

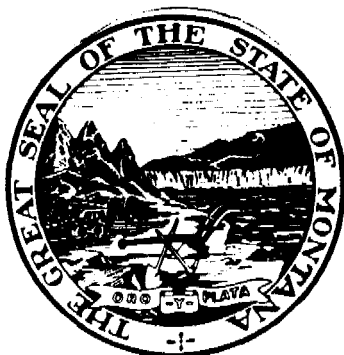
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MONTANA ADMINISTRATIVE REGISTER

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1995 ISSUE NO. 8
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PAGES 555-726



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

In the matter of proposed)	NOTICE OF PROPOSED
amendment of ARM 12.6.901)	AMENDMENT
relating to a no wake speed)	
zone in the North Shore and)	No Public Hearing
Marshall Cove of Cooney)	is Contemplated
Reservoir)	

To: All Interested Persons

1. On June 5, 1995, the Fish, Wildlife & Parks Commission (commission) proposes to amend ARM 12.6.901 relating to a no wake speed zone for watercraft in the North Shore and Marshall Cove of Cooney Reservoir.

2. The proposed rule change is as follows:

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

(a) through (b) remain the same.

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

Big Horn County through Broadwater County remain the same.
Carbon County: (A) on Cooney Reservoir: all of Willow Creek arm as buoyed; North Shore and Marshall Cove within 300 feet of dock or as buoyed;

Daniels County through (2) remain the same.

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

3. The rationale for the rule is as follows: Over the past few years, visitation at Cooney has continued to rise. During the 1994 season, the Department of Fish, Wildlife & Parks operated traffic counters at three major areas in the park. All of these areas have boat ramps as part of the visitor service. The two areas which require a no wake speed authority, North Shore and Marshall Cove, are running an average of 1,200 vehicles per week each. Since the North Shore is primarily day use, the vehicle counts reflect mostly boat activity. Marshall Cove has a good campground so not all of its visitors are boaters using the ramp area.

There is increasing congestion and overuse of the two areas in question, raising significant safety concerns. The safe approach to and exit from the boat dock areas is a major safety concern. It is imperative for the commission to address the

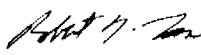
problem, obtain the authority to buoy the two areas for no wake control and thereby protect boating and non-boating water users.

4. Interested persons may present their data, views or arguments concerning the proposed amendments in writing no later than May 26, 1995, to Dick Ellis, Region 5 Supervisor, Montana Fish, Wildlife & Parks, 2300 Lake Elmo Drive, Billings, Montana 59105.

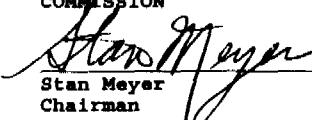
5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Dick Ellis, Region 5 Supervisor, Montana Fish, Wildlife & Parks, 2300 Lake Elmo Drive, Billings, Montana 59105. A written request for hearing must be received no later than May 26, 1995.

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

FISH, WILDLIFE & PARKS
COMMISSION



Robert N. Lane
Rule Reviewer



Stan Meyer
Chairman

Certified to the Secretary of State on April 17, 1995.

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

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

To: All Interested Persons.

1. On May 23, 24, and 25, 1995, the Fish, Wildlife & Parks Commission (commission) will hold public hearings to consider the amendment of rule 12.6.901 as proposed in this notice. The hearings will be conducted at 7:00 p.m. on the following dates:

- May 23, 1995: Montana Fish, Wildlife & Parks Headquarters, 3201 Spurgin Road, Missoula, Montana.
- May 24, 1995: Council Chambers in City Hall, 223 South Second, Hamilton, Montana.
- May 25, 1995: High School Library, Superior, Montana

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

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

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

Deer Lodge County:

- (A) Big Hole River
- (B) The Clark Fork River and tributaries from their headwaters to the Powell county line.

Gallatin County remains the same.

Granite County:

- (A) Bear Mouth rest area pond
- (B) The Clark Fork River and tributaries from Powell county line to Missoula county line.

Hill County through Jefferson County remain the same.

Lewis & Clark County:

- (A) Wood Lake
- (B) Spring Meadow Lake
- (C) The Blackfoot River and tributaries from their headwaters to the Powell county line.

Madison County through Meagher County remain the same.

Mineral County: (A) The Clark Fork River from St. John's fishing access site to Tarkio fishing access site, also known as the Alberton Gorge Whitewater section.

Missoula County: (A) Frenchtown Pond
(B) Harpers Lake
(C) Bitterroot River from the Ravalli county line to its confluence with the Clark Fork River. Exception: Motorized craft may be used from March 1 through June 15 on the portion of the Bitterroot River from the mouth of Lolo Creek downstream to the Clark Fork River.

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

(E) The Clark Fork River and tributaries from the Granite county line to the Milwaukee Bridge abutments on Milltown Reservoir.

Powell County: (A) The Blackfoot River and tributaries from the Lewis and Clark county line to the Missoula county line.

(B) The Clark Fork River and tributaries from the Deer Lodge county line to the Granite county line.

Ravalli County: (A) Twin Lakes
(B) The Bitterroot River from its headwaters to the Missoula county line.

Richland County through (b) remain the same.

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

Big Horn County through Madison County remain the same.

Mineral County: (A) Clark Fork River from Tarkio fishing access site to Forest Grove fishing access site. (This portion of the river is the lower end of the Alberton Gorge Whitewater section.)

Missoula County remains the same.

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

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

3. The rationale for the proposed amendment is as follows: A closure to motorized water craft on the Blackfoot River and its tributaries from the headwaters to the Stimson Lumber Company Dam at Bonner is proposed to address safety concerns. Recreational use, particularly rafting, canoeing, swimming, wade fishing and inner-tubing has increased to the point where motorized use presents a hazard to other users. In addition, the river is confined in several areas by large rocks, making motorized use both difficult and dangerous.

A closure to motorized use on the Bitterroot River and its tributaries is proposed from the headwaters to its confluence with the Clark Fork River, with one exception, to address safety concerns. The Bitterroot River is narrow in many areas, with several channels and tight turns, and offers the potential for collisions between non-motorized and motorized users, as well as swimmers and anglers. Motorized use will still be allowed from March 1 through June 15 on a portion of the Bitterroot River from the mouth of Lolo Creek to its confluence with the Clark Fork River. This time frame allows use during the traditional run-off or high water period, when other use is minimal.

A closure to motorized use on the Upper Clark Fork River and its tributaries from the headwaters to the old Milwaukee Bridge abutments at Milltown Reservoir is proposed to address safety concerns. This portion of the Clark Fork is narrow in many areas, with several channels and tight turns. Increasing non-motorized use and wade fishing present the potential for collisions between motorized and non-motorized operators, as well as wading anglers.

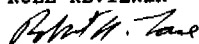
A closure on the Lower Clark Fork River and its tributaries from St. John's fishing access site to the Tarkio fishing access site is proposed to address safety concerns in the white-water portion of the area know as the Alberton Gorge. This area receives extremely high use from non-motorized floaters. The rapids are large enough to block from view most rafts and kayaks that may be coming downstream meeting motorized craft.

In addition, a no-wake designation is proposed for the remainder of the Alberton Gorge from Tarkio fishing access site to Forest Grove to prevent potential collisions between high speed motorized craft and non-motorized craft.


4. Interested persons may present their data, views or arguments either orally at the hearings or in writing. Written data, views or arguments may be submitted to Rich Clough, Region Two Supervisor, Montana Fish, Wildlife & Parks, 3201 Spurgin Road, Missoula, Montana 59801, and must be received no later than May 31, 1995.

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

RULE REVIEWER


Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION


Patrick Graham, Secretary

Certified to the Secretary of State on April 17, 1995.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.44.103, 105, 320, 402,) FOR PROPOSED AMENDMENT
404, 415, and 905 concerning) OF RULES
control of hazardous waste.)

(Hazardous Waste)

To: All Interested Persons

1. On May 18, 1995, at 10:00 a.m., the department will hold a public hearing in Room C209, Side 1, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.44.103 SCOPE OF PERMIT REQUIREMENTS (1) Remains the same.

(2) Owners and operators of hazardous waste management units must have HWM permits during the active life, including the closure period, of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under (8) and (9) of this rule. If a post-closure permit is required, the permit must address applicable groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of subchapter 7 of this chapter. The denial of a permit for the active life of a hazardous waste management facility or hazardous waste management unit does not affect the requirement to obtain a post-closure permit under this section.

(3)-(10) Remain the same.

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

16.44.105. TEMPORARY PERMITS (INTERIM STATUS) (1)-(5) Remain the same.

(6) Interim status terminates:

(a)-(d) Remain the same.

(e) (For owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984) ~~interim status terminates~~, on November 8, 1989, unless the owner or operator of the facility submits a Part B application for an HWM permit for an incinerator facility by November 8, 1986.

(f) (For owners or operators of any facility--other than a land disposal or an incinerator facility--which has achieved interim status prior to November 8, 1984) ~~interim status~~

terminates, on November 8, 1992, unless the owner or operator of the facility submits a Part B application for an HWM permit for the facility by November 8, 1988.

(g) For owners or operators of any surface impoundment which is in existence on the effective date of statutory or regulatory amendments under the MHW that render the facility subject to the requirement to have an HWM permit and which is granted interim status after November 8, 1984, 4 years after the date on which the facility first becomes subject to such permit requirements, unless the surface impoundment contains, or is retrofitted to contain, two or more liners and a leachate collection system between such liners, and operates the leachate collection and removal system in accordance with 40 CFR §264.221(c) (adopted by reference in 16.44.702), unless exempted under 40 CFR §264.221(d), (e), or (f) (adopted by reference in 16.44.702).

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

16.44.320 CHARACTERISTICS OF HAZARDOUS WASTE--GENERAL

(1) Remains the same.

(2) A hazardous waste which is identified by a characteristic in this subchapter, ~~but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333~~, is assigned the each EPA hazardous waste number that is applicable as set forth in ARM 16.44.321 through 16.44.324. This number must be used in complying with all applicable requirements of this chapter.

(3) Remains the same.

AUTH: 75-10-204, ~~75-10-405~~, MCA; IMP: 75-10-203, 75-10-204, ~~75-10-403, 75-10-405~~, MCA

16.44.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS

(1) A person who generates a waste, as defined in ARM 16.44.302, must determine if that waste is a hazardous waste using the following method:

(a)-(b) Remain the same.

(c) for purposes of compliance with ARM 16.44.129, or if the waste is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, he the generator must then determine whether the waste is identified in ARM 16.44.320 through 16.44.324 by either:

(i)-(ii) Remain the same.

(d) if the waste is determined to be hazardous, the generator must refer to ARM 16.44.129 for possible exclusions or restrictions pertaining to management of the specific waste in question.

(2) Conditionally exempt small quantity generators are subject only to the following requirements in this chapter:

(a)-(b) Remain the same.

~~(c) ARM 16.44.404(3) optional generator registration;~~

(d)-(e) Remain the same but are renumbered (c)-(d).

(3) Small generators are subject to the following requirements in this subchapter and to the applicable provisions of ARM 16.44.129:

(a)-(n) Remain the same.

(4) Large generators are subject to the following requirements in this subchapter and to the applicable provisions of ARM 16.44.129:

(a)-(n) Remain the same.

(5) Remains the same.

AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, 75-10-405, MCA

16.44.404 MAINTENANCE OF REGISTRATION AND REGISTRATION FEES

(1)-(2) Remain the same.

~~(3) Any generator who would be excluded from registration requirements by (1) of this rule, but who wishes to maintain his or her annual registration, may do so by paying the applicable fee.~~

~~(4)(3)~~ The department shall, by utilizing one of the following methods, assign each generator who is subject to registration to one of 6 5 size classes for the purpose of fee assessments:

(a)-(b) Remain the same.

~~(5)(4)~~ The size classes for determining the annual registration fee amount are defined in Table 1 below:

TABLE 1

Size Class	Annual Generation Rate (in tons)	Annual Reg. Fee	Relationship to the Three Generator Categories Defined in ARM 16.44.401
I	X < 1.3	\$ 10	Conditionally exempt generators who choose to be registered
II I	1.3 < X ≤ 13	\$ 75	Small generators/ Large generators
III II	13 < X ≤ 100	\$ 200	Large generators
IV III	100 < X ≤ 1000	\$ 600	Large generators
V IV	1000 < X ≤ 2500	\$1000	Large generators
VI V	2500 < X	\$1500	Large generators

~~(6)(5)~~ Generators once assigned to a size class for registration fee assessment purposes will remain in that size class each registration year until the department determines that assignment to a new class is appropriate based upon:

(a) an evaluation of recent annual reports per ~~(4)(3)~~(a) of this rule; or

(b) Remains the same.

(7)-(9) Remain the same but are renumbered (6)-(8).

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

16.44.415 REQUIREMENTS FOR ACCUMULATION OF WASTES AND ACCUMULATION IN SATELLITE LOCATIONS (1)-(3) Remain the same.

(4) During the time that small generators and large generators accumulate hazardous wastes on-site, the following requirements apply:

(a)-(e) Remain the same.

(f) The generator must comply with the emergency preparedness and prevention requirements set forth in subpart C of 40 CFR Part 265 (incorporated by reference in ARM 16.44.609) and with the requirements for a waste analysis plan set forth in 40 CFR 268.7(a)(4) (incorporated by reference in ARM 16.44.129).

(g) Remains the same.

(5)-(9) Remain the same.

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

16.44.905 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (1)-(5) Remain the same.

(6) Public notice of activities described in section (1) of this rule shall be given by the following methods:

(a) by mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this section may waive his or her rights to receive notice for any classes and categories of permits):

(i)-(ii) Remain the same.

(iii) federal and state agencies and other appropriate government authorities (e.g. the Montana historical preservation office), including any affected states or Indian tribes;

(iv)-(vi) Remain the same.

(b)-(d) Remain the same.

(7)-(9) Remain the same.

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

3. The department is proposing these amendments to the rules in order to maintain consistency with federal rules, which is necessary in order to enable the department to retain primacy status to enforce its hazardous waste program in place of the federal hazardous waste program.

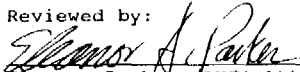
4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to J. Mark Stahly, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than May 26, 1995.

5. J. Mark Stahly has been designated to preside over and conduct the hearing.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 17, 1995.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the amendment of)
rule 16.24.414 regarding tuber-)
culosis testing of employees in a)
day care center)

NOTICE OF PROPOSED
AMENDMENT OF
ARM 16.24.414

NO PUBLIC HEARING
CONTEMPLATED

1. On June 5, 1995, the department proposes to amend rule 16.24.414 regarding tuberculosis testing of employees in a day care center.

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

16.24.414 HEALTH SUPERVISION AND MAINTENANCE (1)-(6)
Remain the same.

(7) Every employee, volunteer, or resident at a day care center must:

(a) have an examination for tuberculosis prior to commencing work at the day care center, in conformity with ARM 16.28.1005, ~~and have a re-examination for tuberculosis every year thereafter;~~

(b) - (d) Remain the same.

(8) Remains the same.

AUTH: 53-4-506, 52-2-735, MCA; IMP: 53-4-506, 52-2-735, MCA

3. In order to prevent a regulatory conflict, the department finds it necessary to amend this rule because the TB annual reexamination requirement conflicts with ARM 16.28.1005, the department's rule governing TB control measures in schools and day care facilities and implementing its authority to control communicable disease pursuant to 50-1-202, MCA. At this time, an evaluation of data regarding tuberculosis infection risk within the population of day care center employees indicates low risk. Therefore, because the data available to the department at this time does not support the annual re-testing requirement, the rule is being amended to conform with existing tuberculosis testing requirements.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, in writing, to Amy MacKenzie, Department of Health and Environmental Sciences, P.O. Box 200901, Helena, Montana, 59620-0901, no later than May 26, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, s/he must make a written request for a hearing and submit this request along with any written comments he/she has to Amy MacKenzie, Department of

Health and Environmental Sciences, P.O. Box 200901, Helena, Montana, 59620-0901. A written request for hearing must be received no later than May 26, 1995.

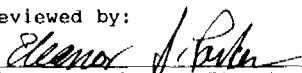
6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons, based on the number of day care providers, employees, volunteers, and residents in the State and the number of persons served by them.



ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 17, 1995 .

Reviewed by:



Eleanor Parker, DHES Attorney

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

In the matter of the amendment) NOTICE OF PUBLIC
of Rule 36.22.1242 pertaining) HEARING ON
to the rate of the privilege) PROPOSED AMENDMENT
and license tax on oil and)
gas production.)

TO: All Interested Persons

1. On May 25, 1995, at 8:00 a.m., a public hearing will be held in the Billings Petroleum Club, Sheraton Hotel, 27 North 27th Street, Billings, Montana, to consider the amendment of rule 36.22.1242.

2. The proposed amendment to the rule provides as follows:

36.22.1242 REPORTS BY PRODUCERS - TAX REPORT - TAX RATE
Section (1) remains the same.

(2) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported therefrom shall be 100 per cent of the rate authorized in Section 82-11-131, MCA, (3/10ths 240ths of 1%) of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after July 1, 1986 1995.

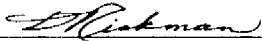
AUTH: Sec. 82-11-111 MCA

IMP: Sec. 82-11-131 MCA

RATIONALE: The proposed amendment to rule 36.22.1242 is necessary to implement House Bill 418(1995) which authorizes the board to increase its privilege and license tax up to 3/10ths of one percent to defray the operating expenses of the board as authorized in Sec. 82-11-131, MCA. The board proposes to increase the tax to the statutory maximum at this time to cover anticipated operating expenses in its legislatively approved budget, and to repay an intra-agency loan necessitated by declining oil and gas revenues during fiscal year 1995.

3. Interested parties may submit their data, views, or arguments, either orally or in writing, at the public hearing. Written data, views, or arguments may also be submitted to Tom Richmond, Department of Natural Resources and Conservation, Oil and Gas Division, 2535 St. Johns Avenue, Billings, Montana 59102, to be received no later than June 1, 1995.

4. Stanley Lund, Chairman of the Board of Oil and Gas Conservation, has been designed to preside over and conduct the hearing.


DEE RICKMAN
EXECUTIVE SECRETARY
BOARD OF OIL & GAS CONSERVATION


DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State April 18, 1995.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED
XLIV and the amendment of	)	ADOPTION OF RULES I
rules 46.8.102, 46.8.106,	)	THROUGH XLIV AND THE
46.8.2002, 46.8.2005,	)	AMENDMENT OF RULES
46.8.2006, 46.8.2008,	)	46.8.102, 46.8.106,
46.8.2009, 46.8.2014,	)	46.8.2002, 46.8.2005,
46.8.2020, 46.8.2021,	)	46.8.2006, 46.8.2008,
46.8.2026, 46.8.2027,	)	46.8.2009, 46.8.2014,
46.8.2028, 46.8.2029,	)	46.8.2020, 46.8.2021,
46.8.2031, 46.8.2039,	)	46.8.2026, 46.8.2027,
46.8.2041, 46.8.2044,	)	46.8.2028, 46.8.2029,
46.8.2045, 46.8.2047	)	46.8.2031, 46.8.2039,
pertaining to developmental	)	46.8.2041, 46.8.2044,
disabilities eligibility,	)	46.8.2045, 46.8.2047
adult and family services	)	PERTAINING TO DEVELOPMENTAL
and staffing	)	DISABILITIES ELIGIBILITY,
	)	ADULT AND FAMILY SERVICES
	)	AND STAFFING

TO: All Interested Persons

1. On May 23, 1995, at 1:30 p.m., a public hearing will be held in the auditorium of the Scott-Hart Building, 303 N. Roberts, Helena, Montana to consider the proposed adoption of Rules I through XLIV and the amendment of rules 46.8.102, 46.8.106, 46.8.2002, 46.8.2005, 46.8.2006, 46.8.2008, 46.8.2009, 46.8.2014, 46.8.2020, 46.8.2021, 46.8.2026, 46.8.2027, 46.8.2028, 46.8.2029, 46.8.2031, 46.8.2039, 46.8.2041, 46.8.2044, 46.8.2045, 46.8.2047 pertaining to developmental disabilities eligibility, adult and family services and staffing.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 15, 1995, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be adopted, relating to eligibility, staff requirements and service requirements for adult and family services, provide as follows:

[RULE I] ELIGIBILITY: GENERAL ELIGIBILITY REQUIREMENTS

(1) A person, in order to be considered for placement into developmental disabilities services funded through the

developmental disabilities program of the department, must be determined by the department in accordance with the criteria and procedures of these rules to be a person with a developmental disability as defined at 53-20-202(3), MCA.

(2) A child and the child's family, in order to be considered for placement into family education and support services funded through the developmental disabilities program of the department, must be determined by the department in accordance with the criteria and procedures of these rules to be a person with a developmental disability as defined at 53-20-202(2), MCA or a person with a developmental delay or potentially subject to developmental delay.

(3) A determination of eligibility, except for federally funded Part H family education and support services, does not entitle a person to placement into any developmental disabilities service.

(4) A person who is eligible to be considered for placement into developmental disabilities services may apply for services by following the placement determination procedures at ARM 46.8.1501, et seq.

(5) Appropriate documentation of eligibility will be maintained by the department or a responsible contractor according to procedures established by the department.

(6) Application for determinations of eligibility and placement, except for family education and support services, are made through developmental disabilities case managers. Application for determinations of eligibility and placement for family education and support services are made through the family education and support services contractors.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

[RULE II] ELIGIBILITY: EVALUATION (1) Diagnostic and evaluation services to determine whether a person has a developmental disability, if not otherwise available to the person from other programs of services are available to any person believed to have a developmental disability and to be in need of developmental disabilities services.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

[RULE III] ELIGIBILITY: STATE FUNDED FAMILY EDUCATION AND SUPPORT SERVICES (1) A person, along with the person's family, are eligible for state-funded family education and support services if the person is:

(a) a child from birth to 18 years of age with a developmental disability;

(b) a child from birth to 6 years of age who is at risk for a developmental delay who is residing in a family unit; or

(c) an adult from 18 to 22 years of age with a developmental disability who is not receiving adult services.

(2) An adult who has a developmental disability and is residing in a natural, foster or adoptive home may receive limited services under state-funded family education and support services to the extent the department and the contractor determine is appropriate.

(3) Eligibility for state-funded family education and support services are determined by the contractor at the time of application for services to the contractor.

AUTH: Sec. 53-20-204 MCA

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

[RULE IV] ELIGIBILITY: FEDERALLY FUNDED PART H FAMILY EDUCATION AND SUPPORT SERVICES

(1) A child from birth to 3 years of age residing in a family unit, along with the child's family, are eligible for federally funded Part H family education and support services if the child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, even though the delay may not exist at the time of diagnosis, or the child is experiencing developmental delays in one or more of the areas listed in subsection (1)(b).

(a) A diagnosed physical or mental condition that has a high probability of resulting in a developmental disability includes sensory impairments, inborn errors of metabolism, microcephaly, fetal alcohol syndrome, epilepsy, down's syndrome or other chromosomal abnormalities.

(b) A developmental delay includes delays in cognitive development, physical development, including vision and hearing, communication development, social or emotional development or adaptive development.

(c) The criteria to be used in determining a child's eligibility as a result of developmental delay include a minimum of a 50% delay in any one of the developmental areas listed in subsection (1)(b) or a 25% delay in 2 or more of the developmental areas listed in subsection (1)(b).

(2) Developmental delay must be measured by appropriate diagnostic instruments and procedures. Informed clinical opinion must be used in determining eligibility for services as a result of developmental delay if there are no standardized measures, or the standardized measures and procedures available are not appropriate for a given age or developmental level.

(3) Eligibility for federally funded Part H family education and support services is determined by the contractor at the time of application for services to the contractor.

AUTH: Sec. 53-20-204 MCA

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

[RULE V] ELIGIBILITY: FEDERALLY FUNDED INTENSIVE FAMILY EDUCATION AND SUPPORT SERVICES

(1) A child from birth to 18 years of age or an adult less than 22 years of age is eligible for federally funded intensive family educational support services if the person has a developmental disability,

has one or more of the characteristics in subsection (2) and without intensive services, would be in jeopardy of placement in an ICF/MR due to the inability of the natural or foster family to maintain the child in the home without additional resources.

(2) Characteristics of persons with developmental disabilities in need of intensive services are:

(a) severe/profound mental retardation, including extreme deficiencies in self-care and daily living skills as compared to age peers;

(b) significant maladaptive social and/or interpersonal behavior patterns which require an ongoing supervised program of intervention; or

(c) severe medical or health related problems such as sensory or physical deficits requiring substantial care.

(3) The person must meet medicaid eligibility requirements.

(4) The person must be determined by the field services specialist or the intensive review committee to meet the eligibility requirements for intensive services.

AUTH: Sec. 53-20-204 MCA

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

[RULE VII] ELIGIBILITY: CHILDRENS' COMMUNITY HOME SERVICES

(1) A child from 5 to 18 years of age or an adult less than 22 years of age is eligible for childrens' community home services if the person has a developmental disability and meets the requirements for intensive services in [Rule V].

(2) The person must be determined by the field services specialist or the intensive review committee to meet the eligibility requirements for intensive services.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-209 MCA

[RULE VII] ELIGIBILITY: CHILDRENS' SUMMER DAY SERVICES

(1) A person is eligible for childrens' summer day services if the person is:

(a) a child from birth to 18 years of age with a developmental disability;

(b) a child from birth to 6 years of age at risk for developmental delays in one or more of the areas listed in [Rule IV(1)(b)]; or

(c) an adult from 18 to 23 years of age with a developmental disability who is not receiving adult services.

AUTH: Sec. 53-20-204 MCA

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

[RULE VIII] ELIGIBILITY: STATE FUNDED ADULT SERVICES

(1) An adult is eligible for state funded adult services if the person has a developmental disability.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

[RULE IX] ELIGIBILITY: FEDERALLY FUNDED INTENSIVE ADULT SERVICES (1) An adult is eligible for federally funded intensive adult services if the person has a developmental disability, has one or more of the characteristics listed in subsection (2) and, without intensive adult services, would be in jeopardy of placement in an ICF/MR due to the inability of the services available to maintain the person in community-based services without additional resources.

(2) Characteristics of persons with developmental disabilities in need of intensive services are:

(a) severe/profound mental retardation, including extreme deficiencies in self-care and daily living skills as compared to age peers;

(b) significant maladaptive social or interpersonal behavior patterns which require an ongoing supervised program of intervention; or

(c) severe medical or health related problems such as sensory or physical deficits requiring substantial care.

(3) The person must meet medicaid eligibility requirements.

(4) The person must be determined by the field services specialist or intensive review committee to meet the eligibility requirements for intensive services.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

[RULE X] ELIGIBILITY: STATE FUNDED SENIOR SERVICES (1) An adult is eligible for state funded senior services if the person has a developmental disability and is aged or has physiological or mental conditions characteristic of debilitating aging conditions.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-209 MCA

[RULE XI] ELIGIBILITY: FEDERALLY FUNDED SENIOR SERVICES (1) An adult is eligible for federally funded senior services if the person has a developmental disability, is aged or has physiological or mental conditions characteristic of debilitating aging conditions, has one or more of the characteristics listed in [Rule V(2)], and without intensive senior services would be in jeopardy of placement in an ICF/MR or nursing facility due to the inability of the services available to maintain the person in community-based services without additional resources.

(2) The person must meet medicaid eligibility requirements.

(3) The person must be determined by the field services specialist or intensive review committee to meet the eligibility

requirements for intensive services established by the department.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-209 MCA

[RULE XIII] ELIGIBILITY: APPEAL PROCEDURES (1) An adverse decision regarding eligibility for any service, except as otherwise provided in this rule, is appealable under the provisions of ARM 46.2.202, et seq.

(2) An adverse decision regarding eligibility for family education and support services, other than for federally funded Part H family education and support services, is appealable through the internal grievance procedure provided by the contractor. If a resolution to the adverse decision regarding eligibility cannot be reached through the internal grievance procedure, the adverse decision is appealable under the provisions of ARM 46.2.202, et seq.

(3) An adverse decision regarding eligibility for federally funded Part H family education and support services is appealable through the internal grievance procedure provided by the contractor. If a resolution to the adverse decision regarding eligibility cannot be reached through the internal grievance procedure, the adverse decision is appealable in accordance with the procedures for resolving complaints regarding federally funded Part H early intervention services as provided by federal rule at 34 CFR 303.420 through 303.425. The department hereby adopts and incorporates by reference the impartial procedures for resolving individual child complaints regarding federally funded Part H early intervention services published, July 1, 1994, by the United States department of education, at 34 CFR section 303.420 through section 303.425.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-201 and 53-20-209 MCA

[RULE XIII] STAFFING: APPLICABILITY (1) Contractors must employ staff who are able to demonstrate the ability to meet the needs of the persons that the contractors serve.

(2) All contractors of services, except contractors providing transportation services that are also available to the general public and contracting with the department to provide only transportation services, are subject to these rules.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XIV] STAFFING: STAFF COMPETENCIES GENERALLY (1) A contractor must have a written job description and listing of competencies for each staff position.

(2) A contractor must conduct a thorough screening and a background check of all persons prior to employment with the corporation. A thorough screening and background check must

include, but is not limited to, a criminal background check through the Montana department of justice.

(3) A contractor must verify that each staff member meets the competencies to perform the tasks and responsibilities of their position.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XVI] STAFFING: STAFF COMPETENCIES FOR FAMILY EDUCATION AND SUPPORT SERVICES (1) Contractors providing family education and support services, must comply with the staff competency requirements of this rule.

(2) A family support specialist, an intake specialist or an intensive support coordinator must meet family support specialist certification requirements.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XVI] STAFFING: STAFF COMPETENCIES FOR COMMUNITY HOME, INTENSIVE COMMUNITY HOME, SUPPORTED LIVING, WORK DAY SERVICES (1) Contractors providing community home, supported living or work or day services must comply with the staff competencies requirements of this rule.

(2) Each staff person must demonstrate the competencies necessary to meet the needs of the persons receiving services from the staff person.

(3) The rules, policies and procedures that staff must demonstrate competency in include, but are not limited to, the following:

- (a) health and safety;
- (b) individual rights;
- (c) systems reporting procedures;
- (d) abuse, neglect and exploitation;
- (e) application of treatment and training techniques; and
- (f) behavior management techniques.

(4) For intensive community home, intensive work or day services, each staff person must successfully complete the developmental disabilities client programming technician (DDCPT) curriculum or its equivalent, if competency within the areas covered by such curriculum has not previously been demonstrated.

(a) A new staff person, lacking competency in the areas covered by the DDCPT curriculum, must enroll in the curriculum within 45 working days of the date of hire.

(5) For supported living services, each supported living coordinator must demonstrate the competencies specified in [Rule XL] within the first 6 months of employment.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XVII] STAFFING: CONTRACTOR STAFFING FOR SERVICES

(1) All contractors must comply with the staffing requirements of this rule.

(2) The contractor must maintain minimum staffing ratios in each program of service, as specified for each program in the contract.

(3) The contractor must ensure the presence of awake night staff in applicable programs, when specified in the contract.

(4) The contractor must provide for emergency, back-up staff in applicable programs, when specified in the contract.

(5) Procedures for supervision of staff including day, evening, night and weekend staff must be maintained, implemented and documented in applicable programs, when specified in the contract.

(a) Supervision of staff must include the provision of guidance and direction to on-line staff in a sufficient and reasonable manner to ensure that the individuals served receive appropriate, quality care and treatment. Supervision of staff can include having a supervisor on call or available to provide assistance to on-line staff on an as needed basis. Some periodic and unscheduled on-site visits should be utilized as a means of ensuring and maintaining appropriate staff behavior.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XVIII] STAFFING: CONTRACTOR STAFFING FOR SUPPORTED LIVING SERVICES

(1) A contractor for supported living services must maintain the level of supervision available in each supported living opportunity or group of opportunities, as specified in the contract.

(2) Level of supervision requirements are specified in the contract unless all direct services funds are included in resource and support wrap-around services.

(3) Level of supervision requirements specified in the contract must include:

(a) the number of hours per 24-hour period that direct, on-site, awake staff supervision is available;

(b) the number of hours per 24-hour period that on-call supervision is available with a description of the type of on-call system, inclusive of the response time;

(c) the availability of staff supervision at night with a description of the type of supervision, inclusive of response time; and

(d) the direct-care staff ratios provided during each 24-hour period for each day of the week.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XIX] ADULT AND FAMILY SERVICES: EDUCATION AND TRAINING REQUIREMENTS

(1) Education and training must be provided in accordance with the performance requirements in this rule.

(2) An adult or family services contractor in providing education and training must comply with the performance requirements in this rule.

(3) Education and training must be directed toward the individual's attainment of goals identified by the IP or the IFSP team.

(4) There are 2 categories of training: formal and incidental. Formal training is a focused, documented effort to accomplish a training objective. Incidental training occurs incidental to daily living and is facilitated through various techniques which recognize that all individuals learn, grow and develop if given the opportunity to do so. Formal training should occur in the environment in which the knowledge, skill or ability will most likely be used.

(5) Training may be most appropriate across a variety of environments. The IP or the IFSP team identifies the settings for specific training objectives. The training method should be the most culturally normative, effective method for the individual and the skill or ability that is the subject of the training. Incidental training should occur across all settings.

(6) Training, formal or incidental, must be provided in the development of the following areas: motor/physical, communication, self-help and personal care, functional academics, community life, social and sexual, health and safety, home-related skills, adaptive behavior, leisure, work, job-specific training, and self-advocacy.

(7) Motor and physical training develops gross and fine motor skills. Training includes locomotion, body posture and control, motor coordination and physical conditioning.

(8) Communication training develops an individual's ability to affect the environment around them through other people. Training includes receptive and expressive language and control of inappropriate verbalization.

(9) Self-help and personal care training develops independence in basic daily living skills. Training includes eating, toileting, dressing, bathing, hair care, personal hygiene and grooming; clothing selection and care; care of menstrual needs; mobility and care of mobility devices.

(10) Functional academics develops academic skills directly related to independent functioning in the community. Training includes reading and survival word recognition and number concepts and recognition.

(11) Community life training develops independence in the community, locating and using community resources, and interacting with others. Training includes orientation to the community, travel and transportation; community recreation; safety, including traffic signs; shopping skills, restaurant use and use of community services.

(12) Social and sexual training develops independence and acceptance in the community. Training includes interpersonal relationships, birth control, marriage, children and pregnancy; sexual abuse and exploitation; alcohol and drug use; human development; and disease and sexually transmitted disease prevention.

(13) Health and safety training develops the skills necessary to live independently and safely in the community and to maintain optimal health. Training includes self administration of medications; first aid; nutrition; home, work and community safety and response to emergencies.

(14) Home-related skills training develops independence in managing one's own home. Training includes financial management; clothing care and selection; household chores, meal preparation and food handling; home repair and maintenance; time telling; telephone usage; and use and care of major appliances.

(15) Adaptive behavior training develops acceptable alternatives to maladaptive behavior. Training includes positive programming, dealing with difficult situations, anger management, independence, dependability, initiative, versatility and decreasing maladaptive behavior.

(16) Leisure training develops independent, age-appropriate use of free time, both through individual and group activities. Training includes crafts; individual and group games; hobbies and sports.

(17) Work training develops skills which are necessary to functioning in the work environment. Training includes small assembly; color and shape assembly; attention span/attending and following instructions; matching and sorting and simple assembly; quality of work, quantity of work and general work habits; obtaining employment, relating to supervisor and relating to peers.

(18) Job-specific training develops all the skills necessary to succeed in the paid employment that an individual is hired to perform.

(a) Training occurs within the actual job environment and addresses naturally occurring demands and contingencies.

(b) The trainer assists the employee in completing the job until all the tasks can be performed at the standards established by the employer.

(c) Trainer activities may include, but are not limited to, performing the job in order to prepare a task analysis; identifying and addressing employee needs; directly training employees within the natural environment and ensuring completion of job requirements for the employer until the employee is completing the job independently.

(19) Self advocacy training develops advocacy skills. Training includes rights, responsibilities and participation in the planning process.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

[RULE XX] ADULT AND FAMILY SERVICES: LEISURE AND COMMUNITY ACTIVITIES (1) Leisure and community activities must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing adult or family services in the provision of leisure and community activities must comply with the performance requirements in this rule.

(3) The individual must be allowed the opportunity to choose community activities to participate in. The individual may choose the activities based on the individual's knowledge of the variety of activities occurring within the community.

(a) The individual should be encouraged and assisted in experiencing a variety of enjoyable community activities.

(4) The individual must be allowed the opportunity to choose leisure activities to participate in. The individual may choose the activities based on the individual's knowledge of the variety of activities occurring within the individual's services and the community.

(a) The individual should be encouraged and assisted in experiencing a variety of enjoyable leisure activities.

(b) A variety of leisure activities should be available, based on the preferences of the persons receiving services.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-205 MCA

[RULE XXI] ADULT SERVICES: PURPOSE (1) The purpose of adult services is to obtain resources, support, training and guidance designed to assist an individual in the individual's life.

(2) Services, in accordance with the individual planning process provided at ARM 46.8.201, et seq., must meet the needs of the individual served. The individual, in partnership with service staff and significant others, establishes priorities, and participates in the development, implementation and evaluation of the individual plan (IP). Planning teams, in planning for the provision of services, must consider the level of services the individual is enrolled in and the availability of funds when making decisions regarding specific services to be provided. IP objectives are designed to address areas in an individual's life where assistance is needed based on the assessments and desires of the individual. These areas may include living arrangements, work and day options, transportation, recreation and leisure, citizenship, relationships, and life management.

(3) Services must be provided in environments which enhance the quality of life for the individual. These environments must ensure that the individual's basic life and health care needs are met.

(4) Adult services must assist an adult with developmental disabilities to:

(a) enhance independence and interdependence with others in the community;

(b) expand options for participation in and contribution to society;

(c) increase skills and abilities to enable on-going personal growth; and

(d) reside, work and play in safe, healthy, integrated environments.

(5) The following principles must guide the provision of the assistance and services to an individual:

(a) The individual will have an increasing amount of control and choice in these services.

(b) The individual will have increasing options and flexibility available.

(c) The individual will have an opportunity for a good life with accompanying rights, responsibilities and risk.

(d) The location of activities and the interaction with other persons will be as integrated as possible in the community.

(e) The service will be as least intrusive in the person's life as possible.

(f) The principles of positive programming will be used.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXII] ADULT SERVICES: PERFORMANCE REQUIREMENTS

(1) Adult services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing adult services, other than a contractor providing transportation services that are also available to the general public and contracting with the department to provide only transportation services, must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and the contract with the department.

(3) In the provision of adult services, the contractor must:

(a) ensure that all facilities used in the provision of services meet all applicable licensure requirements and health and safety codes;

(b) maintain and implement policies and procedures for a safe, healthy environment for all individuals served;

(c) maintain and implement policies and procedures which ensure health monitoring occurs and necessary medical assistance is provided or sought for all individuals served;

(d) provide supervision, support, care, education and training according to the needs of the individual and as specified by the IP team;

(e) implement any assigned activities of the IP;

(f) maintain and implement policies and procedures to assist individuals and staff in emergencies such as medical problems, behavior intervention, disasters, and other similar emergencies;

(g) participate in the IP team process, recommending objectives, as applicable, to the IP team for the individual;

(h) coordinate transportation to assist the individual in meeting the individual's needs;

(i) adhere to the service component definitions when specified in the contract; and

(j) provide additional or specialized services or requirements when specified in the contract.

(4) Service options and funding sources may have specific requirements that must be met.

(5) In the provision of intensive adult services, the contractor, in addition to the criteria in subsection (3), must:

- (a) provide the level of care, habilitation and guidance necessary to meet the intensive needs of the individual; and
- (b) ensure, when specified in the contract, other support services needs are addressed to enhance the ability of the individual to benefit from all services and activities.

(6) In the provision of senior services, the contractor, in addition to the criteria in subsection (3), must:

- (a) implement a plan, when specified by the IP team, to allow the individual, based on individual interests and desires, to choose daily routines, including remaining at home.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

[RULE XXIII] ADULT SERVICES: COMMUNITY HOME SERVICES REQUIREMENTS (1) Adult community home services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing adult community home services must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and the contract with the department.

(3) Adult community home services are living arrangements in which 2 to 8 individuals, 16 years of age or older, reside with supervision, care, support and training. In addition to safe, comfortable housing, an individual is provided a healthy, well-balanced diet and is assisted in choosing, caring for and selecting for wear, suitable clothing. Community homes are available to meet a wide range of needs including those of individuals who have intensive or senior needs.

(4) In addition to these rules, community home contractors are required by 53-20-305, MCA to meet the state of Montana licensing requirements for community homes for persons with developmental disabilities.

(5) Service options and funding sources may have specific requirements that must be met.

(6) In the provision of adult community home services, the contractor must provide:

- (a) safe and comfortable housing;
- (b) a healthy, well-balanced diet;
- (c) assistance in choosing, caring for and selecting for wear, suitable clothing;
- (d) weekly opportunities for a variety of integrated community activities unless otherwise specified by the IP team;
- (e) daily opportunities for a variety of leisure activities unless otherwise specified by the IP team; and
- (f) an emergency response system for an individual who is at home during the day without a staff person present. The contractor must have approval from the IP team prior to an individual remaining at home. The system must be approved by the IP team based on the capability of the individual to remain at home and to use the emergency response system.

(7) In the provision of intensive services, the contractor, in addition to the other requirements of this rule, must:

(a) ensure, when specified in the contract, that facilities are capable of being certified according to ICF/MR licensing requirements for residents for whom self-evacuation is impractical; and

(b) make provisions, when specified in a contract, to allow individuals to remain at home during the day in cases of illness, episodic behavior, or individual schedules to accommodate service needs, such as supported employment.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXIV] ADULT SERVICES; WORK OR DAY SERVICES REQUIREMENTS (1) Work or day services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing work or day services must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and policies, and the contract with the department.

(3) Work or day services include facility-based services and community supported work activities. Supported work activities include individual supported employment, crews, enclaves, and volunteer work. Work or day services are available to meet a wide range of needs including those of individuals who have intensive or senior needs.

(4) Service options and funding sources may have specific requirements that must be met.

(5) In the provision of work or day services, the contractor must:

(a) provide any combination of work or day services, including supported work activities, according to the choices and needs of the individual and as specified by the IP team; and

(b) design activities, built on an array of options, that meet the needs and desires of the individual.

(6) A contractor for work or day services must ensure that medicaid home and community services monies are only expended on persons who are eligible for federally funded intensive adult services as provided in [Rule IX].

(a) The person must have formerly resided in an ICF/MR or a nursing facility in order to be eligible for work services, including individual supported employment or paid work in any work or day service.

(b) The person who formerly resided in an ICF/MR or a nursing facility must not earn more than 50% of the minimum wage in a work activity center or sheltered workshop.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXV] ADULT SERVICES: SUPPORTED LIVING SERVICES REQUIREMENTS

(1) Supported living services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing supported living services must comply with the performance requirements in this rule. All performance requirements are to be met as provided in department rules and the contract with the department.

(3) A service placement designated as an independent living or transitional living placement as of June 30, 1995 or designated after June 30, 1995 as a supported living placement but specified by contract to be a not fully converted placement, is subject only to the requirements in subsections (4) through (7).

(4) Supported living services identify, provide, and coordinate necessary supports to maintain individuals in communities of their choice and create opportunities to have valued residential, vocational, and social opportunities. Supported living services make living arrangements available to individuals who are at least 18 years old and reside in neighborhood housing. The level and intensity of supervision, care, support, training, guidance and coordination of services and resources is based on individual needs, as determined by the IP team.

(5) Service options and funding sources may have specific requirements which must be met.

(6) In the provision of supported living services, the contractor must provide:

(a) identification of service needs including necessary resources and supports;

(b) identification, development, and access to existing resources and support networks;

(c) necessary current and future planning; and

(d) facilitation of personal choice, opportunities, and supports.

(7) In the provision of supported living services, the contractor must:

(a) provide supervision, support, care, training and guidance according to the needs of the individual as specified by the IP team;

(b) provide frequency of personal contact by staff with the individual as specified by the IP team;

(c) provide or encourage participation in a variety of integrated community activities;

(d) discuss and plan with the IP team, as appropriate for each individual, health and safety issues based on information gathered prior to the IP meeting including a risk assessment;

(e) recommend to the IP team a plan for each individual that will identify an emergency backup support and crisis response system to deal with problems or issues arising when support services are interrupted or delayed, or individual's needs change; and

(f) maintain the services for all supported living opportunities as described in the contract.

(8) Individuals and their representatives must have the opportunity to participate in the hiring of direct care staff assigned to work with them.

(9) There must be an individualized cost plan for each individual that includes a plan of care inclusive of supports which denote all support costs, administrative and support coordination costs.

(10) There must be portability of all or a portion of supported living funds to another qualified supported living provider as specified in the contract.

(11) There must be a consumer evaluation of supported living services conducted at least annually with a summary maintained.

(12) Supported living coordination must:

(a) teach the individual and caregivers to independently locate and establish contact with agencies who can assist them in securing the services they require. This allows them to become less reliant on the service system, generally, and supported living coordination, specifically;

(b) provide in-service training to those people providing habilitation, personal care, or other services to the recipient;

(c) manage personal and plan funding to ensure that personal and service needs are being met and that funds are efficiently utilized and accurately reported;

(d) provide for adequate supervision of the individual during the day, evening, and weekend;

(e) hire and supervise qualified staff to provide supported living services with input from the individual and caregivers;

(f) subcontract for services required by the plan of care;

(g) conduct periodic assessments of risk in order to ensure that the supported living arrangement is appropriate and safe given the individual's unique abilities and needs;

(h) conduct individual assessments specifically related to the supported living service. These assessments will not duplicate assessments completed by developmental disabilities case managers in scope or type of data collected;

(i) contract for suitable high quality housing, when necessary; and

(j) require documentation of the services provided and for approving payments to direct service providers.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXVI] ADULT SERVICES: SUPPORTED LIVING SERVICES SAFETY REQUIREMENTS (1) A contractor who provides supported living services must comply with the safety requirements in this rule.

(2) The contractor must document that the individual, with or without assistance, demonstrates the ability to respond to fire and other emergency procedures as specified in this rule, and as specified by the IP team. If the individual lives in the family home, the contractor must document that the individual,

with or without assistance, demonstrates the ability to respond to fire and other emergency procedures agreed to by the family. These results must be shared with the IP team. If the individual lives in the family home the results must be shared with the family.

(3) The contractor, if it owns, leases or rents the residence or assists in locating the residence, must provide a safe and healthy living environment:

(4) The contractor must ensure that each residence meets the following life safety requirements:

(a) Smoke detectors must be present in each sleeping room and at a point centrally located in the area giving access to each separate sleeping area. A documented monthly check must occur to ensure that each detector is operating correctly.

(b) A fire extinguisher must be located in the kitchen. A documented annual check must occur to ensure that each extinguisher is operating correctly.

(c) Every room used for sleeping, living or dining must have at least 2 exits, at least 1 of which will be a door or stairway providing a means of unobstructed travel to the street or ground level outside of the building.

(d) All exits must be maintained in an unobstructed, easily traveled condition at all times.

(5) The contractor must develop and implement procedures for emergency evacuation to be followed in the case of fire or other emergency, and these emergency procedures shall include a plan for removing all persons, including individuals who need assistance in exiting.

(6) At least annually the contractor must demonstrate that the individual can evacuate safely with or without supervision.

(7) In any circumstances of a potentially unsafe or unhealthy living environment for an individual which the contractor does not own, lease or rent or which the contractor did not assist in locating, the contractor must in concert with the IP team:

(a) discuss and document with the individual and guardian the potentially unsafe or unhealthy concerns in the individual's residence;

(b) provide options to assist the individual in locating a safer and healthier residence; and

(c) ensure that the individual or guardian is making an informed decision to remain in a potentially unsafe or unhealthy residence.

(8) The contractor must maintain and implement procedures for:

(a) individualized, in-place emergency response systems. The individual must demonstrate the ability at least annually to use the system; and

(b) in-place systems for response during times when assigned staff do not report for duty.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXVII] FAMILY SERVICES: PURPOSE (1) Family services include family education and support services, children's community home services and children's summer day services.

(2) The purpose of family education and support services is to obtain or provide resources, support, training and assistance designed to assist a child and to enhance the capacity of a family to promote the development of a child.

(3) The purpose of children's community home services is to provide a healthy and safe living environment to meet the needs of children with intensive developmental disabilities who no longer reside with a natural or foster family. This living arrangement supports a child's overall development, provides opportunities for socialization and the development of leisure skills, and facilitates integration into community life.

(4) These rules define services and describe the specific services available, program components, program requirements and limitations, contractor performance requirements, and education and training requirements.

(5) The definitions used for federally funded intensive home and community family education and support services, except for those in [Rule XXVIII], are at ARM 46.8.2001, et seq.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXVIII] FAMILY SERVICES: GENERAL DEFINITIONS These definitions apply to all family services.

(1) "Children's community home" means a licensed, home-like living arrangement in which 2 to 6 children with developmental disabilities who are between 5 and 22 years of age and have intensive needs, reside under the general care and supervision of community home staff.

(2) "Children's community home services" means residential services for children with developmental disabilities who have intensive needs and who are unable to reside with their families or with a foster family. Children's community home services provide children with physical care, guidance, resource and service coordination, and direct instruction based on developmental models and principles of normalization. Children's community home services include:

(a) providing a community-based residential alternative to natural and foster homes;

(b) helping children with disabilities reach their maximum developmental potential;

(c) coordinating the provision of individualized services for children such as special education, day services, recreation, and other community-based services; and

(d) assisting children with disabilities to increase their level of personal independence, move on to less restrictive settings, and lessen their reliance on the service system.

(3) "Children's summer day services" mean day services occurring during the summer that provide both formal and informal functional education and training and leisure and

recreational activities designed to promote development, independence, and acquisition of individual skills. Training is provided in such areas as self-help, social, language, pre-academic, academic, motor and prevocational.

(4) "Core services" means those services available to all children and families based on needs identified in the individual family service plan (IFSP). Core services include evaluation and assessment, individualized family service plan, support coordination, information and referral, and procedural safeguards.

(5) "Evaluation and assessment" means a process for determining a child's initial and continuing eligibility for services. The evaluation process is a responsive and individualized set of procedures for completing the eligibility determination process in a fair and timely fashion.

(6) "Family" means natural parents, adoptive parents, foster parents, grandparents, guardians, stepparents or others with whom a child lives, and persons who are legally responsible for the child's welfare.

(7) "Family education and support services" means types of services that provide resources, supports and assistance designed to assist a child and to enhance the capacity of a family to promote the development of a child. The family, in partnership with program staff, establishes priorities and assists in the development, implementation and evaluation of the IFSP. Family education and support services include:

(a) helping children with disabilities reach their maximum potential;

(b) keeping children with their families in their home communities;

(c) assisting families in maximizing their skills and abilities to utilize generic and specialized resources; and

(d) helping families avoid unnecessary reliance on the service delivery system.

(8) "Family services" means family education and support services, children's community home services, and children's summer day services.

(9) "Family support specialist" means a person employed by a family services contractor to deliver support coordination services.

(10) "Individual educational program" (IEP) means, as defined at ARM 10.16.1207, a plan of outcomes and objectives which address a child's educational strengths and deficits.

(11) "Individualized family service plan" (IFSP) means a written plan for organizing and directing the delivery of family education and support services to a child and the child's family. The plan includes information regarding a family's concerns and priorities for resources, supports and assistance. The plan helps each family establish and achieve its goals. The plan is part of a dynamic planning process undertaken by an interdisciplinary team. The family is the primary member of the team and is the final decision maker.

(12) "Information and referral" means assistance by contractor staff in informing families not currently served of

program criteria, evaluations, and providing direction to the most appropriate available resources which may meet their needs. Information and referral includes investigating the availability and appropriateness of various resources, explaining the options available to the family, and contacting the agencies on behalf of the family. Information and referral also includes the provision of information requested by families previously served.

(13) "Parent" means a natural parent, guardian, or a person acting as the parent of a child, or a surrogate parent who has been appointed in accordance with federal statute. The term includes grandparents, stepparents, or others with whom a child lives, and persons who are legally responsible for the child's welfare. The term does not include the state.

(14) "Procedural Safeguards" mean measures to provide a child and family with appropriate involvement in the planning, development, and provision of services and to provide due process concerning decisions that they believe adversely affect the provision of services.

(15) "Resource and support wrap-around services" means items or services obtained or provided for the purpose of accomplishing IFSP objectives. These services may include assistive technology, audiology, support coordination, family education, counseling, home visits, health, nursing, nutrition, occupational therapy, physical therapy, psychology, social work, special instruction, speech-language pathology, transportation, and vision services. The component services of resource and support wrap-around services for purposes of state-funded family education and support services and for federally funded Part H family education and support services are defined in [Rule XXIX]. The component services of resource and support wrap-around services for purposes of federally funded intensive family education and support services are defined at ARM 46.8.2001, et seq.

(16) "Support coordination" means assistance and services provided by a family support specialist or an intensive support coordinator to assist and enable a child and the child's family to receive the rights, procedural safeguards, and services that are provided through the family education and support services programs. Support coordination includes:

(a) assisting a family to access or modify existing community resources, both formal and informal;

(b) assisting a family to gain access to, facilitating the timely delivery of, and coordinating and monitoring the resources and services identified in the IFSP;

(c) coordinating all activities associated with the development, implementation, and evaluation of an IFSP;

(d) maintaining a record of support coordination activities in each child's record;

(e) coordinating the performance of evaluations, assessments and family information gathering activities;

(f) coordinating and monitoring the delivery of available resources;

- (g) informing the family of legal rights related to special services;
- (h) informing families of the availability of advocacy services;
- (i) coordinating with medical and health providers when requested by the family;
- (j) facilitating the development of a transition plan to other services; and
- (k) completing referral information when the child is ready to move to a new service.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

[RULE XXIX] FAMILY SERVICES: DEFINITIONS FOR STATE FUNDED AND FEDERALLY FUNDED PART H FAMILY EDUCATION AND SUPPORT SERVICES These definitions apply to state-funded family education and support services and to federally-funded Part H education and support services.

(1) "Assistive technology devices" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology services" means services that directly assist a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

(a) evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for children with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing early intervention and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

(f) training or technical assistance for professionals including persons providing early intervention or rehabilitation services, or other persons who provide services to, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Audiology services" means the identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques. Audiology services include:

(a) determining the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(b) referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(c) providing auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(d) providing services for prevention of hearing loss; and

(e) determining the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(4) "Family education, counseling, and home visits" means services provided, as appropriate, by family support specialists, and other qualified personnel, including but not limited to, psychologists, professional counselors and social workers, to assist the family of a child in understanding the special needs of the child and how to enhance the child's development.

(5) "Full service" means services, supports and resources furnished to a child and family eligible for federally funded Part H family education and support services or for state funded family education and support services. The child and family are served in accordance with an IFSP, through service coordination provided at a minimum of one staff contact per month. This service provides access to resources and support wrap-around services.

(6) "Health services" means medical services necessary to enable a child to benefit from other family education and support services during the time the child is receiving family education and support services.

(a) Health services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressing or colostomy collection bags, other health services, and consultation by physicians with other service providers concerning the special health care needs of children that will need to be addressed in the course of providing other early intervention services.

(b) Health services do not include services that are surgical, medical or medical-health in nature. Excluded services include, but are not limited to, cleft palate surgery, surgery for club foot, the shunting of hydrocephalus, hospitalization or management of congenital heart ailments, the prescribing of medicine or drugs for any purpose, devices necessary to control or treat a medical condition, immunization and regular well-baby care routinely recommended for all children.

(7) "Medical services only for diagnostic or evaluation purposes" means services provided by a licensed physician to determine a child's developmental status and need for family education and support services.

(8) "Nursing services" means the provision of medically necessary nursing care as prescribed by a medical professional. Nursing services include:

(a) assessing health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(b) providing nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(c) administering medications, treatments, and regimens prescribed by a licensed physician.

(9) "Nutritional services" means services to maintain and improve the nutrition of a person. Nutritional services include:

(a) individual assessments in nutritional history and dietary intake, anthropometric, biochemical, and clinical variables, feeding skills and feeding problems, and food habits and food preferences;

(b) developing and monitoring appropriate plans to address the nutritional needs of a child based on the child's individual needs assessment; and

(c) referral to appropriate community resources to carry out nutrition goals.

(10) "Occupational therapy services" means therapy services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings. Occupational therapy services include:

(a) identification, assessment, and intervention;

(b) adapting the environment, and selecting, designing and fabricating assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(c) preventing or minimizing the impact of initial or future impairment, delay in development, or loss of functional ability.

(11) "Physical therapy services" means therapy services to enhance sensorimotor function through therapies addressing musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Physical therapy services include:

(a) screening, evaluation, and assessment of the child to identify movement dysfunction;

(b) obtaining, interpreting, and integrating information appropriate to program planning, to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(c) providing individual and group services to prevent, alleviate or compensate for movement dysfunction and related functional problems.

(12) "Psychological services" means services to assess a person's mental or developmental status. Psychological services include:

- (a) administering psychological and developmental tests, and other assessment procedures;
- (b) interpreting assessment results;
- (c) obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and
- (d) planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(13) "Social work services" means services to improve a person's social well-being. Social work services include:

- (a) making home visits to evaluate a child's living conditions and patterns of parent-child interaction;
- (b) preparing social or emotional developmental assessments of the child within the family context;
- (c) providing individual and family-group counseling with parents and other family members and appropriate social skill-building activities with the child and parents;
- (d) working with problems in a child's and family's living situation where family education and support services are provided that affect the child's maximum utilization of family education and support services; and

(e) identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from family education and support services.

(14) "Special instruction services" means the design of learning environments and activities to promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction. Special instruction services include:

- (a) planning curriculum, including the planned interaction of personnel, materials, and time and space, to achieve the outcomes in the child's IFSP;
- (b) providing families with information, skills and supports to enhance the skill development of the child; and
- (c) working with the child to enhance the child's development.

(15) "Speech-language pathology services" means services to enhance a person's speech and language skills. Speech-language pathology services include:

- (a) identifying children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
- (b) referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

(c) providing of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(16) "Transportation services" means providing the cost of travel, including but not limited to mileage or travel by taxi, common carrier, or other means, and related costs. Related costs include, but are not limited to, parking expenses necessary for a child and the child's family to receive family education and support services.

(17) "Vision services" means services to enhance or to compensate for vision loss. Vision services include:

(a) evaluating and assessing visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(b) referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(c) training in communication skills, orientation and mobility for all environments, visual, independent living skills, and other skills necessary to activate visual motor abilities.

(18) "Other services" means family education and support services that are identified in the IFSP and that are useful in meeting the developmental needs of the child and the concerns and priorities of the family.

(19) "Respite services" means services to relieve the stress of constant care. Respite care services include, but are not limited to, respite care hours, transportation, and recreation or leisure activities for the child and family. These services are designed to meet the safety and daily care needs of each child and the needs of the child's family so as to reduce family stress generated by provision of constant care to a family member with a developmental disability.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXX] FAMILY SERVICES: DEFINITIONS FOR STATE FUNDED FAMILY EDUCATION AND SUPPORT SERVICES

These definitions apply to state-funded family education and support services.

(1) "Annual service agreement" means a yearly plan developed with a family to provide limited or follow-along family education and support services.

(2) "At risk" means a child, from birth to 6 years of age, who is at risk of a delay in development or of having a developmental disability due to environmental risk, established risk, or biological risk.

(3) "Biological risk" mean a child who has a probability of aberrant development due to a history of prenatal, perinatal, neonatal, and early development events suggestive of biological insult to the developing central nervous system. The events, either singly or collectively, increase the probability of later appearing aberrant development.

(4) "Child education" means education that enables family members to conduct specific skill acquisition, stimulation, or behavioral intervention programs with the child.

(5) "Environmental risk" means a biologically sound child who has a high probability of developmental delay due to life experiences unless there is corrective intervention. Life experiences that may contribute to developmental delay include maternal and family care, health care, opportunities for expression of adaptive behaviors, and patterns of physical and social stimulation that are sufficiently limiting.

(6) "Established risk" means a child has a probability of developmental delay due to early appearing aberrant development that is related to diagnosed medical disorders of known etiology bearing relatively well known expectancies for developmental delay.

(7) "Family education" means education that enables family members to function as independently as possible in providing or obtaining services and supports for the child so that reliance on services is minimized or eliminated.

(8) "Follow-along service" means support coordination services developed and provided in accordance with an annual service agreement for one to four staff contacts per year.

(9) "Limited services" means services, supports and limited resources furnished to a child and family. Limited services are developed and provided in accordance with an annual service agreement. Limited services may include up to 4 staff contacts per year.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXXI] FAMILY SERVICES: GENERAL REQUIREMENTS

(1) Family services must be provided in accordance with the performance requirements in this rule.

(2) The department will enter into contracts with entities to provide family services.

(3) A contractor providing family services must comply with the performance requirements in this rule and the contract.

(4) All facilities, other than the parent's home, used in the provision of services must meet all applicable licensure requirements and health and safety codes.

(5) Policies and procedures must be maintained and implemented to ensure:

(a) a safe, healthy environment for all children served; and

(b) the safe transport of all children.

(6) Supervision, support, care, education, training, health monitoring and medical assistance must be provided in accordance with the needs of the child and as specified by the IFSP or IP team.

(7) Planning teams, in the planning for the provision of services, except for federally funded Part H family education and support services, must consider the level of services the

individual is enrolled in and the availability of funds when making decisions regarding specific services to be provided.

(8) An emergency response system must be maintained as specified in the contract to assist children and staff for emergencies such as medical problems, behavior intervention, disasters, and other similar emergencies.

(9) The contractor must participate in the IFSP or IP team process recommending objectives, as applicable, to the team for each child.

(10) Any activities of the IP or IFSP assigned to the contractor must be implemented.

(11) Transportation must be coordinated to assist each family in meeting the child's needs.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

[RULE XXXII] FAMILY SERVICES: FAMILY EDUCATION AND SUPPORT SERVICES REQUIREMENTS

(1) Family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing family education and support services must comply with the performance requirements in this rule and the contract.

(3) Core services must be provided to all families except those families who participate in limited or follow-along services.

(4) The evaluation and assessment process must consider the unique characteristics of the child, the accumulated information about the child, and the child's parents' choices regarding evaluation alternatives.

(a) During initial and ongoing contacts in the evaluation and assessment process, the child must be continually assessed and matched to eligibility requirements for available resources provided by the contractor or other service delivery systems.

(b) The evaluation and assessment process must provide the child's parents with appropriate information for making informed decisions regarding service options for their child and family.

(c) The evaluation and assessment process must be individualized in nature, must be based on the family's primary developmental and functional concerns regarding the child, and must address the child's specific characteristics.

(5) Information and referral must be provided on an as-needed basis. Information and referral to more appropriate services must be provided to children found to be ineligible for developmental disabilities services.

(6) The individualized family service plan must direct the provision of assistance and services to the child.

(a) The needs of the child and the family must be identified and prioritized in the IFSP.

(b) The methods and outcomes established through the IFSP must be consistent with the family's priorities and values.

(c) The family must be allowed to participate in the planning process at the level they find most comfortable.

- (d) The IFSP must meet with the approval of the family.
- (e) The IFSP must include every service provided to the child and family.
- (f) The funding source for each objective in the IFSP must be identified.
- (g) The IFSP must include objectives and prescriptive programs related to the accomplishment of child education outcomes.
- (h) Decisions as to the services, resources and supports to be provided must be made with consideration of the level of services the child is receiving and the availability of funding.
- (7) Family service records must be maintained documenting each contact with or on the behalf of a child or family and describing the services provided.
- (8) Support coordination must serve to obtain the supports and services as specified in the IFSP.
- (a) Support coordination may only be provided by a family support specialist, an intensive support coordinator, or a family member.
- (b) Support coordination manages the delivery of services so as to assure usage of other appropriate services before the IFSP may attempt to develop any new resource to meet an identified need.
- (c) Family members may choose to take responsibility for completing certain support coordination activities in accordance with the IFSP.
- (d) Each family must be assigned a family support specialist responsible for monitoring support activities.
- (9) Respite services must be provided in conformity with an IFSP or an annual service agreement developed with the family.
- (a) Respite services are selected in collaboration with the family.
- (b) The family selects the persons to provide respite care.
- (10) Procedural safeguards must be accorded to children and families receiving family education and support services.
- (a) Parents must be provided the opportunity to examine, inspect or review records relating to evaluations, assessments, eligibility determination, IFSP development and implementation, individual complaints dealing with the child, and any other areas involving records about the child and the child's family.
- (b) Parents must be given prior notice for matters of eligibility, evaluation, or placement of the child. Notice must be effectively given by means of native language or other communication form when appropriate.
- (c) Parental prior consent must be given in writing for:
 - (i) conducting the initial evaluation, child assessment, and family information gathering;
 - (ii) initiating the provision of services for the first time, or any time a change in service is being considered; and
 - (iii) the exchange of personally identifiable confidential information.

(d) Parents must be allowed to decline all services or a specific service. Declining a service must not jeopardize the receipt of other services.

(e) A surrogate parent must be appointed when:

(i) no parent can be identified;

(ii) the division, appropriate state agency, or the family services agency cannot discover the whereabouts of a parent after engaging in reasonable efforts; or

(iii) the child is a ward of the state under law.

(f) Personally identifiable information must be kept confidential.

(g) An adverse decision affecting services to the child or family may be appealed.

(i) A decision must be appealed through the internal grievance procedures of the contractor. If a resolution cannot be reached with the contractor, the decision is appealable under the provisions of ARM 46.2.202, et seq.

(ii) For federally funded Part H family education and support services, a decision must be appealed through the internal grievance procedures of the contractor. If a resolution cannot be reached with the contractor, the decision is appealable in accordance with the procedures for resolving complaints regarding federally funded Part H early intervention services as provided by federal rule at 34 CFR 303.420 through 303.425. The department hereby adopts and incorporates by reference the impartial procedures for resolving individual child complaints regarding federally funded Part H early intervention services published, July 1, 1994, by the United States department of education, at 34 CFR 303.420 through 303.425.

(h) Each family must be provided with a copy of procedures for appealing decisions made by the contractor.

(11) An annual consumer satisfaction survey of families who received services during the year must be conducted and the results provided to the department.

(12) A monthly waiting list must be submitted to the department's regional office according to procedures defined by the department.

(a) An inventory for client and agency planning (ICAP) must be completed and submitted for each child on the waiting list, each child enrolled in services, and upon initial enrollment, for each child waiting for or receiving limited or follow-along services.

(13) Family education and support services staff assist a family in selecting and training providers to achieve identified IFSP outcomes.

(a) A family generally may select and train providers of resource and support wrap-around services. In certain circumstances requiring specialized training, family education and support services staff may recruit, screen, and interview potential providers.

(14) Family education and support services staff monitor and document service delivery.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

[RULE XXXIII] FAMILY SERVICES: STATE FUNDED FAMILY EDUCATION AND SUPPORT SERVICES REQUIREMENTS (1) State-funded family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing state funded family education and support services, including limited and follow-along service, must comply with the performance requirements in this rule and the contract.

(3) The family of a child receiving limited service must have at least one annual face-to-face visit with contractor staff to develop an agreement with the family to provide access to limited resources and up to three additional support coordination contacts per year.

(4) The family of a child receiving follow-along service must have at least one annual face-to-face visit with contractor staff to develop an agreement with the family to provide up to three additional support coordination contacts per year.

(5) The contractor must recruit and maintain an up-to-date list of persons who are available to provide respite care within the geographic area served by the contractor.

(a) All persons who are recruited and maintained on the list must receive orientation.

(b) Orientation must at the minimum include:

(i) familiarization with the contractor corporation and its role in the provision of respite services; and

(ii) familiarization with a family information profile form and procedures for using the profile.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

[RULE XXXIV] FAMILY SERVICES: FEDERALLY FUNDED PART H FAMILY EDUCATION AND SUPPORT SERVICES REQUIREMENTS

(1) Federally funded Part H family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing federally funded family education and support services must comply with the performance requirements in this rule and the contract.

(3) All services must be provided in accordance with the policies and procedures contained in Montana's state plan under Part H of the individuals with disabilities education act as approved by the United States department of education. The department hereby adopts and incorporates by reference the Montana state plan under Part H of the individuals with disabilities education act as approved November, 1994, by the United States department of education. A copy of the plan may be obtained from the Department of Social and Rehabilitation Services, Developmental Disabilities Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(4) All services available through other accessible funding sources must be provided through those other funding sources prior to any expenditure for those services through federally funded Part H family education and support services.

(5) The contractor must recruit and maintain an up-to-date list of persons who are available to provide respite care within the geographic area served by the contractor.

(a) All persons who are recruited and maintained on the list must receive orientation.

(b) Orientation must at the minimum include:

(i) familiarization with the contractor corporation and its role in the provision of respite services; and

(ii) familiarization with a family information profile form and procedures for using the profile.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXXVI] FAMILY SERVICES: FAMILY EDUCATION AND SUPPORT SERVICES RESOURCE AND SUPPORT WRAP-AROUND SERVICES REQUIREMENTS

(1) Resource and support wrap-around services must be provided in accordance with the IFSP.

(2) Resource and support wrap-around services are available for a child and family eligible under federally funded Part H family education and support services.

(3) Resources and support wrap-around services are available for a child and family under state funded family education and support services only as availability of funding allows.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXXVII] FAMILY SERVICES: FEDERALLY FUNDED INTENSIVE FAMILY EDUCATION AND SUPPORT SERVICES REQUIREMENTS

(1) Federally funded intensive family education and support services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing federally funded intensive family education and support services must comply with the performance requirements in this rule and the contract.

(3) Services must be provided in accordance with the general rules governing home and community services for persons with developmental disabilities at ARM 46.8.2001, et seq.

(4) A contractor must be a designated organized health care delivery system.

(5) All services available through other accessible funding sources must be provided through those sources prior to any expenditure through federally funded intensive family education and support services.

(6) At least one contact each month with or on behalf of a family for the purpose of providing support coordination, direct services or to provide supervision and consultation to subcontracted personnel must be documented.

(7) The residential status of each child on the caseload must be reported to the regional manager at the beginning of the fiscal year.

(8) All possible or actual movement from a natural home or a foster home must be reported to the regional manager as soon as possible.

(9) Recruitment activities must be done for the purpose of securing and maintaining foster families willing to consider long-term placement, including shared care or back-up foster families, respite providers and emergency placement providers.

(a) Recruitment activities and results must be coordinated with the department of family services.

(b) Families interested in providing foster care must be screened in cooperation with the licensing agency.

(10) No more than one person with severe disabilities may be placed in a home.

(11) A foster family under consideration must meet the child and, when possible, the child's natural parents, and a trial visit must take place prior to the decision regarding placement.

(12) Documentation of agreements with families and subcontracted personnel to provide paid habilitation services must be maintained.

(13) Habilitation programs must be carried out in accordance with each child's IFSP.

(14) A cost projection sheet corresponding to the plan of care must be developed at no less than 6 month intervals. The cost projection sheet must conform to allowable costs and identify funding sources.

(15) A contractual requirement that intensive family support funds be portable to another qualified intensive family support contractor must be complied with.

(16) Each family on the waiting list must be contacted at least annually to determine their continuing need for services and provide information and referral.

(17) Selection for a service opening must be made in accordance with departmental procedures.

(a) The department's regional office must be notified of service openings.

(b) Each family on the waiting list must be informed of any service openings.

(c) Written notice of screening decisions must be provided to interested families. Written notice includes description of the department's procedure for requesting a fair hearing.

(18) The provision of services to eligible children must be reported on a separate quarterly and final expenditure report for Montana's home and community services program for persons with developmental disabilities.

(19) The contractor must recruit and maintain an up-to-date list of persons who are available to provide respite care within the geographic area served by the contractor.

(a) All persons who are recruited and maintained on the list must receive orientation.

(b) Orientation must at the minimum include:

- (i) familiarization with the contractor corporation and its role in the provision of respite services; and
- (ii) familiarization with a family information profile form and procedures for using the profile.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

[RULE XXXVII] FAMILY SERVICES: CHILDREN'S COMMUNITY HOME SERVICES REQUIREMENTS

(1) Children's community home services must be provided in accordance with the performance requirements in this rule.

(2) A contractor providing children's community home services must comply with the performance requirements in this rule and the contract.

(3) Children's community home services must ensure that the child's basic life and health care needs are met.

(4) A primary goal of children's community home services is to increase the independence of children with disabilities, especially in the areas of self-help, socialization, and community interaction.

(5) The provision of services must be based on the objectives set by each child's individual planning (IP) or individual education program (IEP) team.

(6) Residents must be provided a healthy, well-balanced diet and suitable clothing.

(7) Residents must be provided the care, habilitation and guidance necessary to meet the intensive needs.

(8) Physical care, supervision, and support must be provided according to the needs of the child.

(9) Policies and procedures must be maintained to ensure health monitoring and medical assistance is provided or secured for all children served.

(10) Weekly opportunities for a variety of integrated community activities must be provided unless otherwise specified by the IP team.

(11) Daily opportunities for a variety of leisure activities must be provided unless otherwise specified by the IP team.

(12) Facilities that the department determines are appropriate must be designed and configured so as to have the potential for certification according to ICF/MR licensing requirements for residents for whom self-evacuation is impractical.

(13) Provisions must be made in accordance with the requirements of the contract for children to remain at home during the day in cases of illness, episodic behavior, or individual schedules to accommodate service needs.

(14) Transition assistance must be provided for children and their IP teams as they move into a different setting or adult services.

(15) Education and training at a minimum must be provided in the following areas of skill development:

(a) individual self help skills, including but not limited to eating, dressing, bathing, toileting, attending to basic health care needs, telling time, and telephone use;

(b) social interaction skills, including but not limited to general manners, public behavior, sexual awareness and boundaries, and personal safety;

(c) independent living skills, including but not limited to clothing care and selection, household chores, cooking, response to emergencies, home repair and maintenance, leisure and recreational choices and skills; and

(d) community living skills, including but not limited to shopping, use of public or personal transportation, restaurant skills, and traffic safety skills.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

[RULE XXXVIII] FAMILY SERVICES: CHILDREN'S SUMMER DAY SERVICES REQUIREMENTS (1) Children's summer day services must be in accordance with the performance requirements in this rule.

(2) A contractor providing children's summer day services must comply with the performance requirements in this rule and the contract.

(3) The provision of services must be based on the objectives set by each child's individual planning (IP) or individual education program (IEP) team.

(4) Physical care, supervision, and support must be provided in accordance with the needs of the child.

(5) Weekly opportunities for a variety of integrated community activities must be provided, unless otherwise specified by the IP team.

(6) Daily opportunities for a variety of leisure activities must be provided, unless otherwise specified by the IP team.

(7) Transition assistance must be provided for children as they move into different settings or adult services.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

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

46.8.102 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Abuse" means any action causing or threatening physical or mental harm to an individual including neglect, physical abuse, sexual abuse, withholding of basic necessities, the use of unapproved aversive procedures, and the misuse of personal items or monies.

(2) "Accreditation organization" means an organization recognized by rule which establishes and publishes standards relating to the quality of services provided by providers

contractors of services to persons with a developmental disability, analyzes compliance with those standards and accredits providers contractors based on those standards.

(3) "Accredited program" means a program recognized and accredited, as provided in ARM 46.8.901, et seq., by either the accreditation council on services for people with disabilities (AC) or by the commission on accreditation of rehabilitation facilities (CARF) for academic and professional preparation program.

~~(2)~~(4) "Accreditation report" means a report produced after a survey of a provider contractor by an accreditation organization which states the extent of the provider's contractor's compliance with the standards of the accreditation organization and presents the determination of the accreditation organization as to whether the provider contractor is accredited.

~~(3) "Adult community homes services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing age appropriate residential and habilitation services for two to eight persons who are 16 years of age and older.~~

~~(4) "Adult habilitation services" means the provision to adults with developmental disabilities in non-residential settings of functional training and habilitation including basic life skills, pre-vocational skills, work activities and sheltered employment skills and other skills prerequisite or integral to vocational activities and which facilitate movement of persons to increasingly higher levels of independence.~~

~~(5) "Adult intensive training community homes services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing habilitation and intensive residential training services for two to eight persons with intensive need who are 16 years of age and older.~~

Subsection (6) remains the same in text but is renumbered (5).

(a) represents the interests and rights of a person receiving services consistent with the person's expressed interests;

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

~~(8) "At risk" means a child from birth through five years of age who may become developmentally delayed or developmentally disabled.~~

~~(9) "Children's community homes services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing age appropriate residential and habilitation services for two to five persons who are between the ages of 5 and 22.~~

(7) "Board" means 3 meals a day or any other full nutritional regimen. A meal furnished as part of an adult day care program is not considered board.

(8) "Case manager" means the person, employed by either a contractor or the division, who assesses individual service needs, assists individuals to access services, coordinates the

planning process, monitors services delivered, and provides crisis management.

(109) "Client, individual, or recipient" means a person with a developmental disability who is enrolled in a provider service program receiving developmental disabilities services.

(11) "Client abuse" means any action causing or threatening physical or mental harm to a client including neglect, physical abuse, sexual abuse, withholding of basic necessities, the use of unapproved aversive procedures, and the misuse of personal items or monies.

(10) "Contract" means any contractual agreement, inclusive of appendices and other duly incorporated writings, for the delivery of services to persons with developmental disabilities entered into by the department with the contractor.

(11) "Contractor" or "provider" means any person or entity providing developmental disabilities services to persons with developmental disabilities through a contract with the department.

(12) "Developmental disabilities services" means the state program of services for persons with developmental disabilities managed through the developmental disabilities division of the department.

Subsection (12) remains the same in text but is renumbered (13).

(14) "Direct care staff" means a person employed by a contractor in a position the duties of which focus on the hands on delivery of services to persons with developmental disabilities or to their families or both. Direct care tasks include: monitoring and delivering basic life and health care needs, implementing programs, intervening when maladaptive behaviors occur, recording progress toward meeting goals and objectives, documenting incidents, and sharing information with supervisory staff or other professionals according to the policies and procedures of the contractor. In outreach services, direct care tasks may include conducting home visits and providing specialized instruction to family members in the implementation of programs to meet individual needs.

Subsection (13) remains the same in text but is renumbered (15).

(14) "Division staff" means the area managers and training and contract managers of the developmental disabilities division of the department of social and rehabilitation services.

(16) "Emergency response system" means a system which can be efficiently operated by staff or where appropriate, individuals, that ensures the safety of the people in the home or the facility in an emergency. The system includes well-rehearsed emergency procedures for the people living and working in the facility. The system includes, in addition to emergency response measures, a reliable means of communicating with on-call staff and other people who are available in the event of an emergency. The means of communication may include an immediate electronic access to ambulance, fire department, medical staff, police and other staff within the corporation.

(1517) "Evaluation services" means a service through which process for making determinations are made as to regarding whether handicapping disabling conditions are present, and what determining individual needs are, and making specific recommendations or selecting treatment alternatives to address those needs are formulated or selected.

(16) "Family training and support services" means the provision of general information, training and in-home support services to natural, adoptive and foster families to assist in the development and care of a child with developmental disabilities or "at risk" of becoming developmentally disabled.

(18) "Family" means natural parents, adoptive parents, foster parents, grandparents, guardians, stepparents, or others with whom a child lives and non-custodial parents and other persons who are legally responsible for the child's welfare.

(19) "Field services specialist" means a person employed by the division in a field-based position to assist corporations in the delivery of services.

(1720) "Habilitation" means assistance to an individual the process to assist a person with developmental disabilities to in acquiring and maintaining those life skills that which enable the individual person to cope more effectively with the demands of his or her own person and the environment and to raise the level of his or her improve physical, mental and social functioning efficiency. Habilitation includes, but is not limited to, formal structured education and treatment.

(1821) "Incidents" means significant events, acts or omissions not otherwise permitted which result or may result in physical or emotional harm to a person an individual or which intentionally deprive a person an individual of acknowledged rights, including, but not limited to:

(a) death of a client;
(b) harm or illness of a client requiring hospitalization;
(c) complaints or illness of an extended nature;
(d) harm of a staff member due to actions of a client an individual;

(e) suicide attempts by a client;
(f) a substantial change in a client's residential or vocational work placement without approval of the client's individual habilitation planning team;

(g) alleged unlawful activities by or affecting a client an individual;

(h) client abuse;
(i) client's rights violations;
(j) an unaccounted for absence of the client;
(k) significant property damage; or
(l) any behavior requiring the use of an emergency procedure as provided for in ARM 46.8.1201 et seq.

(19) "Independent living services" means the provision of functional residential training on a regular basis to persons who reside in unstructured and unsupervised situations.

(2022) "Individual plan" means a written plan for training and action identifying the supports and services that are necessary to achieve independence, dignity, and personal

fulfillment, developed for a person with developmental disabilities by the individual planning team on the basis of a skill assessment and determination of the strengths and needs of the person individual.

(2123) "Individual planning team" means an interdisciplinary team composed of those persons specified in ARM 46-8-105(3) 46.8.206 that identifies and evaluates the needs of a person an individual receiving services, develops an individual plan to meet those needs, periodically reviews the person's individual's response to the plan and revises the plan accordingly.

(2224) "Individual program plan" means the written strategy for meeting an objective of an individual plan.

(23) "Provider" means any person or entity furnishing services to persons with developmental disabilities under a contractual agreement with the department through the developmental disabilities division.

(25) "Integrated/inclusive community activities" means enjoyable activities that provide an individual with opportunities to participate with other members of the community.

(26) "Leisure activities" means enjoyable recreational and other activities in which an individual may actively participate.

(27) "Life management" means obtaining services, assistance or information necessary for an individual to undertake the everyday tasks of life. Examples of these tasks include making medical appointments, maintaining financial arrangements with government agencies for SSI payments or food stamps, banks for saving or checking accounts, developing a budget, balancing a checkbook, completing income tax forms, paying bills, going to the barber or beauty shop, getting a bicycle repaired, etc.

(28) "Organized health care delivery systems" means an organized system of health care delivery which allows for both the direct provision of health care services as well as contracting with other qualified providers to furnish services required by an individual's plan of care.

(29) "Portability" means providing for contract funds used to support the individual in the current placement to be transferred to a new service contractor when an individual receiving services moves to another geographical area of the state or obtains services from another qualified provider contract.

(30) "Positive programming" means the application of a variety of behavior modification procedures and techniques to change undesirable behaviors, with an emphasis on minimizing the use of punishers and aversive programming.

Subsection (24) remains the same in text but is renumbered (31).

(25) "Respite care services" means the provision of temporary relief services to natural or foster families to relieve them from the continuous care of an eligible developmentally disabled or "at risk" child.

~~(26) "Senior adult community homes services" means those facilities licensed in accordance with section 53-20-201, et seq., MCA providing age appropriate residential and habilitation services for two to eight older persons.~~

~~(27) "Senior day services" means the provision to older adults with developmental disabilities in non-residential settings of functional training and age appropriate activities including organized group activities, maintenance of previously acquired self-help and social skills, and formal training in leisure-type activities.~~

~~(32) "Room" means shelter type expenses including all property related costs such as rental or purchase of real estate and furnishings, maintenance, utilities and related administrative services.~~

~~(2933) "Standardg" means criteria adopted developed by various sources and used by the department for the purpose of judging the adequacy of the quality and extent of service provided to developmentally disabled individuals by providers to persons with developmental disabilities.~~

~~(2934) "Survey" means a review of the provider's contractor's services by an accreditation organization for the purposes of determining the extent of compliance with the standards of the accreditation organization and for accrediting the provider's contractor's services.~~

~~(30) "Transitional living services" means the provision of functional training and habilitation on a regular basis to persons who reside in unstructured living situations and who require intermittent supervision and assistance.~~

~~(31) "Vocational placement services" means assistance in locating competitive employment as well as ongoing training and support to developmentally disabled individuals and their employers in order to maintain employment.~~

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

IMP: Sec. 53-20-203, 53-20-204 and 53-20-205 MCA

46.8.106 CONFIDENTIALITY OF INFORMATION Subsection (1) remains the same.

(a) name and, address, and phone number;

Subsections (1)(b) through (1)(g) remain the same.

(2) The department and the provider shall not disclose confidential information concerning any applicant or client except under the following circumstances:

~~(a) Information about an applicant or client may be released to department staff and providers who assist in or participate in eligibility determination, referral or the provision of services to the applicant or client.~~

Subsection (2)(b) remains the same in text but is renumbered (3).

(ia) the applicant or client if he is a legally competent adult; or

Subsections (2)(b)(ii) remains the same in text but is renumbered (3)(b)(ii). Subsections (2)(c) through (2)(e) remain the same in text but are renumbered (4) through (6).

(7) The provisions of the department's confidentiality policy, except where contrary to a specific provision of this rule, provide the standards for the protection, management and release of confidential information. The department's confidentiality policy, adopted October 1, 1988, and published in the Department of Social and Rehabilitation Services Policy Manual ADM 102 is hereby adopted and incorporated by reference. Copies of the policy may be obtained from the Department of Social and Rehabilitation Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-204 and 53-20-205 MCA

46.8.2002 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: GENERALLY Subsections (1) through (4) remain the same.

(5) The department, in order to comply with federal requirements or to limit expenditures to available funding, may: Subsections (5)(a) through (5)(c) remain the same.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2005 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ELIGIBILITY Subsections (1) through (1)(c) remain the same.

(i) the intensive services review committee, as provided in ARM 46.8.2006, ~~and a nurse~~; or

(ii) ~~by a qualified mental retardation professional, as defined in ARM 46.12.1310, employed by the department, and a nurse~~; and

Subsections (1)(d) through (2)(a) remain the same.

(b) has extreme deficits in self-care and daily living skills which require intensive training; ~~or~~

(c) has significant maladaptive social and/or interpersonal behavior patterns which require an on-going, supervised program of intervention; ~~or~~

(d) has specialized services needs, and exhibits physical or mental limitations or changes similar to those expected in an older person.

Subsection (3) remains the same.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2006 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: INTENSIVE SERVICES REVIEW COMMITTEE Subsection (1) remains the same.

(2) The ISRC is composed of at least one representative from the developmental disabilities division and a provider of intensive services. ~~A representative from the department of family services developmental disabilities case manager and a nurse may also be included on the committee.~~

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205

MCA

46.8.2008 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:
AVAILABLE SERVICES Subsection (1) remains the same.

(a) ~~case management intensive support coordination~~ services, as provided in ARM 46.8.2020 and 46.8.2021;
Subsections (1)(b) through (1)(c) remain the same.
(d) adult day ~~care~~ services, as provided in ARM 46.8.2026 and 46.8.2027;

Subsections (1)(e) through (1)(l) remain the same.

(m) psychological and professional counseling services, as provided in ARM 46.8.2044 and 46.8.2045;

(n) nursing services, as provided in ARM 46.8.2046 and 46.8.2047; and

(o) dietitian services, as provided in ARM 46.8.2048 and 46.8.2049;

(p) supported living coordination, as provided in [Rule XXXIX and XL];

(q) meal services, as provided in [Rule XLI and XLII]; and
(r) respiratory services, as provided in [Rule XLIII and XLIV].

Subsections (2) through (3) remain the same.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2009 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:
GENERAL PROVIDER REQUIREMENTS Subsections (1) through (3) remain the same.

(4) Reimbursement for services, except for transportation service as defined in ARM 46.8.2042, shall not be made to a member of the recipient's immediate family, parents of minor children or to spouses unless the department approves reimbursement based on a determination by the department that the spouse or parent is delivering a service, not normally a spousal or parental responsibility, requiring specialized skills that necessitate professional type training and knowledge.

(a) Immediate family includes the following:

- (i) husband or wife;
- (ii) natural parent;
- (iii) natural child;
- (iv) natural sibling;
- (v) adopted child;
- (vi) adopted parent;
- (vii) step-parent;
- (viii) step-child;
- (ix) step brother or step-sister;
- (x) father-in-law or mother-in-law;
- (xi) son-in-law or daughter-in-law;
- (xii) brother-in-law or sister-in-law;
- (xiii) grandparent;
- (xiv) grandchild; or

~~(xv) foster child.~~

Subsection (5) remains the same.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2014 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM;
NOTICE AND FAIR HEARING Subsections (1) through (1)(a)
remain the same.

(2) The department will provide a recipient at least 30 calendar days notice before any termination or reduction as ~~provided in ARM 46.8.2002(4)~~ of services due to limitations upon services or insufficient program funds, as provided in ARM 46.8.2002(4).

Subsections (3) through (4) remain the same.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2020 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM;
CASE MANAGEMENT INTENSIVE SUPPORT COORDINATION SERVICES,
DEFINITION (1) ~~Case management~~ Intensive support
coordination services are services for the support and
coordination of medicaid home and community services and other
services and supports provided to individual recipients in the
intensive family support program.

(2) ~~Case management~~ Intensive support coordination
services include:

~~(a) developing individual plans of care;~~
~~(b) monitoring and managing individual plans of care;~~
~~(c) arranging for and establishing resources for the~~
~~recipient;~~

~~(d) maximizing the recipient's efficient use of services~~
~~and community and family resources, including mobilizing and~~
~~using support systems such as family members, social organiza-~~
~~tions and friends;~~

~~(e) facilitating interaction among people working with the~~
~~recipient; and~~

~~(f) teaching the recipient and caregivers skills which~~
~~enable them to independently locate and establish contact with~~
~~agencies that can assist in securing needed services.~~

(a) providing ongoing monitoring of the recipient's
services;

(b) intervening when necessary to ensure that the
recipient's living situation continues to be healthy and safe,
and that needs continue to be met;

(c) conducting periodic assessments of risk in order to
ensure that the intensive family support arrangement is
appropriate and safe given the recipient's unique abilities and
needs;

(d) assessing the recipient to determine the resources and
services needed to carry out the individual plan;

(e) developing, monitoring, and recording written plans of
care in a way the recipient, caregivers, and others understand;

(f) meeting frequently with the recipient, and others, regarding the adequacy of the plan of care, how well the plan is being implemented, and changes which may be necessary in the plan;

(g) teaching the recipient and caregivers to independently locate and establish contact with agencies who can assist them in securing the services they require in order to reduce reliance on the service system, generally, and on intensive support coordination, specifically;

(h) facilitating interaction between people working in resource systems;

(i) mobilizing and using natural helping networks such as family members, neighbors and friends;

(j) providing inservice training to people providing habilitation, personal care, or other services to the recipient. Training includes general orientation and training on the specific needs of the recipient and how best to meet those needs;

(k) managing personal as well as cost plan dollars to ensure that personal and service needs are met and that funds are efficiently utilized and accurately reported;

(l) locating and arranging for suitable high quality housing, when necessary;

(m) providing for adequate supervision of the recipient during the day, evening, and weekend;

(n) hiring and supervising qualified staff to provide necessary services, with input from the recipient and caregivers;

(o) subcontracting for services required by the plan of care;

(p) ensuring that the recipient is free to choose a provider from among available qualified providers; and

(q) requiring documentation of the service provided and for approving payment to direct service providers.

AUTH: Sec. 53-2-201, 53-6-113, ~~53-6-402~~ and ~~53-20-204~~ MCA
IMP: Sec. 53-2-201, 53-6-101, ~~53-6-402~~ and ~~53-20-205~~ MCA

46.8.2021 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: CASE MANAGEMENT INTENSIVE SUPPORT COORDINATION SERVICES, REQUIREMENTS (1) ~~Case management as a medicaid home and community services intensive support coordination~~ may only be provided by ~~non-profit~~ corporations under contract with the department.

(2) An ~~ease manager~~ intensive support coordinator must:

(a) be certified as a family support specialist;

Subsection (2)(a) remains the same in text but is renumbered (2)(b).

(bc) provide appropriate ~~ease management~~ intensive support coordination services in the least costly manner; and

Subsection (2)(c) remains the same in text but is renumbered (2)(d).

(3) ~~The case manager is responsible for; intensive support coordinator must ensure that the service is available on a 24 hour, 7 day a week basis.~~

~~(a) obtaining, training, supervising and subcontracting with direct service providers;~~

~~(b) requiring documentation of the service provided; and~~

~~(c) for approving payment to direct service providers.~~

~~(4) A recipient may choose a provider from among the available qualified providers.~~

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2026 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ADULT DAY CARE SERVICES, DEFINITIONS (1) Adult day care services are functional training services for the health, social, habilitation and supervision needs of a recipient provided in settings outside the person's place of residence.

(2) Adult day care services provided to an older recipient may be primarily for skill maintenance and the acquisition of skills that will enable the recipient to participate in a variety of age-appropriate activities supporting the goal of maintaining the recipient's ability to function in the community and to avoid institutionalization.

(3) Adult day care services do not include residential overnight services.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2027 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ADULT DAY CARE SERVICES, REQUIREMENTS (1) An adult day care service provider must employ staff experienced in providing services to persons with developmental disabilities, particularly to persons of advanced age.

Subsection (2) remains the same.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2028 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: HABILITATION SERVICES, DEFINITION Subsections (1) through (2)(c) remain the same.

(d) intensive daily care required because of the severity of the recipient's disability and provided by foster parents or other caregivers;

(e) individual habilitation programs carried out by foster parents or other caregivers;

Subsections (2)(d) and (e) remain the same in text but is renumbered (2)(f) and (g).

(3) Pre-vocational services, or work or day services as provided in [Rule XVIII are services that support habilitative goals necessary for further vocational development. Pre-vocational services prepare a recipient for paid or unpaid

employment. Pre-vocational services are not intended to develop specific job skills. Pre-vocational services may include:

- (a) training in self-help skills_{7i};
- (b) motor and physical development_{7i};
- (c) communication skills_{7i};
- (d) functional academics_{7i};
- (e) community life skills_{7i};
- (f) work skills_{7i} and
- (g) leisure skills.

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

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2029 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: HABILITATION SERVICES, REQUIREMENTS Subsections (1) through (1)(b) remain the same.

- (i) ~~intensive day programs~~ day services;
- (ii) ~~prevocational programs~~ services; and
- (iii) ~~supported employment, otherwise referred to as supported work services.~~

(2) Prevocational and supported employment services may be provided to only those recipients who formerly resided in an ICF²s/MR or a nursing facility.

(3) Prevocational services may be provided only to those recipients:

- (a) who are compensated for the work they do at a rate that is less than 50% of minimum wage_i and
- (b) who are not expected to be able to join the general work force within one year.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2031 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: RESPITE CARE, REQUIREMENTS Subsection (1) remains the same.

(2) Respite care providers may be required by the ~~case manager~~ intensive support coordinator or the supported living coordinator to be:

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

~~(3) Respite care available to a recipient is limited to 30 days in a fiscal year. Additional respite care may be allowed if contained in an approved plan of care, and if the cost does not exceed the available funding.~~

Subsection (4) remains the same in text but is renumbered (3).

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2039 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ENVIRONMENTAL MODIFICATIONS, REQUIREMENTS Subsections (1) through (1)(d) remain the same.

(e) meet the specifications, if applicable, for the modification set by the American national standards institute (ANSI); and

(f) be prior authorized jointly by the provider's board of directors and the department if the cost of the project may exceed specified contract limits \$4,000.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2041 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: ADAPTIVE EQUIPMENT, REQUIREMENTS

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

(c) meet the specifications, if applicable, for the equipment set by the American national standards institute (ANSI);

(d) be prior authorized jointly by the provider's board of directors and the department if the cost of the project may exceed specified contract limits \$4,000; and

Subsection (1)(e) remains the same.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2044 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: PSYCHOLOGICAL AND PROFESSIONAL COUNSELOR SERVICES, DEFINITION

(1) Psychological services are defined in ARM 46.12.580 except that under the medicaid home and community services program, psychological services may be provided for include:

Subsections (1)(a) through (1)(c) remain the same.

(2) Professional counseling services are defined at ARM 46.12.620 except that under the medicaid home and community services program, professional counseling services may include:

(a) consultation with persons providing direct care;

(b) development and monitoring of behavior programs; and

(c) counseling to persons caring directly for the recipient when the caregiver's counseling needs are related to the responsibilities of the caregiving relationship.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2045 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: PSYCHOLOGICAL AND PROFESSIONAL COUNSELING SERVICES, REQUIREMENTS

Subsection (1) remains the same.

(2) Psychological services must meet the requirements of ARM 46.12.581 except ~~that~~ under the medicaid home and community services program,†

~~(a) consultation with direct care givers is reimbursable;~~

~~(b) development and monitoring of behavior programs is reimbursable; and~~

~~(c) counseling to persons caring directly for the recipient when the caregiver's counseling needs are related to the responsibilities of the caregiving relationship.~~

(3) Professional counseling services must be provided by a professional counselor licensed as provided in ARM 8.61.1201 et seq.

(4) Professional counselor services must meet the requirements of ARM 46.12.622.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

46.8.2047 MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: NURSING SERVICES, REQUIREMENTS Subsections (1) through (2) remain the same.

(3) Nursing services may be provided to a recipient in ~~his~~ the recipient's home, or at a vocational or day activity setting.

AUTH: Sec. 53-2-201, 53-6-113, 53-6-402 and 53-20-204 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-402 and 53-20-205 MCA

4. The rules as proposed to be adopted relating to service requirements for medicaid home and community services provide as follows:

[RULE XXXIX] MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: SUPPORTED LIVING COORDINATION, DEFINITION (1) Supported living coordination activities include:

(a) teaching the recipient and caregivers to independently locate and establish contact with agencies who can assist them in securing the services they require in order to reduce reliance on the service system, generally and on supported living coordination, specifically;

(b) providing in-service training to those people providing habilitation, personal care, or other services to the recipient;

(c) managing personal as well as plan costs to ensure that personal and service needs are met and that funds are efficiently utilized and accurately reported;

(d) providing for adequate supervision of the recipient during the day, evening and weekend;

(e) hiring and supervising qualified staff to provide supported living services, with input from the recipient and caregivers;

(f) subcontracting for services required by the plan of care;

(g) conducting periodic assessments of risk in order to ensure that the supported living arrangement is appropriate and safe given the recipient's unique abilities and needs;

(h) conducting individual assessments specifically related to the supported living service. These assessments will not duplicate assessments completed by developmental disabilities case managers in scope or type of data collected;

- (i) arranging for suitable high quality housing, when necessary;
- (j) ensuring that the recipient is free to choose a provider from among available qualified providers; and
- (k) requiring documentation of the service provided and for approving payment to direct service providers.

AUTH: Sec. 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-6-402 and 53-20-205 MCA

[RULE XL] MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: SUPPORTED LIVING COORDINATION, REQUIREMENTS (1) Supported living coordination may only be provided by corporations under contract with the department.

- (2) A supported living coordinator must have:
 - (a) a B.A. degree from an accredited college in a human service related field; and
 - (b) one year of experience working with people with developmental disabilities; or
 - (c) an equivalent combination of education and experience.
- (3) A supported living coordinator must:
 - (a) provide appropriate intensive support coordination services in the least costly manner; and
 - (b) ensure implementation of the plan of care.
- (4) Providers of supported living coordination must ensure that the service is available on a 24 hour, 7 day a week basis.

AUTH: Sec. 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-6-402 and 53-20-205 MCA

[RULE XLII] MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: MEAL SERVICES, DEFINITIONS (1) Meal services provide hot or other appropriate meals once or more a day, up to 7 days a week, to ensure that a recipient receives adequate nourishment and to prevent institutional placement.

AUTH: Sec. 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-6-402 and 53-20-205 MCA

[RULE XLIII] MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: MEAL SERVICES, REQUIREMENTS (1) Meal services may only be provided to recipients who are not eligible to receive meals from any other source, or who need different or more extensive services than are otherwise available.

- (2) A full nutritional regimen of 3 meals per day may not be provided as a home and community services.

AUTH: Sec. 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-6-402 and 53-20-205 MCA

[RULE XLIII] MEDICAID HOME AND COMMUNITY SERVICES PROGRAM: RESPIRATORY SERVICES, DEFINITION (1) Respiratory services include direct treatment, ongoing assessment of medical

condition, equipment monitoring and upkeep, pulmonary education and rehabilitation.

AUTH: Sec. 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-6-402 and 53-20-205 MCA

[RULE XLIV] MEDICAID HOME AND COMMUNITY SERVICES PROGRAM:
RESPIRATORY SERVICES. REQUIREMENTS (1) Respiratory therapy services must be provided by a registered respiratory therapist as defined by the national board for respiratory care.

AUTH: Sec. 53-6-402 and 53-20-204 MCA

IMP: Sec. 53-6-402 and 53-20-205 MCA

5. The rules proposed for adoption generally implement program requirements governing the delivery of services for the state program of developmental disabilities services administered by the Department of Social and Rehabilitation Services. The proposed rules provide program requirements in relation to eligibility for services, staffing of services, the provision of adult and family services, and the provision of certain medicaid funded home and community services.

The Department of Social and Rehabilitation Services delivers developmental disabilities services through contractual agreements with providers. These rules are generally necessary to provide criteria to govern the delivery of services by the contractual providers.

The Department of Social and Rehabilitation Services has over the course of several years developed extensive program requirements to govern the delivery of services for the state program of developmental disabilities services. Those requirements have been presented and applied through appendices to the contracts for services entered into by the department. The proposed rules are a compilation with some revisions and additions of the program requirements previously implemented through contractual agreement.

The proposed rules generally are necessary in that implementation of the program requirements through rules is more appropriate from a legal viewpoint, because of better access the public will generally have better understanding of the services being provided, and the rule format organizes the program requirements in a more comprehensive and comprehensible format.

The proposed rules are also necessary in that the rules will further assure consistency throughout the state in matters of eligibility for services and delivery of services. The proposed rules will limit unreasonable and unfair variations in service delivery from occurring either due to geography or service provider.

Proposed Rules I through XII, concerning eligibility

Proposed Rules I through XII, concerning eligibility are necessary to provide the criteria and procedures by which determinations may be made concerning the eligibility of persons for services in the Montana developmental disabilities service system. An adult, in order to be considered for placement into the Montana developmental disabilities services system, must be determined to have a developmental disability. A child, in order to be considered for placement into the Montana developmental disabilities services system, must be determined to have a developmental disability, to be developmentally delayed, or at risk of developmental delay.

In order to provide the public and potentially eligible persons with appropriate and concise direction, there is an eligibility rule for each distinct service. This is necessary in that the type of service and the funding source for the type of service necessitate certain eligibility criteria for each service.

The proposed rules on eligibility are also necessary in that the desire to access quality services is leading to an increase in the numbers of applicants who may not meet the basic eligibility criteria. The proposed rules will provide more concise criteria and certain procedures for the determinations that are to be made.

Proposed Rule XII is necessary in that the public and potential applicants should be clearly informed in the context of the rules governing eligibility as to the opportunities for contesting an adverse decision. Due to specific federal criteria relating to the federally funded Part H program for family education and support services, it is necessary to provide in the proposed rule a separate appeal process for that program.

Proposed Rules XIII through XVIII, concerning staffing

The proposed Rules XIII through XVIII, concerning staffing, are necessary to assure that there are an appropriate number of persons directly providing services in each service setting of the Montana developmental disabilities service system. The proposed rules are also necessary to assure that the persons directly providing the services have the appropriate qualities to serve the needs and best interests of the persons receiving services.

In order to provide the provider corporations, the public and recipients with appropriate and concise direction, there is a staffing rule for each distinct service. This is necessary in that the type of service necessitates certain staffing ratios and criteria for each service.

Proposed Rules XIX and XX, concerning education and training requirements and leisure and community activities.

Proposed Rule XIX, concerning education and training, is necessary to set appropriate education and training criteria for all providers of services through the Montana developmental disabilities service system. Education and training activities are the principal activity of the service system and are the impetus for individual development. Criteria are necessary to assure that these activities are conducted in ways that stimulate the development of each person receiving services.

Proposed Rule XX, concerning leisure and community activities, is necessary to set appropriate criteria for all providers of services through the Montana developmental disabilities service system. Criteria are necessary to assure that leisure and community activities provide a person with a stimulating and integrating social context.

Proposed Rules XXI through XXVI, concerning adult services

Proposed Rules XXI through XXVI, concerning adult services, are necessary to set criteria to govern the provision of those services by providers contracting to provide adult services for the Montana developmental disabilities service system.

Each rule for a type of adult service is necessary in that the type of service and the funding source for the type of service necessitate certain performance criteria for each service. In addition, it is necessary to vary performance criteria to reflect the progression in latitude accorded a recipient in exercising rights and privileges as a recipient moves from more restrictive to less restrictive service settings.

A specific rule on safety requirements for supported living services is necessary in that there is a broad array of types of residential settings in this service and the involvement of a provider in the choice and arrangements for a living setting vary widely. Furthermore, these settings due to the use or integration in community housing characteristically have no particular health and life safety requirements other than those for generic housing.

Proposed Rules XXVII through XXXVIII, concerning family services

Proposed Rules XXVII through XXVIII, concerning family services, are necessary to set criteria to govern the provision of those services by providers contracting to provide family services for the Montana developmental disabilities service system. A separate set of rules for family services is necessary in that family services are generally delivered in modes and by providers that differ in significant ways from the modes and providers of the adult services.

Each rule for a type of family service is necessary in that the type of service and the funding source for the type of service necessitate certain performance criteria for each service. The three types of family education and support services share many characteristics in common. It is necessary, however, to distinguish them in rule by definitions and performance criteria, to satisfy requirements that are particular to the two types that have federal funding sources.

Proposed Amendment of ARM 46.8.102, Definitions

The proposed amendments to ARM 46.8.102, definitions, are necessary to conform terms with current usage, to remove terms that are archaic, and to remove certain terms that are to be defined elsewhere.

Proposed Amendment of ARM 46.8.106, Confidentiality of Information

The proposed amendments to ARM 46.8.106, confidentiality of information, are necessary to provide for the protection of phone numbers, to further define appropriate use of confidential information for administrative purposes, and to provide for the incorporation of the department's policy on confidentiality. The policy on confidentiality provides detailed criteria and procedures to assure appropriate protection of confidential information.

Proposed Amendments of ARM 46.8.2002, 46.8.2005, 46.8.2006, 46.8.2008, 46.8.2009, 46.8.2014, 46.8.2020, 46.8.2021, 46.8.2026, 46.8.2027, 46.8.2028, 46.8.2029, 46.8.2031, 46.8.2039, 46.8.2041, 46.8.2044, 46.8.2045, and 46.8.2047, concerning medicaid home and community services provided through the Montana developmental disabilities service system

These proposed amendments, concerning medicaid home and community services provided through the Montana developmental disabilities service system, are necessary to make appropriate grammatical changes, to remove archaic references, to conform terminology with current terminology, to incorporate changes in definitions and criteria, and to provide for additions to the services that may be available through the program. These changes are necessary to improve language, to better inform the public of the services available and the criteria governing the services, to conform with federal requirements for the program, to improve the delivery of services, and to expand the available services to benefit recipients.

Proposed Rules XXXIX, XL, XLI, XLII, XLIII, and XLIV, concerning medicaid home and community services provided through the Montana developmental disabilities service system

Proposed Rules XXXIX through XLIV, concerning medicaid home and community services provided through the Montana developmental

disabilities service system, are necessary to provide additional services that may be available through the program. These changes are necessary to conform with federal requirements for the program, to improve the delivery of services, and to expand the available services to benefit recipients.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 25, 1995.

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

Dana Sklar
Rule Reviewer

Peter S. Blouin by Michael G. Bellamy
Director, Social and
Rehabilitation Services

Certified to the Secretary of State April 17, 1995.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)
of rules pertaining to defini-)
tions, forward commitment fees,)
residential loan programs,)
appraisals, conventional loan)
programs, FHA and VA loan pro-)
grams, loan programs for)
commercial, multi-family and)
non-profit corporations and)
conventional, FHA, VA, commer-)
cial, and multi-family loan)
programs - assumptions)

NOTICE OF AMENDMENT OF
RULES PERTAINING TO LOAN
PROGRAMS ADMINISTERED BY
THE BOARD OF INVESTMENTS

TO: All Interested Persons:

1. On February 23, 1995, the Board of Investments published a notice of proposed amendment of rules pertaining to loan programs administered by the Board of Investments, at page 247, 1995 Montana Administrative Register, issue number 4.

2. The Board has amended ARM 8.97.1301, 8.97.1303, 8.97.1401 through 8.97.1404 and 8.97.1406 & 8.97.1407, 8.97.1410, 8.97.1412 and 8.97.1414 exactly as proposed. The Board has amended ARM 8.97.1405 as proposed, but with the following changes:

The language "(i) through (2) will remain the same" should have stated "(k) through (2) will remain the same."

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

COMMENT NO. 1: One comment was received which supported the Board's proposed rules.

RESPONSE: The Board acknowledges receipt of the comment.

COMMENT NO. 2: One comment was received which opposed the rule that would allow Board staff to withhold \$100 of the commitment fee on rejected residential loan requests.

RESPONSE: The Board took this comment into consideration and voted to adopt the rules as presented as the purpose of this fee is to discourage submission of applications that are truly nonconforming under Freddie Mac guidelines. Sellers have the option of contacting staff before submitting any

application to discuss unusual or nonconforming features of an application.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

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

Certified to the Secretary of State, April 17, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of Accreditation) TO ARM 10.55.604 ALTERNATIVE
Standards; Procedure) STANDARD

To: All Interested Persons

1. On December 22, 1994, the Board of Public Education published notice of proposed amendments to 10.55.604 Alternative Standard on page 3154 of the 1994 Montana Administrative Register, Issue Number 24.

2. The board has amended the rule as proposed with the following changes:

10.55.604 ALTERNATIVE STANDARD (1) through (4) will remain the same as proposed.

(5) A school or school district may submit a plan to employ a performance-based accreditation ~~model~~ process to the Office of Public Instruction. The basic performance-based process available for school implementation shall incorporate five steps or their equivalent:

(a) The development of a student/community profile.

(b) The development of a school mission statement which reflects a locally derived philosophy of education.

(c) The identification of desired learner results (exit performance standards).

(d) The analysis of instructional and organizational effectiveness, and

(e) the development and implementation of a school improvement plan.

A school or school district granted approval for a ~~results oriented performance-based accreditation model~~ process shall be subject to an on-site accreditation review at the end of an initial three-year period by a team of individuals selected by the Office of Public Instruction. After a successful initial review, the school shall be subject to accreditation review by a visitation team at minimum five-year intervals. Schools are encouraged to coordinate on-site reviews with each self-evaluation phase of the process. Accredited schools electing this formative process may petition the Board of Public Education to waive existing school employing an approved performance based accreditation model may not be required to comply with other standards herein except those that are required by law.

AUTH: Sec. 20-4-114, MCA IMP: Sec. 20-2-121, MCA

3. At the public hearing five persons testified as proponents and three persons testified as opponents. One person had oral comment. There were no written comments received before the deadline of January 25, 1995.

4. The opponents were concerned that this measure would lead to outcome-based education being mandated in the accreditation standards. However the Board felt that the outcome-based education and performance-based accreditation standards were separate concepts and that this measure would not lead to outcome based education unless it were to be adopted by the local school board. It is currently not explicit in the rules that a school may apply for a performance-based system. This amendment will make it clear that school districts may apply for a performance-based accreditation process and waive the accreditation standards of the board except those required by statute.


WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 4/17/94.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of Accreditation) TO ARM 10.55.711 GENERAL:
) CLASS SIZE AND TEACHER
) LOAD, 10.55.712 CLASS SIZE:
) ELEMENTARY

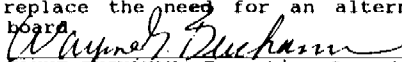
To: All Interested Persons

1. On December 22, 1994, the Board of Public Education published notice of proposed amendment to 10.55.711 General: Class size and Teacher Load and 10.55.712 Class size: elementary on page 3156 of the 1994 Montana Administrative Register, Issue Number 24.

2. The board has amended the rules as proposed.

3. At the public hearing which was held on January 26, 1995 three persons testified as proponents and no persons testified as opponents. One person had oral comment. There were no written comments received before the deadline of January 25, 1995.

4. The board amended the rules in order to provide needed guidelines for the use of teacher aides in the overloaded classrooms which would replace the need for an alternative standard approval by the board.


WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 4/17/94.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
adoption of amendments) TO ARM 10.55.907
of Accreditation) DISTANCE LEARNING
Standards; Procedures)

TO: All Interested Persons

1. On December 22, 1994 the Board of Public Education published notice of the proposed rule amendments to ARM 10.55.907 Distance Learning on page 3152 of the Montana Administrative Register, issue #24.

2. The board has amended the rule as proposed with the following changes:

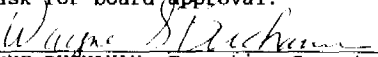
10.55.907 DISTANCE LEARNING (1) through (2)(d) will remain the same as proposed.

(e) schools evaluate the course(s), teacher(s) and facilitator(s) according to local school district policy and/or locally negotiated agreements as may be applicable.

AUTH: Sec. 20-2-114 MCA; IMP: Sec. 20-2-121

3. At the public hearing three persons testified as proponents and no persons testified as opponents. One person had oral comment. There were no written comments received before the deadline of January 25, 1995.

4. The board amended this rule to allow local school districts to approve and evaluate there own distance learning programs without having to ask for board approval.


WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 4/17/94.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of Assessment) TO ARM 10.56.101 STUDENT
) ASSESSMENT

To: All Interested Persons

1. On December 22, 1994, the Board of Public Education published notice of proposed amendment to 10.56.101 Student Assessment on page 3151 of the 1994 Montana Administrative Register, Issue Number 24.

2. The board has amended the rule as proposed with the following changes:

10.56.101 STUDENT ASSESSMENT (1) through (4) will remain the same as proposed.


(5) The superintendent of public instruction is authorized to make available the reported student assessment data in compliance with confidentiality requirements of will release school testing data to individuals or agencies who request such information except data that is prohibited for release by state or federal and state law.

(6) through (7) will remain the same as proposed.

AUTH: Sec. 20-2-121 IMP: Sec. 20-2-121

3. At the public hearing which was held on January 26, 1995 one person testified as proponent and no persons testified as opponents. There were no written comments received before the deadline of January 25, 1995.

4. The board proposed this amendment to the rule in order to clarify the conditions under which individuals and agencies may obtain test assessment information


WAYNE BOCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 4/17/95.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT, REPEAL
amendment and repeal of) AND ADOPTION
rules pertaining to)
teacher certification)

To: All Interested Persons

1. On December 22, 1994, the Board of Public Education published notice of the proposed amendment of ARM 10.57.101 Review of Policy, 10.57.102 Definitions, 10.57.103 Grades, 10.57.107 Emergency Authorization of Employment, 10.57.202 Approved Programs, 10.57.204 Experience Verification, 10.57.211 Test for Certification, 10.57.212 Minimum Scores on the National Teacher Examination Core Battery, 10.57.215 Renewal Requirements, 10.57.216 Renewal Activity Approval, 10.57.217 Appeal Process for Denial of Renewal Activity, 10.57.220 Recency of Credit, 10.57.301 Endorsement Information, 10.57.401 Class 1 Professional Teaching Certificate, 10.57.402 Class 2 Standard Teaching Certificate, 10.57.403 Class 3 Administrative Certificate, 10.57.404 Class 4 Vocational Certificate, 10.57.405 Class 5 Provisional Certificate, 10.57.501 Social Workers, Nurses and Speech and Hearing Therapists, 10.57.601 Request to Suspend or Revoke Teacher or Specialist Certificate: Preliminary Action, 10.57.602 Notice and Opportunity for Hearing Upon Determination that Substantial Reason Exists to Hold a Hearing to Suspend or Revoke Teacher or Specialist Certificate, 10.57.603 Hearing in Contested Cases, 10.57.604 After Hearing by Member of Board/Hearing Examiner/Board of Public Education, 10.57.701 Appeal from Denial of a Teacher or Specialist Certificate, 10.57.702 Considerations Governing Acceptance of Appeal in Cases Arising Under 20-4-104(1)(c), MCA, 10.57.703 Hearing on Appeal and the repeal of 10.57.205, Conversion Program Secondary to Elementary, 10.57.209 Extension of Certificates for Military Service, and adoption of New Rule I-- 10.57.406 Class 6 Specialist Certificate on page 3125 of the 1994 Montana Administrative Register, Issue Number 24.

2. The board has repealed, amended and adopted the rules as proposed with the following changes:

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

(12) "Renewal unit" means a quantitative recognition of a certificate holder's participation in activities designed to supplement, enhance, and/or upgrade their professional skills or knowledge base (see ARM 10.57.215). The activity must be:

- (a) a planned and structured experience,
- (b) of benefit to the certificate holder's professional relationships development, and
- (c) an exposure to a new idea or skill or an extension of an existing idea or skill.

~~(13) "Mentorship supervision" means a program of support and assistance approved by the superintendent of public instruction provided by the mentor to an intern/beginning teacher for one full school year.~~

~~(14) "Organized curriculum development" means activities sanctioned by a school district for the purpose of planning and assessing curriculum.~~

~~(15) "Self-directed study" means individually generated activities designed to meet the definition of a renewal unit.~~

(16) through (25) will remain the same but be renumbered (13) through (22).

AUTH: Sec. 20-4-102 MCA; IMP, Sec. 20-4-106 MCA

10.57.215 RENEWAL REQUIREMENTS (1) through 2(a) will remain the same as proposed.

(b) of benefit to the certificate holder's professional relationships development, and

(c) will remain the same as proposed.

(d) the instruction of relevant higher education courses(s), based upon academic credit of course(s), by a Montana certificate holder who has achieved the terminal a graduate degree in an endorsed field of specialization.

(3) Unless limited by restrictions in (4), participation in renewal activities are equivalent to the following renewal units:

(a) 1 renewal unit

= hour of attendance at a workshop

~~= 2 hours of self-directed study~~

~~= 2 hours or organized curriculum development~~

~~(b) 2 renewal units~~

~~= 1 hour of presentation at a workshop~~

~~(c) (b) 10 renewal units~~

= 1 quarter college credit

~~= 1 full school year of intern/beginning teacher~~

supervision

~~(d) (c) 15 renewal units~~

= 1 semester college credit

(4) The following restrictions and conditions on renewal unit activities apply:

(a) will remain the same as proposed.

~~(b) Renewal units may only be given once per subject/topic for presentation at workshops~~

The certificate holder will be solely responsible for retaining the renewal unit verification to be used in the application for certificate renewal.

~~(c) Only 5 renewal units per year may be given for organized curriculum development.~~

~~(d) Only 15 renewal units may be given per topic for self-directed study.~~

~~(e) Mentorship supervision experiences of less than one (1) full school year will not be granted.~~

AUTH: Sec. 20-4-102 MCA; IMP, Sec. 20-4-108 MCA

10.57.216 RENEWAL ACTIVITY APPROVAL APPROVED RENEWAL ACTIVITY (1) ~~To receive approval for a renewal activity, a request from an educational organization or agency, or from an individual applying for self-directed study, must be submitted to the office of public instruction at least 30 days prior to the start of the activity. Except that the director of certification may accept notification of the intent to apply, or applications, until at least 20 days prior to the start of the activity from March 1992 through March 1993. Courses from accredited college programs do not require approval as a renewal activity. Providers of professional development activities which verify acceptable renewal unit activities for certificate renewal are:~~

(a) accredited college and university academic credit programs, for which no application or prior approval is required, and

(b) the following entities:

(i) state accredited school systems, upon submission and approval of an application for status as a provider of professional development renewal unit credit,

(ii) professional education organizations, to include the Montana School Boards Association, upon submission and approval of an application for status as a provider of professional development renewal unit credit, and

(iii) government agencies (federal, state, tribal, county, city), upon submission of an application for status as a provider of professional development renewal unit credit,

(c) an individual certificate holder not currently under contract in Montana may request participation with an approved provider, or apply directly to the certification division, office of public instruction, in advance of the beginning of a program.

~~(2) All self-directed study requests must be accompanied by a statement that:~~

~~(a) describes how verification will be made,~~

~~(b) identifies the school official who will verify the completion of the activity and assures that the three objectives required for a renewal unit will be met, and~~

~~(c) includes the signature of the above mentioned school official. Those school systems approved as providers of professional development may identify programs at locations other than their site of operation for renewal unit verification to be awarded by them. This may include out-of-state programs and conferences which are appropriate for a client's professional development.~~

~~(3)(a) If a curriculum organization has a review process established, requests for curriculum renewal activity approval in that curriculum area will be sent to that state organization for review. A recommendation for approval or denial should be returned to the certification division of the office of public instruction within 10 days of the receipt of the request. All requests not returned within that time frame will be assigned to appropriate office of public instruction staff members for approval.~~

~~(b) All other requests will be assigned to appropriate curriculum specialists at the office of public instruction. A recommendation for approval or denial must be returned to the certification division of the office of public instruction within 10 days of the receipt of the request. Those entities approved by the office of public instruction as providers of professional development programs are those applicants who agree to maintain a process in compliance with the definition of renewal unit activities found in ARM 10.57.102(12) and further clarified in ARM 10.57.215 and 10.57.216.~~

~~(a) Approved providers must agree to report the activities undertaken as professional development for renewal unit awards annually to the office of public instruction.~~

~~(b) Approved providers must agree to submit to an audit of records to verify compliance with the terms of the provider agreement. This audit, conducted by the office of public instruction, may be the result of a routine random review or in response to an inquiry. The results of all audits will be reported to the board of public education by the office of public instruction at least on an annual basis. Records which must be maintained by the provider include:~~

- ~~(i) the activity title and brief description,~~
- ~~(ii) date(s) and location of program,~~
- ~~(iii) program schedule and number of participants.~~

~~(c) For all programs designated as professional development for the purpose of issuing renewal units to certificate holders, the provider will prepare and issue completed renewal unit registration forms to eligible participants. This form will be provided by the office of public instruction and this form, or an approved facsimile, must be utilized for all renewal unit awards.~~

~~(4) All requests for non-curriculum renewal activities will be assigned to office of public instruction staff for review. A recommendation must be returned to the certification division of the office of public instruction within 10 days of the receipt of the request. Upon the receipt of a complete and accurate annual report of professional development activities for issuing of renewal units, on or before the deadline for submission, the provider status will be continued on a listing of providers.~~

~~(a) This listing will be duplicated for distribution to the board of public education annually and will be available for public distribution.~~

~~(b) Providers will be responsible for maintenance of records of all professional development activities for which renewal unit awards are made for one year following the date of completion of the annual reporting requirement.~~

~~(5) If a recommendation for denial is made, the recommending organization or staff member will provide the office of public instruction with a substantive explanation as to why the activity is denied approval. If, upon the reporting of the results of a program audit of any provider, the board of public education finds cause to remove an entity from the provider status, the designated official representing that~~

entity will be notified of a time and date for an open hearing to determine whether continued provider status should be maintained.

~~(6) A determination for approval or denial will rest with the director of certification or a designee.~~

~~(7) Upon request of the applicant, an appeals committee will review activities denied for renewal when such denial is based on the program content of the renewal activity.~~

10.57.217 APPEAL PROCESS FOR DENIAL OF RENEWAL ACTIVITY (1) Following a request for a review of the denial of a renewal activity, the chair of the certification standards and practices advisory council will appoint an appeals committee consisting of:

~~(a) two members of the certification standards and practices advisory council, and~~

~~(b) a specialist from an appropriate content area at the office of public instruction. Any appeal to the content of a renewal activity or to the process or practices used by a renewal unit provider may be submitted to the superintendent of public instruction for review and determination.~~

~~(2) The appeals committee will review the request and will recommend approval or denial. The committee may receive additional testimony on the merits of the activity. Decisions of the superintendent on matters of renewal unit activity may be appealed to the board of public education.~~

~~(3) Denial by the appeal committee may be appealed to the board of public education.~~

AUTH: Sec. 20-4-102 MCA; IMP, Sec. 20-4-108 MCA

10.57.220 REGENCY OF CREDIT (1) through (4) will remain the same as proposed.

(5) Applicants with terminal graduate degrees in an endorsable field of specialization may use experience instructing in relevant higher education courses for regency in applying for certification.

AUTH: Sec. 20-4-102, 20-4-103 MCA;

IMP: Sec. 20-4-102, 20-4-103, and 20-4-106 MCA

10.57.405 CLASS 5 PROVISIONAL CERTIFICATE (1) through (6) (b) will remain the same as proposed.

(i) at least 30 semester (45 quarter) credits} in one teaching-a broadfield area with and at least 10 semesters (15 quarter) credits in two another teaching areas within the field; and

(ii) through (10) will remain the same as proposed.

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-106, 20-4-108 MCA

10.57.406 CLASS 6 SPECIALIST CERTIFICATE

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

(4) Renewal; Verification of one year of successful

specialist experience or the equivalent, plus presentation of acceptable evidence of 4 additional graduate semester (6 graduate quarter) credits of academic or equivalent inservice course work.

(5) will remain the same as proposed.

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-106, 20-4-108 MCA

3. At the public hearing which was held on January 26, 1995 four persons testified as proponents and no persons testified as opponents. There were no written comments received before the deadline of January 25, 1995.

4. The board has adopted these amendments after considerable review which is required by ARM 10.57.101.


WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 4/17/95.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
rules 16.10.701-704, 706-707,	)	OF RULES AND ADOPTION
710-711, 714-715, & 717 and new	)	NEW RULES I-IV
rules I- III IV regulating trailer)	
courts and campgrounds.)	

(Campground Rules)

To: All Interested Persons

1. On September 22, 1994, the department published a notice of public hearing on the above-captioned amendments and new rules at page 2602 of the 1994 Montana Administrative Register, issue number 18. On November 10, 1994, the department published a supplemental notice at page 2892 of the 1994 Montana Administrative Register, issue number 21, extending the deadline for written comment to November 23, 1994.

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

16.10.701 DEFINITIONS ~~(1)~~ Terms defined in 50-52-101, MCA, supplement those defined herein. The following definitions apply when used in this subchapter unless the context clearly indicates otherwise:

(a) Same as proposed but is renumbered (1).

(2) "Alter" means to change the purpose or use of an existing trailer court or campground by the public.

(b)-(c) Same as proposed but renumbered (3) and (4).

(5) "Building authority" means the building codes bureau, department of commerce, or its local authorized agent.

(6) "Cabin" means a hard-sided structure occupying a campsite that is set on a permanent foundation and may have:

(a) plumbing, including running potable water or a toilet; and

(b) linens or daily housekeeping service.

(7) "Camping trailer" means a vehicular portable unit mounted on wheels and designed for travel, recreation, and vacation and constructed with collapsing partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

~~(d)~~ (8) "Campsite" means that part of a campground where a cabin is located or that is designated for the placement of a single tent space or trailer space.

(e) (9) "Contamination" means impairment or other alteration of the physical, chemical, or biological properties of water, including causing violation of the surface water quality standards contained in ARM Title 16, chapter 20, subchapter 6 or the maximum contaminant levels for public water supplies contained in ARM Title 16, chapter 20, subchapter 2 or other-

wise creating a hazard to human health.

(f)(10) "~~Trailer~~ recreational vehicle" means a trailer recreational vehicle that lacks one or more of the following: toilet, lavatory, or ~~bathing facilities~~ waste water tank.

(11) "Enlarge" means to add trailer spaces or campsites onto an existing trailer court or campground.

(12) "Fifth wheel trailer" means a vehicular unit that is:

(a) mounted on wheels;

(b) designed to provide temporary living quarters for recreational, camping, or travel use;

(c) of such size or weight that it does not require a special highway movement permit;

(d) of gross trailer area not to exceed 400 square feet (37.2 m²) in the set-up mode; and

(e) designed to be towed by a motorized vehicle that has a towing mechanism mounted above or forward of the tow vehicle's rear axle.

(g) Same as proposed but is renumbered (13).

(h)(14) "~~Trailer~~ recreational vehicle" means a ~~trailer~~ recreational vehicle that has a toilet, lavatory, and bathing facilities, ~~and waste holding tank~~. Omission of one or more of these facilities will classify the ~~trailer~~ recreational vehicle as a dependent ~~trailer~~ recreational vehicle.

(i)-(l) Same as proposed but are renumbered (15)-(18).

(m)(19) "Mobile Manufactured home" includes a mobile home as referred to in 50-52-101(7), MCA, and means a transportable structure that in one or more sections that:

(a) is 8 body feet or more in width or 40 body feet or more in length in the traveling mode;

(i)(b) exceeds when erected on site, is 320 or more square feet in size;

(i)(c) is built on a permanent chassis; and

(i)(d) is designed for use with or without a permanent foundation; and

(i)(e) is designed to be used as a dwelling for human occupancy or use upon connection to required utilities, including plumbing, heating, and electrical systems. "Mobile home" includes 1 or more components that can be retracted for towing and subsequently expanded for additional capacity, or 2 or more units separately designed for joining into 1 unit.

(20) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use that is built on or attached to a self-propelled motor vehicle chassis or to a chassis cab or van.

(21) "Park trailer" means a recreational vehicle that:

(a) is built on a single chassis mounted on wheels;

(b) has a gross trailer area that does not exceed 400 square feet in the set-up mode; and

(c) is certified by the manufacturer as complying with American National Standards Institute (ANSI) A119.5 standards.

(n)(22) "Plan submittal" means the information and fees

required under rule ARM 16.10.702.

(e)(23) "Potable water" means water that is safe for human consumption in terms of bacteriological and chemical quality, as determined by the department using public drinking water standards set forth in ARM Title 16, chapter 20, subchapter 2.

(p)(24) "Primitive campground" means a campground that is intended used for backcountry use camping and is not accessible by a motorized vehicle does not have any services.

(q)-(s) Same as proposed but are renumbered (25)-(27).

(28) "Recreational vehicle" or "RV" means a vehicular unit designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and that either has its own power or is mounted on, or towed by, another vehicle. The basic types of RVs are: camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper.

(t) Same as proposed but is renumbered (29).

(u)(30) "Service building" means a structure housing shower or bath, toilet, lavatory, and or other facilities required by this subchapter.

(v)-(z) Same as proposed but are renumbered (31)-(35).

(36) "Tent space" means that part of a campground designated for the placement of a single tent and the exclusive use of its occupants. A tent space does not include a pitched tent on a designated trailer space that is used for sleeping purposes by persons who have rented the trailer space.

(aa)(37) "Trailer" means a vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle trailer as referred to in 50-52-101(7), MCA. Trailers include, but are not limited to, camping trailers, fifth wheel trailers, park trailers, travel trailers, motor homes, and truck campers manufactured homes and recreational vehicles. A trailer is also known as a recreational vehicle and may be either dependent or independent, depending upon its features.

(ab) Same as proposed but is renumbered (38).

(39) "Travel trailer" means a vehicular unit, mounted on wheels, that:

(a) is designed to provide temporary living quarters for recreational, camping, or travel use;

(b) has a size and weight that does not require a special highway movement permit when towed by a motorized vehicle; and

(c) has a gross trailer area of less than 320 square feet (29.7 m²).

(40) "Truck camper" means a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, and designed to be loaded onto and unloaded from the bed of a pickup truck.

(ac)-(ae) Same as proposed but are renumbered (41)-(43).

(2) The department hereby adopts and incorporates by reference the provisions of ARM Title 16, chapter 20, subchapters 2 and 6, containing, respectively, public water supply

~~maximum contaminant levels and surface water quality standards, and ARM 16.10.702, setting requirements for layout plan review. Copies of ARM Title 16, chapter 20, subchapters 2 and 6, and ARM 16.10.702 may be obtained from the Food and Consumer Safety Bureau or the Water Quality Division, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.~~

RULE IV (16.10.701A) INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the department hereby adopts and incorporates by reference the provisions of ARM Title 16, chapter 20, subchapters 2 and 6, containing, respectively, public water supply maximum contaminant levels and surface water quality standards; and ARM 16.10.702, setting requirements for layout plan review. Copies of ARM Title 16, chapter 20, subchapters 2 and 6, and ARM 16.10.702 may be obtained from the Food and Consumer Safety Bureau or the Water Quality Division, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620.

AUTH: 50-52-102, MCA; IMP: 50-52-102, MCA

16.10.702 LAYOUT PLAN REVIEW (1)(a) Same as proposed.

~~(b) If layout plans submitted to the department include a combination of general services and limited services campgrounds, then each campground type and location must be clearly designated in the plans.~~

(b) Same as proposed but renumbered (c).

(2) ~~Detailed layout~~ Layout plans must be drawn in detail and to scale, and must show:

(a)-(k) Same as proposed.

(l) location and detail of each watering station;

(m) location and detail of each sanitary station;

(n)-(p) Same as proposed.

(q) evidence that the required license application fee assessed under ARM 16.10.703 has been paid. This fee is nonrefundable.

(3) The plans and specifications must also show+

~~(a) At least 20 feet of side-by-side separation distance between trailers or mobile~~ manufactured homes in trailer courts.

~~(b) That mobile homes will be placed on a concrete or 3-inch gravel pad.~~

(4)-(7) Same as proposed.

(8) Approval to construct is for a period not to exceed 2 years, after which, if construction has not begun, plans and specifications must again be submitted for re-evaluation under rules in effect at the time of resubmittal. Any period of non-licensure for 2 or more years ~~or any period during which construction has ceased for more than 2 years~~ also requires resubmittal of plans and specifications for review and approval by the department before the campground or trailer court is relicensed.

(9)-(11) Same as proposed.

RULE 1 (16.10.702A) LAYOUT PLAN--WATER SUPPLY REQUIREMENTS

(1)(a) Same as proposed.

(b) If an existing public water supply of satisfactory quantity and pressure is available, and the owner of the public water system agrees to provide service, connection must be made to the public water system and its supply used exclusively except for non-potable water uses approved by the department in writing. If a satisfactory existing public water supply is not available, a private or public water supply system for potable water uses must be developed and used as approved by the department.

(c) All general services and limited services campground spaces for tents or dependent trailers must either be directly served by a water supply, within 300 feet of a common water station, or otherwise have a water supply approved by the department under (2) of this rule. A water station consists of at least a water hydrant of the necessary appurtenances, and must be protected against backflow, back siphonage, and hose contamination. A water station must ~~also~~ be separately located from the sanitary station to ensure that the water station hose is not used for to flush sewage from the sewage holding tank flushing.

(d)(i) Same as proposed.

(ii) A water riser must extend at least 4 24 inches above ground elevation, and surface water must be directed away from the riser. The pipe size must be at least 3/4 of an inch.

(iii)-(iv) Same as proposed.

(v) A stop-and-waste valve and cock must be installed at the base of a water riser at least 6 feet below the ground surface unless otherwise approved by the department in writing.

(vi)-(vii) Same as proposed.

(e) A water service lateral must be constructed as follows:

(i) Pipe used for a water service lateral must be copper, 160 psi-rated plastic approved for potable water supply use under the "Uniform Building Code" (1991 edition) state plumbing requirements described in ARM 8.70.302(1), or an equivalent approved by the department.

(ii) Same as proposed.

(iii) A water service lateral must be laid at least 10 feet horizontally from any existing or proposed sewer line or in a manner allowed under the "Uniform Plumbing Code" (1991 edition) state plumbing requirements described in ARM 8.70.302(1).

(iv) A water service lateral crossing a sewer line must be laid to provide a minimum vertical distance of 12 18 inches between the bottom of the water service lateral and the top of the sewer line or in a manner allowed under the "Uniform Plumbing Code" (1991 edition) state plumbing requirements described in ARM 8.70.302(1).

(2) The department, upon consultation with the local health authority, may allow a deviation from a specific requirement of (1)(c)-(e) above for a general services campground and may allow a deviation from a specific requirement of

(1)(b)-(e) above for a limited services campground, including the requirement that a limited services campground must have a potable water supply, upon demonstration by the applicant to the department that the deviation does not have the potential to cause adverse public health effects. To be eligible for a deviation from the requirement that a limited services campground have a potable water supply, the applicant must submit to the department a plan that describes measures which will ensure that:

(a) the public is informed of the absence of a potable water supply at the campground; and

(b) the public is warned that existing water in the area of the campground is not suitable for drinking or other uses that may adversely affect public health.

(3)-(5) Same as proposed.

(6) The department hereby adopts and incorporates by reference the provisions of ARM 16.16.301 through 16.16.305, which describe subdivision review requirements for water systems; ARM 16.20.401 through 16.20.405, stating requirements for public water and sewer plans, cross connections, and drilling of water wells; the ~~Uniform Plumbing Code (1991 edition) state plumbing requirements described in ARM 8.70.302(1),~~ which describes comprehensive requirements for the laying of pipes; ~~Uniform Building Code (1991 edition), which contains and standards for pipe used to supply potable water; and American Water Works Association American National Standard C600-87 (June 14, 1987 Approval), which describes requirements for installation of water mains. Copies of ARM 16.16.301 through 16.16.305, 16.20.401 through 16.20.405, the Uniform Plumbing Code ARM 8.70.302(1), and American Water Works Association National Standard C600-87 may be obtained from the Food and Consumer Safety Bureau or Water Quality Division, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620.~~

RULE 11 (16.10.702B) LAYOUT PLAN--SEWAGE SYSTEM REQUIREMENTS (1)(a)-(c) Same as proposed.

(d) A sanitary station is required in each general services campground that provides trailer space for independent trailers recreational vehicles, unless the following circumstances exist:

(i)-(ii) Same as proposed.

(iii) the department determines that installation of a sanitary station is not feasible because of lack of electricity, water under pressure, or other sanitary reasons, and the campground is designed for use only by tent campers or by independent recreational vehicles.

(e)-(g) Same as proposed.

(h) A sewer service lateral must be constructed as follows:

(i) Same as proposed.

(ii) The lateral must be constructed of schedule 40 PVC, schedule 40 ABS, or other pipe approved under the "Uniform Plumbing Code" (1991 edition) state plumbing requirements de-

scribed in ARM 8.70.302(1) as a drain, waste, or vent pipe.

(iii) Same as proposed.

(iv) The lateral must be sloped to maintain a 2 foot/second flow velocity (~~1-2~~ 1/8-inch per foot for 4-inch line).

(i) Same as proposed.

(j) All materials used for sewer connections must meet "Uniform Plumbing Code" (1991 edition) the state plumbing requirements as described in ARM 8.70.302(1). An exception to this requirement is that "flex hose" may be used for making the sewer connection only in a campground and only when the connection will be made for ~~14~~ 30 days or less when restricted to RVs that are located on designated trailer spaces and are not skirted.

(2)-(3) Same as proposed.

(4) Upon installation of a sewage disposal system, the system must be tested by filling with water or other equivalent means approved by the department. For a system lateral constructed of schedule 40 PVC or standard weight cast iron pipe, the applicable test, unless approved otherwise by the department, is exposure to a pressure of at least a 10-foot head of water for a minimum of 15 minutes. If the sewage disposal system leaks during the test, the system may not be put into service until the leak is repaired.

(5) Same as proposed.

(6) The department hereby adopts and incorporates by reference the provisions of ARM 16.16.302 through 16.16.305, setting standards for sewage treatment and disposal systems; ARM 16.20.401 and 16.20.402, setting requirements for public water and sewer plans and cross connections; and ~~the Uniform Plumbing Code (1991 edition)~~ ARM 8.70.302(1), which describes state plumbing requirements for sewage systems. Copies of ARM 16.16.302 through 16.16.305, 16.20.401, 16.20.402 and ~~the Uniform Plumbing Code~~ ARM 8.70.302(1) may be obtained from the Food and Consumer Safety Bureau or the Water Quality Division, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620.

16.10.703 LICENSURE (1)-(3) Same as proposed.

(4) A licensee shall give notice in writing to the department ~~within 7~~ at least 30 days after prior to selling, transferring, giving away, or otherwise disposing of interest in or control of any campground or trailer court. The notice must include the name and address of the person succeeding to the ownership or control of the campground or trailer court.

(5)-(6) Same as proposed.

(7)(a) Except as provided in (b), the licensee or manager of a trailer court or campground may not accept camping units that would exceed the number and types of sites approved under the license for the campground.

(b) A campground may accommodate an overflow of camping units for a period that may not exceed 14 days in a calendar year if the local health authority issues written approval for the overflow prior to its occurrence and the campground

licensee or manager has ensured that adequate public health measures, including provision of sewage and solid waste disposal and potable water, are provided for the overflow.

16.10.704 INSPECTIONS AND COMPLIANCE REQUIREMENTS Same as proposed.

16.10.706 WATER SUPPLY--ONGOING REQUIREMENTS (1)(a) An adequate and potable supply of water must be provided in:

(i) any new or enlarged limited services campground approved by the department on or after March 31, 1995, unless the department grants a deviation for the campground under [Rule 1(2)1]; and in

(ii) each trailer court; and

(iii) any general services campground.

(b)-(d) Same as proposed.

(2)-(5) Same as proposed.

16.10.707 SEWAGE SYSTEM Same as proposed.

16.10.710 SOLID WASTE--STORAGE AND DISPOSAL (1) The operator or licensee or manager of a campground or trailer court must ensure that the storage, collection and disposal of solid waste does not cause health hazards, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution.

(2) The operator or licensee or manager of any campground or trailer court must take immediate measures to alleviate public health or sanitation hazards presented by the presence of solid waste at the campground or trailer court, and. The licensee or manager must also comply with the following, unless the campground is a primitive campground or a limited services campground whose operator or licensee that does not provide solid waste storage, collection, or disposal services and meets the requirements of (1):

(a)-(c) Same as proposed.

16.10.711 NOXIOUS PLANT, ANIMAL, DUST AND OTHER PUBLIC HEALTH CONTROLS (1) The operator licensee or manager of any campground or trailer court must take immediate measures to alleviate public health or sanitation hazards presented by the presence of solid waste at the campground or trailer court.

(2) Same as proposed.

(3)(a)-(c) Same as proposed.

(d) The growth of brush, weeds and grass must be controlled to prevent harborage of noxious insects and other vermin. Vegetation and waste materials creating Rodent harborage is are not allowed within 100 feet of established structures.

(e)-(g) Same as proposed.

(4) The operator--and licensee and manager of the campground or trailer court are responsible for ensuring that the requirements of this rule are met.

16.10.714 OPERATOR MISCELLANEOUS LICENSEE REQUIREMENTS (1) Same as proposed.

(2) The licensee of a trailer court shall have a manager on duty ~~on the premises~~ to maintain the trailer court and its facilities in accordance with this subchapter and the act. The manager shall have authority to take immediate actions, including actions requiring expenditure of funds, to correct public health problems as they occur. The licensee shall ensure that all trailer court occupants are given an address and telephone number where the manager can be reached at all times.

(3) Signs must be placed in conspicuous places indicating restrictions placed on the types of ~~travel~~ trailers permitted in a general services or limited services campground, based on the type and amount of facilities provided.

(4) Each campsite and trailer space in a general services or limited services campground must be clearly marked with an identification number or other symbol.

(5) Same as proposed.

(6) Every ~~owner, operator, attendant or other person licensee or manager~~ operating a campground shall notify the department or local health authority immediately of any suspected communicable or contagious disease within the campground.

16.10.715 GUEST REGISTRATION (1) The licensee of a campground, except for a primitive campground or a limited services campground that is not on the same premises as a general service campground, shall maintain a register that must be preserved for at least 6 months, that is available to the department and local health authority, and that records:

(a)-(c) Same as proposed.

16.10.717 SERVICE BUILDINGS AND OTHER SERVICE FACILITIES FOR GENERAL SERVICES CAMPGROUNDS (1) A central service building ~~containing~~ must be provided for each general services campground that has spaces designated for use by trailers or tents. The central service building must be approved by the building authority and must contain toilets and other plumbing fixtures must be provided in each general services campground that has spaces designated for use by independent trailers or tents, as follows:

(a) Same as proposed.

(b) The service building must be of permanent construction and equipped with lighting, ~~heating,~~ lavatories, ~~toilets,~~ and a janitorial sink. Interior service building surfaces in plumbed areas must be smooth, nonabsorbent, and easily cleanable. Showers, if provided, must have non-slip surfaces and ventilation. All window, doors, and other openings must be screened or closed.

(c) Same as proposed.

(d) Same as proposed except Table I is placed at the end of this subsection.

(e) The service building, and all equipment in the service building, must be kept clean and in good repair. All

showers, toilets, and lavatories must be cleaned with disinfectant products.

(f) Same as proposed except Table I is moved in its entirety to (d).

(2) Same as proposed.

RULE III (16.10.718) PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES Same as proposed.

3. The department received several written and oral comments on the proposed rules. The comments are summarized and responded to below.

GENERAL COMMENTS

Comment No. 1: One commentor requested that the department clarify its statement of reasonable necessity to update the rules.

Response: Paragraph 4 of this Notice of Adoption elaborates on the reasonable necessity for these rules.

Commentor No. 2: One commentor was concerned about whether the rules went beyond protection of public health and sanitation, and whether the guidance provided by statute is adequate.

Response: The department has very carefully assessed the subject areas that fall within protection of public health and sanitation and has limited its rules accordingly. Within a particular subject area, such as provision of potable water, the rules are tailored to only achieve protection of public health and sanitation. The provisions, for example, enable the department to waive the potable water requirement if the applicant demonstrates that public health will nevertheless be protected. The result of these rules is a focused and more definitive set of requirements for campgrounds and trailer courts that are specifically tailored to address public health and sanitation requirements. As such, the department feels the rules are well within the scope of rulemaking directed under 50-52-103, MCA. As to the rulemaking statute itself, the directives are general. However, protection of public health and sanitation are very clear mandates.

Comment No. 3: Several commentors requested that terms regarding types of trailers be redefined to reflect current federal regulatory standards and industry terminology. Some commentors also requested use of updated terminology in the text of the rules to clarify requirements, particularly layout plan review, for designated trailer court and campground spaces.

Response: The definitions in ARM 16.20.701 are amended accordingly. Clarifying amendments are made to the proposed definitions of "trailer" and "motor home". Also, the terms "camping trailer", "recreational vehicle", "fifth wheel trailer", "manu-

factured home", "park trailer", travel trailer", and "truck camper" are added to these rules and integrated with the terms "trailer" and "mobile home", which are used in Title 50, chapter 52, MCA. The definitions are taken directly from definitions promulgated by the Department of Housing and Urban Development (HUD) or the American National Standards Institute (ANSI). The HUD definition for "recreational vehicle" includes a number of various recreational vehicle types, which have been defined in these rules to clarify the different types of recreational vehicles. Some definition and text usages of the term "trailer" now read "recreational vehicle" or "RV".

Comment No. 4: There were multiple comments regarding the definitions of "limited services campground" and "primitive campground," the requirements associated with these campgrounds, and the need for exemptions or variances from these requirements. Commentors expressed concern about the definition of "limited services campground", which requires an adequate and potable water supply, adequate sewage disposal, and adequate solid waste disposal. They asked how this definition affected their existing campgrounds and any future campground development.

Commentors were also concerned that the proposed definition for "primitive campgrounds" excluded access by motorized vehicles, noting that some primitive campgrounds are accessible by snowmobiles, motorboats, or all-terrain vehicles. Finally, various commentors raised concerns about the designation of numerous state parks by the legislature as "primitive parks", which restricts campground development and improvements; the expense of public improvements, including costs of providing potable water in campgrounds that are accessible by motorized vehicles; difficulties in locating all water supply systems within 300 feet of campsites; and the requirement of solid waste collection systems in remote areas, which may create a nuisance by attracting wildlife.

Response: The statutory definition for "campground" in 50-52-101(1), MCA, covers all types of campgrounds where persons can sleep overnight using tents, cabins, or park trailers. These rules address the wide variation in campgrounds by establishing three campground categories that are determined according to levels of services provided: the "general services campground", the "limited services campground", and the "primitive campground".

a. Limited services campgrounds: By definition there must be an adequate and potable water supply as required by Rule I, an adequate sewage disposal as required by Rule II, and adequate solid waste disposal as described in ARM 16.10.710. Significantly, Rule I and Rule II layout plan requirements only apply to a limited services campground if the campground is a new campground or if an owner or licensee is proposing to alter or enlarge an existing campground. Owners or licensees of existing limited services campgrounds are not required to upgrade services to include a potable water supply or a sewage

disposal system until these campgrounds are altered or enlarged.

Further, the rules are amended to enable a campground owner, licensee or manager of a new, altered or enlarged limited services campground to apply for a deviation from the requirement of a potable water supply system. Specifically, Rule I(2), as amended, allows the department to grant a deviation from the potable water supply requirement if certain public health requirements are met. The deviation process will enable the department to address a broad array of specific concerns, including the potable water supply requirement itself and more specific requirements such as distance to a potable water source.

For sewage disposal, the requirement for a sealed pit privy continues in effect because of the public health and sanitation concerns associated with adequate and appropriate sewage disposal.

As to solid waste disposal, ARM 16.10.710 is amended to allow limited services campgrounds to use a "pack-it-in and pack-it-out" system rather than a solid waste collection system, unless adverse public health conditions result (see ARM 16.10.710(1)). This approach will also address concerns about garbage cans and their attraction to wildlife.

b. Primitive campgrounds: The amended definition for designated primitive campgrounds (see ARM 16.10.701(24)) states that primitive campgrounds are located in backcountry areas, used for camping purposes, and have no services. Under this amendment, some backcountry campgrounds that are accessible by motorized vehicles may be classified as primitive campgrounds. Layout plans are not required for new, enlarged or altered primitive campgrounds. However, ARM 16.10.710 continues to require the licensee or manager of a primitive campground to alleviate any solid waste disposal problems, if they occur.

c. General campgrounds: Commentors did not express concerns regarding the minimum public health requirements or services required for general services campgrounds.

Comment No. 5: Federal agencies requested an exemption from meeting state licensure and layout plan review reviews. One federal agency commented that federal agencies are not required to meet state campground requirements because of the "Supremacy Clause" of the U.S. Constitution. However, the federal agencies commented that they are required to meet federal drinking water and sanitary sewage disposal requirements under the Safe Drinking Water and Clean Water Acts, and suggested a memorandum of understanding with the department consistent with these requirements.

The federal agencies also commented that submittal of layout plans for general services or limited services campgrounds would be a duplication of effort and a waste of taxpayer monies. One agency requested clarification of the department's requirement for layout plan review of non-public systems. The agency also requested clarification whether the department's requirements applied to all facilities or only to

new or facilities undergoing change.

Response: The department recognizes that the federal agencies may assert that federal law preempts application of certain requirements of Title 50, chapter 52, MCA. However, Title 50, chapter 52, MCA, does not provide an exemption for the federal agencies. Section 50-52-103, MCA, identifies the only exemption, which is for licensure and is available only to the state and its political subdivisions. Thus, on its face Title 50, chapter 52, and the rules promulgated under this chapter apply to federal facilities. These requirements include licensing, payment of licensure fees, compliance with certain ongoing health and sanitation requirements, and, if the campground is new or an enlargement or alteration of an existing campground, submittal of layout plans for review and approval of both public and non-public drinking water supply and sewage disposal systems.

The department is concerned about duplication of effort and expenditures, and it will meet with the federal agencies to explore a memorandum of understanding concerning these rules and parallel requirements associated with implementation of state laws addressing Clean Water Act and Safe Drinking Water Act responsibilities.

Regarding layout plans, Rule I requires department review and approval of layout plans for both public and non-public water supply and sewage systems. Public water supply and sewage systems are also reviewed under both the Public Water Supply Act (Title 75, chapter 6, MCA) and, if the campground involves a subdivision, the Sanitation in Subdivisions Act (Title 76, chapter 4, MCA).

Comment No. 6: Two commentors asked if the rules applied to all publicly owned campgrounds, including state and federal campgrounds in addition to all privately owned campgrounds.

Response: The rules apply to all privately and publicly owned campgrounds. Campgrounds owned by political subdivisions as defined in 50-52-103(1), MCA, are exempted from licensure requirements but must comply with all other trailer court and campground rules.

Comment No. 7: One commentor was concerned about the statement in the adoption-by-reference sections that the rules may be obtained from either the Food and Consumer Safety Bureau or the Water Quality Division, and questioned the authority of both entities to enforce the rules.

Response: The Department of Health and Environmental Sciences is the regulatory agency. Copies of the rules are available from either of the sub-entities referred to by the commentor.

Comment No. 8: One commentor expressed difficulty in knowing what the abbreviations T1A, T1B, or T2 on issued licenses means.

Response: The department agrees that the abbreviations on issued licenses should be expanded. Currently, the mainframe programming system limits the amount of information that can be printed on the license. Changes from the current format are planned and should be implemented for licenses issued during the next calendar year.

Comment No. 9: Two commentors requested opportunity to comment on the revised administrative rules after the close of the comment period.

Response: All comments received in the formal rule adoption process have been duly considered in preparation of this notice of adoption and the amendments contained herein. The commentors' request cannot be accommodated without issuing a notice of proposed rulemaking, which the department feels is unnecessary given the opportunity for comment that has already been provided to the public.

ARM 16.10.701 DEFINITIONS (See also, Responses to Comments No. 3 and 4).

Comment No. 10: One commentor suggested substituting "mobile home parks" for "trailer courts".

Response: The term "trailer court" is defined in 50-52-101(7), MCA, and must therefore continue to be utilized. Further, the term "trailer" includes both manufactured homes (which includes mobile homes) and "recreational vehicles". Therefore, mobile home parks are contained within the definition of trailer courts. The response to comment No. 3 also discusses definitions that are relevant to this comment.

Comment No. 11: One commentor requested a definition of the term "alter" to explain further what might trigger the need for submittal of a layout plan to the department.

Response: A definition of the term "alter" was added to ARM 16.10.701.

Comment No. 12: One commentor requested that the definition of "building code authority" be restored to reflect the current regulatory authority and to reference plumbing code methods and materials and building requirements.

Response: A definition of the term "building authority" was added to ARM 16.10.701.

Comment No. 13: Two commentors suggested a new definition of the term "cabin". One commentor suggested that "cabin" be defined to mean a hard-sided structure occupying a campsite and not equipped with plumbing. The commentor also suggested a new definition for "cottage" to mean a hard sided structure occupying a campsite that contains plumbing which is subject to local

building codes. Also, the commentor suggested that the term "cabin" be changed to "camping cabin".

Response: The term "cabin" is defined at ARM 16.10.701(6). "Cottage" is not defined because it is a type of cabin that is regulated by the building authority. The term "cabin" is not changed to "camping cabin" because the term "cabin" is referred to in the statutes (see 50-52-101(1), MCA).

There may be confusion concerning when overnight sleeping in a cabin is licensed under Title 50, chapter 52, or under Title 50, chapter 51, MCA (public accommodations). If a cabin is licensed as a public accommodation, under Title 50, chapter 51, MCA, it must have potable running water with a sewage disposal system, including a toilet, lavatory, bathing facilities, linens and daily housekeeping service. If a cabin is licensed as a campsite under Title 50, chapter 52, MCA, it may or may not have potable running water with a sewage disposal system or any combination of toilet, lavatory, or bathing facilities. Further, the provision of mattresses, bedding, or linens is optional, and regular housekeeping services to keep the cabin clean are necessary, but not on a daily basis. If a cabin in a campground is eligible for licensure under both chapters 51 and 52 of Title 50, the licensure application will be reviewed cooperatively by the department with the license applicant and the local health authority to determine which license or licenses are appropriate.

Comment No. 14: One commentor suggested amending the definition of "dependent trailer" to omit bathing facilities because the proposed rules do not require bathing facilities in campgrounds that provide services to dependent trailers. Another commentor suggested eliminating the definition.

Response: The term "dependent trailer", at ARM 16.10.701(10), is amended to delete bathing facilities and add "waste water tank" to accurately reflect the facilities found in trailers. The term itself is changed to "dependent recreational vehicle." Also, please see the response to comment No. 2 for a discussion of other relevant definitional changes.

Comment No. 15: One commentor requested a new definition for "enlarge" to explain what constitutes an expansion to require layout plan review submittal for existing general services or limited services campgrounds.

Response: A definition of the term "enlarge" has been added to ARM 16.10.701.

Comment No. 16: One commentor stated that a "general services campground" should describe a campground that provides services to a variety of camping units including tents, dependent and independent RV's, or camping cabins, and that a campground which provides laundry, grocery or other services is irrelevant to the definition.

Response: Campgrounds are classified according to the level of services that are available to the public. The commentor's recommendation is inconsistent with this approach; therefore, "general services campground" is not amended.

Comment No. 17: One commentor suggested substituting "mobile home park" for "trailer court".

Response: The term "trailer" as defined, includes both "manufactured homes (which includes mobile homes)" or "recreational vehicles". Thus, "trailer court" is a more inclusive term that includes a mobile home park.

Comment No. 18: One commentor stated that a limited services campground should be redefined as a campground that serves independent recreational vehicles only. Three commentors recommended that "limited services campgrounds" should only include sites where fees are charged. One commentor suggested revising the numbering of subsections within the definition of "limited service campground".

Response: The definition of "limited services campground", at ARM 16.10.701(17), is retained. A "limited services campground" is determined according to the level of service, not by the types of camping allowed (see also response to comment No. 15). The department regulates services based on public health issues; therefore, fees are not an appropriate criterion. Numbering changes have been made to the definition section. For general discussion of campground definitions, see response to comment No. 4.

Comment No. 19: One commentor suggested revising the numbering of subsections within the "mobile home" definition. Another commentor questioned the definition of "mobile home", stating it was confusing given the definition of "park trailer" by the National Association of RV Parks and Campgrounds. Another commentor suggested the definition for "mobile home" needed clarification to distinguish it from the definition of a "factory built building" as defined in Section 50-60-101(6), MCA.

Response: Numbering changes have been made to the definitions section (ARM 16.10.701). Specifically, the definitions are given numerical citations for ease of reference. To accommodate this change, the incorporation by reference language [paragraph (2) of ARM 16.10.701] was deleted from ARM 16.10.701 and adopted as a separate new Rule IV.

To clarify and eliminate definition conflicts between "mobile home", "park trailer" and "factory built building", the amended definition of "manufactured home" (which includes mobile home) relies directly on language from HUD. Also, please see responses to comments No. 3 and 80.

Comment No. 20: One commentor suggested adding new definitions of "mobile home park", to mean a facility used to park mobile

homes, and "mobile home space", to mean a unit used to park a single mobile home. Another commentor requested clarification of the differences between a mobile home park space and an RV park space.

Response: "Mobile home space" and "mobile home park" are not defined because the terms are not used elsewhere in the rules. The difference between a mobile home park space and an RV space relates to the statutory terminology in 50-52-101(7), MCA, which states that both mobile homes and trailers may use a trailer court. ARM 16.10.701(37) defines a trailer to include both a mobile home (redefined in ARM 16.10.701(19) as a manufactured home) and a recreational vehicle as defined in ARM 16.10.701(28). The manufactured home definition requires access to all utilities, including water, sewage disposal, and electricity. An RV park space, which would fall within a trailer space (see ARM 16.10.701(38)), may or may not have water, sewage disposal, or electricity. In situations where both RVs and mobile homes are served, the licensee must determine which spaces are designed to serve each type of trailer.

Comment No. 21: Two commentors requested a new definition for "occupancy" to clarify what it means and when it is used in the definition of "mobile home" (now "manufactured home").

Response: The definition for "manufactured home", at ARM 16.10.701(19) is based on the construction of the unit and not where it is parked or for how long it is parked. The new definition tracks federal regulations and does not rely upon occupancy as a criterion.

Comment No. 22: Two commentors requested deletion of the phrase "is not accessible by a motorized vehicle" from the "primitive campground" definition. The commentors stated that remote campgrounds often can be accessed by specialized motorized vehicles, including all-terrain vehicles, 4-wheel drive vehicles, snowmobiles, or motorized boats.

Response: The definition of "primitive campground", at ARM 16.10.701(24), is modified to address this concern. Please see response to comment No. 4.

Comment No. 23: One commentor stated that the definition of "service building" implies that all facilities listed are required.

Response: The term "or", which replaces "and", is inserted in ARM 16.20.701(30) to allow different combinations of services.

Comment No. 24: Two commentors stated that "sewer riser", as defined, references the portion of the sewer riser that extends "above" ground, rather than "to" the ground elevation. One commentor noted that the sewer riser extends from a point where the lateral is no longer horizontal and includes the vertical

pipe below and above the ground.

Response: The definition of "sewer riser", at ARM 16.10.701(32) is retained. The definition includes all of the pipe from the point in the ground where the lateral pipe is no longer horizontal, vertically through the ground and above the ground to the point where the "sewer riser" is connected to the trailer sewer connection, flex hose, or pipe.

Comment No. 25: Two commentors were concerned that tent space is not defined, that the rules do not establish a minimum size or set standards for use of a tent space, and that tent spaces are not distinguished from situations where tents are used for additional sleeping space by occupants of a trailer space.

Response: A new definition for "tent space" is added at ARM 16.10.701(36), and the definition of "campsite" in ARM 16.10.701 is amended to incorporate this term and the term "trailer space". While there are no minimum standards for a tent space, the licensee must declare the size and location of tent spaces when layout plans are submitted for campground review and licensing. If alteration or enlargement of an existing campground is planned, the layout plans must also denote tent space changes. Use of a tent by trailer occupants for additional sleeping on a trailer space does not reclassify the trailer space as a tent space.

Comment No. 26: Two commentors requested that the department define "use" to clarify what it means in the definition of "mobile home", and asked if there are time limits for "use".

Response: The term "use" does not require definition, given the new definition of mobile home, now "manufactured home", at ARM 16.10.701(19).

Comment No. 27: One commentor suggested substitution of "recreational vehicle" for "trailer", to conform with modern terms. One commentor suggested an inconsistency exists whenever "recreational vehicles" is used in place of the term "trailer".

Response: The term "trailer" is the statutory term relied upon in Title 50, chapter 52, MCA. "Trailer" includes both "manufactured homes" and "recreational vehicles".

16.10.702 LAYOUT PLAN REVIEW

Comment No. 28: One commentor suggested that ARM 16.10.702(1) be amended to simply state that "department approval of the plans and specifications must be obtained prior to construction, altering, or enlarging, a campground or mobile home court." Two commentors requested that licensed engineers certify layout plans rather than require plan review and approval by the department. Another commentor noted that the layout plan review process requires submittal of plans to both the

state and local health agencies, and that either the department or the local health agency may make the on-site inspection. The commentor stated that one authority should have sole approval and inspection responsibility.

Response: A detailed description of requirements for campgrounds is needed to address a variety of public health issues. Certification is inadequate assurance that public health and sanitation will be protected given the wide variability in campgrounds and trailer courts. Further, there is no check for consistency in engineering review using a certification process. ARM 16.10.702(1) and (9)(c) promote a cooperative working relationship between the state and local health authorities in regulation of trailer courts and campgrounds, particularly since both entities regulate public health and sanitation under a variety of authorities.

Comment No. 29: One commentor asked if installation of tent spaces onto an existing general services campground would require that full services be provided to the tent spaces.

Response: The department agrees that a campground may have both general services campground and limited services campground components, and has added a new section, ARM 16.10.702(1)(b), to the layout plan review rule to address this situation. The addition of tent spaces onto an existing general services campground may be designated in layout plans as limited services spaces.

Comment No. 30: One commentor pointed out that ARM 16.10.702(2) contains redundant references to "detail".

Response: The department agrees and has deleted one of the references.

Comment No. 31: One commentor noted that ARM 16.10.702(2)(l) and (m) should be amended to read "location and detail of each watering station and each sanitary station".

Response: The department agrees and has amended the subsections consistent with the commentor's recommendation.

Comment No. 32: One commentor requested clarification of ARM 16.10.702(2)(q) because it requires evidence that the required license fee has been paid. However, until a campground or mobile home court has gone through the approval process and has been constructed, it does not require a license.

Response: The department has amended ARM 16.10.702(2)(q) to address the commentor's concern. The amended language inserts "application" to clarify that the fee paid is the license application fee. While the license is not required until post-construction, the fee must be paid at the time of application.

Comment No. 33: One commentor was concerned that 20 feet spacing between trailers was not adequate (ARM 16.10.702(3)(a)), particularly where trailers have slide-outs. Another commentor suggested adding the words "side-by-side" to clarify spacing, stating it was needed as protection from fire spread between trailers.

Response: The rule is amended to require 20-feet of side-by-side separation distance between manufactured homes only. Trailers, a broader term, is deleted because of potential conflicts with some building code requirements concerning recreational vehicle space widths.

Comment No. 34: Several commentors felt it was unnecessary to require a concrete or 3" gravel pad for a mobile home, citing reasons that include prohibitive costs, difficulty in determining the pad size due to varying mobile homes sizes, difficulty in cleaning the gravel pad, an increase in fire danger due to debris collection, and safety hazards from loose gravel.

Response: This requirement is stricken. The requirement was intended to prevent rodent harborage near a mobile home. ARM 16.10.711(3)(a) requires measures to prevent rodent harborage.

Comment No. 35: One commentor suggested the adoption-by-reference sections which describe subdivision review requirements for water systems, sewer plan, water wells, etc., may conflict with the definition of trailer court.

Response: The statutory definition of trailer court and the requirements set forth for trailer courts are supplemental to and do not conflict with subdivision review requirements.

Comment No. 36: Two commentors were concerned that ARM 16.10.702(8) requires construction of a trailer court or campground to begin within 2 years from the time of plan approval, stating that financial difficulties often delay the beginning of construction. One commentor thought there should be no time limit for commencement of construction. A commentor also questioned if this rule would require resubmittal of layout plans if he did not re-commence construction of cabins within 2 years after installation of in-the-ground water and sewer systems. Finally, a commentor thought the terms "begun" and "ceased" were vague and suggested rewording the statements.

Response: In general, ARM 16.10.702(8) attempts to ensure that approvals and resultant construction implement the most advanced public health and sanitation innovations, and to thereby more effectively and efficiently protect public health. Resubmittal of plans, when required, could utilize considerable portions of the original submittal. However, to parallel public water supply requirements, the department has stricken the clause "or any period during which construction has ceased for more than 2 years". With this amendment, the term "ceased" is

no longer used. The term "begun" refers to actual construction work on site, and does not require additional specificity. Language was also added by the department to eliminate the possibility that the sentence in question could be read, in the case of a facility whose license has lapsed for two or more years, to require plans to be submitted even if there is no intention to reopen it.

Comment No. 37: One commentor was concerned that local health authorities could refuse to validate a license application.

Response: Section 50-52-209, MCA, provides for appeal to the local board of health when a local health officer refuses to validate a license. Refusal to validate the license may only occur upon a finding that the requirements of Title 50, chapter 52, MCA or any rules implementing this chapter are not met.

Rule I LAYOUT PLAN--WATER SUPPLY REQUIREMENTS

Comment No. 38: One commentor stated that Rule I(1)(b), which requires that an existing public water supply, if available, be used exclusively as the water source, is overly stringent because alternate water supplies should be allowed for purposes such as irrigation.

Response: The department has amended the rule to allow use of alternate water for non-potable uses.

Comment No. 39: Two commentors stated that it is not practical to require a potable water supply within 300 feet of campsites, citing reasons that include difficulty in locating an aquifer, no electricity, cost issues, and no expectation of such service by the public. Another commentor requested clarification of the requirement that a water hose for drinking water cannot be used for flushing sewage holding tanks.

Response: The department agrees that the 300-foot requirement could be too stringent in special situations, and notes the deviation available in Rule I(2) for both general services and limited services campgrounds (see also response to comment No. 3). However, 300 feet is considered a reasonable walking distance to a water supply source at a typical limited services or general services campground. The statement requiring that a water station hose may not be used for flushing sewage holding tanks is clarified.

Comment No. 40: One commentor thought the water riser height requirement in Rule I(1)(d)(ii) should be more than 4 inches above the ground for sanitary protection.

Response: The requirement has been changed to a minimum of 24 inches above the ground. A license applicant can request a deviation from this height requirement under subsection (2).

Comment No. 41: One commentor stated that if all water lines must be installed frostfree, then the stop-and-waste valve depth in the ground should be clearly stated.

Response: Rule I(1)(d)(v) is amended to specify that the stop-and-waste valve depth must be at least 6 feet below the ground surface. Existing shallow bury lines are not affected by this requirement.

Comment No. 42: Two commentors requested use of standards other than the "Uniform Plumbing Code" or the "Uniform Building Code". One commentor requested use of the "state plumbing code", stating the Building Codes Bureau (Department of Commerce) updates this reference in their administrative rules every year. This request applies to Rule I(1)(e)(i), (iii) and(iv), Rule II(1)(h)(ii) and (j).

Response: The rules are amended consistent with this request.

Comment No. 43: One commentor stated that WQB Circulars 1 and 3 require 18 inches vertical separation between water and sewer lines.

Response: Rule I(1)(e)(iv) is amended to be consistent with the circulars.

Comment No. 44: Several commentors questioned whether potable water should be required at a limited services campground. They cited reasons that include: (a) the public enjoys using campgrounds at Montana's primitive parks and fishing access sites that do not have water supplies; (b) it would be cost-prohibitive to install potable water supplies to these limited services campgrounds; and (c) disposal of waste water from use of public water systems would pollute state waters.

Response: Rule I(2) provides for a deviation from the potable water requirement for new, altered, or enlarged limited services campgrounds, if public health is not jeopardized. Also, this requirement does not apply to existing limited services campgrounds. See, response to comment No. 4.

Rule II LAYOUT PLAN--SEWAGE SYSTEM REQUIREMENTS

Comment No. 45: One commentor was concerned that Rule II requires replacement of all existing non-sealed pit privies.

Response: Rule II applies to layout plan review for (a) new construction of general services or limited services campgrounds; and (b) alteration or enlargement of existing general services or limited services campgrounds. Rule II does not apply to existing campgrounds that are not altered or enlarged. If existing limited services campgrounds are altered or enlarged, the non-sealed pit privies must be replaced with either sealed vault pit privies or other sewage disposal sys-

tems approved by the department.

Comment No. 46: One commentor was concerned that Rule II(1)(d) referred only to general services campgrounds requiring sanitary stations. The commentor thought this subsection should require a sanitary station in each campground that has campsites for independent RV's. One commentor was concerned about requiring sanitary stations for general services campgrounds.

Response: The department does not feel sanitary stations are needed at every campground that serves RVs. RVs typically have a holding capacity that should enable disposal properly at an approved location off-site. Sanitary stations are required at general services campgrounds because the category contemplates provision of such services. However, a deviation is available from the requirement. In situations where a sanitary station is not available, RVs with wastewater collection tanks are expected to properly dispose of wastewater at an approved location off-site.

Comment No. 47: Two commentors thought the language in Rule II(1)(d), referring to independent trailers, was confusing and perhaps incorrect. One commentor thought the language should include "dependent recreational vehicles" and another commentor said the term "independent recreational vehicle" should be used and defined.

Response: The word "independent" is deleted so that any trailer spaces (for either dependent or independent RVs) in a general services campground would trigger the requirement for a sanitary station. Both dependent and independent RV units may contain a wastewater collection tank for sink, lavatory, toilet, or bathing facilities. "Recreational vehicle", "independent recreational vehicle" and "dependent recreation vehicle" are now defined at ARM 16.10.701(28), (10) and (14)).

Comment No. 48: One commentor commented that, if the Uniform Plumbing Code is used to establish setbacks for the sewer riser, it would be difficult to have a vertical connection between a trailer drain and the sewer riser. The commentor requested clarification since the Uniform Plumbing Code has different requirements for recreational vehicle sewer connections and trailer court sewer connections.

Response: Rule II(1)(g)(i) establishes an independent requirement that does not rely on the Uniform Plumbing Code. The state plumbing code does not include Appendix E, Mobile Home Parks and Recreational Vehicle Parks, of the Uniform Plumbing Code (see ARM 8.70.302(1)(a)(xvii)).

Comment No. 49: One commentor requested conversion of percent slope to inches per foot for sewer lateral installation.

Response: Rule II(1)(h)(iv) is amended accordingly. This

amendment is also consistent with WQB Circular 4.

Comment No. 50: Two commentors were concerned that Rule II(1)(j) limits use of flex hose for sewer connections in a campground to 14 days or less. One commentor sought an extension of the time period to 60 days or less, suggesting this practice would be acceptable because RV's are not skirted and any leak would be evident. One commentor requested a waiver from this requirement for seasonal campgrounds.

Response: Rule II(1)(j) is amended to state a limit of 30 days, provided trailers are not skirted. The department believes use of flex hose for longer periods may pose a threat to public health.

Comment No. 51: One commentor stated that Rule II(4) addresses testing of a sewage line but does not address what is required if a test detects a leak.

Response: The department agrees that a leak discovered by the test must be stopped and has amended the rule accordingly.

16.10.703 LICENSURE

Comment No. 52: Two commentors said that it is confusing to have both the local health authority and the state health authority validating licenses. The commentors were concerned over dual jurisdiction, mentioning requirements by building codes and state and local health authorities.

Response: Consistent with statute, both the state health department and local health authorities cooperate in the licensure process. However, only local health authorities can validate a license according to the authority given by 50-52-208, MCA. In addition, there are other public health statutes administered by local governments. Given various statutory authorities which authorize regulation of campgrounds and trailer courts, coordination is an important function that will be emphasized by the department in administration of these rules.

Comment No. 53: One commentor stated that the proposed rules do not indicate whether the required license fee is an annual or one-time fee. One commentor opposed the raise in licensure fee from \$20 to \$40.

Response: Section 50-52-203, MCA, states that the license expires on December 31 of the year in which it is issued, which makes it and its fee annual. ARM 16.20.703(2) also conforms the fee requirement to the statutory fee. The 1991 Legislature raised the license fees from \$30.00 to \$40.00.

Comment No. 54: Two commentors disagreed that federal agencies are required to submit a nonrefundable \$40 license application fee to the department.

Response: See the response to comment No. 5.

Comment No. 55: One commentor stated that going from notice "at least 30 days prior" to sale to notice "within 7 days after" a sale does not ensure that upgrades or changes to meet current public health standards can be effected or corrected.

Response: The department agreed and amended ARM 16.20.703(4) to return the requirement to that which existed in the original rule.

Comment No. 56: One commentor was concerned that local boards of health may adopt more stringent standards than the department.

Response: Title 50, chapter 2, MCA, grants certain powers and duties to local boards of health and health officers. Using this and other authority, a local board of health may be able to adopt requirements more stringent than the department in several substantive areas.

Comment No. 57: One commentor wanted to specify that a mobile home park or campground may not accept more units than it is licensed to accommodate. The commentor stated that overflow camping is a prevalent problem that must be clearly addressed. Another commentor stated licensees have overflow difficulties due to occasional, extraordinary events.

Response: Licensees should not accept more units than those for which it is licensed. However, occasional events can result in overflow in a campground. ARM 16.10.703(7) is amended to allow limited overflow provided the licensee meets certain restricting criteria.

16.10.704 INSPECTIONS AND COMPLIANCE REQUIREMENTS

Comment No. 58 One commentor stated that the Montana Landlord and Tenant Act limits the access of landlords to mobile home spaces because they are considered private residences. The commentor asked if a landlord can legally allow a health inspector access onto a mobile home space during an unannounced inspection and whether this would conflict with the 24 hour notice required in the Montana Landlord and Tenant Act.

Response: Section 50-52-303, MCA, provides state and local health officers, sanitarians-in-training, and registered sanitarians free access to trailer courts and campgrounds at all reasonable hours for the purpose of conducting investigations and inspections as required by this chapter. The Landlord and Tenant Act may restrict access of the landlord onto a mobile home space without 24 hours prior notice; however, this act does not restrict access of authorized health agency personnel onto a mobile home space at reasonable times. The department anticipates that such inspections would involve reasonable

notice to the landlord, tenant, or both of them.

16.10.706 WATER SUPPLY--ONGOING REQUIREMENTS

Comment No. 59: One commentor asked if ARM 16.10.706 applies to new facilities, stated the term "potable" is ambiguous, and asked if this section includes a public water supply.

Response: ARM 16.10.706 applies to all facilities that provide potable water to its users. Potable water is mandatory for new facilities and existing facilities that are altered or enlarged. Potable water is defined at ARM 16.10.701(23). All public and non-public water supply systems must provide potable water.

Comment No. 60: One commentor expressed concern about the need for small campgrounds and trailer parks (under 10 units) to meet water sampling requirements beyond what is currently required by the department's Water Quality Division.

Response: Potable water, as a matter of public health, is also a concern for small trailer courts and campgrounds that have private water systems (under 10 units). Therefore, the sampling requirement is increased in the proposed rules. Given the public health concerns associated with drinking water, the department does not feel the requirements in this section are too onerous.

16.10.707 SEWAGE SYSTEM

Comment No. 61: One commentor asked if ARM 16.10.707(6) allows liquid wastes from sinks, showers, toilets, or baths to run on the ground as long as they do not accumulate on the ground surface. Another commentor recommends changing the wording to require that trailers with waste holding tanks must use the waste holding tank to store discharged liquids.

Response: The rule states that wastewater must be discharged only to an approved sewage disposal system. Therefore, liquid wastes may not run on the ground. The department disagrees that trailers with waste holding tanks must be required to store discharged liquids. Trailers with holding tanks can either hold the sewage or discharge it to the sewage disposal system in the trailer court or campground.

16.10.710 SOLID WASTE--STORAGE AND DISPOSAL

Comment No. 62: One commentor suggested adding litter to the list of problems to be avoided with solid waste storage facilities. This comment was also made in regard to ARM 16.10.711.

Response: ARM 16.10.711(3)(a) addresses the issue of litter.

Comment No. 63: One commentor was concerned that ARM

16.10.710(2) does not require a limited services campground to provide solid waste disposal services. Another commentor was concerned that solid waste containers may attract wildlife, including grizzly bears.

Response: ARM 16.10.710(2) is amended to specify that solid waste removal is required in a limited services campground unless the applicant meets the requirements of ARM 16.10.710(1). A "pack it in, pack it out" approach may be acceptable if public health is protected. Further, a solid waste collection system may not be appropriate in some limited services campgrounds that are remote and visited frequently by wildlife. For further discussion, see response to comment No. 4.

16.10.711 NOXIOUS PLANT, ANIMAL, DUST AND OTHER PUBLIC HEALTH CONTROLS

Comment No. 64: One commentor stated that the term "operator" needs to be defined, and questioned whether this term is the same as "licensee". The commentor also asked who has the final liability for compliance with these rules.

Response: The term "operator" is deleted and replaced by the term "licensee" and "manager" in this rule and other rules. Both the licensee or the manager could be liable for noncompliance with these rules.

Comment No. 65: One commentor requested revision of ARM 16.10.711(2) and (3) to specify the types of vegetation, animals and insects which are of concern.

Response: The department does not feel it is necessary to specify all vegetation, animals, and insects that present a public health concern. The omission of one harmful plant, animal, or insect may in fact allow a public health problem. Also, management for general services and limited services campgrounds must address physical conditions in the campgrounds that would increase risk to the public of contracting vectorborne diseases. These are general provisions, not literal provisions, that set standards for campground management practices that will limit the risk to the public of contracting vectorborne diseases.

Comment No. 66: One commentor stated that a licensee has no control over the type of trailer skirting or the condition of a trailer that is privately owned but is situated on a rented trailer space. The commentor also discussed difficulties in accessing the skirting opening because trailer owners often lock these openings for safety reasons.

Response: While the owner is principally liable for complying with the skirting requirement, the licensee through the lease agreement may have control over the areas addressed by the

commentor. ARM 16.10.711 states that an access opening must be provided but not necessarily open. The department will address the skirting problem during inspection training with local health authorities.

Comment No. 67: One commentor recommended that vegetation and waste materials having the potential for rodent harborage should not be allowed within a distance of 100 feet from established structures.

Response: ARM 16.10.711(3)(d) is amended to address the issue of public health risk.

Comment No. 68: Several commentors were concerned that roads in the campground will have to be paved, costing \$150,000. One commentor asked if this section applied to RV parks.

Response: Dust in a campground is a legitimate health concern. ARM 16.10.711(1)(f) does not require chip sealing of roads and allows the licensee or manager to choose an economical method to control dust. This subsection applies to RV parks.

16.10.714 LICENSEE REQUIREMENTS

Comment No. 69: One commentor stated that ARM 16.10.714(1), which requires that a trailer court with a water or wastewater treatment plant have a certified operator, should also apply to campgrounds.

Response: A certified operator would be required if a public water or sewage system which serves a campground is part of a trailer court. A water or sewer system for a campground alone is a transient system that would not require a certified system operator.

Comment No. 70: One commentor was concerned that ARM 16.10.714 requires each trailer court to have a resident manager.

Response: The department agreed it was not necessary to require a resident manager and deleted the phrase "on the premises" from ARM 16.10.714(2) to clarify this point. The rule does require the manager to visit the trailer court as often as necessary to ensure that the requirements in these rules are met.

Comment No. 71: One commentor was concerned that use of "travel trailer" in ARM 16.10.714(3) is inconsistent with the rest of the rules.

Response: The modifier "travel" is stricken.

Comment No. 72: One commentor stated that campsites in limited services campgrounds should be marked. The designation of camp-

sites is important to ensure that the operator limits camping to approved areas only.

Response: The applicable rule, ARM 16.10.714(4), is broadened to require designation of campsites in both general service and limited services campgrounds.

16.10.715 GUEST REGISTRATION

Comment No. 73: Two commentors thought that requiring registration of each occupant and each vehicle which uses a trailer space or camp site is excessive.

Response: The proposed rules did not change previous guest registration requirements, which would assist investigations in the event a disease outbreak occurs. However, ARM 16.10.715 is amended to remove the requirement for most limited services campgrounds. Because fewer services are provided and general visitation may be less, the potential for disease outbreak in a limited services campground is lessened accordingly.

16.10.717 SERVICE BUILDINGS AND OTHER SERVICE FACILITIES FOR GENERAL SERVICES CAMPGROUNDS

Comment No. 74: One commentor requested that ARM 16.10.717 require that service building proposals must "have been approved by the building authority". This requirement would inform owners and licensees of the need for such approvals.

Response: ARM 16.10.717 is amended to reference the need for building authority approval.

Comment No. 75: One commentor suggested removing the requirement that service buildings provide heat, since many campgrounds are open only during the summer months. Also, a commentor stated that requiring screen doors for service buildings is impractical because they receive abuse. Another comment suggested basic service building construction requirements. Examples include (1) surfaces must be smooth, nonabsorbent, easy cleanable, and durable; and (2) showers must have non-slip surfaces.

Response: The heat requirement for service buildings is deleted. Because insects and rodents must be kept out of a service building, either screening or closure by other means is required. Finally, building surface requirements are added to ARM 16.10.717(1)(b) to address the commentor's concerns.

Comment No. 76: One commentor suggested amendment of ARM 16.10.717(1)(e) to require that showers, toilets, and lavatories be cleaned with disinfectant products.

Response: This section is amended accordingly.

Comment No. 77: One commentor requested consideration for either-sex shower facilities and requested Americans with Disabilities Act (ADA) shower and restroom requirements.

Response: Either-sex shower facilities are generally viewed as an unacceptable method for providing adequate shower facilities. Regarding ADA requirements, see ARM 16.10.702(10). Table I's position is moved from (1)(f) to (1)(d) to clarify sanitary facility requirements in (1)(d).

Comment No. 78: One commentor stated that bedding is not defined and, if the licensee provides bedding, the cabin licensure should occur under Title 50, chapter 51, MCA, not Title 50, chapter 52, MCA.

Response: Bedding is an optional service and has a plain meaning that is sufficient for purposes of the rule. There are statutory criteria, which do not include bedding, that determine the applicability of Title 50, chapters 51 and 52, MCA.

Rule III PERFORMANCE STANDARDS

Comment No. 79: One commentor objected to the requirement that local health authorities must conduct any and all complaint inspections requested by the department, stating that this requirement infringes upon internal staff management practices and is an unfunded mandate.

Response: The department feels it is reasonable to request a local health department to conduct a trailer court inspection to determine compliance with these rules. This is not an unfunded mandate as counties receive 85% of the state license fee to fund on-site inspections and investigations.

Rule IV INCORPORATION BY REFERENCE

Comment No. 80 (Department): As noted in the response to Comment No. 19, in the interest of simplification, the department altered the numbering of the definitions in ARM 16.10.701 to eliminate the initial "(1)" and allow numbering, rather than designating by letter, each definition, a change that also required deleting the incorporation by reference in paragraph (2) from the rule altogether and making it an independent rule (new Rule IV). The change has no substantive effect.

4. A statement of reasonable necessity is provided in the original Notice of Public Hearing for Proposed Amendment of Rules and Adoption of New Rules I-III (see 1994 MAR p. 2602, Issue No. 18). In addition, given the broad statutory directive in 50-52-102, MCA, to the department "to adopt rules for constructing and operating campgrounds [and] trailer courts to . . . insure public health and sanitation," the department was faced with tailoring public health and sanitation protection to a variety of factual scenarios, ranging from backcountry camp-

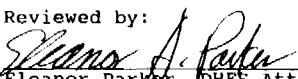
grounds to urban campgrounds and trailer courts. The pre-existing rules did not tailor requirements to the various scenarios, resulting in impractical, overbroad, or impossible requirements of certain campgrounds and trailer courts. This rule package is intended to apply specific public health and sanitation requirements in a manner that addresses, reasonably, the broad array of campgrounds and trailer courts that are required by statute to be regulated.



ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 17, 1995 .

Reviewed by:



Eleanor Parker, DHES Attorney

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 16.14.540 amending financial) OF ARM 16.14.540
assurance requirements for Class II)
landfills.) (Solid Waste)

To: All Interested Persons

1. On February 9, 1995, the department published notice of the proposed amendment of ARM 16.14.540 at page 175 of the 1995 Montana Administrative Register, issue number 3.

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

16.14.540 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS II
LANDFILLS (1)(a) Same as proposed.

(b) The requirements of this rule are effective April 9, 1996 ~~1997~~.

(2)-(5) Same as proposed.

3. One comment was received from the public and one from department staff; a summary of each comment and the department's response to them follows.

Comment: One person requested the department to add language allowing the automatic adoption of federal rules regarding the corporate financial test and corporate guarantee, 40 CFR Section 258.74(e) and (g), upon final adoption of the proposed federal rule.

Response: The department declined to adopt the added language suggested for the following reasons: First, the amendment proposed by the department was narrowly focused and non-controversial, allowing the department the ability to coordinate with a proposed federal regulatory delay. Because the amendment was non-controversial, no hearing was held on the amendment and none was requested. The change proposed may not be as non-controversial and considerably widens the proposed rule change to encompass areas that the public may wish to comment on. Second, the department feels it has the latitude to consider a corporate financial test and corporate guarantee under the existing rule, to wit, ARM 16.14.540(5)(f). The department may propose a rule change to mirror the federal regulations on corporate financial tests and corporate guarantees upon final adoption of the federal rule.

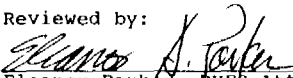
Comment and response: The department staff noted that the amendment proposed was to delay the effective date of state financial assurance requirements in order to coordinate them with those to be adopted on the federal level by EPA in 1996, but that since the initial notice of the proposed delayed

effective date, EPA has delayed the effective date of its requirements another year, until 1997. Therefore, the effective date of the state rule should be delayed an extra year as well. The department's director agreed and amended the effective date accordingly.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 17, 1995.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the amendment of)
rules 16.20.401 & 16.20.407)
modifying and updating minimum)
requirements for public sewage)
systems.)

NOTICE OF
AMENDMENT OF RULES

(Water Quality)

To: All Interested Persons

1. On February 9, 1995, the board published notice of the proposed amendment of the above-captioned rules at page 168 of the 1995 Montana Administrative Register, Issue No. 3.
2. The rules were amended as proposed with no changes.
3. The board received several comments; a summary of each and the board's response follow:

Comment: James E. Taylor requested clarification of fees for projects that fall in the category of subdivisions and whether projects might be faced with multiple fees under these rules and the subdivision rules.

Response: The comment is not directed at the specific change proposed in these rules but instead at how fees would be applied in situations where both sewage system and subdivision rules apply. The department assesses fees according to the program that reviews the proposal.

Comment: James E. Taylor also recommended that Section 93.23 of Circular WQB-2 be amended to include more specific requirements to avoid degradation of groundwater.

Response: No change was made because the pond seal requirement, which limits seepage to an amount that will not degrade groundwater, negates the need for an extensive geological or hydrogeological study. It is the design engineer's responsibility to determine the amount of investigation necessary for a particular site.

Comment: James E. Taylor noted, in regard to Section 93.422 of Circular WQB-2, that a more reliable bentonite seal will be achieved if the design is performed on material that actually ends up forming the liner of the pond.

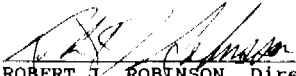
Response: Regardless of the base material at the site, a seal is required that severely restricts leakage. Soil borings are required for the proposed lagoon site to provide the engineer information regarding soils and possible seal materials. Therefore, Circular WQB-2 includes the recommended requirement.

Comment: James Glastz expressed concern about the operating condition of the Whitefish sewer system, and stated that frequent

sewer backups have occurred.

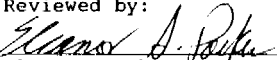
Response: The comment is outside the scope of the rules. However, the department is working with the City of Whitefish to address issues regarding its sewage system.

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

by 
ROBERT J. ROBINSON, Director

Certified to the Secretary of State April 17, 1995 .

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the proposed) NOTICE OF AMENDMENT OF
amendment of rules related to) ARM 24.29.702A; 24.29.702B;
requirements for employers) 24.29.702C; 24.29.702F;
that self-insure for workers') AND 24.29.702J
compensation purposes)

TO ALL INTERESTED PERSONS:

1. On February 9, 1995, the Department published notice at pages 177 through 183 of the Montana Administrative Register, Issue No. 3, to consider the amendment of the above-captioned rules.

2. On March 3, 1995, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Written comments were received prior to the closing date of March 10, 1995.

3. After consideration of the comments received on the proposed amendments, the Department has amended ARM 24.29.702A, 24.29.702B, 24.29.702C, 24.29.702F and 24.29.702J as proposed, except for the following changes: (new matter underlined, deleted matter stricken, additional changes shown in all capital letters)

24.29.702A SOLVENCY AND ABILITY TO PAY (1) Proof of solvency and financial ability to pay compensation, benefits and liabilities is required. Employers or groups of employers electing to be self-insured ~~must shall~~ MUST demonstrate financial stability ~~ability to pay compensation, benefits and all liabilities which are likely to be incurred under the Workers' Compensation and Occupational Disease Acts~~ STABILITY by providing audited financial statements, ~~evidence of excess insurance, and a security deposit (if required),~~ that upon analysis indicate sufficient security, as determined by the ~~division department~~, ~~if that decision is concurred in by the Montana self-insurers guaranty fund~~ DIVISION, to protect the interests of injured workers.

~~(2) These shall consist of analysis of financial conditions, current and historical, including, but not limited to, the following factors The department will analyze the financial information provided by the employer or group of employers. The analysis will include review and consideration of financial ratios related to the financial soundness of the employer or group of employers. The ratios reviewed typically include, but are not necessarily limited to THESE SHALL CONSIST OF ANALYSIS OF FINANCIAL CONDITIONS, CURRENT AND HISTORICAL, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING FACTORS:~~

- ~~(a) quick ratio,~~
- ~~(b) current ratio,~~

- ~~(e)~~ current liabilities to net worth~~7,1,1~~
- ~~(d)~~ current liabilities to inventory~~7,1,1~~
- ~~(c)~~ total liabilities to net worth~~7,1,1~~
- ~~(f)~~ fixed assets to net worth~~7,1,1~~
- ~~(g)~~ collection period~~7,1,1~~
- ~~(h)~~ inventory turnover~~7,1,1~~
- ~~(i)~~ assets to sales~~7,1,1~~
- ~~(j)~~ sales to net working capital~~7,1,1~~
- ~~(k)~~ accounts payable to sales~~7,1,1~~
- ~~(l)~~ return on sales~~7,1,1~~
- ~~(m)~~ return on assets~~7,1,1~~
- ~~(n)~~ return on net worth~~7,1,1~~
- ~~(o)~~ contingent liabilities~~7,1,1~~
- ~~(p)~~ comparison to industry standards~~7,1~~ and
- ~~(q)~~ income from ongoing operations and corporate bond rating.

~~(3) An individual employer electing to self insure that does not have audited statements prepared as a normal business practice may substitute reviewed financial statements for audited financial statements if the employer furnishes an increased security deposit.~~

~~(4) Only an employer or group of employers meeting financial standards acceptable to the division department, if that decision is concurred in by the Montana self insurers guaranty fund, DIVISION shall may SHALL be granted permission to be bound as a plan no. 1 self-insurer.~~

~~(2) AN INDIVIDUAL EMPLOYER ELECTING TO SELF-INSURE THAT DOES NOT HAVE AUDITED STATEMENTS PREPARED AS A NORMAL BUSINESS PRACTICE MAY SUBSTITUTE REVIEWED FINANCIAL STATEMENTS FOR AUDITED FINANCIAL STATEMENTS IF THE EMPLOYER FURNISHES AN INCREASED SECURITY DEPOSIT.~~

AUTH: 39-71-203 MCA

IMP: 39-71-403 and 39-71-2101 to 39-71-2109 MCA

24.29.702B WHEN SECURITY REQUIRED (1) Security must be deposited with the division department DIVISION by the employer or group of employers on order of the division department, if that decision is concurred in by the Montana self insurers guaranty fund, DIVISION under any of the following conditions:

(a) ~~Every employer or group of employers must deposit security with the department. The deposit requirement may be waived in whole or in part by the division for individual employers or groups of employers only who provide substantive evidence that the full amount of the deposit is not needed. This evidence shall consider criteria for solvency and ability to pay as set forth in ARM 24.29.702A. EVERY EMPLOYER OR GROUP OF EMPLOYERS MUST DEPOSIT SECURITY WITH THE DEPARTMENT. THE DEPOSIT REQUIREMENT MAY BE WAIVED IN WHOLE OR IN PART BY THE DIVISION FOR INDIVIDUAL EMPLOYERS OR GROUPS OF EMPLOYERS ONLY WHO PROVIDE SUBSTANTIVE EVIDENCE THAT THE FULL AMOUNT OF THE DEPOSIT IS NOT NEEDED. THIS EVIDENCE SHALL CONSIDER CRITERIA FOR SOLVENCY AND ABILITY TO PAY AS SET FORTH IN ARM 24.29.702A.~~

(b) (b) The employer or group of employers no longer has the solvency or ability to pay compensation, benefits, and

liabilities as determined under standards applied in ARM 24.29.702A.

(ebc) ~~The employer or group of employers does not have sufficient securities on deposit with the division department DIVISION under section 39-71-2107, MCA, to meet current liabilities, in addition to all other liabilities.~~

(ed) ~~The employer is substituting reviewed financial statements for audited financial statements.~~

(2) ~~The deposit requirement may be waived in whole or in part by the department, if that decision is concurred in by the Montana self insurers guaranty fund, only for those individual employers or groups of employers that provide clear and convincing evidence that the full amount of the deposit is not needed in order to provide reasonable protection and guaranty of the payment of outstanding liabilities. The evidence must address the criteria for solvency and ability to pay set forth in ARM 24.29.702A.~~

AUTH: 39-71-203 MCA

IMP: 39-71-403, ~~39-71-2105~~, 39-71-2106 and 39-71-2107 MCA

~~24.29.702C SURETY BOND SURETY BOND SECURITY DEPOSIT-- AMOUNTS REQUIRED (1) When security is required under ARM 24.29.702B, the division will require that such DIVISION WILL REQUIRE THAT SUCH security must be deposited in the following amounts: IN THE FOLLOWING AMOUNTS:~~

(a) ~~Under ARM 24.29.702B(1)(a), the amount shall be the greater of: \$250,000 or an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.~~

(a) ~~UNDER ARM 24.29.702B(1)(a), THE AMOUNT SHALL BE THE GREATER OF: \$250,000 OR AN AVERAGE OF THE WORKERS' COMPENSATION LIABILITIES INCURRED BY THE EMPLOYER IN MONTANA FOR THE PAST 3 CALENDAR YEARS.~~

(b) ~~Under ARM 24.29.702B(1)(b), the amount shall be equivalent to the employer's or group of employers' total workers' compensation and occupational disease liabilities.~~

(b) ~~UNDER ARM 24.29.702B(1)(b), THE AMOUNT SHALL BE EQUIVALENT TO THE EMPLOYER'S OR GROUP OF EMPLOYERS' TOTAL WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITIES.~~

(c) ~~Under ARM 24.29.702B(1)(c), the amount shall be UNDER ARM 24.29.702B(1)(c), THE AMOUNT SHALL BE in an amount which, in the division's DIVISION'S judgment of the department, if that decision is concurred in by the Montana self insurers guaranty fund, provides reasonable protection and guaranty of the payment of outstanding liabilities.~~

(d) ~~UNDER ARM 24.29.702B(1)(d), THE AMOUNT SHALL BE IN AN AMOUNT WHICH, IN THE DIVISION'S JUDGMENT, PROVIDES REASONABLE PROTECTION AND GUARANTY OF THE PAYMENT OF OUTSTANDING LIABILITIES.~~

(2) ~~In the absence of clear and convincing evidence indicating that the amount of the deposit should be more or less than the amount provided by 39-71-2106(1)(a), MCA, the amount of security required is the amount provided by 39-71-2106(1)(a), MCA.~~

AUTH: 39-71-203 MCA
IMP: 39-71-403, 39-71-2106 and 39-71-2107 MCA

24.29.702F INITIAL ELECTION--INDIVIDUAL EMPLOYERS (1) An individual employer initially electing to be bound as a self-insurer must provide the following:

(a) a completed application on forms provided by the division department DIVISION;

(b) audited financial statements for the last ~~two TWO~~ +(2+) years, or, an employer that does not have audited statements prepared as a normal business practice, may substitute reviewed financial statements if the employer furnishes an increased security deposit;

(c) proof that it has been in business for a period of not less than ~~five FIVE~~ +(5+) years; however,

(i) an employer in business less than ~~five FIVE~~ +(5+) years may be considered if its liability is guaranteed by a parent corporation which has been in business for a period of not less than ~~five FIVE~~ +(5+) years;

(ii) an employer whose liability is guaranteed by a parent corporation must provide a corporate resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the division department DIVISION ~~as set forth in appendices B and C.~~ AS SET FORTH IN APPENDICES B AND C.

(d) evidence that it has obtained an insurance policy of specific excess and aggregate excess insurance with policy limits, nature of coverage and retention amounts acceptable to the division department; ~~if that decision is concurred in by the Montana self insurers guaranty fund DIVISION~~, as required in ARM 24.29.702E. ~~Excess insurance must be managed by a third party administrator.~~ EXCESS INSURANCE MUST BE MANAGED BY A THIRD-PARTY ADMINISTRATOR. Evidence must include the administrator's approved specific and aggregate self insured retention and maximum policy limits;

(e) through (h) Remain the same.

(i) ~~a surety bond security;~~ A SURETY BOND in an amount as required in ARM 24.29.702C;

(j) Remains the same.

(k) evidence that internal policies and procedures are satisfactory to administer a self-insured program; ~~and,~~

~~(l) for a private employer applicant, proof of membership in the Montana self insurers guaranty fund.~~

AUTH: 39-71-203 MCA
IMP: 39-71-403, 39-71-2101, 39-71-2102, and 39-71-2103 MCA

24.29.702J RENEWAL--INDIVIDUAL EMPLOYERS (1) An individual employer renewing an election to be bound as a self-insurer under plan no. 1 must provide the following:

(a) Remains the same.

(b) its latest year's audited financial statement, or, an employer that does not have audited statements prepared as a normal business practice, may substitute reviewed financial statements if the employer furnishes an increased security

deposit;

(c) and (d) Remain the same.

(e) an employer whose liability is guaranteed by a parent corporation must provide a corporate resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the ~~division department~~ DIVISION ~~as set forth in appendices B and C~~ AS SET FORTH IN APPENDICES B AND C;

(f) a loss run and summary for the preceding year and, on forms provided by the ~~division department~~ DIVISION, its number of open claims, the amounts paid to date on open claims and its estimated compensation and medical liabilities;

(g) a statement indicating whether or not estimated compensation and medical liabilities are included in the employer's balance sheet, ~~and~~.

~~(h) for a private employer, proof of continuing membership in the Montana self insurers guaranty fund.~~

AUTH: 39-71-203 MCA IMP: 39-71-403, and 39-71-2104 MCA

4. After consideration of the comments received on the proposed amendments, the Department has decided **not** to amend ARM 24.29.702D and 24.29.702E at this time.

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

Agency Comment: The Department has, over time, received several comments from various insurers that were concerned about the amount they were being charged for the administrative assessment. (The administrative assessment funds most of the workers' compensation activity of the Employment Relations Division.) In response to those concerns, the Department formed an Assessment Advisory Group in June 1994, to review the various functions performed by the Department and to make recommendations for improvement of the services provided. The Advisory Group is currently reviewing the functions performed by the Self Insurance Unit and anticipates making recommendations that will affect the rules that were proposed for adoption. In light of the Advisory Group's forthcoming recommendations the Department has decided to delay implementation of all of the changes proposed to these rules other than those changes permitting employers to submit reviewed financial statements.

Comment 1: The Montana Self-Insurers Association ("MSIA") commented that it supports the amendment which removes the audited financial statement as an absolute requirement for self insurance.

Response 1: The Department appreciates the MSIA comment.

Comment 2: The MSIA commented that the rules are a "cookbook" approach to self insurer's approval and recommended changes to the proposed amendments and offered numerous other amendments.

Response 2: Please see the agency comment. The Department has decided to delay implementation of all changes at this time, other than those necessary to allow self-insurance applicants to submit reviewed financial statements. The MSIA's suggested amendments will be considered when changes to the rules are considered in the near future.

Comment 3: The board of directors of a self-insured group commented in support of all of the proposed amendments because the amendments provide flexibility to the Department and the Montana Self-Insurers Guaranty Fund and are advantageous to individual and group self-insurers.

Response 3: Please see response to comment number 2 above. The Department appreciates the board's comments and will keep them in mind when considering changes to these rules in the future.

Comment 4: A self-insured employer suggested an amendment to 24.29.702J to allow employers who have been self-insured for a minimum of three years to substitute an actuarial study for the audited financial statements. The MSIA also commented in favor of the suggested amendment.

Response 4: The Department believes that the amendments proposed by the self-insurer are too substantive to adopt without giving notice and allowing the opportunity for comment. The proposed amendments will be considered when changes to the rules are considered in the near future.

6. The amendments to the rules are effective May 1, 1995.

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

David A. Scott
David A. Scott
Rule Reviewer

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

Certified to the Secretary of State: April 17, 1995.

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

In the matter of the adoption) NOTICE OF ADOPTION OF
of rules related to the) NEW RULES II THROUGH V
workers' compensation) AND AMENDMENT OF 24.29.3802
data base system and amendment)
of the attorney fee rule)

TO ALL INTERESTED PERSONS:

1. On September 8, 1994, the Department published notice at pages 2487 through 2490 of the Montana Administrative Register, Issue No. 17, to consider the adoption of the above-captioned rules. On November 10, 1994, the Department published notice at page 2893 of the Montana Administrative Register, Issue No. 21, that the comment period was being extended.

2. On October 6, 1994, a public hearing was held in Helena concerning the proposed rules/proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of November 28, 1994.

3. After consideration of the comments received on the proposed rules, the Department has adopted RULE III (24.29.4335), RULE IV (24.29.4336) and RULE V (24.29.4339) exactly as proposed. The Department is not adopting proposed RULE 1.

4. After consideration of the comments received on the proposed rules, the Department has adopted RULE II (24.29.4332) as proposed, with the following changes: (deleted material interlined, added material underlined)

RULE II (24.29.4332) CLAIMANT CONSULTANT AND LEGAL FEE REPORTING REQUIREMENTS (1) through (3) Same as proposed.

~~(4) Although this rule becomes effective December 1, 1994, in order that attorneys have adequate time to prepare for compliance with these rules, reporting~~ Reporting is not required until January July 1, 1995. Reports must be submitted to the department within 10 days of the triggering event, unless the department specifies that a longer period in which to report is acceptable.

(5) Reports must be filed for all claims where there is an attorney fee agreement in effect on January July 1, 1995, regardless of date of injury, if a triggering event occurs on or after January July 1, 1995. Reports which would have been due prior to January July 1, 1995, do not have to be submitted.

AUTH: Sec. 39-71-203 MCA IMP: Sec. 39-71-225 MCA

5. After consideration of the comments received on the proposed rules and the proposed amendment, the Department has amended ARM 24.29.3802 exactly as proposed.

6. The Department has thoroughly considered the comments and testimony received on the proposed rules and proposed amendment. The following is a summary of the comments received, along with the Department's response to those comments:

General Comments:

Comment 1: The Montana Self-Insurers Association ("MSIA") and Crawford & Company ("Crawford") commented that legal costs are not now an important cost driver in workers' compensation in Montana, and requested that the proposed rules be withdrawn. The MSIA questioned why the Legislature would require collection of fee information beyond what is presently required for the protection of claimants.

Response 1: The Department believes that § 39-71-225, MCA, requires that legal cost information be captured as part of the overall workers' compensation data base system. Although the commenter may believe that legal costs are not an important cost driver, the Department is not aware of any objective study that shows that to be true. The Department believes that one of the purposes of the data base system is to provide objective historical information from which sound decisions about cost drivers can be made.

Comment 2: Donald R. Marble and Leonard J. Haxby, attorneys in private practice in Montana, objected to the rules as undue governmental interference into the relationship between attorney and client.

Response 2: The Department believes that § 39-71-225, MCA, requires that legal cost information be captured as part of the overall workers' compensation data base system. The Department does not believe that there is any interference in the attorney - client relationship caused by the reporting of total legal fees paid.

Comment 3: Donald R. Marble, who serves on the Commission on Practice, questioned the need for the rules, noting that the Commission on Practice regulates unethical attorney conduct and that the State Bar mediates fee disputes.

Response 3: The Department does not intend to regulate the practice of law, and does not promulgate these rules with that objective. Instead, the Department is required by statute to track costs associated with workers' compensation claims, as noted in Response 1, above. The Department also points out that while the State Bar may offer fee dispute mediation, the Department has the authority to resolve fee disputes between a workers' compensation claimant and the claimant's attorney, pursuant to § 39-71-613, MCA and ARM 24.29.3802.

Comment 4: The MSIA commented that the cost of compliance with the rules could be substantial.

Response 4: The Department notes that insurers are already required to report claims costs to the data base system, pursuant to ARM 24.29.4321. The information required from insurers will be reported on the same form and at the same time

as those reports. The Department believes that insurers will incur only minimal marginal costs when reporting the information required by these new rules.

Comment 5: The MSIA commented that a Department advisory group "voted not to collect the information as proposed in these rules."

Response 5: The Department formed an informal advisory group composed of attorneys (both claimant and defense counsel), insurance industry representatives, and a member of the legislature, expressly to advise the Department on how to collect legal fee information. The proposed rules were a result of the consensus of that advisory group. The Department points out that it had a separate informal advisory group for insurer reporting requirements (on which a representative of the MSIA sat) that limited its scope of discussion by not considering legal fee issues. The Department believes that using informal advisory groups to help it in its rulemaking duties is appropriate and falls within the spirit of both the Montana Administrative Procedure Act and the Montana Negotiated Rulemaking Act.

Comment 6: The MSIA commented that the rules should not be implemented until July 1, 1995, "in order to give the Legislature the time to review any statutory requirements for the information."

Response 6: Section 39-71-225, MCA, requires that the data base system be fully operational by July 1, 1995. However, due to data base system programming and other delays, the reporting parties will not be required to file reports until July 1, 1995.

Comment 7: The MSIA commented that "legal fees and costs" should be reported together.

Response 7: The Department, based on the discussions with its advisory committee, believes that the "costs" component of legal services in workers' compensation cases is de minimis, and not worth trying to capture. Many of the "costs" reported with attorney billings are actually the cost of expert witnesses (and thus are reportable as a consultant cost). "Costs", as the term is used by the Workers' Compensation Court in construing § 39-71-611 and -612, MCA, does not include directly billed fees for such services as long distance telephone calls, photocopy costs, or postage. The only true legal "cost" item not being captured is that of deposition transcripts.

Comment 8: The Montana Trial Lawyers Association commented that the Department should treat all attorneys in the workers' compensation system alike, whether they represent injured workers or employers and their insurers.

Response 8: The Department intends to gather attorney fee information regarding both claimant's attorneys and defense attorneys in a fair and equitable manner.

RULE I Comments:

Comment 9: Numerous members of the news media opposed RULE I, citing various arguments, including the "public right to know" provision of the Montana Constitution. The media commenters generally urged that the Department continue its present practice of releasing information concerning attorney fees earned on settlements of workers' compensation claims.

Response 9: The Department will not adopt proposed RULE I. The Department will continue to release its annual report of attorney fee information related to approved settlements, in keeping with the practice of the last several years.

RULE II Comments:

Comment 10: An attorney objected to proposed RULE II. The commenter generally objected to the rule and felt that the rule did not serve any useful purpose. The commenter characterized the provisions of the rule as being "cumbersome."

Response 10: The Department has been advised on what data to collect and the timing of the collection of that data by members of the informal advisory group. The Department believes that it is fair to say that the attorney members of the advisory group all agreed (members of the claimant's bar and the defense bar alike) that the requirements of RULE II are much less burdensome or objectionable than they had initially envisioned. The Department recognizes that any reporting requirement imposes additional duties on parties subject to the requirement; it has endeavored to streamline the process to the greatest extent feasible. As stated above, the Department believes that it is required by statute to obtain data on legal and consultant fees. However, the Department has amended the rule to provide for a longer response period when it believes that circumstances justify.

Comment 11: The MSIA commented that there needs to be a better definition of who is a "consultant" for purposes of reporting, and suggests that the current wording ignores rehabilitation consultants.

Response 11: The Department believes that a rehabilitation consultant (who is providing professional services as part of litigation or negotiation strategy, rather than as part of the benefits provided to a claimant under the law) is evaluating the abilities of a claimant, and thus is a "consultant." If the definition contained in RULE II(3)(b) proves to be inadequate, even after reporting parties have been trained in reporting by Department personnel, the Department will consider amending the rule to clarify the definition.

RULE III Comments:

Comment 12: The MSIA asked when do legal fees commence, and suggested that legal fees begin only after the claimant has an attorney.

Response 12: Legal fees "commence" when the client pays the fee. An insurer that pays for legal advice does so without regard to whether the claimant has an attorney. Likewise, a

claimant pays legal fees pursuant to the terms of the agreement with the claimant's attorney.

Comment 13: The MSIA commented that fees should be reported on the basis of what was paid during a specific time.

Response 13: The triggering events in the rules generally so provide. The fees, like all cost information tracked on the data base system, are reported on a "paid to date" basis.

RULE IV Comments:

Comment 14: The MSIA and the American Insurance Association ("AIA") commented that the in-house counsel reporting requirements are inadequate, because every insurer will report differently. The MSIA stated that most private sector insurers have in-house counsel that have a variety of duties, not just advising on Montana claims.

Response 14: RULE IV only requires that the cost of providing legal advice on Montana indemnity claims be reported. The Department believes that the rule provides for a reasonably consistent way to allocate fees that the insurer pays.

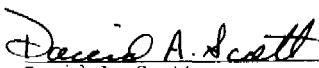
Comment 15: The MSIA and the AIA commented that some of the costs reportable pursuant to RULE IV are considered confidential. The commenters also criticized the cost of collecting the information and the fact that some of the information could be estimated.

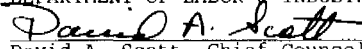
Response 15: The Department is required by § 39-71-225, MCA, to protect the confidentiality of the information received. The Department believes that RULE IV represents a reasonable balance between the insurer's cost of reporting the information and the accuracy of the information obtained. While the Department could require that all legal fees incurred by an insurer be allocated to individual claims, the Department does not believe that such a requirement would be cost-effective or provide data that was significantly more accurate. Likewise, merely allowing an insurer to come up with an allocation of in-house legal costs, without any guidance as to the components, would also be inefficient and be more likely to lead to inaccurate data.

Comment 16: The AIA questioned whether the rule contemplated collecting information on attorney fees incurred nationally, or just as to Montana claims.

Response 16: The rules only require reporting of data related to Montana indemnity claims.

7. The new rules and the amendment to ARM 24.29.3802 are effective May 1, 1995.


David A. Scott
Rule Reviewer

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

Certified to the Secretary of State: April 17, 1995.

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

In the matter of the) NOTICE OF AMENDMENT OF
amendment and repeal of rules) ARM 24.30.102 AND
related to occupational safety) REPEAL OF ARM 24.30.103
and health standards for)
public sector employment)

TO ALL INTERESTED PERSONS:

1. On February 9, 1995, the Department published notice at pages 184 to 187 of the Montana Administrative Register, Issue No. 3, to consider the amendment of ARM 24.30.102 and the repeal of ARM 24.30.103.

2. On March 10, 1995, a public hearing was held in Helena concerning the proposed amendments and the proposed repeal at which oral and written comments were received. Written comments were received prior to the closing date of March 17, 1995.

3. After consideration of the comments received on the proposed amendments, the Department has amended ARM 24.30.102 exactly as proposed, except with the following changes: (new material underlined, deleted material interlined, additional material in all capital letters and underlined)

24.30.102. OCCUPATIONAL SAFETY AND HEALTH CODE FOR GENERAL INDUSTRY PUBLIC SECTOR EMPLOYMENT (1) through (3) Same as proposed.

(4) All sections adopted above by reference are binding on every public sector employer ~~as defined in subsection (2) above~~ even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29-Part 1910, as of July 1, 1990 ~~1995 1994~~, and Federal Register Vol 55, No. 151, ~~published Monday, August 6, 1990, pp 32015-32020, together with all safety standards adopted therein,~~ are considered under this rule as the printed form of the safety code adopted under this subsection, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code adopted under this subsection. All the provisions, remedies, and penalties found in the Montana Safety Act (sections 50-71-101 through 50-71-334 MCA) apply to the administration of the provisions of the safety code adopted ~~in this subsection by this rule.~~

(45) ~~1910.4 Numbering.~~ For convenience, the federal number of a particular section found in the code of federal register regulations ~~shall~~ SHOULD be used when referring to a section in the safety code adopted in subsection (3) above. The federal number ~~shall~~ IS TO be preceded by the term (565). Thus, when

section 1910.27 of the Code of Federal Register Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (565) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102 (65) 1910.27".

AUTH: Sec. 50-71-311 MCA

IMP: Sec. 50-71-311 and 50-71-312 MCA

4. The Department did not receive any comments or testimony on the proposed repeal of ARM 24.30.103, and therefore repeals the rule exactly as proposed.

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

Comment 1: Several commenters expressed concern over the cost of complying with any requirements resulting from the amendment of the rule, generally citing opposition to "unfunded mandates."

Response 1: The Department is aware of the current financial strain on every political subdivision within the state. Unfortunately, part of this strain comes both from direct and indirect costs of workplace injuries and illnesses suffered by public sector employees. The Department's efforts to promote workplace safety are directed toward reducing those costs. The Department also notes that public sector employers have been subject (via ARM 24.30.102 and 24.30.103) to the OSHA rules for many years; the proposed amendments merely update the references to the federal rules and streamline the language. The Department believes that the proposed amendments do not add a significant burden to affected employers.

Comment 2: Several commenters suggested that volunteer fire departments be exempted from the rule, citing the expense of compliance with the rule. Roger W. Stevens, Chief, South Kalispell VFD commented that their training, equipment and fire fighting procedures are in accordance with National Fire Protection Association (NFPA) standards.

Response 2: The Department notes that the federal OSHA standards that deal with fire protection (adopted by reference in the rule) are based on NFPA standards. As noted in response no. 1, above, many fire departments have been subject to the same basic rules for a number of years. The Department does not believe that the public interest in providing for the safety of firefighters would be well served by exempting VFDs from the rule.

However, the Department also notes that the rules only apply to public sector employers; if a volunteer fire department is not an "employer" (as that term applies to the provisions of Title 39, MCA), then the rule does not apply to that entity. The purpose of the rule is to provide a safe workplace for the employees of every public sector employer.

Comment 3: One commenter proposed that the Department not adopt Subpart (L) of 29 CFR 1910, pertaining to fire fighting, as a mandatory provision applicable to volunteer fire departments.

Response 3: Subpart (L) [29 CFR §§ 1910.155 - 1910.165] has been in effect in Montana's public sector for several years and the amendment of ARM 24.30.102 causes no change to that aspect of the rules. As noted in response no. 1 and 2, above, public sector employers have been subject to the same basic rules for a number of years, and to the extent that a volunteer fire department is not an "employer", the rule does not apply to the entity.

Comment 4: A commenter also asked that the rules adopted by reference be published by the Department and provided to every political subdivision.

Response 4: The Department does not believe that it is an efficient use of resources to duplicate activities of the federal government by printing copies of the CFRs. If a governmental unit desires a copy of the portion of the CFRs as adopted by these rules, the Department will furnish them at cost. However, if a jurisdiction needs only a small portion of the CFRs, the Department will strive to provide a copy at no cost to the jurisdiction.

Comment 5: A commenter noted that there was an apparent typographical error in subsection (4) of the rule, referencing standards in effect on July 1, 1995, rather than 1994.

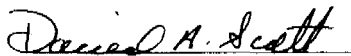
Response 5: The Department agrees with comment and has amended the rule accordingly.

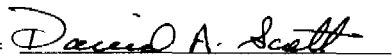
Comment 6: The Department received informal comments from the Secretary of State, Administrative Rules Bureau, to the effect that the numbering scheme in proposed subsection (5) seems somewhat confusing.

Response 6: Based on discussions with the Administrative Rules Bureau and an independent review of proposed subsection (5), the Department has made minor technical amendments to the rule.

6. The amendments and repeal are effective June 1, 1995, rather than May 1, 1995, as proposed, in order to comply with the provisions of 50-71-302, MCA.

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY


David A. Scott
Rule Reviewer

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

Certified to the Secretary of State: April 17, 1995.

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

In the matter of:) PETITION FOR DECLARATORY
The applicability of) RULING
37-51-321(1)(i) and (2)(a),)
MCA, regarding the ability)
of a "Limited Buyer Broker")
to make a buyer aware if)
non-listed property)

TO: All Interested Persons:

1. Petitioner's name and address: Pat M. Goodover, II,
P.O. Box 1725, Great Falls, MT 59403.

2. Petitioner questions whether it is illegal for a real estate broker or salesman to make a potential buyer aware of property that is not listed but that the broker or salesman knows is being offered for sale. He notes that section 37-51-321(1)(i) states that brokers will not offer real property for sale without the knowledge and consent of the owner. The petitioner asks whether a "limited buyer broker," who has neither a listing agreement with the seller nor a contract with the buyer, may advise a potential purchaser of such a property without violating section 37-51-321(2)(a), MCA. That section says that it is illegal to advertise property without a signed listing agreement.

3. The regulation/statute as to which petitioner requests a declaratory ruling is 37-51-321(2)(a), MCA, which provides that it is unlawful for a broker to advertise property without a signed listing agreement; and 37-51-321(1)(2) which relates to (2)(a).

4. The question presented for declaratory ruling by the Board is "How can a 'Limited Buyer Broker' inform a potential buyer about the availability of property which is not listed, but is 'for sale'?"

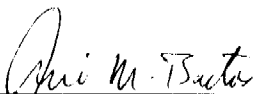
For example, if a broker informs his buyer about a "FSBO" [For Sale by Owner] (which is advertised in the paper), and the FSBO refuses to sign any listing agreement (even a one-party agreement), is that broker in violation of the law? Similarly, if a broker approaches an owner and asks if he would sell his property (the property is not officially on the market), and that owner says he would, but again will not sign anything, can a broker tell a buyer about that? If a broker does inform that buyer, is he in violation of the above MCA sections?

5. Petitioner contends that a limited buyer's broker should NOT be able to inform a potential buyer about a property without a listing agreement; and since he would not be a "limited buyer's broker" if he had a listing (he would be a sellers' broker, or buyers' broker, depending upon the type of "listing"), he cannot market properties which are not already listed.

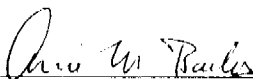
6. Petitioner requests a declaratory rule that a limited buyer broker cannot inform a buyer about the potential availability of property without being in violation of the above MCA sections.

7. Petitioner does not know of any other party similarly affected, but is aware that this practice goes on quite often.

BOARD OF REALTY REGULATION
STEVE CUMMINGS, CHAIRMAN



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 1995.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1994. This table includes those rules adopted during the period January 1, 1995 through March 31, 1995 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1994, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 and 1995 Montana Administrative Register.

GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication Dates for the Montana Administrative Register, p. 2709, 3009

ADMINISTRATION, Department of, Title 2

- 2.5.201 and other rules - State Purchasing, p. 2469, 2814

(Public Employees' Retirement Board)

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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 March, 1995, appear. Vacancies scheduled to appear from May 1, 1995, through July 31, 1995, 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 qualifications necessary.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 3, 1995.

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 MARCH, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Success</u>	<u>Appointment/End Date</u>
Board of Health and Environmental Sciences Dr. Dennis Schreffler Billings Qualifications (if required): health care professional	Health and Environmental Sciences Governor	reappointed	3/25/1995 1/1/1999
Board of Hearing Aid Dispensers Mr. Dudley Anderson Missoula Qualifications (if required): hearing aid dispensers	(Commerce) Governor	Lopez	3/17/1995 7/1/1997
Board of Occupational Therapy Practice Ms. Lynn Davis Billings Qualifications (if required): licensed occupational therapist	(Commerce) Governor	reappointed	3/21/1995 12/31/1998
Board of Science and Technology Development Mr. Larry Gianchetta Missoula Qualifications (if required): representative of the public sector	(Commerce) Governor	Stephenson	3/24/1995 1/1/1999
Mr. Dolph Harris Sidney Qualifications (if required): representative of private business	Governor	Noble	3/24/1995 1/1/1999
Mr. Rick Hill Helena Qualifications (if required): representing private business with knowledge of finance	Governor	reappointed	3/24/1995 1/1/1999
Dr. Rebecca Mahurin Bozeman Qualifications (if required): representing the private sector	Governor	reappointed	3/24/1995 1/1/1999

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1995

Appointee	Appointed by	Successes	Appointment/End Date
Children's Trust Fund Board Mr. Gary Acevedo Pablo Qualifications (if required): public member	(Family Services) Governor	reappointed	3/17/1995 1/1/1998
Mr. Kirk Astroth Bozeman Qualifications (if required): public member	Governor	reappointed	3/17/1995 1/1/1998
Ms. Judy Birch Helena Qualifications (if required): representative of Office of Public Instruction	Governor	reappointed	3/17/1995 1/1/1998
Ms. Barbara Campbell Deer Lodge Qualifications (if required): public member	Governor	Epstein	3/17/1995 1/1/1998
Ms. Judy Garrity Helena Qualifications (if required): representative of Department of Family Services	Governor	Kerstein	3/17/1995 1/1/1998
Family Support Services Advisory Council (Social and Rehabilitation Services) Ms. Sharon Wagner Helena Qualifications (if required): represents Department of Health and Environmental Sciences	Governor	not listed	3/3/1995 9/9/1996
Hazardous Materials Transportation Advisory Council (Transportation) Mr. Curt Laingen Helena Qualifications (if required): none specified	Governor	Havdahl	3/8/1995 12/13/1996

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Milk Control Board Dr. Robert Greer Bozeman Qualifications (if required): Democrat	(Commerce) Governor	reappointed	3/3/1995 1/1/1999
Mr. Michael F. Kleese Stevensville Qualifications (if required): Democrat and an attorney	Governor	reappointed	3/3/1995 1/1/1999
State Tax Appeal Board Ms. Patricia Foster Helena Qualifications (if required): public member	(Administration) Governor	reappointed	3/1/1995 3/1/2001

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term_end</u>
Advisory Council on Chemical Dependency (Corrections and Human Services) Rep. Steve Benedict, Hamilton Qualifications (if required): none specified	Director	7/1/1995
Sen. B.F. "Chris" Christiaens, Great Falls Qualifications (if required): none specified	Director	7/1/1995
Justice Janet Eschler, Billings Qualifications (if required): none specified	Director	7/1/1995
Mr. Jim Gamell, Great Falls Qualifications (if required): none specified	Director	7/1/1995
Ms. Judith Cedrose, Helena Qualifications (if required): none specified	Director	7/1/1995
Ms. Sandra Lambert, Miles City Qualifications (if required): none specified	Director	7/1/1995
Mr. Marko Lucich, Butte Qualifications (if required): none specified	Director	7/1/1995
Mr. Curtis Moxley, Chinook Qualifications (if required): none specified	Director	7/1/1995
Ms. Betty Wing, Missoula Qualifications (if required): none specified	Director	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Governor) Father Carl Erickson, Fort Benton Qualifications (if required): representative of Region III	Governor	7/18/1995
Mr. R.H. (Buff) Hultman, Drummond Qualifications (if required): representative of Region V	Governor	7/18/1995
Ms. Fern Prather, Big Timber Qualifications (if required): representative from Region II	Governor	7/18/1995
Ms. Ena D. Simpson, Polson Qualifications (if required): representative of Region VI	Governor	7/18/1995
Agricultural Development Council (Agriculture) Mr. P.L. "Joe" Boyd, Billings Qualifications (if required): active in agriculture	Governor	7/1/1995
Mr. Leo Giacometto, Helena Qualifications (if required): Director of Agriculture	Governor	7/1/1995
Mr. Larry Johnson, Kremlin Qualifications (if required): active in agriculture	Governor	7/1/1995
Mr. Jon Noel, Helena Qualifications (if required): Director of Commerce	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture) Dr. Gary Jensen, Bozeman Qualifications (if required): representative of MT cooperative Extension Service	Governor	7/1/1995
Mr. Allen Whitmer, Bloomfield Qualifications (if required): representative of a seed association	Governor	7/1/1995
Board of Architects (Commerce) Mr. Thomas L. Geelan, Havre Qualifications (if required): public member	Governor	7/1/1995
Board of Banking (Commerce) Mr. Douglas K. Morton, Kalispell Qualifications (if required): national bank officer	Governor	7/1/1995
Mr. Gary Rebal, Great Falls Qualifications (if required): public member	Governor	7/1/1995
Board of Barbers (Commerce) Mr. Max Demars, Big Timber Qualifications (if required): barber	Governor	7/1/1995
Board of Cosmetologists (Commerce) Mr. Dick Meyers, Billings Qualifications (if required): licensed cosmetologist	Governor	7/1/1995
Board of Hearing Aid Dispensers (Commerce) Ms. Patricia Ingalls, Butte Qualifications (if required): hearing aid dispenser	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Morticians (Commerce) Mr. John J. Michelotti, Billings Qualifications (if required): licensed mortician	Governor	7/1/1995
Board of Nursing (Commerce) Ms. Sherri Chatham, Great Falls Qualifications (if required): licensed practical nurse	Governor	7/1/1995
Ms. Nancy Heyer, Missoula Qualifications (if required): registered nurse	Governor	7/1/1995
Board of Nursing Home Administrators (Commerce) Ms. Joyce Asay, Forsyth Qualifications (if required): nursing home administrator	Governor	5/28/1995
Board of Pharmacy (Commerce) Ms. Patricia M. Mitchell, Dillon Qualifications (if required): pharmacist	Governor	7/1/1995
Board of Physical Therapy Examiners (Commerce) Mr. Thomas K. Meagher, Cut Bank Qualifications (if required): physical therapist	Governor	7/1/1995
Board of Plumbers (Commerce) Mr. Terry Campbell, Helena Qualifications (if required): represents Department of Health	Governor	5/4/1995
Mr. Elmer Lazurs, Helena Qualifications (if required): public member	Governor	5/4/1995
Mr. Lloyd Linden, Helena Qualifications (if required): public member	Governor	5/4/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. David E. Bowman, Ennis	Governor	7/1/1995
Qualifications (if required): surveyor		
Dr. Fred E. Walter, Butte	Governor	7/1/1995
Qualifications (if required): engineer		
Board of Public Accountants (Commerce)		
Mr. Gary Nelson, Plentywood	Governor	7/1/1995
Qualifications (if required): certified public accountant		
Board of Radiologic Technologists (Commerce)		
Dr. Stephen Becker, Libby	Governor	7/1/1995
Qualifications (if required): radiologist		
Mr. Jim Winter, Great Falls	Governor	7/1/1995
Qualifications (if required): radiologic technologist		
Board of Real Estate Appraisers (Commerce)		
Ms. Connie G. Clarke, Miles City	Governor	5/1/1995
Qualifications (if required): public member		
Ms. Janet Davis, Billings	Governor	5/1/1995
Qualifications (if required): licensed appraiser		
Board of Realty Regulation (Commerce)		
Mr. Steven E. Cummings, Kalispell	Governor	5/9/1995
Qualifications (if required): public member and from Western Congressional District		
Mr. Rocky Zimdars, Glasgow	Governor	5/9/1995
Qualifications (if required): in realty business and Democrat from Western Congressional District		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Regents of Higher Education (Education) Mr. Jim Brown, Libby Qualifications (if required): student representative	Governor	6/1/1995
Board of Sanitarians (Commerce) Ms. Melissa Tuemmler, Ulm Qualifications (if required): registered sanitarian	Governor	7/1/1995
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Pat J. Byrne, Great Falls Qualifications (if required): water well contractor	Governor	7/1/1995
Committee on Telecommunication Services for the Handicapped (Social and Rehabilitation Services) Mr. Ron Bibler, Great Falls Qualifications (if required): handicapped member	Governor	7/1/1995
Mr. John Delano, Helena Qualifications (if required): 1 of 4 handicapped members, 2 must be deaf or hard hearing	Governor	7/1/1995
Mr. Ben Havdahl, Helena Qualifications (if required): 1 of 4 handicapped members, 2 must be deaf or hard hearing	Governor	7/1/1995
Community Services Advisory Council (Governor) Ms. Norma Bixby, Lame Deer Qualifications (if required): represents Native Americans	Governor	7/1/1995
Ms. Candace Bowman, Lewistown Qualifications (if required): public member	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Services Advisory Council (Governor) cont.		
Ms. Susan Callaghan, Butte	Governor	7/1/1995
Qualifications (if required): represents business		
Ms. Nancy Coopersmith, Helena	Governor	7/1/1995
Qualifications (if required): represents Office of Public Instruction		
Mr. George Dennison, Missoula	Governor	7/1/1995
Qualifications (if required): represents University System		
Ms. Gertrude Downey, Butte	Governor	7/1/1995
Qualifications (if required): represents non-profit organization		
Ms. Patricia J. Gunderson, Belgrade	Governor	7/1/1995
Qualifications (if required): represents labor		
Ms. Meredith Hariton, Missoula	Governor	7/1/1995
Qualifications (if required): represents program participants, ages 16 through 29		
Ms. Kay Hopkins, Kalispell	Governor	7/1/1995
Qualifications (if required): represents public		
Ms. Jan Kenitzer, Baker	Governor	7/1/1995
Qualifications (if required): represents public		
Ms. Billie Krenzler, Billings	Governor	7/1/1995
Qualifications (if required): represents local government		
Mr. Joe R. Lovelady, Helena	Governor	7/1/1995
Qualifications (if required): entity receiving assistance under Domestic Volunteer Service Act		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Services Advisory Council (Governor) cont.		
Mr. Charles McCarthy, Helena	Governor	7/1/1995
Qualifications (if required): represents Department of Family Services		
Major Loren Oelkers, Helena	Governor	7/1/1995
Qualifications (if required): represents Department of Military Affairs		
Mr. Andy Oldenburger, Manhattan	Governor	7/1/1995
Qualifications (if required): represents public		
Dr. Arnold Olsen, Helena	Governor	7/1/1995
Qualifications (if required): represents Fish, Wildlife and Parks		
Ms. Kathy Sova Ramirez, Helena	Governor	7/1/1995
Qualifications (if required): represents nonprofit organization		
Mr. Bob Simoneau, Helena	Governor	7/1/1995
Qualifications (if required): represents Department of Labor and Industry		
Mr. Peyton Terry, Glasgow	Governor	7/1/1995
Qualifications (if required): public member		
Council on Physical Fitness and Sports (Governor)		
Ms. Mary Kay Bennett, Helena	Governor	7/12/1995
Qualifications (if required): public member		
Ms. Jeri Domme, Helena	Governor	7/12/1995
Qualifications (if required): public member		
Mr. Ron Egeland, Billings	Governor	7/12/1995
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council on Physical Fitness and Sports (Governor) cont. Mr. Todd Foster, Great Falls Qualifications (if required): public member	Governor	7/12/1995
Mr. Dick Harte, Bozeman Qualifications (if required): public member	Governor	7/12/1995
Ms. Malia Kipp, Missoula Qualifications (if required): public member	Governor	7/12/1995
Ms. Cindy Lewis, Helena Qualifications (if required): public member	Governor	7/12/1995
Ms. Judy Martz, Butte Qualifications (if required): public member	Governor	7/12/1995
Mr. Robert W. Moon, Helena Qualifications (if required): public member	Governor	7/12/1995
Mr. Bob Norbie, Great Falls Qualifications (if required): public member	Governor	7/12/1995
Mr. Tom Osborne, Billings Qualifications (if required): public member	Governor	7/12/1995
Mr. Hal Rawson, Helena Qualifications (if required): public member	Governor	7/12/1995
Mr. Pat Rummerfield, Colstrip Qualifications (if required): public member	Governor	7/12/1995
Mr. Spencer Sartorius, Helena Qualifications (if required): public member	Governor	7/12/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council on Physical Fitness and Sports (Governor) cont. Dr. Brian Sharkey, Missoula Qualifications (if required): public member	Governor	7/12/1995
Ms. Judy Spolstra, Bozeman Qualifications (if required): public member	Governor	7/12/1995
Mr. Dan Thoene, Butte Qualifications (if required): public member	Governor	7/12/1995
Dr. Manuel White, Helena Qualifications (if required): public member	Governor	7/12/1995
Education Advisory Council (Office of Public Instruction) Mr. Bob Deming, Great Falls Qualifications (if required): represents institutions of higher education	Governor	5/1/1995
Mr. J.K. Kuzara, Roundup Qualifications (if required): school board member	Governor	5/1/1995
Ms. Wilma Mad Plume, Browning Qualifications (if required): represents classroom teachers	Governor	5/1/1995
Ms. Robin McCallum, Helena Qualifications (if required): school counselor	Governor	5/1/1995
Rep. Scott T. McCulloch, Billings Qualifications (if required): legislator	Governor	5/1/1995
Ms. Carol McElwain, Butte Qualifications (if required): school board member	Governor	5/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Education Advisory Council (Office of Public Instruction) cont.		
Ms. Martha H. Parrish, Rexford	Governor	5/1/1995
Qualifications (if required): represents elementary school librarians		
Ms. Kathy Seacat, Helena	Governor	5/1/1995
Qualifications (if required): represents parents of elementary students		
Ms. Mary Wagner, Missoula	Governor	5/1/1995
Qualifications (if required): represents school administrators		
Mr. R. Stephen White, Helena	Governor	5/1/1995
Qualifications (if required): represents home schoolers		
Sister Elizabeth Youngs, Billings	Governor	5/1/1995
Qualifications (if required): represents private school		
Electrical Board (Commerce)		
Mr. Charles T. Sweet, Kalispell	Governor	7/1/1995
Qualifications (if required): master electrician		
Flathead Basin Commission (Governor)		
Ms. M. Colleen Allison, Columbia Falls	Governor	6/30/1995
Qualifications (if required): public member		
Ms. Marilyn Wood, Kalispell	Governor	6/30/1995
Qualifications (if required): public member		
Health Care Authority Board (Health and Environmental Sciences)		
Ms. Marget V. Newman, Ronan	Governor	6/30/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Society Board of Trustees (Historical Society)		
Ms. Ana Brenden, Scobey Qualifications (if required): public member	Governor	7/1/1995
Mr. John Burke, Butte Qualifications (if required): public member	Governor	7/1/1995
Mr. Jack Hayne, Dupuyer Qualifications (if required): public member	Governor	7/1/1995
ICC for State Prevention Programs (Governor)		
Ms. Marilyn Thorquist Chakos, Billings Qualifications (if required): experience in private or nonprofit provision of prevention program	Governor	7/1/1995
Incentive Awards Advisory Council (Administration)		
Mr. Jim Adams, Helena Qualifications (if required): general public member	Director	7/1/1995
Ms. Ann Bartel, Great Falls Qualifications (if required): general public member	Director	7/1/1995
Mr. Bartley J. Campbell, Helena Qualifications (if required): state employee	Director	7/1/1995
Mr. Mark Cress, Helena Qualifications (if required): ex-officio non-voting	Director	7/1/1995
Mr. Russell G. McDonald, Helena Qualifications (if required): state employee	Director	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Incentive Awards Advisory Council (Administration) cont. Mr. Erich Merdinger, Helena Qualifications (if required): state employee	Director	7/1/1995
Ms. M. Carol Ogle, Helena Qualifications (if required): state employee	Director	7/1/1995
Mr. Jim Pellegrini, Helena Qualifications (if required): state employee	Director	7/1/1995
Ms. Janet Reller, Helena Qualifications (if required): state employee	Director	7/1/1995
Mr. Joe Williams, Helena Qualifications (if required): state employee	Director	7/1/1995
Interagency Coordinating Council for Prevention Programs Ms. Robin Morris, Havre Qualifications (if required): representative of prevention programs and services	(Family Services) Governor	7/1/1995
Job Training Coordinating Advisory Council (Labor and Industry) Ms. Judy Birch, Helena Qualifications (if required): none specified	Governor	7/1/1995
Mr. Peter S. Blouke, Helena Qualifications (if required): none specified	Governor	7/1/1995
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): represents business	Governor	7/1/1995
Mr. Rick Day, Helena Qualifications (if required): none specified	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Job Training Coordinating Advisory Council (Labor and Industry) cont. Ms. Jane DeLong, Helena Qualifications (if required): represents business	Governor	7/1/1995
Ms. JoEllen Estenson, Columbia Falls Qualifications (if required): none specified	Governor	7/1/1995
Mr. Hank Hudson, Clancy Qualifications (if required): represents state or local government	Governor	7/1/1995
Ms. Heleen Kellicut, Deer Lodge Qualifications (if required): represents business	Governor	7/1/1995
Mr. Bob Marks, Clancy Qualifications (if required): represents business	Governor	7/1/1995
Ms. Sue Matthews, Miles City Qualifications (if required): none specified	Governor	7/1/1995
Ms. Felicity McFerrin, Helena Qualifications (if required): represents labor/community-based organizations	Governor	7/1/1995
Mr. Steve P. Nelsen, Bozeman Qualifications (if required): none specified	Governor	7/1/1995
Mr. Jon Oldenburg, Lewistown Qualifications (if required): represents labor/community-based organizations	Governor	7/1/1995
Mr. David Owen, Helena Qualifications (if required): represents business	Governor	7/1/1995
Ms. Diane Ruff, Billings Qualifications (if required): represents business	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Job Training Coordinating Advisory Council (Labor and Industry) cont. Mr. Randy Siemers, Billings Qualifications (if required): none specified	Governor	7/1/1995
Ms. Sherry Stevens Wulf, Kalispell Qualifications (if required): none specified	Governor	7/1/1995
Senator Mignon Waterman, Helena Qualifications (if required): none specified	Governor	7/1/1995
Mr. Noel Williams, Eureka Qualifications (if required): none specified	Governor	7/1/1995
Representative Karyl Winslow, Billings Qualifications (if required): none specified	Governor	7/1/1995
Joint Committee on Post-Secondary Education Policy and Budget (Leg. Fiscal Analyst) Ms. D'Anna Smith, Bozeman Qualifications (if required): student representative	Governor	6/30/1995
Judicial Standards Commission (Judicial) Ms. Jean Grow, Glendive Qualifications (if required): public member from Congressional District II	Governor	7/1/1995
Judicial Unification and Finance Commission (Legislative Council) Ms. Toni Atwood, Livingston Qualifications (if required): public member	Governor	6/30/1995
Ms. Barbara Ford, Bigfork Qualifications (if required): public member	Governor	6/30/1995
Mr. J. Perry Wolfe, Scobey Qualifications (if required): public member	Governor	6/30/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Library Services Advisory Council (Education)		
Ms. Greta Chapman, Libby	Director	6/1/1995
Qualifications (if required): represents public libraries		
Ms. Beverly Knapp, Bozeman	Director	6/1/1995
Qualifications (if required): represents users of public library service in Broad Valleys Federation		
Ms. Anita Nelson, Missoula	Director	6/1/1995
Qualifications (if required): represents the disabled		
MIAMI Project Advisory Council (Health and Environmental Sciences)		
Ms. Lil Anderson, Billings	Governor	6/30/1995
Qualifications (if required): represents local health department		
Ms. Nancy Colton, Bozeman	Governor	6/30/1995
Qualifications (if required): involved in kid's issues and represents parents' organization		
Mr. Dan Dennehy, Butte	Governor	6/30/1995
Qualifications (if required): represents service providers		
Ms. Nancy Ellery, Helena	Governor	6/30/1995
Qualifications (if required): represents SRS which administers or supervises services under MT Medicaid program		
Ms. Betty Hidalgo, Great Falls	Governor	6/30/1995
Qualifications (if required): represents nonprofit health organization		
Dr. Jeffrey P. Hinz, Great Falls	Governor	6/30/1995
Qualifications (if required): private physician who specializes in obstetrics or pediatrics		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
MIAMI Project Advisory Council (Health and Environmental Sciences) cont. Rep. Angela Russell, Lodge Grass Qualifications (if required): member Crow Tribe and knowledge of and in involved health services for Native Americans	Governor	6/30/1995
Mr. Dale Taliaferro, Helena Qualifications (if required): represents preventative health services for women and kids	Governor	6/30/1995
Mental Health Advisory Council on Youth (Corrections and Human Services) Ms. Shirley Brown, Helena Qualifications (if required): represents Department of Family Services	Governor	6/30/1995
Senator Ethel Harding, Polson Qualifications (if required): state legislator	Governor	6/30/1995
Ms. Toni Jensen, Helena Qualifications (if required): parent of emotionally disturbed child	Governor	6/30/1995
Mr. Ted Lechner, Billings Qualifications (if required): represents youth court	Governor	6/30/1995
Mr. Glenn McFarlane, Billings Qualifications (if required): represents service provider groups	Governor	6/30/1995
Mr. Mike McLaughlin, Great Falls Qualifications (if required): represents service provider groups	Governor	6/30/1995
Mr. Bob Runkel, Helena Qualifications (if required): represents Office of Public Instruction	Governor	6/30/1995
Ms. Barbara Sample, Billings Qualifications (if required): represents youth service advocacy	Governor	6/30/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mental Health Advisory Council on Youth (Corrections and Human Services) cont. Mr. Pete Surdock, Helena Qualifications (if required): represents Department of Corrections and Human Services	Governor Governor	6/30/1995
Microbusiness Finance Program Advisory Council (Commerce) Ms. Barbara Burke, Missoula Qualifications (if required): none specified	Governor	7/1/1995
Mr. Dolph Harris, Sidney Qualifications (if required): represents business owners	Governor	6/30/1995
Ms. Jamie Kay, Missoula Qualifications (if required): none specified	Governor	7/1/1995
Mr. Richard C. King, Havre Qualifications (if required): none specified	Governor	7/1/1995
Mr. Duane Kurokawa, Wolf Point Qualifications (if required): none specified	Governor	7/1/1995
Ms. Robyn Morrison Hampton, Helena Qualifications (if required): represents expertise in revolving loan fund administration	Governor	6/30/1995
Ms. Kim L. Peterson, Havre Qualifications (if required): represents low-income persons	Governor	6/30/1995
Mr. Rick Sharp, Butte Qualifications (if required): none specified	Governor	7/1/1995
Mr. Craig Smith, Wolf Point Qualifications (if required): represents cities with population less than 15,000	Governor	6/30/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Microbusiness Finance Program Advisory Council (Commerce) cont. Mr. Robert N. Storey, Missoula Qualifications (if required): represents microbusiness owners	Governor	6/30/1995
Montana Library Services Advisory Council (Education) Ms. Sue Nissen, Butte Qualifications (if required): none specified	Director	7/1/1995
Montana Mint Committee (Agriculture) Mr. Dale Sonstelle, Kalispell Qualifications (if required): active mint grower	Governor	7/1/1995
Motorcycle Safety Advisory Committee (Office of Public Instruction) Mr. Robert E. Brown, Glasgow Qualifications (if required): certified motorcycle safety instructor	Superintendent	7/1/1995
Mr. Dal Smilie, Helena Qualifications (if required): represents motorcycle group	Governor	7/1/1995
Mr. Ron Ullom, Red Lodge Qualifications (if required): peace officer	Governor	7/1/1995
Noxious Weed Advisory Council (Agriculture) Mr. Barry Bowles, Townsend Qualifications (if required): Herbicide Dealer and Applicator	Director	6/30/1995
Mr. Dane Castleberry, Ekalaka Qualifications (if required): Livestock Production	Director	6/30/1995
Ms. Linda Ellison, Bozeman Qualifications (if required): Sportsman/Wildlife Group	Director	6/30/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Advisory Council (Agriculture) cont. Mr. Charles M. Jarecki, Polson Qualifications (if required): member at large	Director	7/1/1995
Ms. Mercy Knowlton, Poplar Qualifications (if required): Agriculture Crop Production	Director	6/30/1995
Mr. Lonnie McCurdie, Conrad Qualifications (if required): Consumer Group	Director	6/30/1995
Mr. Terry Turner, Havre Qualifications (if required): none specified	Director	6/30/1995
Petroleum Tank Release Compensation Board (Health and Environmental Sciences) Mr. Al Audet, Great Falls Qualifications (if required): representative of petroleum service industry	Governor	6/30/1995
Mr. John Dove, Missoula Qualifications (if required): representative of insurance company	Governor	6/30/1995
Mr. Dean South, Helena Qualifications (if required): representative of petroleum services industry	Governor	6/30/1995
Mr. Howard Wheatley, Great Falls Qualifications (if required): representative of independent petroleum marketers and chain retailer	Governor	6/30/1995
Reserved Water Rights Compact Commission (Governor) Ms. Tara DePuy, Livingston Qualifications (if required): governor's appointment	Governor	6/1/1995
Mr. Gene Etchart, Glasgow Qualifications (if required): member appointed by Governor	Governor	6/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Reserved Water Rights Compact Commission (Governor) cont. Senator Lorents Grosfield, Big Timber Qualifications (if required): member appointed by Senate	Senate	6/1/1995
Mr. Dennis Iverson, Helena Qualifications (if required): member appointed by Governor	Governor	6/1/1995
Mr. Joseph P. Mazurek, Helena Qualifications (if required): member appointed by Senate	Senate	6/1/1995
Mr. Jack Salmond, Choteau Qualifications (if required): member appointed by Governor	Governor	6/1/1995
Rep. Bob Thoft, Stevensville Qualifications (if required): member appointed by House of Representatives	House of Rep.	6/1/1995
Mr. Chris D. Tweeten, Helena Qualifications (if required): member appointed by Attorney General	Attorney General	6/1/1995
State Emergency Response Commission (Military Affairs) Mr. Steve Barry, Helena Qualifications (if required): represents Department of Justice	Governor	7/21/1995
Mr. Pat Brannon, Helena Qualifications (if required): represents Department of Transportation and Highways	Governor	7/21/1995
Ms. Judy Browning, Helena Qualifications (if required): represents Governor's Office	Governor	7/21/1995
Ms. Beate Galda, Helena Qualifications (if required): represents Fish, Wildlife and Parks	Governor	7/21/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current_position_holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont. Mr. Jim Greene, Helena Qualifications (if required): represents Disaster and Emergency Services	Governor	7/21/1995
Mr. Marv Jochems, Billings Qualifications (if required): none specified	Governor	7/21/1995
Mr. Pat Keim, Helena Qualifications (if required): none specified	Governor	7/21/1995
Ms. Yvonne Kobasziar, Great Falls Qualifications (if required): none specified	Governor	7/21/1995
Mr. Curt Laingen, Helena Qualifications (if required): none specified	Governor	7/21/1995
Mr. Bob Robinson, Helena Qualifications (if required): none specified	Governor	7/21/1995
Mr. Seldon Weedon, Great Falls Qualifications (if required): none specified	Governor	7/21/1995
State Library Commission (Education) Ms. Mary Doggett, White Sulphur Springs Qualifications (if required): public member	Governor	5/22/1995
Teachers' Retirement Board (Administration) Mr. E. Joseph Cross, Billings Qualifications (if required): member of a retirement system	Governor	7/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Commerce)		
Ms. Maureen Averill, Bigfork Qualifications (if required): represents Glacier Country	Governor	7/1/1995
Ms. Diane Brandt, Glasgow Qualifications (if required): represents Missouri River Country	Governor	7/1/1995
Mr. David Hemion, Helena Qualifications (if required): represents Montana Chamber of Commerce	Governor	7/1/1995
Ms. Edythe McCleary, Hardin Qualifications (if required): represents Custer Country	Governor	7/1/1995
Ms. Lisa Reid Perry, Shepherd Qualifications (if required): public member	Governor	7/1/1995
Veterans Cemetery Advisory Council (Military Affairs)		
Mr. Herb Ballou, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Dick Baumberger, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Joel Cusker, Helena Qualifications (if required): none specified	Director	5/1/1995
Ms. Alma Dickey, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Lee Dickey, Helena Qualifications (if required): none specified	Director	5/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Veterans Cemetery Advisory Council (Military Affairs) cont.</u>		
Mr. James W. Duffy, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. M. Herbert Goodwin, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Jim Heffernan, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. James F. Jacobson, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Robert C. McKenna, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Mickey Nelson, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Carl L. Nordberg, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Fred Olson, Fort Harrison Qualifications (if required): none specified	Director	5/1/1995
Mr. George Paul, Helena Qualifications (if required): none specified	Director	5/1/1995
Ms. Irma Paul, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Ray Read, Helena Qualifications (if required): none specified	Director	5/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. Ruddy Reilly, Helena Qualifications (if required): none specified	Director	5/1/1995
Ms. Rose Marie Storey, Helena Qualifications (if required): none specified	Director	5/1/1995
Vocational Education Advisory Council (Governor)		
Mr. Fred "Rocky" Clark, Butte Qualifications (if required): none specified	Governor	5/1/1995
Mr. Jeff Dietz, Billings Qualifications (if required): none specified	Governor	5/1/1995
Ms. Aleta Ann Haagenstad, Clancy Qualifications (if required): none specified	Governor	5/1/1995
Dr. Jon Jourdonnais, Great Falls Qualifications (if required): none specified	Governor	5/1/1995
Dr. August "Gus" Korb, Havre Qualifications (if required): none specified	Governor	5/1/1995
Dr. Dennis Lerum, Missoula Qualifications (if required): none specified	Governor	5/1/1995
Mr. Jesse O'Hara, Great Falls Qualifications (if required): none specified	Governor	5/1/1995
Dr. Robert Schaal, Kalispell Qualifications (if required): none specified	Governor	5/1/1995

VACANCIES ON BOARDS AND COUNCILS -- May 1, 1995 through July 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Education Advisory Council (Governor) cont. Mr. James Schultz, Lewistown Qualifications (if required): none specified	Governor	5/1/1995
Colonel Gordon Simmons, Missoula Qualifications (if required): none specified	Governor	5/1/1995
Representative Chuck Swysgood, Dillon Qualifications (if required): none specified	Governor	5/1/1995
Ms. Avis Ann Tobin, Helena Qualifications (if required): none specified	Governor	5/1/1995
Mr. Howard Williams, Helena Qualifications (if required): none specified	Governor	5/1/1995