuprecht, Butte Qualifications (if required): public member	Governor	7/1/1997
Wheat and Barley Committee (Agriculture) Mr. Larry Barber, Coffee Creek Qualifications (if required): republican representing District V	Governor	8/20/1997
Mr. Stephen P. McDonnell, Three Forks Qualifications (if required): democrat representing District VI	Governor	8/20/1997
Mr. Duane Arneklev, Plentywood Qualifications (if required): democrat representing District I	Governor	8/20/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

Board/current position holder	Appointed by	Term end
Workforce Preparation Coordinating Council (Labor and Industry)	Governor	9/7/1997
Ms. Jane DeLong, Helena Qualifications (if required): representing business	Governor	9/7/1997
Mr. David Owen, Helena Qualifications (if required): representing business	Governor	9/7/1997
Ms. Carol Murray, Browning Qualifications (if required): representing local education	Governor	9/7/1997
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): representing business	Governor	9/7/1997
Ms. JoEllen Estenson, Columbia Falls Qualifications (if required): representing local education	Governor	9/7/1997
Rep. Bob Gilbert, Sidney Qualifications (if required): public member	Governor	9/7/1997
Ms. Diane R. Ruff, Billings Qualifications (if required): representing business	Governor	9/7/1997
Mr. Don Judge, Helena Qualifications (if required): representing organized labor	Governor	9/7/1997
Ms. Helen Kellicut, Deer Lodge Qualifications (if required): representing business	Governor	9/7/1997
Mr. Jim Hollenback, West Superior Qualifications (if required): representing community based organizations	Governor	9/7/1997
Mr. Dennis Lerum, Missoula Qualifications (if required): representing local education	Governor	9/7/1997

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1997 through SEPTEMBER 30, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Workforce Preparation Coordinating Council (Labor and Industry) Cont. Mr. Bob Marks, Clancy	Governor	9/7/1997
Qualifications (if required): representing business		
Mr. Jon Oldenburg, Lewistown	Governor	9/7/1997
Qualifications (if required): representing business		
Ms. Felicity McFerrin, Helena	Governor	9/7/1997
Qualifications (if required): representing organized labor		
Mr. Gordon Morris, Helena	Governor	9/7/1997
Qualifications (if required): representing local government		