MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule pertaining to licensing by exam for midwives	)))	NOTICE OF PROPOSED ADOPTION OF A NEW RULE PERTAINING TO LICENSING BY EXAM FOR MIDWIVES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 25, 1992, the Board of Alternative Health Care proposes to adopt a new rule pertaining to licensing by examination for direct entry midwives.

2. The proposed new rule will read as follows:

"I LICENSING BY EXAMINATION (1) Applicants for direct entry midwifery licensure by examination shall submit a completed application with the proper fees and supporting documents, at least 90 days prior to the examination date, to the board office. Supporting documents shall include:

(a) written documentation of good moral character consisting of three letters of reference, at least one of which must be from a licensed direct entry midwife;

(b) a copy of a certified transcript sent directly from a high school, showing evidence the applicant has graduated from the school;

(c) any other documents, affidavits and certificates required by section 37-27-201, and 37-27-203, MCA, and board rules.

(2) All applicants shall take the midwives' alliance of north America (MANA) examination as endorsed by the board, or any other examination to be prescribed or endorsed by the board, and have their scores reported to the board office by the proper MANA interstate reporting service, or its equivalent. All applicants for MANA examination shall:

(a) sit for the MANA examination only when administered by the board, at its designated Montana site, or when administered by proper MANA officials in conjunction with the annual MANA national meeting;

(b) achieve a passing score of 70 percent, as required by statute.

(3) All applicants shall comply with the adult and infant cardiopulmonary resuscitation certification requirement set forth in 37-27-201, and provide a photocopy of a current CPR card, which must remain valid throughout the license period.

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-201, 37-27-202, 37-27-203, MCA

REASON: This rule is being proposed to implement licensing by examination for direct entry midwives, as mandated by Chapter 27 of Title 37 mandated by the 1991 Montana Legislature.

3. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Board of Alternative Health Care, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, to be received no later than 5:00 p.m., July 23, 1992.

4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Alternative Health Care, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, to be received no later than 5:00 p.m., July 23, 1992.

5. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1, based on the 14 provisional licensees in Montana.

BOARD OF ALTERNATIVE HEALTH CARE
DR. MICHAEL BERGKAMP, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State June 15, 1992.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to traineeship requirements, fees, record retention, unethical conduct, complaints, disciplinary actions, testing procedures, and continuing educational requirements, and the adoption of new rules pertaining to notification, definitions, forms of bills of sale, contracts and purchase agreements, and inactive status	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 8.20.401, 8.20.402, 8.20.407, 8.20.408, 8.20.409, 8.20.411, 8.20.412, AND 8.20.501, AND THE ADOPTION OF NEW RULES PERTAINING TO NOTIFICATION, DEFINITIONS, FORM OF BILLS OF SALE, CONTRACT, AND PURCHASE AGREEMENTS, AND INACTIVE STATUS

TO: All Interested Persons

1. On July 27, 1992, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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

"8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS (1) The licensed hearing aid dispenser (supervisor) ~~will~~ shall:

(a) directly supervise every fitting made by the trainee. The supervisor shall approve the selection of the ear mold, and hearing aid, and shall approve the choice of which ear to fit prior to fitting. The supervisor shall directly supervise during the trainee's first ~~60~~ 90 days of the training period.

(1)(b) through (5) will remain the same.

~~(6) Trainees shall affix the designation "trainee" after his or her name on all business cards, correspondence, advertising or any written material concerning the hearing aid field.~~

~~(7)~~ (6) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee in his training activities, in accordance with section 37-16-405, MCA.

(7) The supervisor's name, business phone number, and title "supervisor" shall be included on all written materials distributed by a trainee, if such materials include the trainee's name."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301, 37-16-405, MCA

REASON: The proposed amendment will require direct supervision of a trainee for the first 90 days of the training period, in compliance with Title 37, Chapter 16, MCA, mandated by the 1991 Legislature, and will allow customers an opportunity to speak directly to the trainee's licensed supervisor.

"8.20.402 FEES (1) The fees shall be as follows:

(a) Application fee (includes initial written and practical examination)	$150.00
(b) Re-examination--written	65.00
(c) Re-examination--practical (includes renewal of trainee license)	55.00
(d) Original license ~~(upon passing examinations)~~	100.00
(e) Renewal active license	125.00
(f) Renewal inactive license	60.00
(g) Copies of laws and rules	5.00

~~(2) $100.00 of the application fee is refundable within the first 60 days after application, with $25.00 being retained for board administrative costs.~~

~~(3)~~ (2) All ~~other~~ fees payable to the board are non-refundable."

Auth: Sec. 37-1-134, 37-16-202, MCA; IMP, Sec. 37-1-134, 37-16-202, 37-16-402, 37-16-405, 37-16-407, MCA

REASON: The proposed amendment will set a fee for inactive license renewal, in compliance with Title 37, Chapter 16, mandated by the 1991 Legislature, and will allow for nonrefundability of fees, commensurate with costs of processing applications and preparing for exams.

"8.20.407 RECORD RETENTION (1) All hearing aid dispensers shall maintain all hearing tests and records ~~indefinitely~~ for a period of one year following the date of client's death on all ~~persons~~ clients to whom he sells hearing aids."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-411, MCA

REASON: The proposed amendment will eliminate the retention of unnecessary files and paperwork by licensees beyond the period when reference to them may be necessary.

"8.20.408 UNETHICAL CONDUCT (1) For the purpose of section 37-16-411~~(14)~~, MCA, unethical conduct shall include, but not be limited to, the following:

~~(1)~~ (a) ~~It shall be considered unethical conduct to~~ the use in advertising or otherwise, of the words "prescribe" or "prescription" or any abbreviation, variation or derivative thereof or symbol therefore in referring to or in describing any industry product unless such product was made pursuant to a prescription given by a physician; provided, however, that the word "prescription" or words of similar meaning may be used to refer to or describe an industry product which was specifically made to compensate for hearing loss of a particular purchaser in accordance with the directions furnished by a qualified person other than a physician when

such words are accompanied by a clear and conspicuous disclosure that the "prescription" was not based on a medical examination and that the person issuing it was not a physician.;

~~(2) It shall be unethical conduct to engage in any of those methods of advertising that are prohibited by rules 1 through 17 of the Trade Practice Rules of the federal trade commission as adopted and promulgated on July 20, 1965 and as amended to date.~~

~~(a) Because of the length of these rules and because the cost of publishing them in entirety in this rule would be prohibitive, they are incorporated herein by this reference. The full text of these Trade Practice Rules may be obtained from the Board of Hearing Aid Dispensers, 1424 9th Avenue, Helena, Montana 59620-0407.~~

~~(3) Any person, firm or corporation residing outside of the state of Montana, who may be engaging in the business of distributing hearing aids within this state or in the business of advertising within this state the sale of hearing aids shall be required by this board to comply with these standards of ethical conduct as well as to comply with the governing statutes and rules of the board.~~

~~(4)~~ (b) ~~It shall be considered unethical conduct for a hearing aid dispenser to initiate~~ initiating contact by telephone, without the dispenser first identifying himself by name and company he represents, ~~Nor shall he make~~ or making more than ~~1~~ one such contact unless further contact is specifically requested by the client.; ~~In the case of a person who already has a hearing aid still under guarantee, it shall be unethical for a hearing aid dealer other than the dealer who sold the aid to that person to contact more than once unless specifically requested by the person to make contact.~~

(c) contacting a person who already has a hearing aid still under warranty, more than once, unless contact is made by the original dispenser, or further contact is specifically requested by the client;

~~(5)~~ (d) ~~It shall be considered unethical conduct for a hearing aid dispenser to use~~ use of a contract which does not ~~specify on its face the time limit between the time of signing the contract and the time of delivery. Such time limit shall be prominently displayed on the face of the contract and the dealer must orally inform the client of this provision in the contract prior to the consummation of such contract.~~ comply with the board's rules on contract content;

~~(6)~~ (e) ~~It shall be understood that any hearing aid dispenser who shall engage~~ engaging in a home solicitation sale ~~shall be expected and subject to~~ without complying with the statutory requirements of the Door to Door Sales Act as set ~~out~~ forth in section 30-14-501, MCA.

(2) Any person, firm or corporation located outside the state of Montana, who engages in the business of distributing or advertising of hearing aids within this state, shall comply with all applicable statutes and rules of the board.

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-411, MCA

REASON: The proposed amendment will delete the Federal Trade Commission Trade Practice Rule reference, as these rules were deleted in 1977, and will renumber and re-word the sections for clarity and compliance with statutory requirements.

"8.20.409 COMPLAINTS (1) Complaints to the board will be forwarded to the firm ~~or dealer~~ and dispenser involved in ~~this dealer or~~ the complaint. The firm and dispenser will be given 30 days to ~~resolve~~ respond to the complaint. ~~The complainant is also to be so informed.~~"

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-411, 37-16-412, MCA

REASON: The amendment is being proposed to use the term "dispenser" rather than "dealer" under the statute and to require both the dispenser and firm to respond to the complaint in a timely manner.

"8.20.411 DISCIPLINARY ACTIONS - FINES (1) The board reserves the ~~discretion~~ right to take appropriate disciplinary action provided for in section 37-1-136, ~~and~~ 37-16-411, and 37-16-414, MCA, against a licensee who has violated any law or rule of the board, and to decide on a case by case basis the type and extent of disciplinary action it deems appropriate, applying the following considerations:

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

(g) ordering the licensee to successfully complete appropriate professional training; ~~or~~

(h) imposition of a fine or fines not to exceed $500 per incident of violation; or

(i) ordering the licensee to make restitution to the purchaser or his estate, of the purchase price of a hearing aid or related device, minus the dispensing fee, in accordance with 37-16-414, MCA.

(3) ~~(i)~~ ~~f~~Fines will be determined by the board on an individual ~~per~~ case by case basis.

(ii) and (iii) will remain the same but will be renumbered (a) and (b).

(3) will remain the same but will be renumbered (4)."

Auth: Sec. 37-1-136, 37-16-202, MCA; IMP, Sec. 37-16-411, 37-16-414, MCA

REASON: The proposed amendment will add the disciplinary action of restitution as allowed by 37-16-414, mandated by the 1991 Legislature.

"8.20.412 MINIMUM TESTING AND RECORDING PROCEDURES (1) ~~The minimum testing requirements shall be:~~ The following tests shall be performed as specified:

(a) ~~A~~air conduction tests ~~must~~ shall be ~~made at~~ conducted bilaterally in accordance with American national standards institute (ANSI) standard frequencies of 250-500-1000-2000-4000-6000 Hertz. Appropriate masking ~~must~~ shall be used.

(b) ~~B~~bone conduction tests ~~are to be made~~ shall be conducted bilaterally, if appropriate, on every client ~~at~~ in accordance with ANSI standards at 500-1000-2000-4000 Hertz. ~~Proper~~ Appropriate masking ~~is to~~ shall be ~~applied~~ used.

(c) ~~S~~speech reception threshold and discrimination testing must be conducted in ~~an~~ a quiet environment, ~~not to exceed 55 dBA ambient noise level, consistent with OSHA standards,~~ with appropriate masking used, and measurement of user discomfort level.

~~(d) Measurement of user discomfort level.~~

(2) will remain the same.

(3) Reports of audiometric test results on the patient's audiogram for the purpose of fitting and dispensing hearing aids shall include the following information:

(a) ~~N~~name and age of the ~~patient~~ client;

(b) ~~D~~date of the test;

(c) ~~N~~name and license number of the person ~~giving~~ performing the test; and

(d) ~~W~~whether the test equipment was calibrated in SPL or HTL.

(4) All ~~A~~audiometers ~~used in testing the hard of hearing must~~ shall be calibrated to ANSI standards once a year. A ~~certified~~ copy of an electronic audiometer calibration made within the past twelve months must be submitted to the board by the licensee ~~no later than~~ on June 30 annually."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, 37-16-411, MCA

REASON: The proposed amendment will clarify that tests must be conducted bilaterally on every client. The OSHA standard reference is deleted, as OSHA does not address minimum noise standards for speech testing. Audiometer calibration reporting is standardized for ease of monitoring.

"8.20.501 CONTINUING EDUCATION REQUIREMENTS (1) will remain the same.

(2) Continuing education courses recognized by the board pertaining to fitting and dispensing hearing aids include those sponsored by the Montana hearing aid society, ~~the National Hearing Aid Society~~, the national institute ~~of~~ for hearing instruments studies, the American speech-language hearing association, the American conference of audioprosthology, the Montana speech and hearing association, college courses, and other such programs approved by the board.

(3) A dispenser who is first licensed within the ~~12~~ six months immediately preceding the annual renewal date will not be required to meet the continuing education requirements during that ~~12~~ six month period.

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

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-404, 37-16-407 MCA

REASON: The proposed amendment will delete the reference to the National Hearing Aid Society, which does not offer continuing education courses, and lower the grace period for waiver of the continuing education requirement from 12 to six months, to ensure properly trained and updated licensees for the protection of the public.

3. The proposed new rules will read as follows:

"I. NOTIFICATION (1) The board will provide copies of all proposed amendments and new rules noticed under the Administrative Procedure Act, to all licensed hearing aid dispensers and trainees."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, MCA

REASON: The proposed new rule will ensure all licensees and trainees are made aware of and have an opportunity to comment on any amendments or new rules proposed by the board.

"II. DEFINITIONS (1) "Related devices" means those parts, attachments, or accessories that are sold with a hearing aid by a licensed hearing aid dispenser or trainee, and includes assistive devices of all types if sold by a licensee, but does not include general merchandise items, such as cleaners, cords or batteries that are commonly available at most retail stores.

(2) "Permanent place of business" means the headquarters or home office of the company, corporation or franchise offices which are considered to be permanent by the person or persons in charge of the company, corporation or franchise office, and who also have authority concerning hiring and firing of employees, as well as financial responsibility for the company, and employee liabilities.

(3) "Designated licensee in charge" means the licensed dispenser in charge of the permanent place of business.

(4) "Thirty day cancellation period" means a total of 30 days of actual possession of the hearing aid(s) by the purchaser. If the aid is returned during the 30 day time frame for service, repair or re-make, the time period the aid is out of the purchaser's possession will not count against his 30 day total.

(5) "Defective in fit or function" means a case, shell, component, or circuit defect that prevents the purchaser from wearing and using the hearing aid.

(6) "Dispensing fee" includes, but is not limited to, hearing tests, delivery, counselling, travel, telephone, shipping and handling, postage, hearing aid options, materials, overhead costs, equipment maintenance and calibration.

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301, 37-16-304, 37-16-414, MCA

REASON: The proposed new rule will define terms and phrases used in statutes and rules as interpreted by the board, to provide guidelines to licensees on allowable conduct.

"III REQUIREMENTS FOR BILL OF SALE, CONTRACT, PURCHASE AGREEMENT AND DELIVERY VERIFICATION FORM (1) The following information shall be placed on all bills of sale, contracts, and purchase agreements, in addition to those items required by section 37-16-303, MCA:

(a) purchaser has a 30 day cancellation or refund period beginning on the date of delivery, but not including periods of return for service, repair or re-make;

(b) refunds will be made if hearing aids are defective in fit or function, or dispenser has failed to correct a problem in fit or function;

(c) name and address of the board in addition to the statement required in section 37-16-403, MCA;

(d) the specific time limit between the time of signing the contract and the time of delivery, to be prominently displayed on the face of the contract, and orally presented to the client prior to signing of the contract;

(e) whether or not dispenser will retain a dispensing fee, which may be up to 20 percent of the total sale.

(2) A delivery verification form stating the date of delivery and signed by the purchaser shall be obtained at the time of delivery by the dispenser. The delivery verification form shall also restate the terms of the 30 day refund or cancellation period. Dispensers have the option to use contracts with the required information, signed at delivery, in lieu of the separate delivery verification requirement.

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-303, MCA

REASON: The proposed new rule will set guidelines for the form of bills of sale, contract, purchase agreements and delivery verification forms to standardize licensee's services, and inform the public as to their rights in purchasing hearing aids.

"IV INACTIVE STATUS (1) A licensed dispenser requesting inactive status shall certify his intention to the board on the annual renewal form.

(2) Inactive licensees shall not be required to meet the continuing education requirements under section 37-16-407, MCA.

(3) Inactive licensees shall keep the board office informed of their current mailing address.

(4) Inactive licensees reactivating their license shall submit a minimum of 10 hours of additional formal training or continuing education to be approved by the board, which shall not include on-the-job experience."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-407, MCA

REASON: The proposed new rule will delineate procedures for inactive licensees, and require 10 hours of continuing education to reactivate the license.

4. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, Arcade Building, 111 North

Jackson, Helena, MT 59620-0407, to be received no later than 5:00 p.m., July 23, 1992.

5. Carol Grell, attorney, has been designated by the Department of Commerce, to preside over and conduct the hearing.

BOARD OF HEARING AID DISPENSERS
BYRON RANDALL, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHPAIRO, RULE REVIEWER

Certified to the Secretary of State, June 15, 1992.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensure qualifications, applications and renewals and the proposed adoption of a new rule pertaining to transfer of license	))))))	NOTICE OF PROPOSED AMENDMENT OF 8.39.502 LICENSURE--OUTFITTER QUALIFICATIONS, 8.39.505 LICENSURE--OUTFITTER APPLICATION AND 8.39.508 LICENSURE--RENEWAL AND THE PROPOSED ADOPTION OF A NEW RULE PERTAINING TO TRANSFER OF LICENSE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 25, 1992, the Board of Outfitters proposes to amend and adopt the above-stated rules.

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

"8.39.502 LICENSURE--OUTFITTER QUALIFICATIONS (1) will remain the same.

(a) have three seasons of verified experience ~~in Montana or bordering states~~ as a licensed outfitter or a licensed professional guide working for a licensed outfitter in a similar service and resource area; and,

(b) through (5)(c) will remain the same."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-302, 37-47-304, MCA

REASON: The proposed amendment will revise an experience requirement which also imposes a residency requirement determined to be unconstitutional.

"8.39.505 LICENSURE--OUTFITTER APPLICATION

(1) through (2)(b) will remain the same.

(3) Applicants ~~passing the examination~~ shall ~~have one year to~~ complete an approved operations plan before ~~commencing operations or will then be treated as a new applicant~~ taking the written examination. However, the board may, upon written request and good cause shown, ~~extend this period~~ allow the operations plan to be filed at some other specified time."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-304, 37-47-307, MCA

REASON: This amendment would require an applicant to provide an operations plan which demonstrates he is able to serve the public before going through the expense of the written examination.

"8.39.508 LICENSURE--RENEWAL (1) and (2) will remain the same.

(3) For good cause the time for lapse of license shall be extended for ~~60~~ 30 days, subject to payment of the renewal fee and a late penalty fee.

(4) By January 1 of the new license year, or ~~60~~ 30 days thereafter for good cause shown, an outfitter license may be placed on inactive status for a period not to exceed one license year, by written request and payment of the required fee."

Auth: Sec. 37-1-131, 37-47-201, MCA: IMP, Sec. 37-47-201, 37-47-304, 37-47-307, 37-47-312, MCA

REASON: This amendment would continue to allow a shorter but still reasonable period to reinstate or place a license on inactive status after lapse.

3. The proposed new rule will read as follows:

"I TRANSFER OF LICENSE OF DECEASED OUTFITTER (1) Upon request from the personal representative of the estate of a deceased outfitter, the board shall transfer the license of the outfitter to the immediate family member designated by the personal representative. If the business is sold to someone other than an heir of the outfitter, the purchaser must apply for and obtain his own license within one year of the date of sale."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-310, MCA

REASON: This rule provides a process for transfer of the license of a deceased outfitter.

4. Interested persons may present their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Outfitters, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than July 23, 1992.

5. If a person who is directly affected by the proposed amendments and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Outfitters, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than July 23, 1992.

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

affected has been determined to be 65, based on the 656 licensees in Montana.

BOARD OF OUTFITTERS
IRVING L. "MAX" CHASE

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 15, 1992.

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

In the matter of the proposed amendment of rules pertaining to definitions, supervisor responsibility, schedule of supervision, non-allowable functions of speech aides, and functions of audiology aides	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO SPEECH-LANGUAGE PATHOLOGY AIDES AND AUDIOLOGY AIDES

TO: All Interested Persons:

1. On July 28, 1992, at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to the use and supervision of speech-language pathology and audiology aides.

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

"8.62.402 DEFINITIONS (1) through (5) will remain the same.

(6) Speech-language pathology aides shall be classified as one of the following categories:

(a) Aide I shall mean a person who holds an undergraduate degree in communication sciences and disorders, or its equivalent, and is currently enrolled in an accredited graduate program for the purpose of completing licensure requirements. The aide I shall submit verification of the required continuing education units set forth in ARM 8.62.703 to the board annually.

(b) Aide II shall mean a person who holds an undergraduate degree in communication sciences and disorders, or its equivalent, but is not currently enrolled in an accredited graduate program. The aide II shall submit verification of the required continuing education units set forth in ARM 8.62.703 to the board annually.

(c) Aide III shall mean a person who holds no undergraduate degree in communication sciences and disorders or its equivalent. The aide III shall submit verification of the required continuing education units set forth in ARM 8.62.703 to the board annually.

(7) Audiology aides shall be classified as one of the following categories:

(a) Audiology aide shall mean a person meeting the minimum requirements established by the board who performs any of the activities defined under the "practice of audiology" definition of 37-15-102, MCA under the supervision of a licensed audiologist.

(b) Industrial audiology aide shall mean an audiology aide who conducts pure tone air conduction threshold audiograms for the purpose of industrial hearing tests in addition to other acts and services as provided in the statutes and rules."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, 37-15-202, MCA

REASON: This amendment is being proposed to establish three levels of speech-language pathology aides, and two levels of audiology aides to differentiate between persons holding various types of degrees, and those who do not hold a degree. The categories will allow greater guidance in defining and supervising aides, for the protection, safety, and welfare of the consumer.

"8.62.501 SUPERVISOR RESPONSIBILITY (1) and (2) will remain the same.

(3) The speech-language pathology supervisor or appropriate administrative agency is responsible for insuring that the speech-language pathology aide is initially adequately trained for the tasks he/she will perform. The speech-language pathology supervisor shall perform a task analysis of the duties of the speech-language pathology aide and provide a minimum of 40 hours of practical training in the duties the speech-language pathology aide is expected to perform."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, MCA

REASON: The amendment is being proposed to ensure speech-language pathology supervisors are adequately training the speech-language pathology aides for the tasks they will be performing.

"8.62.502 SCHEDULE OF SUPERVISION - CONTENTS (1) will remain the same.

(2) ~~Aides must be supervised approximately 20% of the client contact time, of which ten percent (10%) must be direct contact~~ Speech-language pathology aides shall be supervised in accordance with their level of aide classification under the following schedule:

(a) Aide I shall be supervised five percent of client contact time, of which two percent shall be direct contact.

(b) Aide II shall be supervised ten percent of client contact time, of which five percent shall be direct contact.

(c) Aide III shall be supervised twenty percent of client contact time, of which ten percent shall be direct contact.

(3) Audiology aides shall be supervised in accordance with the following schedule:

(a) Audiology aides shall be supervised under a proposed plan to be submitted by the supervisor with the aide application, but which shall include a minimum of ten percent of client contact time.

(b) Industrial audiology aides shall be supervised under (3) (a) above, but may be authorized to conduct pure tone air

conduction threshold audiograms when performing outside the physical presence of a supervisor.

(3) will remain the same but will be renumbered (4)."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, 37-15-202, MCA

REASON: This amendment is being proposed to clarify the amount of supervision required under each of the new speech-language pathology aides, and audiology aide categories.

"8.62.504 ~~NONALLOWABLE~~ FUNCTIONS OF AIDES (1) will remain the same.

~~(2) Although aides must be under the supervision of a licensee, the aide shall, nevertheless, not do the following activities:~~

~~(a) conduct speech/language evaluations, although screening activities allowed by the supervisor are permitted;~~

~~(b) interpret data or clinical experience into diagnostic statements of clinical management policies;~~

~~(c) transmit clinical information to anyone other than the professional directly supervising him/her;~~

~~(d) determine the selection of cases; or~~

~~(e) refer clients.~~

~~(f) write or plan individual or group therapy/ rehabilitation plans~~.

(2) All speech-language pathology aides shall be under the appropriate supervision for their category of aide. Each aide shall comply with the following function guidelines for the appropriate aide category:

(a) Aide I may:

(i) perform tasks identified by the speech-language pathology supervisor in the required task analysis, which do not violate any provision of Title 37, chapter 15, MCA, or these rules;

(ii) conduct speech/language evaluations, and write evaluation reports which have been properly signed off by the supervisor;

(iii) conduct screening activities;

(iv) interpret data or clinical experience into diagnostic statement of clinical management policies with supervisor review;

(v) transmit clinical information to appropriate persons with supervisor approval;

(vi) determine the selection of cases with input from the supervisor;

(vii) write or plan individual or group therapy/ rehabilitation plans which have been properly signed off by the supervisor;

(viii) attend child study and individual education planning (IEP) meetings.

(b) Aide II may:

(i) perform tasks identified by the speech-language pathology supervisor in the required task analysis which do not violate any provision of Title 37, chapter 15, MCA, or these rules;

(ii) conduct speech/language evaluations under the supervision of the supervisor, and write evaluation reports which have been properly signed off by the supervisor;

(iii) conduct screening activities as permitted by the supervisor;

(iv) interpret data or clinical experience into diagnostic statements of clinical management policies with the supervisor present;

(v) determine the selection of cases with direct input from the supervisor;

(vi) write or plan individual or group therapy/rehabilitation plans with supervisor review and sign off;

(vii) attend child study and IEP meetings concerning reports and cases prepared by the aide.

(c) Aide III may:

(i) perform tasks identified by the speech-language pathology supervisor in the required task analysis which do not violate any provision of Title 37, chapter 15, MCA, or these rules;

(ii) only conduct screening activities expressly permitted by the supervisor.

(3) Speech-language pathology aides shall comply with the following guidelines on functions which are not allowed for the appropriate aide category:

(a) Aide I may not:

(i) refer clients to outside professionals.

(b) Aide II may not:

(i) transmit clinical information to anyone other than the professional directly supervising him/her;

(ii) refer clients to outside professionals.

(c) Aide III may not:

(i) conduct speech/language evaluations;

(ii) interpret data or clinical experience into diagnostic statements of clinical management policies;

(iii) transmit clinical information except to the professional directly supervising him/her;

(iv) determine the selection of cases;

(v) write or plan individual or group therapy/rehabilitation plans;

(vi) attend case study or IEP meetings except with the permission of the supervisor;

(vii) refer clients to outside professionals.

~~(3)~~ (4) ~~Speech aides who were registered with the board between the dates of August 1, 1989 and June 1, 1989, and who were allowed, as part of their registration plan, to conduct evaluations and participate on CSTs and IEPs will continue to be allowed to perform these activities under supervision if they are enrolled in a graduate program for the purpose of completing licensure requirements. However, speech aides who fall under this subsection must meet licensure requirements by September, 1992, or they will no longer be able to conduct these activities.~~ Speech-language aides I must meet licensure requirements within a specified period of time, to be determined by the aide I and submitted to the board for approval. Upon annual registration, ~~these aides must~~ the speech-pathology aide I shall provide to the board

verification of coursework from the graduate school program attained toward licensure requirements.

(5) Audiology aides and industrial audiology aides shall comply with the supervision plan and functions submitted by the supervisor at the time of application, and with all other statutory or rule requirements.

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, MCA

REASON: The amendment is being proposed to clarify the functions which may be performed by each of the new categories of speech-language pathology aides, and audiology aides.

"8.62.703 CONTINUING EDUCATION REQUIRED - WHEN

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

(5) Speech-language pathology aides I, II and III shall complete 20 units of continuing education annually, and submit verification of this to the board at the time of registration.

(6) Audiology aides and audiology industrial aides shall complete six units of continuing education annually and submit verification of this to the board at the time of registration."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, 37-15-309, MCA

REASON: The amendment is being proposed to set the continuing education unit requirements for the new categories of speech-language pathology aides, and audiology aides to ensure updated education in their fields.

3. Interested persons may submit their data, views and arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Speech-Language Pathologists and Audiologists, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, 59620-0407, to be received no later than 5:00 p.m. July 23, 1992.

4. Carol Grell, attorney, has been designated to preside over and conduct the hearing.

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
CARL CLARK, CHAIRMAN

By: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State June 15, 1992.

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

In the matter of the amendment of rules 16.8.1304 and 16.8.1906, and the proposed adoption of new rule I)	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND THE ADOPTION OF NEW RULE I (Air Quality Bureau)

To: All Interested Persons

1. On July 17, 1992, at 9:30 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules and proposed adoption of new rule I.

2. The proposed air rules and amendments to existing rules implement a fee program for the department's Air Quality Bureau, relating to major open burners, as defined in ARM 16.8.1301. Currently the bureau issues air quality permits to major open burners on an annual basis, as set forth in ARM 16.8.1304. The proposed rules and amendments implement a permit application fee requirement applicable to applications for such permits.

Subject to certain minimum fee amounts, the fees described above are determined on a per ton/per pollutant basis, with specific fees set for particular pollutants. The total fee amount is based upon the source's actual or estimated actual emissions of air pollutants in the last calendar year during which the source actually conducted open-burning pursuant to an air quality permit for major open burners. The source may receive an offset against the fee for non-monetary contributions made to the department's smoke management program during the same calendar year, and a mechanism is set forth for justifying any claimed offsets for such non-monetary contributions.

The failure to pay the required fee assessed by the department will result in the filed permit application being declared incomplete.

3. The proposed new rule and the existing rules, as proposed to be amended, appear as follows (new material in existing rules is underlined; material to be deleted is interlined):

16.8.1304 MAJOR OPEN BURNING SOURCE RESTRICTIONS A major open burning source must:

(1) Remains the same.

(2)(a)-(d) Remain the same.

(e) The appropriate air quality permit application fee required pursuant to RULE I.

(3)-(4) Remain the same.

AUTH: 75-2-111 and 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

16.8.1906 AIR QUALITY PERMIT APPLICATION/OPERATION FEE ASSESSMENT APPEAL PROCEDURES (1) Remains the same.

(a) receipt of the fee assessment notice described in ARM 16.8.1903(2) (Operation Fees); or

(b) issuance of a determination of incompleteness of a permit application based on the lack of the proper permit application fee pursuant to ARM 16.8.1905(2) (Permit Application Fees) or RULE I(3) (Air Quality Open Burning Fees).

(2)-(4) Remain the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

RULE I AIR QUALITY OPEN BURNING FEES (1) Concurrently with the submittal of an air quality major open burning permit application, as required in ARM Title 16, chapter 8, subchapter 13 (Open Burning), section 16.8.1304 (Major Open Burning Source Restrictions), the applicant shall submit an air quality major open burning fee.

(2) Air quality major open burning fees are separate and distinct from any air quality operation fee required to be submitted to the department pursuant to ARM 16.8.1903 or air quality permit application fee required to be submitted to the department pursuant to ARM 16.8.1905 by a source of air contaminants.

(3) An air quality major open burning permit application is incomplete until the proper air quality major open burning fee is paid to the department. If the department determines that the air quality major open burning fee submitted with the major open burning permit application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the major open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM 16.8.1906, and if the fee deficiency is not corrected by the applicant, the major open burning permit application is incomplete until issuance of the board's decision or when the judicial review of the board's decision has been completed, whichever is later. Upon final disposition of the appeal, any portion of the fee which may be due to either the department or the applicant as a result of the decision is immediately due and payable.

(4)(a) The major open burning air quality permit application fee shall be based on the actual or estimated actual amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 16.8.1304 (Major Open Burning Source Restrictions). The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (b), below:

(i) a fee calculated using the following formula:
tons of total particulate emitted in the previous appropriate calendar year,
multiplied by $7.30; plus
tons of oxides of nitrogen emitted in the previous appropriate calendar year,

multiplied by $1.83; plus
tons of volatile organic compounds emitted in the appropriate previous appropriate calendar year, multiplied by $1.83; or
(ii) a minimum fee of $250.

(b) The department may reduce or eliminate, as appropriate, the air quality major open burning fees to be collected from an applicant in recognition of the non-monetary contributions made by the applicant to the smoke management program. The department may recognize only those non-monetary contributions made by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 16.8.1304. To be accepted for the purpose of reducing an applicant's fees for the subsequent calendar year, a written claim for non-monetary contributions to the smoke management program must be filed with the department no later than 60 days after the close of the calendar year during which the non-monetary contributions were made by the applicant. The claim shall describe in detail both the nature of the non-monetary contributions and the dollar value of such contributions. The non-monetary contributions may consist of, but are not limited to, staff time and the use of equipment, supplies or space. The department may review the written claims that are submitted, and may adjust the dollar value of the non-monetary contributions based upon a finding that the value assigned to the contributions is not reasonable, the non-monetary contributions that were made were not reasonably related to the smoke management program, or both. In no case shall a source be reimbursed for non-monetary contributions in excess of their assessed open burning permit fee.
AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

4. The Board is proposing these amendments to the rules as part of the implementation of HB 781 passed by the 1991 Legislature, which significantly amended section 75-2-211, MCA (1991). The fees for major open burners are needed to provide revenues to support the air quality bureau's smoke management program.

5. 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 Yolanda Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 24, 1992.

DENNIS IVERSON, Director

Certified to the Secretary of State June 15, 1992.

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 16.28.1005 setting tuberculosis control requirements for employees of schools and day care facilities.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE 16.28.1005 (Tuberculosis)

To: All Interested Persons

1. On July 15, 1992, at 1:30 p.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rule.

2. The proposed amendments would prohibit employment in a school or day care facility of a person who fails to provide the documentation required showing the results of a tuberculosis test or other specified information to determine if s/he has communicable TB; allow documentation other than annual x-rays to prove a tuberculin-positive employee is not communicable; prohibit an employee that fails to comply with the rule from working in a school or day care until s/he complies; and allow a school employee to transfer within a school district without having to repeat the TB test and require transfer of documentation of that person's TB status with him or her.

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

16.28.1005 EMPLOYEE -- SCHOOLS -- DAY CARE FACILITY

(1) ~~A person employed in a~~ With the exceptions specified in (2) and (7) below, no public or private school as defined in 20-5-402, MCA, ~~the curriculum of which is comprised of the work of any combination of kindergarten through grade 12~~, or ~~in a~~ day care facility as defined in section ~~53-4-401~~ 52-2-703, MCA, ~~must receive~~ may employ a person unless that person has provided the school or day care facility with documentation of the results of a tuberculin skin test~~ing between one~~ done within the prior year, along with the name of the tester and the date and type of test administered, ~~before and 7 days after commencing employment~~, unless the person provides written medical evidence that s/he is a known tuberculin reactor, in which case section ~~(4)~~(5) applies.

(2)(a) A person who is not a known tuberculin reactor and has not had a tuberculin skin test performed as required in (1) above may be employed until the date specified in (b) below if s/he provides the employer with:

(i) a signed and dated written statement by a licensed physician that no such skin test should be performed at that date for medical reasons, along with the specific medical

reasons why the test is temporarily inadvisable and the date after which the test may be administered; and

(ii) a signed and dated written statement by a licensed physician that s/he has examined the person to determine whether or not symptoms of tuberculosis exist and has found no such symptoms.

(b) If, within two weeks after the date upon which the physician's statement indicates the test is once again medically acceptable, the employee has not provided the school or day care facility with documentation of the results of a tuberculin skin test, the school or day care facility must terminate or suspend that person's employment immediately until the test results are submitted to it.

~~(2)~~(3) Each school and day care facility must keep documentation for each current employee of either the date, type, tester, and results of the tuberculin skin test, or the fact that section ~~(4)~~(5) applies.

(3) Remains the same but is renumbered (4).

(4)(a) Remains the same but is renumbered (5).

(b) If any of the conditions listed in subsection ~~(4)~~(5)(a) of this rule are present, the tuberculin-positive employee must be counseled that s/he is at relatively high risk of developing tuberculosis disease and that s/he should complete 6 months of chemoprophylaxis if s/he has not already done so, unless medically contraindicated according to the standards contained in "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children", a joint statement of the centers for disease control and the American thoracic society, adopted March, 1986.

(c) Further surveillance is not required of a tuberculin-positive employee with any condition listed in subsection ~~(4)~~(5)(a) of this rule who completes 6 months of chemoprophylaxis.

(d) A tuberculin positive employee with any of the conditions listed in subsection ~~(4)~~(5)(a) of this rule who does not complete 6 months of chemoprophylaxis~~, with the exception mentioned in subsection (4)(c) of this rule,~~ must~~, have a chest X-ray~~ annually during his/her term of employment, provide his or her employer with documentation from a physician that s/he is free of communicable tuberculosis.

(e) A tuberculin-positive employee with none of the conditions listed in subsection ~~(4)~~(5)(a) of this rule or with a history of close exposure to a case of communicable pulmonary tuberculosis within the previous 2 years or a history of a negative tuberculin test within the previous 2 years may be released from further routine tuberculosis surveillance following 2 negative chest x-rays one year apart. However, if such an employee does not complete 6 months of chemoprophylaxis as well, s/he must be examined by a physician every 5 years after the second negative x-ray is taken to determine whether symptoms of tuberculosis exist.

(5) Remains the same but is renumbered (6).

(7) If an employee violates any requirement of this rule, the employee may not work in a school or daycare facility until

s/he complies with the terms of this rule.

(8) A person employed by a school district who transfers to any other school within the same district need not repeat the actions required by section (1), and the documentation required by section (3) must be transferred to the second school by the first.

~~(6)~~(9) The department hereby adopts and incorporates by reference the portion of the joint statement of the American thoracic society and the centers for disease control entitled "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children" (March, 1986) which specifies medical contraindications to chemoprophylaxis. A copy of the statement may be obtained from the Preventive Health Services Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620 (telephone 406-444-4740~~8~~).

AUTH: 50-1-202, 50-17-103, 52-2-735, MCA
IMP: 50-1-202, 50-17-103, 52-2-735, MCA

4. The department is proposing these amendments to the rule for the following reasons:

(a) to more adequately protect children from exposure to tuberculosis by improving enforcement of the TB control requirements against daycare and school employees who refuse to submit the required TB test results, i.e. by conditioning initial and continued employment upon compliance with the rule;

(b) to ease the burden on schools and school employees of complying with this rule by allowing transfers within a district without the necessity of repeating the TB test or producing the alternative documentation required by section (1) of the rule;

(c) to update TB control standards, e.g. by requiring a tuberculin-positive employee to get a physician's documentation that the employee is not communicable in place of an annual x-ray; and

(d) to add conditional employment requirements for new potential employees who, for medical reasons, cannot take the TB test immediately, thereby allowing them to be employed until they can take the test.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Todd Damrow, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 30, 1992.

6. Ellie Parker, at the above address, has been designated to preside over and conduct the hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State June 15, 1992.

Reviewed by:
Counsel for the Department

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

In the matter of the adoption of Rules I through X, the amendment of rules 46.6.102, 46.6.201, 46.6.303 through 46.6.307, 46.6.406, 46.6.410, 46.6.501 through 46.6.513, 46.6.515, 46.6.517, 46.6.602, 46.6.701, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1201, 46.6.1302, 46.6.1304, 46.6.1305, 46.6.1306, 46.6.1309, 46.6.1601 through 46.6.1604 and the repeal of rules 46.6.302, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 and 46.6.1501 through 46.6.1504 pertaining to the vocational rehabilitation, extended employment and independent living programs	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I THROUGH X, THE AMENDMENT OF RULES 46.6.102, 46.6.201, 46.6.303 THROUGH 46.6.307, 46.6.406, 46.6.410, 46.6.501 through 46.6.513, 46.6.515, 46.6.517, 46.6.602, 46.6.701, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1201, 46.6.1302, 46.6.1304, 46.6.1305, 46.6.1306, 46.6.1309, 46.6.1601 THROUGH 46.6.1604 AND THE REPEAL OF RULES 46.6.302, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 AND 46.6.1501 THROUGH 1504 PERTAINING TO THE VOCATIONAL REHABILITATION, EXTENDED EMPLOYMENT AND INDEPENDENT LIVING PROGRAMS

TO: All Interested Persons

1. On July 16, 1992, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through X, the amendment of rules 46.6.102, 46.6.201, 46.6.303 through 46.6.307, 46.6.406, 46.6.410, 46.6.501 through 46.6.513, 46.6.515, 46.6.517, 46.6.602, 46.6.701, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1201, 46.6.1302, 46.6.1304, 46.6.1305, 46.6.1306, 46.6.1309, 46.6.1601 through 46.6.1604 and the repeal of rules 46.6.302, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 and 46.6.1501 through 46.6.1504 pertaining to the vocational rehabilitation, extended employment and independent living programs.

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

[RULE I] VOCATIONAL REHABILITATION PROGRAM: EMPLOYMENT GOALS (1) The department in the provision of vocational rehabilitation services seeks to provide clients with employment opportunities in the fields of rehabilitation health, public welfare, public safety, law enforcement, and other appropriate public professions.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-108 and 53-7-310 MCA

Rationale: Proposed [Rule I], providing for the vocational rehabilitation program a goal of encouraging clients of the program to pursue public service employment, seeks to foster the commitment of persons to employment that will further the development of these public fields.

[RULE II] VOCATIONAL REHABILITATION PROGRAM: PAYMENT OF TUITION FOR HIGHER EDUCATION (1) The department will provide, in accordance with the provisions of this rule, funding to a vocational rehabilitation client for payment of tuition for a program of higher education, community/junior college, vocational school, technical school or institute, or hospital school of nursing that the department determines in accordance with a client's IWRP is necessary for the vocational rehabilitation of the client.

(2) The department will provide funding to a client for payment of tuition in a program of higher education, community/junior college, vocational school, technical school or institute, or hospital school of nursing only to the extent that the client has need for such funding.

(a) Funding from the department for the cost of tuition is limited to and may not exceed the difference between the cost of tuition and the total of the funding the client can contribute and the funding for tuition received by the client from other sources.

(b) Prior to a determination by the department as to the amount of funding a client should receive for the cost of tuition, a client must apply for and pursue a federal Pell education loan to pay the costs of tuition.

(3) The department will only provide funding for the cost of tuition for a client at the program of higher education, community/junior college, vocational school, technical school or institute, or hospital school of nursing that the department determines is the most cost effective.

(4) The department, except as provided in (a), (b) and (c), will provide funding for the cost of tuition for a client at a public or private program of higher education up to but not exceeding the highest tuition charge in the Montana university system.

(a) The department will provide, subject to the limitation in (b), funding for the cost of tuition to a program of higher education that is more expensive than the highest tuition in the Montana university system if the department determines that the

program is not available otherwise or that the overall cost of attendance inclusive of tuition, room and board, texts and supplies at the program with the more expensive tuition will be less than the overall cost of attendance at the program in the Montana university system.

(b) For tuition to programs of higher education located outside of Montana, the department will provide funding for the cost of tuition up to but not exceeding the highest tuition charge in the Montana university system unless the department determines based on extenuating circumstances that it will provide funding for the cost of tuition up to but not exceeding the tuition rate that would be paid for that program by the vocational rehabilitation agency in the state in which the program is located.

(c) For tuition to a nationally recognized program, designed and staffed for persons with severe disabilities, the department will provide funding for the cost of tuition up to but not exceeding the tuition rate that would be paid for that program by the vocational rehabilitation agency in the state in which the program is located.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-3-310 MCA

Rationale: Proposed [Rule II], governing the payment of tuition for higher education as a vocational rehabilitation service, is needed to provide for the efficient use of program resources by controlling the financial commitments that the program may make on behalf of clients who are pursuing vocational education or higher education.

[RULE III] VOCATIONAL REHABILITATION PROGRAM: SERVICES AVAILABLE TO APPLICANTS (1) The department may provide to an applicant for vocational rehabilitation services, directly or by procurement from other public or private sources, any of the following services that the department determines are necessary for evaluating an applicant's eligibility for vocational rehabilitation services:

(a) personal and vocational adjustment services as provided in ARM 46.6.502;

(b) physical and mental restoration services as provided in ARM 46.6.503;

(c) transportation as provided in ARM 46.6.504;

(d) attendant services as provided in [Rule IV];

(e) assistive services as provided in ARM 46.6.508;

(f) services to family members and dependents as provided in ARM 46.6.509; and

(g) other goods and services as provided in ARM 46.6.510.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-103, 53-7-105, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: Proposed [Rule III], listing vocational rehabilitation services available to applicants, is needed to provide for the efficient use of program resources by specifying the services that may be provided in determinations of a person's eligibility.

[RULE IV] VOCATIONAL REHABILITATION PROGRAM: ATTENDANT SERVICES (1) Attendant services may be provided to a person with a severe disability who is an applicant or client.

(2) Attendant services are available to escort a person to and from school, shopping or institutions where necessary services are provided.

(3) Attendant services are not available for a person who is able to pay the cost of the service or has access to attendant services either through volunteers or other programs.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: Proposed [Rule IV], concerning vocational rehabilitation attendant services, is needed to provide for appropriate use of attendant services by specifying the nature of and limitations upon attendant services provided through the vocational rehabilitation program.

[RULE V] VOCATIONAL REHABILITATION PROGRAM: LICENSES AND FEES (1) The cost of necessary business and occupational licenses and fees may be provided to a client to the extent the client is unable to pay such cost.

(2) Payment of business and occupational licenses and fees for a client is limited to those licenses or fees which are necessary for the business or professional development for the client provided in the client's IWRP.

(3) The department may provide advice and assistance to a vocational rehabilitation client in obtaining appropriate business and occupational licenses and fees.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: Proposed [Rule V], concerning payment of license and fees as a vocational rehabilitation service, is needed to consolidate existing provisions relating to licenses and fees into one rule.

[RULE VI] VOCATIONAL REHABILITATIONS PROGRAM: WORK ADJUSTMENT TRAINING (1) Work adjustment training may be provided to a client whose vocational development is lacking in basic understandings and skills about the work milieu.

(2) Work adjustment training may be provided only in a facility which has a work adjustment program approved by the department.

(3) Work adjustment training for a client may be authorized only for three month periods at a time. Work adjustment training will be reauthorized only when appropriate facility staff recommend further work adjustment.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: Proposed [Rule VI], concerning work adjustment training as a vocational rehabilitation service, is needed to place existing provisions relating to work adjustment training into a single rule and locate the rule in the subchapter relating to vocational rehabilitation services.

[RULE VII] EXTENDED EMPLOYMENT SERVICES: SUPPORTED EMPLOYMENT REQUIREMENTS (1) Supported employment may be provided to a client who needs assistance in entering into competitive work in integrated work settings.

(2) Supported employment as an extended employment service may be provided only in an employment setting where:

(a) the person with disabilities is not part of a work group of other persons with disabilities and most co-workers are not disabled;

(b) the person with disabilities is part of a work group of no more than 8 persons with disabilities and there is regular contact with persons who are not disabled and who are not providing support services to the persons with disabilities; or

(c) the person with disabilities works alone and is in regular contact with persons who are not disabled and who are not providing support services to the person with disabilities.

AUTH: Sec. 53-7-206 MCA
IMP: Sec. 53-7-203 and 53-7-206 MCA

Rationale: Proposed [Rule VII], concerning supported employment requirements for extended employment services, is needed to place existing provisions relating to supported employment requirements into a single rule and locate the rule in the subchapter relating to extended employment services.

[RULE VIII] EXTENDED EMPLOYMENT SERVICES: SHELTERED EMPLOYMENT REQUIREMENTS (1) Sheltered employment as an extended employment service may be provided only in an employment setting where the employer is a sheltered employment provider and the employment setting is within a sheltered workshop or is a setting that is not a supported employment setting.

AUTH: Sec. 53-7-206 MCA
IMP: Sec. 53-7-203 and 53-7-206 MCA

Rationale: Proposed [Rule VIII], concerning sheltered employment requirements for extended employment services, is needed to place existing provisions relating to sheltered employment requirements into a single rule and locate the rule in the subchapter relating to extended employment services.

[RULE IX] FAIR HEARINGS: REVIEW OF FAIR HEARING DECISIONS (1) The administrator or acting administrator of the rehabilitative/visual services divisions may at the administrator's discretion review a fair hearing decision and render a final decision in the matter on appeal. The review by an administrator may be initiated by the administrator or in response to a request for review by the appealing party. The request for review from an appealing party need not be granted.

(a) A review must be initiated within 20 days of the date of the fair hearing decision.

(b) A review may not proceed unless the appealing party and any representatives of the appealing party are provided notice of the intent to review within 20 days of the date of the fair hearing decision.

(c) The administrator may not delegate the authority to conduct a review.

(2) The review by the administrator must be based on the following standards:

(a) the hearing decision appears to be contrary to the provisions of the vocational rehabilitation state plan submitted to and approved by the federal government;

(b) the hearing decision appears to be arbitrary and capricious; or

(c) the appealing party shows that there are previously unknown facts which have a substantial likelihood of reversing in some manner the decision rendered at fair hearing.

(3) The appealing party and any representatives of the appealing party may submit additional information to the administrator.

(4) The administrator must render a final decision in writing, including findings and conclusions, within 30 days of the notice of intent to conduct the review.

(5) The administrator may grant reasonable extensions of the periods of time in this rule if requested by an appealing party.

(6) An appealing party may appeal a final administrative decision to the appropriate judicial forum.

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302, 53-7-315 and 53-19-112 MCA
IMP: Sec. 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112 MCA

Rationale: Proposed [Rule IX], concerning review of fair hearing decisions by the administrator of the rehabilitative/visual services divisions of the Department, is needed to implement federal regulations at 34 CFR §361.48 and state law requirements concerning appeals by applicants and clients.

[RULE X] VOCATIONAL REHABILITATION PROGRAM: IMPLEMENTATION OF REHABILITATION ACT OF 1973 (1) The administrative rules of Montana at Title 46, chapter 6, sub-chapters 1 through 12 implement for the state of Montana the federal program of vocational rehabilitation services for persons with disabilities, codified at 29 U.S.C. 701 et seq. (1992).

(2) The administration of the vocational rehabilitation program, implemented by the administrative rule of Montana at Title 46, chapter 6, sub-chapters 1 through 12, is subject to the provisions of all federal statutory, regulatory or policy authorities that govern the administration of the program. Any provision in these rules that is contrary to a governing federal authority is preempted by the pertinent federal authority.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-103 and 53-7-303 MCA

Rationale: Proposed [Rule X], concerning the authority for the implementation and governance of the vocational rehabilitation program, is needed to give notice that the administration of the program is subject to the federal authorities governing the program.

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

46.6.102 DEFINITIONS (1) "Applicant" means a person who has made formal application to the department to receive vocational rehabilitation or other services administered by the rehabilitative/visual services divisions of the department.

(~~2~~4) "Client" means an applicant who has been determined by the department to be a ~~handicapped~~ person with a disability and to be eligible for services through ~~the~~ vocational rehabilitation~~, visual, nonvocational extended employment, physical disabilities, independent living services or visual medical programs,~~ or other services administered by the rehabilitative/visual services divisions of the department and who has agreed to accept such services as the department may determine are appropriate for that person's vocational rehabilitation or other needs.

(~~3~~5) "Department" means the department of social and rehabilitation services.

(~~4~~6) "Dependent" means any relative to a person by blood or marriage or anyone living in the same household with whom a person has a close interpersonal relationship and for whom a person provides a majority of their financial support.

(5~~16~~) ~~"Handicapped person" means a person with a physical or mental handicap, inclusive of blindness, that can be diagnosed by a physician or appropriate specialist having recognized credentials. Handicapped person for the purposes of this rules is synonymous with disabled person.~~ "Person with an employment handicap" means a person who has a physical or mental disability which constitutes or results in a substantial handicap to employment for the person and who can be reasonably expected to benefit in terms of employability from vocational rehabilitation services.

(6~~8~~) "Employability" means a determination that, with the provision of vocational rehabilitation services, a person is likely to enter or retain, as a primary objective, full-time employment, and when appropriate part-time employment, consistent with the capacities or abilities of the person in the competitive labor market or any other vocational outcome the department determines is appropriate. ~~that the provision of vocational rehabilitation services is likely to enable an individual to begin or continue in employment consistent with his abilities. The employment may be in the competitive labor market, self-employment, homemaking, farm or family work (including work for which payment is in-kind rather than cash), sheltered or homebound employment, or gainful work of any other form.~~

(7~~10~~) "Extended evaluation" means an evaluation of an applicant which necessitates the receipt, for an extended period of time, of vocational services otherwise not available to applicants in order to determine the eligibility of the applicant for the vocational rehabilitation services provided through the vocational rehabilitation program administered by the department.

(8~~7~~) "~~Physical or mental d~~Disability" means an existing physical or mental impairment including blindness which significantly limits, or, if not corrected, may significantly limit ~~an individual's~~ a person's activities or ability to function in a normal manner.

(9~~12~~) ~~"Vocational rehabilitation plan" means the~~ "Individualized ~~W~~written ~~R~~rehabilitation ~~P~~program (I.W.R.P.)" means the plan prepared by the department. ~~This plan~~ which specifies the vocational rehabilitation goals and needs of the client and the services the department may provide to the client in order to assist the vocational rehabilitation of the client.

(~~10~~17) ~~"Severely handicapped person" means a person with a physical or mental disability which seriously limits his employability skills including mobility, communication, self-care, self-direction, work tolerance, or work skills and for whom vocational rehabilitation would require multiple vocational rehabilitation services over an extended period of time.~~ "Person with a severe disability" means a person:

(a) who has a severe physical or mental disability which seriously limits one or more functional capacities such as mobility, communication, self-care, self-direction, inter-

personal skills, work tolerance, or work skills in terms of employability;

(b) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) who has one or more physical or mental disabilities.

(18) "Person with a severe disability" for purposes of sub-chapter 16 means a person whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.

(~~11~~24) "Substantial handicap to employment" means a physical or mental disability which severely limits ~~an individual's~~ a person's ability to prepare for, obtain or retain ~~e~~employment appropriate to his disabilities, background and potential for rehabilitation.

(~~12~~27) "Vocational rehabilitation services" means ~~those~~ vocational rehabilitation services provided in ARM 46.6.501, ~~administered by the department under the authority of Title 53, chapter 7 of the Montana Codes Annotated and as defined in this chapter of the administrative rules of Montana.~~ Vocational rehabilitation services for the purposes of sub-chapters 1 through 5 do not include ~~the~~ vocational rehabilitation~~, visual, nonvocational~~ extended employment services, ~~physical disabilities,~~ independent living rehabilitation services and visual medical ~~programs~~ services as defined in this chapter.

(~~13~~3) "Blindness" means a visual disability as defined at 53-7-301, MCA. ~~physical handicap where a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, or other eye conditions which render vision equally defective, or eye condition which will cause blindness.~~

~~(14) "Instructional services" means orientation, mobility and rehabilitation teaching services.~~

(~~15~~28) "Vocational work evaluation" means a comprehensive process that systematically utilizes work, real or simulated, as the focal point for assessment and vocational exploration, the purpose of which is to assist persons in vocational development. A ~~v~~vocational work evaluation ~~incorporates~~ may rely upon medical, psychological, social, vocational, educational, cultural, and economic data ~~in the attainment of the goals of the evaluation process~~.

(~~16~~30) "Work adjustment training" means a ~~treatment/training~~ process to foster vocational development through ~~utilising~~ individual and group work, or work related activities~~,~~ that:

(a) ~~to~~ assist persons in understanding the meaning, value and demands of work;

(b) ~~to~~ modify or develop attitudes, personal characteristics, and work behavior; and

(c) ~~to~~ develop functional capacities~~, as required, in order to assist individuals towards their optimum level of vocational development~~.

~~(17) "Sheltered workshop" means a nonprofit rehabilitation facility carrying out a recognized program of rehabilitation for handicapped persons in a work setting, and/or providing handicapped persons with remunerative employment for an indefinite period of time where those persons cannot meet the standards of the competitive labor market.~~

(~~18~~29) "Work activit~~ies~~y ~~center~~" means a program of services in a nonprofit rehabilitation facility~~, having an identifiable program, separate supervision and records, planned and designed exclusively to~~ providing therapeutic activities for ~~handicapped workers~~ persons with severe disabilities whose physical or mental impairment is so severe as to make their productive capacity inconsequential. ~~Therapeutic activities may include custodial activities and any purposeful activity so long as work or production is not the main purpose.~~

(~~19~~22) "Rehabilitation facility" or "rehabilitation program" means, a facility operated primarily for the provision of vocational rehabilitation services to persons with disabilities, ~~a facility operated for the primary purpose of providing vocational rehabilitation services to or employment for handicapped persons by providing one or more of the following types of services:~~

~~(a) comprehensive rehabilitation services, including under one management, medical, psychological, social, and vocational services;~~

~~(b) testing, fitting, or training in the use of prosthetic and orthotic devices;~~

~~(c) prevocational conditioning or recreational therapy;~~

~~(d) physical and occupational therapy;~~

~~(e) speech and hearing therapy;~~

~~(f) psychological and social services;~~

~~(g) evaluation;~~

~~(h) personal and work adjustment training;~~

~~(i) vocational training in combination with other rehabilitation services;~~

~~(j) evaluation or control of special disabilities;~~

~~(k) instructional services; and~~

~~(l) transitional or extended employment.~~

(~~20~~11) "Independent living plan" means the written individualized independent living plan (I.I.L.P.) prepared by the department for clients of ~~physical disabilities services~~ the independent living rehabilitation program. This plan specifies the independent living goals and needs of the client and the services the department may provide to the client in order to assist in attaining an improved quality of life.

(2) "Assistive services" means reader services, rehabilitation teaching services, note-taking services, orientation and mobility services, interpreter services, tactile interpreting

services, and telecommunications, sensory and other technological aids and devices that compensate for a disability.

(9) "Extended employment" means a supervised work program as defined at 53-7-202, MCA.

(13) "Maintenance" means financial support provided to a client as defined at 53-7-101 and 53-7-301, MCA.

(14) "Occupational license" means a license as defined at 53-7-101 and 53-7-301, MCA.

(15) "Orthotic device" means a device that activates or supplements a weakened limb or neuromuscular function.

(19) "Programs of higher education" are programs of formal education that lead to an advanced academic degree such as a B.A., B.S., M.A. and Ph.D. Programs of higher education do not include career, vocational, or other specialized programs that do not lead to an academic degree.

(20) "Prosthetic appliance" means an artificial device as defined at 53-7-101 and 53-7-301, MCA.

(21) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with disabilities.

(23) "Sheltered employment" means a program of services as defined at 53-7-202, MCA.

(25) "Support services" means support services as defined at 53-7-202, MCA.

(26) "Supported employment" means a program of services to provide competitive work in integrated work settings for persons with severe disabilities for whom competitive employment has traditionally not occurred or for persons for whom competitive employment has been interrupted or intermittent as a result of a severe disability and who, because of their handicap, need ongoing support services to perform such work.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112 MCA
IMP: Sec. 53-7-101 through 53-7-109, 53-7-201 through 53-7-206, 53-7-301 through 53-7-315 and 53-19-101 through 53-9-112 MCA

Rationale: The proposed changes to ARM 46.6.102, "definitions", provide for new and redefined definitions necessary to the understanding of the existing, revised and new rules relating to the programs administered by the rehabilitative/visual services divisions of the department.

46.6.201 VOCATIONAL REHABILITATION PROGRAM: ORDER OF SELECTION (1) When the department is unable to provide vocational rehabilitation services to all clients due to budgetary or other constraints, the following order of selection will be utilized in determining which clients will receive ~~such~~ the services ~~as~~ which remain available ~~through the vocational rehabilitation program of the department~~:

(a) ~~the severely handicapped~~ persons with severe disabilities; ~~then,~~

(b) ~~the industrially injured as determined in accordance with Title 39, chapter 71 of the Montana Codes Annotated.~~ public safety officers injured during the course of duty;

(c) other clients.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-302 and 53-7-303 MCA

Rationale: The proposed changes to ARM 46.6.201, "vocational rehabilitation program: order of selection", are necessary to provide terminology and language appropriate to the program and to bring the priority listing into conformity with federal regulations at 34 CFR §361.36.

46.6.303 VOCATIONAL REHABILITATION PROGRAM: APPLICATION Subsection (1) remains the same.

(2) The department reviews and evaluates ~~shall consider~~ all applications ~~by individuals seeking vocational rehabilitation services offered through the department.~~ of persons to determine whether the person is eligible for services as provided in these rules.

(3) ~~The department shall process a~~All applications for vocational rehabilitation services are processed as expeditiously as possible.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-303, 53-7-306 and 53-7-315 MCA

Rationale: The proposed changes to ARM 46.6.303, "vocational rehabilitation program: application", are necessary to provide for a standard in the more appropriate language of responsibility.

46.6.304 VOCATIONAL REHABILITATION PROGRAM: DETERMINATION OF ELIGIBILITY (1) A person may be eligible for vocational rehabilitation services if the department determines that the person has an employment handicap.

(~~1~~2) Eligibility of an applicant for vocational rehabilitation services is determined by ~~T~~the department ~~will, except for visual medical services, nonvocational extended services, physical disabilities services and independent living services, determine if an applicant,~~ in accordance with the criteria of this subchapter and subchapter 4 and 5, policies and standards adopted by the department to govern eligibility, and applicable federal law and regulations~~, is a disabled individual, has a substantial handicap to employment and may be reasonably expected to benefit significantly as to employability from vocational rehabilitation services~~.

(~~2~~3) The determination of an applicant's eligibility for vocational rehabilitation services is ~~will be~~ based on a

~~preliminary~~ thorough diagnostic ~~assessment~~ study of the applicant, inclusive of medical, psychiatric, educational, environmental, cultural, recreational, psychological, social and vocational assessments and upon an assessment of financial need~~, if necessary~~. The study may be conducted by the department in the manner chosen by the department.

(a) The ~~assessments will be prepared and conducted by the department in the manner chosen by the department.~~ diagnostic study includes:

(i) an evaluation of the applicant's employability, personality, intelligence level, education achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent information that may be helpful in determining the nature and scope of services needed;

(ii) an appraisal of the applicant's patterns of work behavior, ability to acquire occupational skill, and ability to develop work attitudes, work habits, work tolerance, and social behavior patterns suitable for successful job performance including the utilization of work, simulated or real, to assess and develop the applicant's capacity to perform adequately in a work environment; and

(iii) any other goods or services provided for the purpose of ascertaining the nature of the applicant's employment handicap and whether it may reasonably be expected that the applicant can benefit from vocational rehabilitation services.

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

(5) Eligibility for and the receipt of visual medical services, vocational rehabilitation extended employment services and independent living services are determined in accordance with ARM 46.6.2601 et seq. for visual medical services, ARM 46.6.1302 et seq. for vocational rehabilitation extended employment services and ARM 46.6.1601 et seq. for independent living services.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302, 53-7-315 and 53-19-112 MCA

IMP: Sec. 53-7-101 through 53-7-104, 53-7-105, 53-7-106, 53-7-107, 53-7-201 through 53-7-203, 53-7-301 through 53-7-305, 53-7-306, 53-7-307 through 53-7-309 and 53-19-103 MCA

Rationale: The proposed changes to ARM 46.6.304, "vocational rehabilitation program: determination of eligibility", are necessary to provide terminology and language appropriate to the program and to improve the determination process of the program by specifying the elements of the diagnostic study so as to delimit the nature, scope and means of conducting a study.

46.6.305 VOCATIONAL REHABILITATION PROGRAM: CLIENT ELIGIBILITY CRITERIA Subsection (1) remains the same.

(2) Eligibility to be a client of vocational rehabilitation services~~, except for visual medical services, nonvocational~~

~~extended employment services, physical disabilities services and independent living services~~ is based on the following ~~basic~~ criteria:

(a) the ~~presence of a physical or mental~~ person has a disability ~~which for the individual~~ that constitutes or results in a substantial handicap to employment; and

(b) there is a reasonable expectation that vocational rehabilitation services may ~~substantially~~ benefit the ~~individual~~ person in terms of employability within a reasonable period of time.

(i) Employability is determined relative to a person's abilities and need not be limited to the competitive labor market.

(ii) Rehabilitation will not be undertaken if the person's employment handicap arises from a disability that is medically diagnosed to be continuing in nature with little or no prospect of rehabilitation.

(3) Eligibility for the visual medical ~~program~~ services, ~~for the nonvocational~~ vocational rehabilitation extended employment ~~program~~ services, ~~physical disabilities services~~ and ~~the~~ independent living services are determined in accordance with ARM 46.6.2605 for visual medical services, ARM 46.6.1309 for ~~nonvocational~~ vocational rehabilitation extended employment services, ~~ARM 46.6.1503 for physical disabilities services~~ and ARM 46.6.1604~~3~~ for independent living services.

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

(5) ~~An individual~~ person will not be eligible to be a client unless the department determines that ~~he~~ the person is utilizing all public and private benefits and services to which ~~he~~ the person may be otherwise ~~e~~ntitled and which are of a comparable ~~similar~~ nature to those available through the vocational rehabilitation program of the department.

(6) ~~An applicant~~ client must participate in and agree to accept such vocational rehabilitation services as the department determines ~~in accordance with the objectives of his vocational rehabilitation plan~~ are appropriate for ~~his~~ the person's vocational rehabilitation in accordance with the objectives of the person's IWRP.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302, 53-7-315 and 53-19-112 MCA

IMP: Sec. 53-7-101 through 53-7-104, 53-7-105, 53-7-106, 53-7-107, 53-7-201 through 53-7-203, 53-7-301 through 53-7-305, 53-7-306, 53-7-307 through 53-7-309 and 53-19-103 MCA

Rationale: The proposed changes to ARM 46.6.305, "vocational rehabilitation program: client eligibility criteria", are necessary to provide terminology and language appropriate to the program and to broaden the conceptual application of employability in the eligibility determination in order to conform with current practice.

46.6.306 VOCATIONAL REHABILITATION PROGRAM: FINANCIAL NEED ~~SPECIFIC~~ CRITERIA FOR RECEIPT OF CERTAIN SERVICES

~~(1) Receipt of certain vocational rehabilitation services will be subject to the following specific criteria:~~

~~(a) rehabilitation vocational training services as defined in ARM 46.6.502 will be available only to an individual who the department has in its discretion determined has a mental or physical disability which is a substantial handicap to employment, has the capacity to develop his employability by such training and for whom the training is necessary to his vocational rehabilitation.~~

~~(b) physical and mental restoration services as defined in ARM 46.6.503 will be available only to an individual if the following criteria are met:~~

~~(i) the clinical status of the individual's physical or mental condition is stable or of slow progression. If the individual is under an extended evaluation plan, the condition need not be stable or of slow progression; and~~

~~(ii) that condition constitutes a substantial handicap to employment; and~~

~~(iii) physical restoration services may be reasonably expected to eliminate or substantially reduce the handicapping conditions.~~

~~(c) demonstrated financial need is a requirement for the receipt of certain services as provided for in subsection (2)(c) of this rule.~~

Subsections (2) remains the same in text but will be renumbered (1).

(a) The department ~~will~~ may provide, without charge, the following services to applicants:

(i) evaluation of vocational rehabilitation potential, including diagnostic, prognostic, and related services; and the transportation, meals, and lodging necessary in order to be evaluated.

(b) The department ~~will~~ may provide to a client, without charge, in accordance with the client's IWRP ~~their vocation rehabilitation plans~~, the following vocational rehabilitation services ~~to clients~~:

(i) counseling, and guidance ~~and referral services~~;

(ii) placement ~~in suitable employment~~; and

(iii) post-~~placement~~ employment services which are of no cost to the department; ~~and~~.

~~(iv) instructional services.~~

(c) the department ~~will~~ may provide to clients determined ~~as provided for in subchapter 4~~ to be in financial need, as provided in subchapter 4, the following vocational rehabilitation services when it is determined, in accordance with ~~their vocational rehabilitation plan~~ the client's IWRP, that such services are necessary:

(i) vocational ~~training and training materials~~ assistance;

Subsection (2)(c)(ii) remains the same in text but will be renumbered (1)(c)(ii).

(iii) ~~income~~ maintenance;

(iv) personal and vocational adjustment ~~and other training~~ services;

(v) transportation ~~and travel expenses~~;

~~(vi) vocational training books and supplies;~~

(vii) occupational license ~~related~~ fees;

~~(viii) vocationally related tools, equipment and initial stocks and supplies;~~

~~(ix) interpreter services for the deaf;~~

~~(x) reader services for the blind;~~

~~(xi) telecommunications, sensory, and other technological aids and devices;~~

(vii) assistive services;

(viii) services to family members and dependents;

Subsections (2)(c)(xii) and (xiii) remain the same in text but will be renumbered (1)(c)(ix) and (x).

(2) The provision of services to a client in supported employment is contingent on the client receiving continuing financial support for the client's extended employment from a state, federal or private resource.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.306, "vocational rehabilitation program: financial need criteria for receipt of certain services", are necessary to provide terminology and language appropriate to the program, to remove criteria which is suited to the rules on specific services, and to improve the long-term commitment of participating businesses and to conserve the monies of the program by predicating the receipt of supported employment upon the availability of financial resources.

46.6.307 VOCATIONAL REHABILITATION PROGRAM: EXTENDED EVALUATIONS Subsections (1) through (2) remain the same.

(3) An assessment of the appropriateness and effectiveness of extended evaluation services for an applicant will be conducted at least every ninety days.

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

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-205, 53-7-303, 53-7-306 and 53-7-310 MCA

Rationale: The proposed change to ARM 46.6.307, "vocational rehabilitation program: extended evaluations", providing a ninety day assessment, is necessary to assure that the use of the extended evaluation status is appropriate and does not continue beyond the necessary time.

46.6.406 VOCATIONAL REHABILITATION PROGRAM: ADAPTATIONS OF FINANCIAL NEED STANDARD (1) The department may, within its discretion, use adaptations of the financial need standard where the situation of ~~an individual~~ a client is one of special circumstances which are subject to objective definition by documentation. These objectively defined circumstances include: variations in need due to special needs accompanying designated types of disabilities; variations in need based on the nature of living requirements in different localities; variations in need based on the nature of living requirements caused by particular rehabilitative services to be provided; and variations in need due to short periods of medical care for acute physical and mental conditions arising during the course of vocational rehabilitation. The department will direct the exercise of this discretion and determine the circumstances in which it may be utilized.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-303, 53-7-306 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.406, "vocational rehabilitation program: adaptations of financial need standard", are necessary to provide terminology and language appropriate to the program and to bring the variations in need standard into conformity with the standards of the program by including mental condition.

46.6.410 VOCATIONAL REHABILITATION PROGRAM: RESOURCES Subsections (1) through (3)(b) remain the same.

(c) comparable ~~similar~~ benefits under any program available to ~~an individual~~ a client or members of his family that may be utilized, in whole or in part, to meet the costs of any vocational rehabilitation services or the costs of physical and mental restoration services and maintenance. Consideration need not be given to comparable ~~similar~~ benefits for the costs of physical and mental restoration services and maintenance, if it would significantly delay the provision of services to ~~an individual~~ a client or put the client at extreme medical risk. When ~~an individual~~ a client is or would be eligible for comparable ~~similar~~ benefits, those benefits must be utilized for ~~with~~ achieving the vocational rehabilitation objectives of ~~for~~ the ~~individual~~ client;

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

(e) obligations which, in the discretion of the department, if recognized, would constitute a substantial obstacle to the achievement of the client's IWRP ~~individual's vocation objective~~.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-303, 53-7-306 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.410, "vocational rehabilitation program: resources", are necessary to provide terminology and language appropriate to the program and to add criteria that provides an exception to the requirement for use of comparable benefits when a person is at extreme medical risk.

46.6.501 VOCATIONAL REHABILITATION PROGRAM: AVAILABILITY OF SERVICES ~~(1) Availability of services:~~

(~~a~~1) The department may provide to a client, directly or by ~~contract~~ procurement from other public or private sources, any of the following services~~, recruitment services, training and training materials, physical and mental restoration services, transportation, maintenance, equipment and supplies for vocational effort, reader and interpretative services, support services for family members, other goods and services, placement services, and post employment services as are~~ determined by the department in accordance with ~~his~~ the client's evaluation and IWRP ~~vocational rehabilitation plan~~ to be necessary to the client's vocational rehabilitation~~.~~:

(a) counseling and guidance as provided in ARM 46.6.512;

(b) physical and mental restoration services as provided in ARM 46.6.503;

(c) personal and vocational adjustment services as provided in ARM 46.6.502;

(d) vocational assistance as provided in ARM 46.6.507;

(e) maintenance as provided in ARM 46.6.505;

(f) transportation as provided in ARM 46.6.504;

(g) services to family members and dependents as provided in ARM 46.6.509;

(h) assistive services as provided in ARM 46.6.508;

(i) placement as provided in ARM 46.6.506;

(j) post-employment services as provided in ARM 46.6.511;

(k) occupational licenses;

(l) attendant services as provided in [Rule IV]; or

(m) other goods and services as provided in ARM 46.6.510.

~~(b) The department will provide, directly or by contract, only those services authorized by a counselor in accordance with an applicant's extended evaluation or with a client's vocational rehabilitation plan.~~

Subsections (1)(c) through (2) remain the same in text but will be renumbered (2) through (6).

(a) The department will authorize for a client only those vocational rehabilitation services that the department determines will ~~should~~ eliminate or reduce ~~an individual's~~ a person's employment handicap ~~disability~~ within a reasonable period of time. ~~Rehabilitation will not be undertaken if the condition of disability is medically diagnosed to be continuing in nature with little or no prospect of rehabilitation.~~

~~(b) Vocational training should provide an individual with the skills and knowledge as are sufficient to provide an individual with a reasonable opportunity to find suitable employment given his condition. Vocational training will not be undertaken if this is not likely to result.~~

~~(c) Post-program and post-employment services will be offered to assist an individual in maintaining his employment status or in reobtaining employment. Post-program and post-employment services shall not be provided if this will not result.~~

(~~d~~b) The department shall develop an IWRP with ~~vocational rehabilitation plan for~~ each client. The department shall have the discretion to determine what will constitute the most appropriate services to be provided to an ~~individual~~ a client under ~~this plan~~ the IWRP.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.501, "vocational rehabilitation program: availability of services", are necessary to provide terminology and language appropriate to the program, to remove criteria which is suited to ARM 46.6.305 concerning client eligibility or to the substantive rules on the specific services and to remove language which is redundant to that of other rules.

46.6.502 VOCATIONAL REHABILITATION PROGRAM: PERSONAL AND VOCATIONAL ADJUSTMENT SERVICES ~~TRAINING AND TRAINING MATERIALS~~ (1) ~~The department may furnish training~~ Personal and ~~training materials~~ vocational adjustment services may be provided to an applicant in order to determine ~~his~~ vocational rehabilitation potential or to a client to the extent the department determines necessary to adequately develop ~~his~~ the client's skills and knowledge necessary to provide a successful vocational rehabilitation outcome for the client.

(2) ~~Such training~~ Services may include vocational, prevocational, personal adjustment training, and other rehabilitation training which contributes to the determination of the person's vocational rehabilitation potential or to the person's vocational adjustment. ~~Training provided directly by the department or procured from other public or private training facilities is included.~~

AUTH: Sec. 53-7-102, 53-7-302, and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.502, "vocational rehabilitation program: personal and vocational adjustment services", are necessary to provide terminology and language appropriate to the program, to restructure the rule into a more understandable format and to delete criteria that is expressed elsewhere.

46.6.503 VOCATIONAL REHABILITATION PROGRAM: PHYSICAL AND MENTAL RESTORATION SERVICES (1) Physical and mental restoration services may be provided to an applicant ~~to the extent needed to determine his~~ or client for purposes of evaluation or vocational rehabilitation, ~~potential or to a client in order to facilitate his vocational rehabilitation in accordance with his vocational rehabilitation plan, and may include the following:~~

(2) Physical and restoration services include:

(a) medical or corrective surgical treatment ~~and related costs~~;

(b) physician and other medical practitioner services;

(~~b~~c) ~~psychological and psychiatric treatment~~ diagnoses and treatment for mental or emotional disorders by a physician skilled in the diagnoses and treatment of such disorders or by a psychologist licensed in accordance with state law;

(~~c~~d) dentistry;

(~~d~~e) nursing services;

(~~e~~f) inpatient or outpatient hospitalization and clinic services in connection with surgery or treatment;

(~~f~~g) ~~convalescent or rest home care~~ personal care services;

(~~g~~h) drugs and supplies;

(~~h~~i) prosthetic appliances and orthotic devices;

(~~i~~j) physical therapy;

(~~j~~k) occupational therapy;

(~~k~~l) speech or hearing therapy;

~~(l) physical rehabilitation in a rehabilitation facility;~~

(m) eyeglasses and visual services, ~~if authorized~~ including visual training and the examination and services necessary for the prescription and provision of eye glasses, contact lenses, microscopic lenses, telescopic lenses and other special visual aids, prescribed by a physician skilled in the diseases of the eye or by an optometrist;

(n) podiatry;

~~(o) treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or are inherent in the condition under treatment;~~

(o) therapeutic recreation;

(p) medically related social work services;

(q) special services for the treatment of a person suffering from end stage renal disease;

(r) rehabilitation engineering; and

(~~p~~s) other medical or medically-related rehabilitation services.

(~~2~~3) The department may furnish short periods of medical care for acute conditions arising in the course of vocational rehabilitation, which, if not cared for, would constitute a hazard to the achievement of the ~~vocational rehabilitation objective~~ IWRP, or the completion of the extended evaluation to determine rehabilitation potential.

(4) Physical and mental restoration services are available to an applicant if essential to the determination of an applicant's vocational rehabilitation.

(5) Physical and mental restoration services are available to a client if:

(a) the clinical status of the person's physical or mental condition is stable or of slow progression. For a person under an extended evaluation plan, the condition need not be stable or of slow progression;

(b) that condition constitutes a substantial handicap to employment; and

(c) physical and mental restoration services may be reasonably expected to eliminate or substantially reduce the employment handicaps of the person.

(6) Physical and mental restoration services do not include medical services and procedures of an experimental nature.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.503, "vocational rehabilitation program: physical and mental restoration services", are necessary to provide terminology and language appropriate to the program, to restructure the rule into a more understandable format, to include on the list of services only those services currently available, and to insure appropriate use of the services by providing qualifying descriptions of the services and providing criteria to govern the delivery of the services.

46.6.504 VOCATIONAL REHABILITATION PROGRAM: TRANSPORTATION (1) ~~The department may furnish t~~Transportation may be provided to ~~an individual and,~~ an applicant or client when ~~where~~ necessary~~, family members to secure diagnosis, treatment, training, or other~~ for the person to receive the benefit of vocational rehabilitation services.

(2) ~~Such t~~Transportation ~~will~~ may include, as necessary, the cost of travel and subsistence during travel for ~~an individual~~ a person and ~~his~~ necessary attendants or escorts~~, where such financial assistance is needed~~.

(3) Transportation and subsistence is reimbursed at cost or state per diem, whichever is lower.

(~~3~~4) ~~Such t~~Transportation may include~~s~~ relocation and moving expenses ~~necessary for the achievement of a vocational rehabilitation objective~~ for a move necessary to the vocational rehabilitation of the client.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.504, "vocational rehabilitation program: transportation", are necessary to provide terminology and language appropriate to the program and to provide a rate of reimbursement as a cost control measure.

46.6.505 VOCATIONAL REHABILITATION PROGRAM: ~~INCOME~~ MAINTENANCE (1) ~~Income maintenance aid is a supplementation to other rehabilitation services being provided, and may be granted in special instances to enable a client to derive the full benefit of other vocational rehabilitation services he is receiving.~~ Maintenance for basic living expenses such as food, shelter and clothing expenses, may be provided to a client to meet the subsistence needs of a client when the department determines that the client needs the maintenance in order to receive vocational rehabilitation services.

Subsection (2) remains the same.

(3) Maintenance ~~will be~~ may be provided to a client for no more than 30 days after ~~he~~ the client has been placed in appropriate employment.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.505, "vocational rehabilitation program: maintenance", are necessary to provide terminology and language appropriate to the program and to assure the appropriate use of maintenance by explicitly providing for the discretion of the department in determining the need for maintenance.

46.6.506 VOCATIONAL REHABILITATION PROGRAM: PLACEMENT SERVICES (1) Placement services may be provided to a client to assist the client in finding employment.

(~~1~~2) Placement for a client is developed by ~~T~~the department, either directly or through the services of other public and private placement agencies.~~, will assume responsibility for developing a~~

(3) Pplacement for a client ~~which is~~ must be appropriate as determined in accordance with the ~~goals of his vocational rehabilitation plan~~ client's IWRP.

(~~2~~4) Following placement of a client and before case closure, ~~several~~ follow-up visits ~~will be~~ are made by a department representative to assess the success of the placement ~~and to determine whether the client is again able to meet his normal needs without further outside assistance~~. Once it is determined that a client is suitably placed, his case will be closed.

Subsections (3) through (3)(d) remain the same in text but will be renumbered (5) through (5)(d).

(e) ~~that the employment provides adequate income for the client and his family~~ that the client and employer are satisfied with the placement;

Subsections (3)(f) and (3)(g) remain the same in text but will be renumbered (5)(f) and (5)(g).

(46) After placement there ~~will be~~ is a minimum 60-day waiting period prior to case closure, during which support for the ~~vocational rehabilitation~~ objective IWRP of the client ~~will be~~ is available.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.506, "vocational rehabilitation program: placement services", are necessary to provide terminology and language appropriate to the program and to improve placement opportunities by making the criteria more flexible by removing the adequate income standard.

46.6.507 VOCATIONAL REHABILITATION PROGRAM: VOCATIONAL ~~ASSISTANCE~~ ITEMS (1) Customary tools, equipment, initial stocks and supplies~~, including livestock,~~ may be provided to a client for the operation of a business or ~~agricultural~~ other enterprise or the pursuit of a trade, occupation, or profession if these are determined by the department in accordance with the client's IWRP to be necessary ~~vocational rehabilitation plan to be appropriate~~ for the client's vocational rehabilitation.

~~(2) The department may provide advice and assistance to a client in obtaining appropriate occupational licenses.~~

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.507, "vocational rehabilitation program: vocational items", are necessary to provide terminology and language appropriate to the program, to provide a standard of necessity to assure that vocational items made available to clients are limited to necessary items, and to remove unnecessary language.

46.6.508 ~~READER AND INTERPRETER SERVICE~~ VOCATIONAL REHABILITATION PROGRAM: ASSISTIVE SERVICES FOR PERSONS WITH DISABILITIES (1) ~~The department may provide reader services or interpreter~~ Assistive services may be provided to a ~~blind or deaf~~ an applicant with a disability to the extent needed to determine ~~his~~ vocational rehabilitation potential of the applicant or to a ~~blind or deaf~~ client with a disability in order to facilitate ~~his~~ the client's vocational rehabilitation in accordance with ~~his vocational rehabilitation plan~~ the client's IWRP.

(2) For these services the department ~~will~~ pays a reasonable fee which ~~will~~ cannot exceed what other state, private or federal agencies pay for similar services.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.508, "vocational rehabilitation program: assistive services for persons with disabilities", are necessary to provide terminology and language appropriate to the program.

46.6.509 VOCATIONAL REHABILITATION PROGRAM: SERVICES TO FAMILY MEMBERS AND DEPENDENTS (1) The department may ~~furnish~~ provide a ~~necessary~~ service to any family member or dependent of an applicant or client if the service is determined by the department to be necessary for the client's vocational rehabilitation. ~~individual where the service is required as part of the extended evaluation or vocational rehabilitation plan of the individual and can be provided through no other resource.~~

(2) Services to family members and dependents are only available if not otherwise available to those persons through other programs and sources.

(~~2~~3) ~~Such s~~Services to dependents ~~will~~ include only those services which are necessary to maintain the support of the dependent for the person during the course of evaluation or vocational rehabilitation. ~~may be expected to contribute substantially to the determination of rehabilitation potential or to the rehabilitation of an individual.~~

(4) Family member or member of the family includes a person's relative by blood or marriage or a person living in the same household with whom the person with an employment handicap has a close interpersonal relationship.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.509, "vocational rehabilitation program: services to family members and dependents", are necessary to provide terminology and language appropriate to the program, to conserve the monies of the program by providing that the financial resources of other sources be used first and to provide for control of the utilization of the service by explicitly providing for the discretion of the department in determining the need for the services.

46.6.510 VOCATIONAL REHABILITATION PROGRAM: OTHER GOODS AND SERVICES (1) ~~The department may furnish an attendant for a severely disabled individual on extended evaluation or for a client to be an escort to and from school, shop or other institutions where services are provided. Such services may be available to a client only when found to be necessary and the individual is unable to pay the cost himself. The department may pay for a client's business licenses and professional fees~~

~~when such are required and the client is unable to pay the cost himself.~~ Other ~~necessary~~ goods or supplies not otherwise covered in this chapter ~~deemed~~ may be provided to an applicant or client if necessary to determine the rehabilitation potential of an applicant or necessary to ~~render a~~ the client's vocational rehabilitation ~~fit to engage in a gainful occupation may be furnished when the individual is unable to pay the cost himself~~.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.510, "vocational rehabilitation program: other goods and services", are necessary to provide terminology and language appropriate to the program.

46.6.511 VOCATIONAL REHABILITATION PROGRAM: POST EMPLOYMENT SERVICES (1) ~~The department may in its discretion provide p~~Post employment services may be provided upon placement and after case closure to assist former clients who are in need of such services to maintain themselves in employment or to reobtain employment.

~~(2) Post employment services may be provided where the department determines that assistance is needed following case closure in order to prevent the failure of otherwise successful rehabilitation results. Such services are supportive and supplemental to the vocational rehabilitation plan for that individual.~~

(~~3~~2) ~~All services of this~~ The department may ~~be available through~~ provide as a post employment service ~~where it is required~~ any vocational rehabilitation service the department determines is necessary to maintain the client in gainful employment or to enable ~~him~~ the client to ~~become employable~~ reobtain employment.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.511, "vocational rehabilitation program: post employment services", are necessary to provide terminology and language appropriate to the program and to reflect the program's current practice of using post employment services in efforts to reobtain employment as well as to obtain employment.

46.6.512 VOCATIONAL REHABILITATION PROGRAM: COUNSELING AND GUIDANCE SERVICES (1) Counseling and guidance services may be provided to clients for the following purposes:

(a) personal and work adjustment of the client;

(b) securing needed services from other agencies; and

(c) giving notice of client assistance programs available under 34 CFR part 370.

(~~1~~2) ~~Systematic and adequate c~~Counseling and guidance for the benefit of ~~an individual will be~~ a person may be provided from referral to completion of all services included in ~~his vocational rehabilitation plan~~ the client's IWRP including job placement.

(a) During ~~plan~~ IWRP development, ~~sufficient~~ personal counseling ~~will be~~ is provided to ~~an individual~~ a client in order to develop a suitable vocational rehabilitation ~~plan~~ goal.

(b) ~~Individuals in~~ A client receiving services is ~~are~~ to be contacted at least quarterly to determine if additional counseling is required.

~~(c) Counseling shall continue through completion of services and of job placement.~~

(~~d~~c) ~~Sufficient c~~Counseling ~~shall be~~ is provided ~~by~~ along with post employment service to insure that the former client has a suitable job and will be able to continue in ~~gainful~~ suitable employment.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.512, "vocational rehabilitation program: counseling and guidance services", are necessary to provide terminology and language appropriate to the program and to insure appropriate use of the services by providing criteria to govern the purposes for which the services are available.

46.6.513 VOCATIONAL REHABILITATION PROGRAM: WORK ACTIVITY ~~CENTER~~ SERVICES (1) ~~Services can be purchased from work activity centers only for~~ Work activity services may be provided to clients ~~who are~~ with severe~~ly handicapped individuals and~~ disabilities whose current vocational rehabilitation needs can be satisfied only with the purchase of ~~vocational rehabilitation~~ services ~~as defined in this sub-chapter~~ from a work activity center.

(2) Work activity services are limited to therapeutic activities, inclusive of custodial activities and any purposeful activities that are not principally for the purpose of work or production.

(3) Work activity services may only be provided through an organized work activity program in a vocational rehabilitation facility which is designed to exclusively serve persons with severe disabilities.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.513, "vocational rehabilitation program: work activity services", are necessary to provide terminology and language appropriate to the program and to insure appropriate use of the services by providing criteria to govern the purposes for which the services are available and to designate the type of facilities in which the services are available.

46.6.515 VOCATIONAL REHABILITATION PROGRAM: OUT-OF-STATE SERVICES (1) Transportation and per diem ~~will not be authorized~~ may be provided for out-of-state services if the department determines that ~~similar~~ comparable services are not reasonably available in the state of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.514, "vocational rehabilitation program: out-of-state services", are necessary to provide terminology and language appropriate to the program.

46.6.517 VOCATIONAL REHABILITATION PROGRAM: FINANCIAL LIMITATIONS Subsection (1) remains the same.

(a) Sservices subject to rates of payment are as follows:

(i) payment for physical and mental restoration services listed in ARM 46.6.503 ~~will be~~ is limited to those rates ~~provided in the medical assistance rates of Title 46, chapter 6, subchapters 5 and 12 of the administrative rules of Montana.~~ as listed in the vocational rehabilitation fee schedule manual. The department herein adopts and incorporates by this reference the vocational rehabilitation fee schedule manual published by the department;

(ii) payment for hospital care ~~will be those rates as established by the Montana department of labor, worker's compensation division, under the authority of sections 39-71309 and 39-71-704, MCA in its fee schedule for hospital charges.~~ is limited to those rates provided in the medical assistance rates of Title 46, chapter 12, subchapter 5 and 12 of the administrative rules of Montana; and

(iii) payment for hospital care from a hospital in another state ~~will be those~~ is at the rates as established by that state's vocational rehabilitation agency.

(b) ~~The maximum financial contributions for certain services during the period of client status will be as follows:~~ Financial assistance for the following services is as follows:

(i) ~~$50 a week for income maintenance~~ the amount of maintenance provided is determined by the department based on the financial needs of the client and the availability of funding;

(ii) ~~$200 total for tools~~ the amount of assistance for tools and equipment is determined by the department based on the financial needs of the client and the availability of funding;

(iii) ~~$2,000 total for equipment.~~ the amount of assistance for financing self employment plans is determined by the department based on the availability of funding and a supportive feasibility plan done by a recognized business consultant; and

(iv) rates of payment for non-medical or medical related services which are not listed in the vocational rehabilitation fee schedule manual are the particular vendor's published fee schedule.

~~(c) The maximum financial contributions for services to an individual considered to be industrially injured will be that established in accordance with the authority of 39-71-1003, MCA.~~

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307 and 53-7-310 MCA

Rationale: The proposed changes to ARM 46.6.517, "vocational rehabilitation program: financial limitations", are necessary to provide terminology and language appropriate to the program, to control reimbursement by providing consistent reimbursement methodology and rates through the adoption and modification of reimbursement rates and standards for the services and to remove special financial criteria for recipients of workers' compensation.

46.6.602 REHABILITATION FACILITIES: POLICIES ON ESTABLISHMENT ~~OF REHABILITATION FACILITIES~~ (1) ~~In the establishment of rehabilitation facilities, t~~The department may within its discretion financially participate in the establishment and development of rehabilitation facilities.~~:~~

(2) The department does not financially participate in any of the following aspects of the establishment or development of rehabilitation facilities:

(a) ~~the acquisition of initial equipment; and,~~ acquisition of land;

(b) ~~the initial staffing of the facility for a period not to exceed four years and three months.~~ acquisition of buildings;

(c) remodeling, alteration or expansion of buildings;

(d) construction of buildings;

(e) architect's fees;

(f) site preparation;

(g) initial fixed or movable equipment; or

(h) works of art.

(~~2~~3) The department does ~~will~~ not participate financially in the establishment of work activity centers.

~~(3) Where initial staffing assistance is available from the department, financial participation from the department will be available only for personnel engaged in new or expanded program activities of the rehabilitation facility.~~

(4) Prior to the establishment of a rehabilitation facility, the department will ~~determine that the~~ certify that

there is a need for ~~such~~ the rehabilitation facility ~~exists~~, that ~~such~~ the establishment of the facility is consistent with the state rehabilitation facilities plan, and that the facility will be in compliance with all federal and state laws and statutes governing civil rights.

Subsection (5) remains the same in text but will be renumbered (4)(a).

(~~6~~b) The cCertifications by the state ~~is~~ under this section and ARM 46.6.903 are not a guarantee of grants nor of purchases of services by the department.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-302 and 53-7-303 MCA

Rationale: The proposed changes to ARM 46.6.602, "rehabilitation facilities: policies on establishment", are necessary to provide terminology and language appropriate to the program and to remain within the available monies for service development by specifying the activities and features for which reimbursement is not available.

46.6.701 GROUP SERVICES PROGRAM: AVAILABILITY OF SERVICES

(1) The department provides a program of financial assistance for services to persons and modifications to facilities which may be expected to contribute substantially to the rehabilitation of a group of ~~handicapped~~ persons with disabilities some of whom are currently or potentially clients of the vocational rehabilitation ~~services~~ program.

(2) A service ~~should~~ will not be developed or facility modified solely for the purpose of directly benefiting any one ~~handicapped~~ person with a disability.

(3) Preference will be given to services or facilities with the potential of benefiting the largest number of ~~handicapped~~ persons with disabilities at a minimum cost to the department.

(4) ~~These funds will be only utilized~~ Services are limited to:

(a) ~~to resolve a one-time problem, such as exists in the removal of architectural barriers or the purchase of equipment; and~~ correction of a particular structural problem that constitutes a barrier to persons with disabilities;

(b) purchase of equipment that will serve equally and substantively a group of persons with disabilities;

(~~b~~c) ~~to provide~~ provision of transportation to a group of persons with disabilities; and

(d) provision of instructional materials to persons with disabilities.

(5) Group services are available only to the extent that the services are not otherwise available through other programs or are the financial responsibility of a facility by state or federal law.

(6) Group services assistance is available only for services and modifications that the department determines within

its discretion are appropriate under the criteria of this rule and for which there is funding.

AUTH: Sec. 53-7-102, 53-7-203 and 53-7-302 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-302 and 53-7-303 MCA

Rationale: The proposed changes to ARM 46.6.701, "group services program: availability of services", are necessary to provide terminology and language appropriate to the program, and to remain within available monies for the development of group services by specifying the activities and features for which reimbursement will be available, by providing that the resources of other programs must be used first, and by limiting assistance to services and modifications which the department determines are appropriate and for which there is funding.

46.6.901 ~~GENERAL PURPOSES OF~~ STANDARDS FOR ~~VENDORS~~ PROVIDERS; CERTIFICATION (1) It is the policy of the department to use, whenever feasible, ~~facilities~~ providers which are accredited or approved by an appropriate public authority or professional organization. Where this is not possible, the ~~facilities~~ providers selected, whether public or private, are those that appear upon investigation to be the best adapted to render the specific services required. ~~Facilities~~ Providers will be chosen based upon the professional and technical qualifications of personnel, adequacy of equipment, and scope and quality of services rendered.

(2) The department purchases services for applicants and clients only from providers that meet the accreditation, certification, licensure or other requirements and criteria made applicable by law, accrediting body or determination of the department.

(3) A provider who fails to meet accreditation, certification, licensure or other requirements and criteria made applicable by law, accreditation body or determination of the department will lose certification as a provider.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA;
IMP: Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303 MCA

Rationale: The proposed changes to ARM 46.6.901, "standards for providers: certification", are necessary to provide terminology and language appropriate to the program and to assure the appropriateness and quality of services provided by providers by explicitly establishing the requirement that providers be certified, accredited or licensed by the appropriate authority or accrediting body in accordance with the rules of subchapter 9.

46.6.903 ~~REHABILITATION FACILITIES~~ STANDARDS FOR PROVIDERS: CERTIFICATION OF PROVIDERS OF PROGRAMS OR SERVICES

(1) ~~Services will not be purchased for clients by the department from a rehabilitation facility until certification or provisional certification is attained from the department by that facility.~~ A provider of services for applicants or clients of services provided through chapter 6 of Title 46 of the administrative rules of Montana that is an incorporated corporation delivering a program of vocational rehabilitation, visual rehabilitation, extended employment services or independent living services in order to receive certification from the department must be accredited by the appropriate accrediting body as specified on the following list:

(a) for vocational rehabilitation facilities and similar providers, the standards of the commission of accreditation of rehabilitation facilities (CARF);

(b) for providers serving persons with visual disabilities, the standards of the national accrediting council (NAC) or of CARF; and

(c) for providers of independent living services, the standards of the national council on disability (NCD).

(2) ~~The department will accept as its standards for vocational rehabilitation facilities the standards of the commission of accreditation of rehabilitation facilities (CARF) or for those facilities serving blind persons the standards of the national accrediting council (NAC) or of CARF. These standards will be applied to any rehabilitation facility where the department provides funding or purchases services or where the department has formal cooperative agreements.~~ A provider of services that in accordance with (1) must receive accreditation, may be provisionally certified by the department until the provider receives the appropriate accreditation. A provisional certification may not be for more than 18 months. A provider may not receive another provisional certification, consecutive with a prior provisional certification unless the department determines that the provisional recertification is necessary due to matters of process relating to the accreditation and that the provider is making a good faith effort to become accredited.

(3) The department will certify a provider of services that is not accredited as provided in (1) and that is necessary to the delivery of services to an applicant or client, if the provider is certified or otherwise approved by a state or federal agency with which the department has a cooperative agreement concerning the coordinated delivery of services to a class of persons to which the person belongs.

(~~3~~4) If certification is denied, the ~~facility~~ provider will be notified of the reasons for such decision thirty (30) days in advance of the date on which no more services will be purchased or grants awarded by the department.

~~(4) Facilities accredited by CARF or NAC will be adjudged to be certified.~~

~~(5) Duration of certification.~~

(~~a~~5) The department will provide ~~full~~ certification of a provider upon receipt from the ~~facility~~ provider of records and reports attesting to its CARF or NAC accreditation. The tenure of the certification by the department ~~shall be one year~~ may be up to 3 years. ~~The department may provide for provisional certification of a facility as provided for in subsection (7).~~

(~~b~~a) The department, upon being apprised of any source of material change in the facility's functioning in terms of the standards or in terms of the failure of the facility to provide such records and reports as requested by the department, may review the facility's certification and may modify its certification decision. At the discretion of the department, such review may include an onsite visit.

~~(6) Provisional certification:~~

~~(a) The department may in its discretion provisionally certify a new facility during the first 6 months of its operation. At the termination of the tenure of provisional certification, the facility must meet the requirements for full certification. Findings of the department's facility staff will be summarized in a written report to the facility. If non-certification is the result of the site survey, another survey can be requested on a date six months subsequent to the date of the prior survey.~~

~~(b) The department may in its discretion provide an existing facility with a provisional six (6) month certification if that facility fails to meet CARF or NAC accreditation. No facility will be utilized beyond the six (6) month provisional certification unless CARF or NAC accreditation is received and the facility certified. The department may extend provisional certification where the lack of CARF or NAC accreditation is due to the failure of CARF or NAC to act.~~

~~(c) In order for a facility to receive provisional certification, the department must be provided with records, reports, and documents attesting to the facility's level of compliance with CARF or NAC standards. Evidence must be shown of the ability to meet CARF or NAC compliance within a 6 month period.~~

~~(7) CARF or NAC accreditation need not be required as the applicable standards for those types of facilities listed in ARM 46.6.908 or in ARM 46.9.907. For facilities or services not listed in ARM 46.6.908 or ARM 46.6.907 and not typically subject to CARF or NAC accreditation, the department will approve their utilization by clients if the facility or service is licensed by the department or other state agency, and such licensing is determined by the department to provide adequate standards.~~

~~(8) Out-of-state facilities: Only those out-of-state rehabilitation facilities accredited by CARF or NAC will be utilized by the department.~~

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA;
IMP: Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303 MCA

Rationale: The proposed changes to ARM 46.6.903, "standards for providers: accreditation of providers of programs of services", are necessary to provide terminology and language appropriate to the program, to provide service standards for the protection of persons receiving independent living services by including for providers of independent living services the accreditation standards of the National Council on Disability (NCD), to facilitate the availability of services in communities without providers accredited by one of the accepted accrediting bodies by recognizing the certification or approval of a provider by another public agency and to limit certification to programs of services.

46.6.906 ~~ENFORCEMENT OF~~ STANDARDS FOR PROVIDERS; ON-SITE EVALUATION (1) The department periodically ~~will~~ evaluate~~s~~ the quality of services provided to department clients by ~~rehabilitation facilities~~ providers. This ~~will be~~ is accomplished through personal visitations by representatives of the department, by written reports, by consultation with official accrediting agencies, and through other effective means.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA;
IMP: Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303 MCA

Rationale: The proposed changes to ARM 46.6.906, "standards for providers: on-site evaluation", are necessary to provide terminology and language appropriate to the program.

46.6.907 STANDARDS FOR SPECIFIC TYPES OF PROVIDERS

~~(1) The department for the purposes of providing vocational rehabilitation services will insure that appropriate licensing and service standards are met by providers.~~

~~(a) Medical diagnosis and medical treatment may be provided only by physicians licensed to practice medicine and surgery and otherwise qualified by training and experience to perform the specific services required.~~

~~(b) Physical or occupational therapy may be provided only by therapists who are registered or have graduated from a school for the training of therapists generally accepted by the profession, and who are licensed by the state.~~

~~(c) Nursing services may be provided only by registered nurses or persons who are eligible to be registered.~~

~~(d) Dental diagnosis and dental treatment may be provided only by dentists who are licensed to practice dental surgery, and otherwise qualified by training and experience to perform the specific dental service required.~~

~~(e) Optometry services may be provided only by licensed optometrists.~~

~~(f) Osteopathic services may be provided only by medically licensed osteopaths.~~

~~(g) Prosthetic services may be provided by prosthetists certified by the American board for certification of the prosthetic and orthopedic appliance industry, inc. In the event there are not prosthetists available who meet such standards, the department will utilize the services of those prosthetists who are acceptable to other public and private agencies.~~

~~(h) Speech and hearing services may be provided only by therapists certified by the American speech and hearing association as clinical competent and/or who are licensed by the state of Montana.~~

~~(i) Psychological services may be provided only by psychologists who are licensed to practice psychology in Montana or employed as a psychologist for an institution, academic institution, governmental agency or research laboratory provided these persons are performing the duties for which they were employed by these organizations.~~

(1) Providers of services to applicants and clients must be licensed or certified in accordance with any state laws or regulations and professional standards applicable to the conduct of their profession and the delivery of their services.

(2) ~~The department will determine which of the medical services required are specialty services.~~ Specialty ~~M~~medical services ~~determined to be specialty services will~~ may be rendered only by ~~physicians found by the department to be specialists~~ professionals qualified to perform the particular specialty service required. ~~In providing specialty medical service, the department will use medical specialists who hold certificates of the American medical specialty board, where such boards have been established, or physicians who have established eligibility to examination by such boards; or, when no physicians are available in one of these fields who meet either of the above standards, other qualified physicians, approved by the department's medical consultant, are used.~~

(3) ~~The department has established and will maintain standards for selection of training personnel who are qualified to conduct and carry out~~ Training personnel for applicants or clients must meet qualifications that the department determines are necessary for satisfactory conduct of instructional services ~~as relates~~ necessary to the specific training needed.

(4) Reimbursement is not available to a provider of services that the department determines does not have appropriate or necessary qualification necessary for the delivery of the service.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA;
IMP: Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303 MCA

Rationale: The proposed changes to ARM 46.6.907, "standards for providers: specific standards", are necessary to provide terminology and language appropriate to the program, to remove service standards that are duplicative of standards already

existing and applicable under other authorities and to protect clients from unqualified providers of service by providing that reimbursement is not available to providers whom the department determines are unqualified or not appropriate.

46.6.1201 FAIR HEARINGS ON APPLICANT'S APPEALS ~~(1) An applicant for, or recipient of, vocational rehabilitation services who is dissatisfied with any department action with regard to the furnishing or denial of services, will be advised of his right to file a request for an administrative review of that action and right to a fair hearing if he is dissatisfied with the outcome of the administrative review. The administrative review shall be conducted by the administrator of vocational rehabilitative services or designee.~~

~~(2) The fair hearing shall be conducted in accordance with the fair hearing rules of the department as provided for in ARM 46.2.201 through 46.2.214.~~

(1) An applicant or client for services provided through this chapter may appeal for a fair hearing from an adverse action of the department.

(2) An adverse action is any determination made by the department concerning the furnishing or denial of services delivered under this chapter.

(3) The department will inform an applicant in writing at the time of application of:

(a) an applicant's and client's right to a fair hearing;

(b) the procedure for requesting a fair hearing;

(c) the right to representation by legal counsel or others; and

(d) the availability of advocacy and free legal representation.

(4) The department will provide notice of an adverse action at least 10 days prior to the action unless the action relates to a change mandated by law or applied to the appealing party as a member of a class of clients.

(5) A fair hearing need not be granted or may be dismissed when:

(a) the matter is withdrawn;

(b) the appealing party fails to appear at hearing;

(c) the matter in controversy is a legal issue and a fair hearing is not necessary to develop a factual record for resolution of the matter;

(d) the benefit change at issue is mandated by statutory authority for a class of claimants or the department implements the benefit change for a class of claimants based on its discretionary authority;

(e) the appealing party fails to comply with the procedural requirements of this rule; or

(f) the department does not have jurisdiction over the subject matter or the appeal procedure.

(6) A request for a fair hearing must be made within 30 days of the adverse action.

(7) A fair hearing must be held within 45 days of the request for a fair hearing by the appealing party.

(8) A notice of an adverse action must contain the following information:

(a) a statement of the adverse action;

(b) the reason for the adverse action;

(c) the specific regulations supporting the proposed action;

(d) an explanation of the claimant's right to a fair hearing; and

(e) an explanation of how a fair hearing may be requested.

(9) A fair hearing must be conducted as follows:

(a) by telephone conference unless one of the party's requests that the hearing be an in-person hearing and the hearing officer determines that the request is necessary;

(b) at a reasonable time and date; and

(c) at a reasonable location agreed to by the parties or designated by the hearing officer.

(10) Notice of the time and place of a fair hearing must be provided to the appealing party and the department at least 10 days in advance of the time of the hearing.

(11) A fair hearing must be conducted by an impartial person designated by the department to be a hearing officer in the matter at issue. The department's hearing office will provide the hearing officer, unless the parties agree to the appointment of an outside hearing officer.

(12) A hearing officer may be disqualified upon the filing of a timely and sufficient affidavit of personal bias or other disqualification by any party to the matter. The hearing officer may disqualify himself.

(13) A hearing officer may:

(a) require by subpoena or other appropriate means the furnishing of such information, the attendance of witnesses, the taking of oral or written depositions, written interrogatories, and the production of items that may be necessary and proper for the purposes of the hearing;

(b) require by subpoena or other appropriate means the appearance of witnesses;

(c) order a pre-hearing conference in order to define the issues and other matters by consent of the parties;

(d) grant continuances and other procedures recognized by the Montana rules of civil procedure;

(e) control the hearing record and make evidentiary rulings in accord with the Montana rules of evidence;

(f) administer oaths;

(g) regulate the conduct of the hearing consistent with due process; and

(h) provide for the protection of the confidentiality of client information.

(14) An attorney or third party person may represent an appealing party. Representation must be shown by written consent. If an appealing party is unable to provide written

consent, the hearing officer may make a written determination that the representative for the appealing party is proper.

(15) The hearing officer will render a written opinion, including findings and conclusions, within 30 days of final submission of the case.

(16) The hearing officer must reach a decision in the matter based on the provisions of the relevant state and federal statutory and rule authorities and of the state plan submitted by the vocational rehabilitation agency to and approved by the federal government.

(17) Extensions of time may be granted except for the time period in (6) reasonable extensions of the periods of time in this rule if requested by a party.

(18) Appeal from a decision of a hearing officer is available as provided in [Rule IX]. Appeals of determinations under this chapter may not be made to the board of social and rehabilitation appeals.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112 MCA

Rationale: The proposed changes to ARM 46.6.1201, "fair hearings", are necessary to provide terminology and language appropriate to the program, to implement federal requirements at 34 CFR §361.48 concerning appeals by applicants and clients, to provide adequate due process and to facilitate the appeals and hearing process by providing detailed procedures and standards to govern the appeal process.

46.6.1302 EXTENDED EMPLOYMENT PROGRAM: OBJECTIVES ~~OF THE NONVOCATIONAL EXTENDED EMPLOYMENT PROGRAM~~ (1) The objectives of the ~~nonvocational~~ extended employment program are:

(a) to facilitate the development of appropriate employment positions in community-based ~~facilities to be utilized by~~ integrated job sites for persons with severe disabilities determined by the department to be in need of ~~nonvocational~~ extended employment;

(b) to encourage community placement of currently institutionalized persons by developing community-based, ~~nonvocational~~ extended employment positions; and

(c) to provide opportunities for ~~severely handicapped~~ persons with severe disabilities who cannot be readily absorbed in the competitive market to participate in ~~nonvocational~~ extended employment programs in Montana.

~~(2) The nonvocational extended employment program though administered by vocational rehabilitation services is not a vocational rehabilitation program.~~

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302 MCA
IMP: Sec. 53-7-203 AND 53-7-206 MCA

Rationale: The proposed changes to ARM 46.6.1302, "extended employment program: objectives", are necessary to provide terminology and language appropriate to the program.

46.6.1304 EXTENDED EMPLOYMENT PROGRAM: RESPONSIBILITIES~~BY FOR THE NONVOCATIONAL EXTENDED EMPLOYMENT PROGRAM FUNCTIONS~~ (1) ~~Vocational~~ The rehabilitation~~ve~~/visual services divisions are ~~is~~ administratively responsible for:

(a) administration of the ~~nonvocational~~ extended employment program including:

(i) allocation of monies ~~to sheltered workshops and work activity centers~~;

(ii) payment of monies ~~to sheltered workshops and work activity centers~~;

Subsection (1)(iii) remains the same.

(b) assuring that all clients referred for extended employment are evaluated and a determination is made ~~as to~~ whether they are appropriate for placement in extended employment;

(c) referring appropriate clients to ~~certified sheltered workshops and work activity centers~~ rehabilitation programs; and

Subsection (1)(d) remains the same.

(2) Support~~ive~~ services required by persons in the extended employment program will be arranged by the designated representatives of the ~~community services and~~ developmental disabilities divisions of the department and of the department of family services.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302 MCA
IMP: Sec. 53-7-203, 53-7-205 and 53-7-206 MCA

Rationale: The proposed changes to ARM 46.6.1304, "extended employment program: responsibility for functions", are necessary to provide terminology and language appropriate to the program and to provide the appropriate reference to the department of family services.

46.6.1305 EXTENDED EMPLOYMENT PROGRAM: EXTENDED EMPLOYMENT COMMITTEES (1) A multi-agency committee shall be established at each ~~sheltered workshop and work activity center~~ rehabilitation program participating in the ~~nonvocational~~ extended employment program. Each committee shall have at a minimum one representatives from the ~~facility, the community services division,~~ program and the ~~vocational~~ rehabilitative/visual services~~, and~~ divisions of the department. The department of family services, the developmental disabilities division of the department and the facility specialist shall be ad hoc members of the committee. ~~The rehabilitative facilities specialist shall be an ad hoc member of the committee.~~

(2) The purposes of the ~~nonvocational~~ extended employment committees are:

(a) to screen referrals for appropriateness of certification to the extended employment program. The rehabilitative

facilities specialist ~~should~~ must be consulted if there is any question as to the appropriateness of the program for a ~~given facility for a given~~ client;

(b) to certify persons with severe disabilities ~~handicapped persons~~ for ~~an~~ extended employment services ~~slot, in a particular sheltered workshop or work activity center~~;

(c) to identify client goals. The client should be involved actively in this process. A written plan ~~should~~ must be developed for each client and ~~must~~ be a part of the ~~facility file, social service file, and the vocational rehabilitative~~ client's services file;

Subsections (2)(d) through (2)(d)(ii) remain the same.

(iii) The ~~facility member~~ program representative will represent all ~~facility~~ program functions.

Subsections (2)(d)(iv) through (2)(e)(iv) remain the same.

(v) when a client reaches a level of ~~productivity~~ functioning at which he is no longer eligible for the program.

(f) to determine when and how long a slots should be held open for an absent client; and

(g) to assess at least every six months the status of the client enrolled in extended employment slots to determine their progress, develop new goals, and otherwise review the written plan. The assessment will be in writing with copies in the ~~facility~~ program files and in the appropriate department case records.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302 MCA
IMP: Sec. 53-7-203, 53-7-205 and 53-7-206 MCA

Rationale: The proposed changes to ARM 46.6.1305, "extended employment program: extended employment committees", are necessary to provide terminology and language appropriate to the program and to make the extended employment committees more effective by revising the membership of the committees.

46.6.1306 EXTENDED EMPLOYMENT PROGRAM: PROGRAM ~~FACILITY REQUIREMENTS FOR THE NONVOCATIONAL EXTENDED EMPLOYMENT PROGRAM~~ (1) An ~~nonvocational~~ extended employment slot which remains vacant for a period of 60 days will, at the discretion of the department, be subject to removal from the ~~facility's~~ program's slot allocation.

(2) A ~~facility~~ program which is unable to provide consistent services, minimally six hours per day five days per week, to extended employment clients is subject to a reduction of the ~~facilities~~ program's slot allocation at the discretion of the department.

(3) Should the services of a ~~facility~~ program which provides extended employment services fall below minimum standards, the department will notify the ~~facility~~ program in writing of the deficiencies and state a specific period of time not to exceed six (6) months for corrective actions. Should corrective measures not be made, the ~~facility~~ program will lose

all allocated extended employment slots ~~of the extended employment program~~.

(4) ~~Facilities~~ Programs are required to notify the department when a client has been absent from a program for three consecutive work days. The ~~facility~~ program is responsible for informing the department of the reason for the absence. Department personnel have the authority to excuse or not excuse the absences.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-203 and 53-7-206 MCA

Rationale: The proposed changes to ARM 46.6.1306, "extended employment program: program requirements", are necessary to provide terminology and language appropriate to the program.

46.6.1309 EXTENDED EMPLOYMENT PROGRAM: ~~DETERMINING~~ ELIGIBILITY ~~FOR NONVOCATIONAL EXTENDED SLOTS~~ (1) The ~~nonvocational~~ extended employment committee ~~shall~~ develops and maintains a prioritized waiting list from which candidates ~~shall be~~ are drawn when vacancies occur~~:~~. The ~~such~~ prioritized list ~~shall be~~ is developed ~~along the lines of~~ in accordance with the criteria described in subsection (3).

(2) All ~~referrals~~ persons referred must ~~have undergone a comprehensive work evaluation~~ undergo an appropriate diagnostic study by ~~vocational rehabilitation services~~ the department.

~~(3) Criteria for determining those persons to be certified into the nonvocational extended employment program shall be as follows:~~

(a3) A person ~~in order to receive consideration for certification into the program must be severely handicapped.~~ is eligible for the extended employment program if the person:

(a) has a severe disability;

(b) has historically not been competitively employed or, if employed, the employment has been interrupted or intermittent as a result of those disabilities; and

(c) has been determined by an evaluation of rehabilitation potential to have the ability or potential to engage in the extended employment program.

(~~b~~4) Priority ~~should be given~~ for placement in extended employment services will be as follows:

(a) first, to ~~those referrals~~ persons who are or have been institutionalized in state institutions and who ~~have been~~ are rehabilitated to the point of readiness for ~~nonvocational~~ extended employment~~;~~; then

(b) ~~lower priority shall be given to those referrals~~ to persons who have not been institutionalized but who are adjudged to be candidates for institutionalization if not provided extended employment.

~~(c) Priority shall be given to "obviously low" producers as compared with those who are only "marginally" productive. "Obviously low" producers are identified as being up to 50~~

~~percent productive when compared with normal non-handicapped workers. "Marginal" producers range between 50-75 percent productivity and are to be paid that percentage of the prevailing wage. Workers classified as over 75 percent will generally not be certified for the nonvocational extended employment program as they are productive enough to contribute their share of the overhead and they are approaching the point of readiness for competitive employment.~~

~~(i) Productivity level will be determined in the evaluation process.~~

(~~d~~5) ~~t~~The vocational rehabilitation program must be the first source of extended employment training opportunities to be considered for any person, age 16 or over, whose condition of physical, mental or emotional health substantially prevents ~~him~~ the person from holding regular employment.

(a) Emotional health problems include the standard psychiatric classifications of psychoneuroses or psychosis. To qualify in these categories there must be substantial evidence that the maladaptive behavior has been of sufficiently long duration to constitute a pattern of behavior and is not merely a situational reaction to crisis. There must also be supporting evidence to indicate that the behavior has substantially prevented the person from holding regular employment.

(e6) Those persons eligible for services for persons with developmental~~ly disabled persons~~ disabilities provided by the department must fully utilize those services before they may be considered for eligibility for extended employment services.

(47) Whenever the extended employment committee is unable to arrive at a decision concerning certification, the committee will submit the matter to the facilities specialist of the division ~~administrator~~ with relevant materials for a final decision.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-203, 53-7-205 and 53-7-206 MCA

Rationale: The proposed changes to ARM 46.6.1309, "extended employment program: eligibility", are necessary to provide terminology and language appropriate to the program, to improve eligibility and placement determinations by revising and specifying aspects of eligibility and to remove the division administrator as final decision-maker so that there is no bias in the administrator's role as the final decision-maker for fair hearing purposes.

46.6.1601 INDEPENDENT LIVING REHABILITATION PROGRAM: PURPOSES (1) ~~The purpose of this~~ The independent living rehabilitation program ~~is to~~ provides under Title VII of the federal Rehabilitation Act of 1973 (29 USC 796) comprehensive services ~~designed to meet the current and future needs of severely disabled~~ to persons with severe disabilities ~~whose disabilities are so severe that they do not presently have the~~

~~potential for employment, but for whom services will~~ to enable them to live and function independently in community settings.

(2) The program fosters the establishment of centers for independent living in communities.

(3) The independent living centers also may provide for independent living services designed to assist older persons who are blind to adjust to blindness by furthering their ability to care for their individual needs.

AUTH: Sec. 53-7-102 and 53-19-112 MCA
IMP: Sec. 53-7-103, 53-19-101, 53-19-103 and 53-19-105 MCA

Rationale: The proposed changes to ARM 46.6.1601, "independent living rehabilitation program: purposes", are necessary to provide terminology and language appropriate to the program, to bring the program into conformity with federal purposes by stating the goal of fostering centers for independent living and to broaden the express mission by including services to older persons who are blind.

46.6.1602 INDEPENDENT LIVING REHABILITATION PROGRAM: SERVICES (1) ~~Comprehensive services for i~~Independent living ~~means~~ services include ~~any appropriate~~ vocational rehabilitation services and other services that the department determines ~~will~~ enhance the ability of a persons with ~~severely disabled person~~ disabilities to live independently and to function within a community setting and, if appropriate, to secure and maintain appropriate employment.

(2) Independent living services are limited to those services specified in Montana's three-year state plan for independent living rehabilitation services submitted to and approved by the federal government.

(~~2~~1) ~~Such s~~Services may include, but are not limited to~~, the following~~:

(a) counseling services~~, including psychological, psychotherapeutic and related services~~;

(b) housing adaptation services ~~incidental to the purpose of this section (including appropriate accommodations to and modification of any space to serve disabled persons)~~;

(c) ~~appropriate job placement services~~ physical and mental restoration services;

(d) transportation and transportation training and assistance services;

(e) attendant care and attendant training services;

(f) ~~physical rehabilitation~~ assistive services;

~~(g) therapeutic treatment;~~

(~~h~~g) ~~needed prostheses and other appliances and devices~~ services to family members and dependents;

(~~i~~h) ~~health maintenance~~ vocational assistance and other training services;

(~~j~~i) ~~recreational activities~~ referral services;

(~~k~~j) services for children of pre-school age~~, including physical therapy, development of language and communication skills and child development services~~; and

~~(l) other services the department considers appropriate.~~

(k) advocacy services;

(l) independent living skill instruction services;

(m) peer counseling services;

(n) individual and group recreational services;

(o) outreach and recruitment services;

(p) visual screening services; and

(q) therapeutic services.

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

AUTH: Sec. 53-7-102 and 53-19-112 MCA
IMP: Sec. 53-7-103, 53-19-103 and 53-19-105 MCA

Rationale: The proposed changes to ARM 46.6.1602, "independent living rehabilitation program: services", are necessary to provide terminology and language appropriate to the program, to maintain conformity with the federal requirements for the program by limiting the available services to those specified in the federally approved state plan and to include on the list of services all services currently available.

46.6.1603 INDEPENDENT LIVING REHABILITATION PROGRAM~~,~~; ELIGIBILITY REQUIREMENTS (1) Independent living ~~&~~services may be provided ~~in this program~~ to ~~any~~ a person with severely ~~disabled person~~ disabilities if: ~~whose~~

(a) the person's ability to ~~engage or continue in employment, or whose ability to~~ function independently in the ~~family or~~ community, is ~~so~~ limited by the severity of the disability; and ~~that vocational or comprehensive rehabilitation services would be appreciably more costly and of appreciably greater duration than those required for the vocational rehabilitation of a disabled person~~

(b) the department determines that there is a reasonable expectation that the person will benefit from independent living services.

(2) Persons with severe disabilities not receiving other vocational and rehabilitation services provided by the department have priority for services provided under this program.

(3) The person's financial needs in relation to the costs of services will be determined as provided in ARM 46.6.405 through 46.6.411.

AUTH: Sec. 53-7-102 and 53-19-112 MCA
IMP: Sec. 53-7-103, 53-19-103, 53-19-105 and 53-19-106 MCA

Rationale: The proposed changes to ARM 46.6.1603, "independent living rehabilitation program: eligibility requirements", are necessary to provide terminology and language appropriate to the program, to improve eligibility and placement determinations by revising and specifying aspects of eligibility, to assure provision of services to persons most in need by providing that

persons without vocational and rehabilitation services otherwise have priority for services, and to provide criteria for financial assistance to foster participation in the program.

46.6.1604 INDEPENDENT LIVING REHABILITATION PROGRAM~~,~~: PROVISION OF SERVICES Subsection (1) remains the same.

(2) Only such services as are determined appropriate in accordance with an independent living plan or contract may be provided to a person accepted for services.

(3) Housing adaptation services are limited to accommodations and modifications of a client's home which the department determines are necessary to the client's receipt of services.

AUTH: Sec. 53-7-102 and 53-19-112 MCA
IMP: Sec. 53-7-103, 53-19-103, 53-19-104 and 53-19-105 MCA

Rationale: The proposed changes to ARM 46.6.1604, "independent living rehabilitation program: provision of services", are necessary to provide appropriate terminology and language and to maintain the program's control over housing adaptation services by providing for program determination of what adaptation services are appropriate.

4. The rules 46.6.302, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 and 46.6.1501 through 46.6.1504 as proposed to be repealed are on pages 46-353, 46-374, 46-379 through 46-382, 46-406, 46-407, 46-413, and 46-433 through 46-435 of the Administrative Rules of Montana.

The cites for 46.6.302 are: AUTH: Sec. 53-7-102, 53-7-203, 53-7-302, 53-19-112 MCA; IMP: Sec. 53-7-101 through 53-7-107, 53-7-201 through 53-7-203, 53-7-301 through 53-7-309 and 53-19-103 MCA

The cites for 46.6.601, 46.6.604, 46.6.904 and 46.6.905 are: AUTH: Sec. 53-7-102 MCA; IMP: Sec. 53-7-102 MCA

The cites for 46.6.605, 46.6.606 and 46.6.908 are: AUTH: Sec. 53-7-102, 53-7-203 and 53-7-302 MCA; IMP: Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303 MCA

The cites for 46.6.710 are: AUTH: Sec. 53-7-102, 53-7-203 and 53-7-302 MCA; IMP: Sec. 53-7-203 MCA

The cites for 46.6.1501 and 46.6.1502 are: AUTH: Sec. 53-19-112 MCA; IMP: Sec. 53-19-101 and 53-19-103 MCA

The cites for 46.6.1503 are: AUTH: Sec. 53-19-112 MCA; IMP: Sec. 53-19-103 and 53-19-106 MCA

The cites for 46.6.1504 are: AUTH: Sec. 53-19-112 MCA; IMP: Sec. 53-19-103 MCA

ARM 46.6.601, 46.6.604, 46.6.605 and 46.6.606, concerning the role of the vocational rehabilitation program in the establishment of vocational rehabilitation facilities, are proposed for repeal because the provisions of these rules are no longer relevant to the manner in which the program is administered.

ARM 46.6.710, concerning procedures for work adjustment training, is proposed for repeal because the provisions of the rule are in proposed [Rule VI] which when adopted will place the work adjustment provisions into the more appropriate rule context of subchapter 5.

ARM 46.6.904, 46.9.905 and 46.9.908, concerning particular standards for certain providers, are proposed for repeal because the provisions of the rules are being replaced by the general provisions in ARM 46.6.901, 46.6.903, 46.6.906 and 46.9.907 as they exist and are proposed for amendment.

ARM 46.6.1501, concerning the purpose of the program for persons with severe disabilities, is proposed for repeal because the language of the rule is redundant of language in ARM 46.6.1502.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than July 23, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1992.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to incorporation by reference of codes and standards	))))	CORRECTED NOTICE

TO: All Interested Persons:

1. On January 30, 1992, the Building Codes Bureau published a notice of public hearing at page 111, issue number 2, 1992 Montana Administrative Register. The Building Codes Bureau published a notice of adoption at page 1133, issue number 10, 1992 Montana Administrative Register.

2. The reference to the Uniform Building Code was updated from the 1988 Edition to the 1991 Edition in the original proposed notice but the following cites were inadvertently omitted and will now be amended to indicate the 1991 Edition:

8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE - (1)(d); (4) and (5).
Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-203, MCA

8.70.102 INCORPORATION BY REFERENCE OF UNIFORM HOUSING - (1)(a).
Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-203, MCA

8.70.103 INCORPORATION BY REFERENCE OF UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS - (1)(b).
Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-203, MCA

8.70.110 INCORPORATION BY REFERENCE OF THE UNIFORM CODE FOR BUILDING CONSERVATION - (1)(b).
Auth: Sec. 50-60-203, 50-60-301, MCA; IMP, Sec. 50-60-203, 50-60-301, MCA

3. The statement of reasonable necessity given for these amendments in the original notice, and which pertains to these amendments, is as follows:

"The bureau is proposing these amendments to keep the state standard current with modern technology by adopting the latest available edition of the Uniform Building Code."

DEPARTMENT OF COMMERCE
BUILDING CODES BUREAU
CHARLES A. BROOKE, DIRECTOR

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 15, 1992.

BEFORE THE FINANCIAL DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to dollar amounts to which consumer loan rates are to be applied	)))	NOTICE OF AMENDMENT OF 8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED

TO: All Interested Persons:

1. On May 14, 1992, the Financial Division published a notice of proposed amendment at page 968, 1992 Montana Administrative Register, issue number 9, to consider the proposed amendment of the above-stated rule.

2. The Financial Division has amended the rule exactly as proposed.

3. No comments or testimony were received.

FINANCIAL DIVISION
CHARLES A. BROOKE, DIRECTOR
DEPARTMENT OF COMMERCE

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 15, 1992.

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

In the matter of the adoption of rules pertaining to implementation of the state single audit act (2-7-501 through 2-7-522, MCA) and the repeal of rules pertaining to criteria for the selection of an independent accountant/auditor, criteria for executing a contract with an independent accountant/auditor and reporting standards	)))))))))	NOTICE OF ADOPTION OF NEW RULES PERTAINING TO THE STATE SINGLE AUDIT ACT AND REPEAL OF 8.94.4001, 8.94.4002 AND 8.94.4003

TO: All Interested Persons:

1. On April 16, 1992, the Department of Commerce published a notice of public hearing on the proposed adoption of the above-stated rules at page 727, 1992 Montana Administrative Register, issue number 7. The hearing was held on May 6, 1992, at 9:00 a.m., in the first floor conference room of the Department of Commerce building at 1424 - 9th Avenue, Helena, Montana.

2. The Department has adopted new rules I (8.94.4101), II (8.94.4102), III (8.94.4103), IV (8.94.4104), V (8.94.4105), VII (8.94.4107), VIII (8.94.4108), IX (8.94.4109), X (8.94.4110) and XI (8.94.4111) and repealed ARM 8.94.4001 through 8.94.4003 exactly as proposed. The Department has adopted new rule VI (8.94.4106) as proposed but with the following changes:

"8.94.4106 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES (1) through (6)(c) will remain the same as proposed.

(d) have an external quality control review at least once every three years that meets the requirements specified in Government Auditing Standards, as established by the comptroller general of the United States~~,~~ and receive an unqualified review report from the reviewing firm, team, or association. For purposes of being listed on the department's initial roster covering the period from July 1, 1992 through June 30, 1993 only, an independent auditor may have received a qualified review report on the auditor's last external quality control review. However, to qualify for placement on the subsequent roster covering the period from July 1, 1993 through June 30, 1994, the auditor must have another external quality control review covering a more current review period, and receive an unqualified review report on that review. This may require that the independent auditor obtain an expedited review prior to July 1, 1993.

(e) through (14) will remain the same as proposed."

Auth: Sec. 2-7-506, MCA; IMP, Sec. 2-7-506, MCA

3. Three people presented oral testimony at the hearing. The Department received four additional written comments prior to the end of the comment period on May 14, 1992. Comments were received concerning ARM 8.94.1402, 8.94.1403, 8.94.1406 and 8.94.1407 and a general comment on the proposed rules in their entirety. Summaries of the comments and the Department's responses follow:

ARM 8.94.4102 REPORT FILING FEE

COMMENT NO. 1: There are large differences in the filing fee charges based on the rate charged per revenue dollar. The proposed method of assessment is highly discriminatory and forces the average revenue cities to subsidize the high and low end of the revenue cities.

COMMENT NO. 2: The proposed fee schedule based on revenues is not reasonably related to the costs incurred by the Department in reviewing an audit. Section 2-7-514(2), MCA, appears incongruous and even inconsistent in that one sentence states in part, "... which fee must be based upon the costs incurred by the department in the administration of this part." The last sentence states, "The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts." There is not necessarily an inherent or valid relationship between the costs that the Department will incur in reviewing an entity's audit and the size of its revenues. It is suggested that a better fee schedule is one that has a minimum fee and a maximum fee, and that the charge between the minimum and the maximum be based upon the costs incurred in the review. Alternatively, a fee schedule could be based on the number of findings in an audit report, as that should be related to the amount of work that the Department will incur in reviewing the audit.

COMMENT NO. 3: Concern was expressed over the cost of the annual report filing fees and the effect on fire district budgets.

RESPONSE: The Department received only three comments related to the fee schedule although it is estimated that approximately 200 local government entities, excluding school districts, will be subject to audit and have to pay the filing fee to the Department. Comment No. 1 and Comment No. 2 above appear to contradict each other in that No. 1 would basically increase the costs for larger government entities and reduce it for smaller entities, while No. 2 would very likely increase the costs for smaller local government entities and decrease them for larger entities. In establishing the proposed filing fee schedule, the Department did take into account the fact that a certain minimum amount of work and costs would be incurred related to each local government entity subject to audit regardless of the amount of revenues for that entity. In addition, the fee schedule required by

section 2-7-514, MCA, exempts those entities not subject to audit from paying a filing fee. There are costs associated with those entities, however, that must therefore be funded through the filing fees paid by the entities subject to audit. These include the preparation and mailing of annual report forms, the receipt and review of these reports, and the entry of this information into the department's database. Finally, the department's proposed filing fee schedule is based on the revenue amounts of the entity as required by statute. The number of options in this regard is virtually limitless, and the Department's schedule is a compromise related to the minimum amount of work required, the funding of work related to entities not subject to audit, and the entity revenue amounts.

With regard to the effect on the filing fees on Rural Fire Districts expressed in Comment No. 3, there are approximately 175 rural fire districts in the state. Based on the best information available to the Department, less than 10 of these would be subject to audit and have to pay the annual filing fee.

ARM 8.94.4103 PENALTY FOR FAILING TO FILE ANNUAL FINANCIAL REPORT WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION

COMMENT: Concern was expressed that the time limit of four months from the end of an entity's fiscal year in which to file its annual financial report would be too short, and that auditors in the state would not be able to complete all required audits within that four month time frame. It was also commented that there does not seem to be any late filing penalty for entities that do not receive state monies. There was a question regarding whether the late filing penalty applied only to entities with revenues of $200,000 or more, or to all entities.

RESPONSE: Each local government entity, except school districts and school associated cooperatives, does have to file its annual financial report with the Department within four months after the end of its fiscal year. Extensions can be granted by the Department for good cause. The filing of this report does not, however, relate to the audit requirement. The financial report required is prepared by the entity itself and the involvement of an auditor is not required. If an entity is required to be audited, it can be audited either annually or on a biennial basis. In either case, the audit is required by statute to be initiated within nine months of the close of the last fiscal year of the audit period, and must be completed within one year of the close of the last fiscal year of the audit period. The only penalty provided for failure to file the required annual financial report in a timely manner is the withholding of state financial assistance to the entity. Therefore, the comment is correct in that there is no prescribed penalty for entities not receiving state financial assistance. The late filing penalty applies to all local government entities, except

school districts and associated cooperatives, regardless of revenue amounts.

ARM 8.94.4106 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES

COMMENT: Two representatives of certified public accounting firms and one individual representing both the Office of the Legislative Auditor and the Montana Society of Certified Public Accountants, as the Chairperson of the Governmental Audit Quality Control Committee, commented that section 6(d) of ARM 8.94.4106 should be revised to require that an independent auditor receive an unqualified report from the reviewer on its external quality control review in order to be placed on the roster.

RESPONSE: The Department agrees that independent auditors placed on the roster of auditors authorized to conduct local government entity audits should receive unqualified reports on the external quality control reviews. However, because of the unknown number of public accountants and public accounting firms this change in the rules could affect, because the proposed rules were circulated and publicized without this provision, and because this change would result in state requirements being stricter than the requirements of government auditing standards, as established by the comptroller general of the United States, the Department does not feel that this change should be made as proposed at this time. As an alternative, the Department has modified the proposed rules to require that independent auditors applying for placement on the roster receive either an unqualified or qualified review report. An independent auditor cannot receive an adverse report and be eligible for the roster. If an independent auditor receives an unqualified report, the auditor must continue to receive unqualified reports on future reviews. If an independent auditor receives a qualified review report, the auditor must have a subsequent or expedited external quality control review covering the following year and receive an unqualified review report in order to remain on the roster. The auditor must then continue to receive unqualified review reports on subsequent reviews. This approach will have the effect of requiring all independent auditors on the roster to receive an unqualified review report within one year of being placed on the roster.

ARM 8.94.4107 CRITERIA FOR THE SELECTION OF THE INDEPENDENT AUDITOR

COMMENT: Two representatives of certified public accounting firms commented that local government entities should utilize a point system in order to demonstrate that they select their auditor based on an evaluation of the criteria set out in new rule 8.94.4107, and not only on the basis of the proposed audit fee. They also commented that independent auditors

submitting proposals for local government audits should be notified by the entities of the results of the selection process and informed of the reasons for the selection.

RESPONSE: The Department agrees that there is merit in using a formal point system in evaluating the qualifications of potential independent auditors during the auditor selection process. However, because of the wide variation of audits with regard to type, size and complexity, it would be difficult to impose any specific mandatory point system through the administrative rules process and require its use by all local governments. Further, it is possible for a local government to evaluate the criteria specified in new rule ARM 8.94.4107 without using a formal point system, although a system point is usually seen as more objective and defensible. If situations arise in which it appears that a local government may have selected an auditor without using the criteria specified in the proposed rule, the rule provides that the Department can require the entity to demonstrate that the auditor selected is qualified based on an evaluation of the specified criteria. Further, the Department has and will continue to make available to local government entities Guidelines for Preparation of Requests for Audit Proposals, prepared by the Western Intergovernmental Audit Forum. These Guidelines contain information on how to evaluate audit proposals, including the use of point systems.

Local government entities do advise independent auditors submitting audit proposals whether or not their proposal has been accepted. They usually notify all proposers as to which independent auditor was selected, although they may or may not advise proposers of the reasons for their selection. If a local government entity does not automatically notify independent auditors of the desired information regarding the selection process, the entity should provide it to the auditor upon request. Actions of the governing bodies of local government are public information, and minutes of meetings at which auditor selection was discussed and a determination made are public records. If an entity has not recorded such information or does not have it available, an independent auditor can request that the Department require the entity to demonstrate that the selected auditor is qualified based on an evaluation of the specified criteria, as noted previously. The Department is reluctant to impose an additional duty on all local governments to formally justify in writing the basis for their auditor selection, when most such entities make such information available to proposers or will provide the information upon request.

ARM 8.94.4101 through 8.97.4111

COMMENT: The Chairman of the Governmental Audit Quality Control Committee of the Montana Society of Certified Public Accountants commented that the committee had reviewed and

discussed the proposed rules and felt that the rules would accurately implement the Montana Single Audit Act in the spirit intended by the Legislature when the Act was passed.

RESPONSE: No response is required.

4. No other comments or testimony were received.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 15, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment) of rule relating to super-) visors of special education)	NOTICE OF AMENDMENT OF ARM 10.16.1705

To: All interested persons

1. On December 26, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment of the rule referenced above at page 2550 of the 1991 Montana Administrative Register, issue number 24.

2. A public hearing was held on January 17, 1992, and was attended by several persons. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and at the hearing.

3. After thorough consideration of all the comments received, Rule 10.16.1705 is being amended as proposed. The comments given below have been condensed into groups of like statements followed by OPI response:

COMMENT: Parties opposing the amendment expressed concern that a person with a Class III administrator's certificate with a principal's endorsement lacks the knowledge and expertise required to effectively implement and supervise special education programs. It is their contention that only a Class III administrator's certificate with a supervisor's endorsement in special education qualifies a person to supervise special education.

RESPONSE: OPI recognizes the unique requirements of supervision in each curricula area and provides technical assistance to school districts upon request for training in specific subject areas. OPI acknowledges that knowledge and understanding of special education laws and regulations and procedures are essential to the supervision of special education teaching personnel. OPI, in cooperation with the Montana Academy of Leadership Development (MALD), will initiate intensive and readily available inservice training for elementary and secondary principals as outlined in "Plan . . . Training for Principals in Special Education" beginning in September 1992. In addition, OPI will refer these comments to Donald J. Freshour, Director of Teacher Education and Certification, Office of Public Instruction, for consideration as part of the Review of Montana Teacher Education Program Standards to begin September 1, 1992. If deemed appropriate following this review, the Director may recommend changes in certification requirements regarding knowledge and understanding of special education laws, regulations, principles and procedures required to supervise special education programs in local school districts.

COMMENT: The amendment will short-change our handicapped

youngsters' programs with administrators who often do not know the difference between a student with a learning disability and a student with a mentally handicapping condition.

RESPONSE: Effective special education programs in local districts require identifying and assembling a group of persons who possess knowledge about the individual handicapping condition, the meaning of an individual student's evaluation data and options available for developing and implementing an appropriate education program for the student. It is not intended that special education decisions be made by a single educator who independently possesses all the requisite knowledge and expertise.

COMMENT: Special education funding should not be used to fund principals lacking a supervisor's endorsement in special education.

RESPONSE: Principals who do not hold a supervisor's endorsement in special education will not be funded by special education funds.

COMMENT: Accreditation standards should require districts to individually or cooperatively have a supervisor endorsed in special education available for leadership and program assistance.

Supervisors should have special education law and program assessment backgrounds. If the amendment is allowed to go through, OPI must commit to appropriate training of administrators.

If required to complete course-work in special education, a certified principal has the capability of supervising special education staff and being responsible for special education program management.

RESPONSE: Accreditation standards must be adopted by the Board of Public Education. Current standards require each school district to follow state and federal regulations for special education and allow state special education funds to be used for hiring a supervisor of special education.

COMMENT: Persons supporting the amendment express their opinion that collaboration between special educators and regular educators will be enhanced by the active participation of principal . . . part of the team, an integral part of the professional staff. Special education students are better served by having the least restrictive environment, not only within their classroom setting, but equally so within the administrative structure of the school system.

The principal is a key factor in establishing LRE in the school building and is a major ingredient in providing a congruent

program for students, and therefore, must be involved in the special education process at all levels.

Amendment would allow opportunity for growth for both principals and administrators for extended training in the area of special education.

Requiring special education to be supervised by a person with a special ed. endorsement rather than a principal's endorsement would negate progress of increasing collaboration between regular and special education.

The proposed rule change is in keeping with the current idea of making special education part of the regular education mainstream by melding it into the general education system rather than promoting the continued development of a stand-alone system.

RESPONSE: OPI believes that the best interests of special education students are served by having the special education teachers supervised by the principal in the same manner as other teachers for the reasons stated in the above comment.

OPI will provide principals with in-state opportunities to receive additional training in special education practices and procedures. The principal may have a director of special education within the district or within the cooperative.

COMMENT: If the amendment isn't approved, many principals or superintendents would have to pick up endorsements. Many rural schools would have a difficult time in obtaining/retaining a special education supervisor if a principal's endorsement is not a secondary option.

It is difficult to find teachers with special ed. endorsements, let alone administrators with a supervisor's endorsement in the field.

RESPONSE: OPI is aware of the shortage of qualified personnel in special education. In the past, OPI has sponsored programs such as the special education teacher endorsement project and speech/language pathologist full licensure project. OPI supports ensuring qualified personnel are available to school districts through a variety of preservice and inservice training options.

COMMENT: No more restrictive requirements related to supervision. Otherwise we set the stage for requiring science teachers to be supervised by supervisors endorsed in science education, reading teachers to be supervised by supervisors in reading . . . .

Only the Board of Public Education can adopt rules on certification and endorsements. Request OPI to pursue changing

the requirements to require adequate training of administrators who will be supervising special education programs or personnel.

EMC does not dispute principal's and superintendent's involvement in the leadership of special education services, but they urge OPI to petition the BPE and Board of Regents to address pre-service training.

Persons without backgrounds in special ed. should not supervise special ed. teachers. She has attended numerous CST meetings chaired by principals having little or no knowledge of the special ed. process and would support the amendment if there was a guarantee that those people would receive that training, even 9 semester credits worth.

RESPONSE: In the past two years, OPI has provided workshops in cooperation with the fall School Administrators of Montana conference and has provided inservice to individual districts or cooperatives upon request. Additional workshops will be offered to principals beginning in the fall of 1992. OPI will pursue changes in certification requirements through the current certification review process.

COMMENT: The change does not address supervision of special ed. personnel by special ed. supervisors so the rule should be expanded to include the supervision of nonteaching special ed. personnel as well as teachers, such as school psychologists and speech/language clinicians.

RESPONSE: This recommendation will be considered along with other administrative rule changes currently being reviewed in the area of delivery of special education services to students.

COMMENT: Proposed Rule Amendment

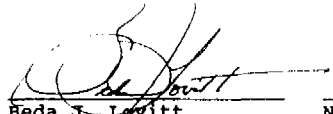
> Supervisors of special education teaching personnel must have a Class III administrator's certificate with a principal's endorsement that includes training in the supervision of special education or a supervisor's endorsement in special education.

In order to maintain the continuity of equity in supervision at the LEA, it is my belief that principals should supervise special education teachers. This should be done in conjunction with special education supervisors. The team would provide quality supervision and maximize compliance with state and federal regulations. Budgeting for special education supervision (considering Montana's current budgeting process) should remain with the special education supervisor's position. This practice would insure qualified personnel capable of producing effective school programs.

RESPONSE: The Office of Public Instruction lacks the authority to adopt rules establishing the requirements for certificate

endorsements. OPI will pursue changes in certification requirements through established procedures at OPI and through the Board of Public Education.

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends the rule as proposed.



Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State June 15, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules relating to regular and special education tuition	NOTICE OF AMENDMENT OF ARM 10.10.301, 10.16.1312 and 10.16.1314; and REPEAL OF ARM 10.16.1313 RELATING TO REGULAR AND SPECIAL EDUCATION TUITION
To: All interested persons	

1. On April 30, 1992, the Superintendent of Public Instruction published notice of proposed amendment and repeal of the rules referenced above at page 832 of the 1992 Montana Administrative Register, issue number 8.

2. No public hearing was held nor was one requested. The Superintendent has received written comments concerning these rules.

COMMENT:

Dan Martin from the Glendive Elementary School District questioned the impact of these amendments on court placements, group homes and out-of-district placements, fearing that this revised tuition calculation placed an additional burden on his district.

RESPONSE:

These amendments impact special education tuition calculations which are established by rule, by substituting a formula that is not dependent on the regular education tuition calculations, which are prescribed by law. The effect of the amendments is to allow districts to receive tuition revenue that will more adequately offset the additional costs of out-of-district special education students that would have been allowed under the prior rules.

3. After consideration of the comments received, the Superintendent of Public Instruction hereby amends and repeals the rules as proposed.

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of June 15, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.2.212 pertaining to fair hearings	NOTICE OF PROPOSED AMENDMENT OF RULE 11.2.212 PERTAINING TO FAIR HEARINGS

TO: All Interested Persons

1. On April 16, 1992, the Department of Family Services published notice of the proposed amendment of ARM 11.2.212 pertaining to fair hearings, at page 739, of the 1992 Montana Administrative Register, issue no. 7.

2. The department has amended the rule as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, June 16, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 11.12.606 pertaining to preschoolers in foster care, and the amendment of ARM 11.14.101 pertaining to CPS day care benefits.	) NOTICE OF AMENDMENT OF ARM 11.12.606 PERTAINING TO PRESCHOOLERS IN FOSTER CARE, AND THE PROPOSED AMENDMENT OF ARM 11.14.101 PERTAINING TO DAY CARE BENEFITS

TO: All Interested Persons

1. On April 16, 1992, the Department of Family Services published notice of the proposed amendment of ARM 11.12.606 pertaining to preschoolers in foster care, and ARM 11.14.101 pertaining to CPS day care benefits, at page 744 of the 1992 Montana Administrative Register, issue no. 7.

2. The department has amended ARM 11.12.606 as proposed. ARM 11.14.101 has been amended as proposed, but with the following changes from the text appearing in the proposed notice of amendment:

11.14.101 CHILD DAY CARE SERVICES, PURPOSE AND LICENSING
Subsections (1) and (2) are amended as proposed.

(3) Licensing, registration and reevaluation of family day care homes, group day care homes and centers is the responsibility of the department. Licensing and issuing certificates of registration ~~is~~ are delegated to the supervisor of the appropriate family resource specialist.

Subsections (4) through (6) are amended as proposed.

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

3. The department has thoroughly considered all comments received:

COMMENT: Family Resource Specialists are generally required to obtain their supervisor's signature on the licensing or registration certificate. Subsection (3) of ARM 11.14.101 should be changed to reflect this fact.

RESPONSE: The department agrees and has provided the requested amendment in this notice.

COMMENT: Utilization of day care aids in the retention and recruitment of foster parents. The proposed amendment to ARM 11.12.106 should be stricken and redrafted to reflect the need for retention and recruitment. In addition, the amendment should

provide criteria controlling department discretion in approving or disallowing day care for a placement. There appears to be no process for foster family input. The amendment should do more to incorporate, rather than alienate foster care families. This budget-driven amendment should not be approved.

RESPONSE: The commentator has mistakenly assumed that the amendment to ARM 11.12.606 is designed to prohibit foster families from placing preschoolers in day care. In fact, the amendment relaxes the restriction in the current rule which provides an outright prohibition against use of day care by foster parents caring for preschoolers. A lengthy explanation of this fact appears in the rationale section of the original notice.

The criteria for approval or non-approval by the regional administrator under the amended version of ARM 11.12.606 depends on the needs of the preschooler, not the needs of prospective foster parents.

The comment that "this is a budget driven" amendment apparently refers to the restrictive criteria for work-enabling CPS day care benefits for foster parents. Again, the commentator fails to consider the language of the old rule in commenting on the proposed changes. Previously, the rule prohibited work-enabling CPS day care benefits. The amended version allows for work-enabling CPS day care benefits under certain circumstances.

COMMENT: The department should not eliminate day care benefits for foster parents. Many foster parents could not afford to care for children without the benefits. If foster care families are unavailable, the department may be forced to allow children to remain in homes where there is a high risk of abuse or neglect. If the State is to provide an adequate foster care system, child care benefits must be provided. The State should recognize that dedicated, working foster parents are an asset to the foster care system. A hearing should be held to air our views on this amendment. The State should not balance its budget on the backs of foster parents.

RESPONSE: Again, the amendment allows for greater use of CPS day care benefits to cover day care expenses of foster parents. Therefore, without the amendment, it is likely that fewer foster parents would receive day care benefits. Given this fact, it seems that the concerns expressed in the comment are better addressed by going forward with the amendment of the rule, rather than through rejection of the proposal. No hearing will be held because an insufficient number of those directly affected have failed to join in the request for a hearing, and no other requests for hearing have been received.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, June 16, 1992.

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

In the matter of the amendment of rules 16.14.201-205, 16.14.207-209, the repeal of 16.14.206, and the adoption of new rules I-VII relating to junk vehicles.	NOTICE OF AMENDMENT OF RULES, REPEAL OF 16.14.206 AND THE ADOPTION OF NEW RULES I-VII

(Solid & Hazardous Waste)

To: All Interested Persons

1. On April 16, 1992, the department published notice at page 762 of the Montana Administrative Register, Issue No. 7, to consider the amendment of the above-captioned rules, the repeal of 16.14.206, and the adoption of new rules I through VII.

2. After consideration of the comments received on the proposed rules, the department has adopted the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

16.14.201 LICENSE TO OPERATE -- APPLICATION (1) Same as proposed.

16.14.202 SHIELDING OF FACILITIES (1)-(2) Same as proposed.

(3)(a) Fences must be constructed of sound building materials. Rough dimensional lumber or better is acceptable. Slabs are not considered rough dimensional lumber. Other types of fencing of equivalent performance, attractiveness, and shielding qualities are also acceptable. Plastics or other materials placed over junk vehicles are not acceptable, except that a reasonably attractive car cover specifically designed to attach tightly to and cover a motor vehicle is acceptable for shielding one junk vehicle at a single location.

(b)-(c) Same as proposed.

(4)-(8) Same as proposed.

16.14.203 RENEWAL OF LICENSE Same as proposed.

16.14.204 DENIAL OF APPLICATION OR CANCELLATION OF LICENSE Same as proposed.

16.14.205 INSPECTIONS Same as proposed.

16.14.206 CONTROL OF JUNK VEHICLES Repealed.

16.14.207 MOTOR VEHICLE GRAVEYARDS (1) Same as proposed.

(2)(a) Remain the same.

(b) A properly completed certificate of ownership, sheriff's certificate of sale, notarized bill of sale from the

former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release~~, or release of interest statement signed by the last registered owner of the vehicle~~ must be obtained for each junk vehicle placed in a motor vehicle graveyard. This documentation must be submitted to the department as soon as the junk vehicles are removed from the motor vehicle graveyard.

(3)-(4) Same as proposed.

(5) The county shall publish and adequately disseminate in the county the hours of operation and other pertinent information regarding the procedures for the collection and acceptance of junk vehicles for each motor vehicle graveyard within its boundaries. Each motor vehicle graveyard must be supervised when open to the public.

(6)-(8) Same as proposed.

AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, 75-10-522, MCA

16.14.208 DISPOSAL OF JUNK VEHICLES THROUGH STATE DISPOSAL PROGRAM Same as proposed.

16.14.209 ITEMIZED ACCOUNTING BUDGET PROCEDURES -- COUNTY JUNK VEHICLE PROGRAMS Same as proposed.

RULE I (16.14.210) AUTHORIZED COUNTIES MAY SELL JUNK VEHICLES Same as proposed.

RULE II (16.14.211) APPROVAL OF COUNTY JUNK VEHICLE SALES Same as proposed.

RULE III (16.14.212) CONDUCT OF COUNTY JUNK VEHICLE SALES (1) Only those junk vehicles which are accompanied by a properly completed certificate of title, sheriff's certificate of sale, ~~notarized bill of sale from the former owner,~~ or sheriff's release~~, or release of interest statement signed by the last registered owner of the vehicle~~ may be sold.

(2)-(4) Same as proposed.

(5) A properly completed title, sheriff's certificate of sale, ~~notarized bill of sale from the last owner, sheriff's release, or release of interest statement signed by the last registered owner of the vehicle~~ or sheriff's release must be provided by the county to the purchaser at the time the purchaser takes possession of the vehicle. In addition, the county shall provide to the purchaser a sales receipt and a signed release of interest statement from the county junk vehicle program.

(6)-(8) Same as proposed.

RULE IV (16.14.213) COUNTY TO REPORT JUNK VEHICLE SALES TO THE DEPARTMENT Same as proposed.

RULE V (16.14.214) SALE PROCEEDS TO BE DEPOSITED INTO THE JUNK VEHICLE PROGRAM ACCOUNT Same as proposed.

RULE VI (16.14.215) A VEHICLE OWNER MAY REQUEST A VEHICLE NOT BE SOLD Same as proposed.

RULE VII (16.14.216) REQUIREMENTS FOR PURCHASES FROM COUNTY GRAVEYARD Same as proposed.

3. The department has repealed 16.14.206 as proposed.

4. The following comments were received and the department's responses follow:

COMMENT 1: Paragraph 2 of the notice of proposed rulemaking concerning junk vehicles, published April 16, 1992, states that the proposed amendments would "require annual accountings from motor vehicle graveyards of all revenues realized from the sale of junk vehicles"; it should be more clearly stated that this pertains only to county graveyards and not to private businesses. Also, what is the definition of the term "motor vehicle graveyard"?

RESPONSE: The second paragraph of the notice is merely a summary of the proposed amendments, the new rules, and the repeal. That paragraph does not contain the actual text of the rules. Pursuant to new language in paragraph (5) of rule 16.14.209, counties must submit to the department annual accountings of revenues realized from the sale of junk vehicles. This rule clearly applies only to counties, and not to private motor vehicle wrecking facilities. Section 75-10-501(5), MCA defines "motor vehicle graveyard" as "a collection point established by a county for junk motor vehicles prior to their disposal".

COMMENT 2: We are not really in favor of selling vehicles from the county graveyards, but if we are assured only licensed wrecking yards can buy there it could be acceptable.

RESPONSE: Section 75-10-502(2), MCA, requires the department to adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities. Therefore, the department has no authority to disallow the sale of junk vehicles by counties. [Rule III(3)] provides that counties may sell junk vehicles only to licensed motor vehicle wrecking facilities.

COMMENT 3: Inspections of yards are fine but they should not be required once a year as sometimes government agencies do not get around to it and therefore it delays the yards from getting their license by the first of the year so they can display it as they are supposed to.

RESPONSE: Section 75-10-521(5), MCA states: "each county... shall inspect each licensed motor vehicle wrecking facility within its boundaries, consistent with rules adopted by the department..." (emphasis added). That statute clearly requires counties to inspect motor vehicle wrecking facilities. ARM

16.14.205(2) simply establishes a time frame in which the inspection is to be conducted. The rule does not permit the department to delay a license renewal based upon the failure of a county to conduct the required inspection.

COMMENT 4: 16.14.205(3) -- State law requires that no new duties may be added to a local government without a concomitant finding of revenue. This section clearly adds more work to the county's junk vehicle program. Instead of identifying a revenue source to cover this increased work load, DHES has decreased our revenue by 1.05% and 4.15% in the last two years. Regardless of the wisdom of this rule, I do not feel it can be legally incorporated until our base grant decreases have been corrected.

RESPONSE: As noted in response to comment number 3, §75-10-521(5), MCA, requires county inspections of motor vehicle wrecking facilities. Therefore, ARM 16.14.205(3) does not add new responsibilities to the counties. Moreover, funding for the inspections is provided through the county junk vehicle program budgets approved and paid by the department pursuant to §75-10-534, MCA. Regarding revenue decreases, the legislature, not the rules of the department, limits the amount that the department may pay for approved county budgets. Section 75-10-534, MCA, provides in relevant part: "The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county." In addition to the limit provided in §75-10-534, MCA, the Montana 52nd Legislature placed a limit of $800,000 on the total amount of funding the Junk Vehicle Fund could provide as grants to the counties. Because the sum of the county budgets exceeds the $800,000 limit, all counties received pro-rata decreases in funding of 1.05% in fiscal year 1992 and 4.15% in fiscal year 1993.

COMMENT 5: 16.14.207(2)(b) -- We have successfully been allowing property owners to release cars to us that were left on their property but not owned by them. Our county attorney approved this type of action years ago. Please rewrite this section to allow continuance of this action.

RESPONSE: The department has amended ARM 16.14.207(2)(b) to allow the collection of junk vehicles upon the receipt of a release of ownership or interest in the vehicle. See also the department's response to comment number 11.

COMMENT 6: 16.14.209 and Rules I through VII -- If the department set out to write rules to purposely discourage the sale of vehicles they could not have done a better job. These rules as proposed are so onerous that they virtually ensure we will never engage in such activity. This is unfortunate, since this activity is the only way we see to offset the continued

reduction in our annual base grant.

RESPONSE: The department has no intent to discourage sales of junk vehicles by counties. The department believes these rules are necessary to implement the applicable laws relating to county sales of junk vehicles.

COMMENT 7: 16.14.207(5) is unnecessary and unjustifiable. Advertising the location of the motor vehicle graveyard will create vandalism and salvaging problems. Requiring graveyards to be supervised when open will require counties to hire additional personnel. Counties should be allowed to restrict public access to graveyards in order to prevent salvaging and littering.

RESPONSE: Section 75-10-522, MCA, indicates that motor vehicle graveyards must provide for the delivery of junk vehicles to motor vehicle graveyards by private individuals. While this does not require that motor vehicle graveyards be regularly open to the public, individuals residing in the county must be afforded the opportunity to personally deliver to the graveyard a junk vehicle or vehicles. The intent of the requirement to disseminate information is to inform individuals how to make arrangements to deliver junk vehicles to the graveyard. The object of having the graveyard supervised when open is to gather the necessary releases and to record the receipt of such vehicles. The supervision is also intended to control and discourage any salvaging from the vehicles at the graveyard while the graveyard is open.

COMMENT 8: 16.14.207(2)(a) -- Does that really mean quarterly? I have always done it yearly.

RESPONSE: ARM 16.14.207(2)(a) requires motor vehicle graveyards to submit records quarterly.

COMMENT 9: 16.14.207(5) -- What kind of operation would a graveyard be involved in? What happens if the contractor has the key, and that is the only time it is open?

RESPONSE: See response to comment number 7.

COMMENT 10: 16.14.202(3)(a) -- It is difficult to justify why a commercially made plastic or canvas car cover cannot be used to shield a single vehicle. These covers are attractive in appearance and are specifically made for covering a vehicle. The following sentence should be added after the last sentence of Section 16.14.202(3)(a): "However, commercially made plastic or heavy cloth car covers specifically made to attach tightly to and cover a motor vehicle are acceptable".

RESPONSE: The department has amended ARM 16.14.202(3)(a) to allow the use of a car cover to shield one junk vehicle at a single location. Due to the variation in color, design, and

construction of car covers, and because the covers may be aesthetically unappealing, the department does not believe the use of car covers is appropriate for shielding more than one vehicle at a single location.

COMMENT 11: 16.14.207(2)(b) -- The documentation requirements as proposed in this section will restrict the release of a majority of the vehicles currently targeted by county junk vehicle programs. Most of the vehicles released to the junk vehicle program are abandoned vehicles with no usefulness or value and are requested to be removed by the property owner, who is often not the vehicle owner. In many instances, it is not feasible nor is it even possible to contact the "last registered owner" for release of the vehicle. In most cases the vehicle was abandoned because the registered owner had no interest in the proper disposal of the vehicle. It is also not efficient to have a sheriff release these types of vehicles. Junk vehicles are scattered throughout the countryside. It would needlessly consume additional man-hours as well as law enforcement vehicles if a sheriff's release was required instead of that of the landowner. This section of the rule should be amended to include in the list of acceptable documentation a release form signed by the owner of the property on which the abandoned junk vehicle is located.

RESPONSE: See response to comment number 5.

COMMENT 12: RULE V (1)(b) - In this rule, reference should be made to the fact that the monies gained by the county's sale of junk vehicles would be able to be carried over into the following program year without reducing the grant funds received from the state.

RESPONSE: [Rule V(1)(b)] states: "[t]he sale proceeds in excess of the salvage values of the vehicles sold may be retained by the county for use in the county's junk vehicle program, in addition to the approved junk vehicle collection and graveyard budget of the county." The Department believes this clearly indicates that the sale proceeds are a source of funding separate from the grants received from the department and, therefore, could be carried over into the next fiscal year without reducing the grant received by the county program.

COMMENT 13: [Rule III(3)] -- How the buyer proves that he is actually an owner of a salvage yard or an appointed representative is of a concern. Exactly how are you going to make sure a buyer is a representative of a motor vehicle wrecking facility?

RESPONSE: [Rule III(3)] requires all bidders to provide proof of a valid motor vehicle wrecking facility license prior to the sale. Presumably, this will provide adequate assurance that the purchaser is an authorized representative of a licensed motor vehicle wrecking facility.

COMMENT 14: Sales of junk vehicles by counties will not be profitable, since most of the vehicles that the counties obtain are not desirable to wrecking facilities.

RESPONSE: The department is required to adopt rules allowing the sale of junk vehicles by counties (see response to comment number 2). The individual counties can best determine whether sales of junk vehicles would be profitable.

COMMENT 15: Because the rules require a sheriff's sale, a title, a release from the former owner, etc., many of the vehicles in county graveyards will be ineligible for sale. Counties do not obtain this documentation for most of the vehicles received by the junk vehicle program.

RESPONSE: The department has deleted from ARM 16.14.207(2)(b) the language which required a release signed by the "last registered owner". See response to comment number 5. However, because the vehicles sold by counties will typically be candidates for re-titling, the department has amended [Rule III] to require documentation which complies with the requirements of the Motor Vehicle Division of the Montana Department of Justice. This documentation will also help protect the counties and the department from potential claims that junk vehicles released to the counties by landowners were not "abandoned" by the owner of the vehicle.

DENNIS IVERSON, Director

Certified to the Secretary of State June 15, 1992

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of new rules I through ~~VIII~~ IX dealing with license and operation fees for solid waste management	NOTICE OF ADOPTION OF NEW RULES I - IX (Solid & Hazardous Waste)

To: All Interested Persons

1. On December 26, 1991, the department published a notice at page 2559 of the 1991 Montana Administrative Register, Issue No. 24, of the proposed adoption of the above-captioned rules.

2. After consideration of the comments received on the proposed rules, the department has adopted the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

RULE I (16.14.401) PURPOSE (1) The purpose of this subchapter is to establish solid waste management system licensing requirements and fee schedules provided for in 75-10-115, and 204, MCA.

AUTH: 75-10-115, 75-10-204, MCA; IMP: 75-10-115, 75-10-204, 75-10-221, MCA

RULE II (16.14.402) AUTHORITY (1) Authority for rules promulgated in this subchapter is provided for in 75-10-115, 204, and 221, MCA, under which the department may establish and collect fees for the management and regulation of solid waste disposal. These fees may include:

(a)-(c) Same as proposed.

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA; IMP: 75-10-115, 75-10-204, 75-10-221, MCA

RULE III (16.14.403) DEFINITIONS Unless the context requires otherwise, in this sub-chapter the following definitions apply:

(1)-(3) Same as proposed.

(4) "Container site" means a facility for the collection of solid waste generated by more than one household or firm, generally open to the public, in refuse container(s) with a total site capacity of more than ten (10) cubic yards.

(4)-(5) Same as proposed but are renumbered (5)-(6).

~~(6)~~(7) "Facility" means a manufacturing, processing or assembly establishment; a transportation terminal, or a treatment, storage or disposal unit operated by a person at one site. This definition does not include infectious ~~medical~~ waste incinerators or other facilities that:

(a) ~~treat and destroy~~ control the generation, transportation, treatment, storage or disposal of infectious ~~medical~~ waste, as that term is defined in 75-10-1003(4), MCA;

(b) ~~that are not operated for profit, and that are operated as part of a medical facility,~~ are owned by and operated as a part of a profession, occupation, or health care facility that generates infectious waste and that is licensed by a board or department of the state; and

(c) do not control the treatment, storage or disposal of non-infectious solid waste.

(7)-(15) Same as proposed but are renumbered (8)-(16).

~~(16)~~(17) "Resource recovery" ~~is a term describing the extraction and utilization of materials and energy from the waste stream. The term is sometimes used synonymously with energy recovery~~ means the recovery of material or energy from solid waste.

(17)-(23) Same as proposed but are renumbered (18)-(24).

~~(24)~~(25) "Substantial change" means any change in the operation, ownership, or siting of a facility in which review by the department takes more than ~~8~~ 24 hours.

~~(25)~~(26) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(27) "Transfer station" means a solid waste management facility that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles (public, commercial or private) and placed in other transportation units for movement to another solid waste management facility.

(26)-(28) Same as proposed but are renumbered (28)-(30).

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA; IMP: 75-10-115, 75-10-221, MCA

RULE IV (16.14.404) APPLICABILITY (1) Except as provided in 75-10-214, MCA, this ~~rule~~ subchapter applies to any person disposing of solid waste or operating or maintaining a solid waste management system involved in the storage, treatment, recycling, recovery, or disposal of solid waste.

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA; IMP: 75-10-115, 75-10-204, 75-10-221, MCA

RULE V (16.14.405) ANNUAL OPERATING LICENSE REQUIRED (1) Except as provided in 75-10-214, MCA, no person may dispose of solid waste or operate or maintain a solid waste management system after July 1, 1991 without an operating license from the department. The license period shall be for a base year from July 1 of one year through June 30 of the subsequent year.

(a) Same as proposed.

(b) The department shall mail invoices for license renewal fees to license holders by June 15 of each year. License renewal fees will be calculated in accordance with Table 1, "Annual License Fee Schedule". Any solid waste management facility that does not fit into one of the categories listed in Table 1 shall be assessed fees no greater than major Class II landfill facilities. Payment of renewal fees may be submitted to the department quarterly, with the first

payment due on or before July 31 of each base year. ~~A late payment charge of 10% per month, or a minimum charge of $10, whichever is greater, will be assessed for all fee payments received later than sixty (60) days after the due date.~~ Failure to submit payments when due shall subject the license holder to the provisions of 75-10-116, MCA.

(c) The annual license fee specified in Table 1 will be pro-rated by quarter for the year in which a license is originally issued.

(2) ~~Renewal of license.~~

~~(a)~~ The department will mail application forms to renewal applicants. Application for renewal of a solid waste management system license shall be submitted to the department by April 1 of each year. Applicants failing to submit the relicensing application and appropriate fees within the specified time shall be subject to the provisions of 75-10-116, MCA.

~~(b) Application for an operating license shall be submitted on forms supplied by the department and shall be accompanied by the appropriate fees as shown in Table 1, "Annual License Fee Schedule".~~

(3) Upon payment of the transfer fee shown in Table 2, "License Transfer Fee", the department will issue a new operating license to a person acquiring rights of ownership, possession or operation of a licensed solid waste management system. Any solid waste management facility that does not fit into one of the categories listed in Table 2 shall be assessed transfer fees no greater than major Class II landfill facilities. Department approvals on operating plans are not transferable prior to licensing.

(4) Same as proposed.

(5) Except for prorated fees when the department declares a facility "closed", license fees are not refundable.

TABLE 1. ANNUAL LICENSE FEE SCHEDULE

FACILITY	ANNUAL LICENSE FEE	DISPOSAL FEE/TON
Major Class II Landfill	$3,500	$0.31
Intermediate Class II Landfill	3,000	0.31
Minor Class II Landfill	2,500	0.31
Major Class III Landfill	1,000	
Minor Class III Landfill	500	
Major Incinerator	3,500	0.31
Intermediate Incinerator	3,000	0.31
Minor Incinerator	2,500	0.31
Container System (Initial Site)	360	
Each Additional Container Site	50	
Transfer Station (>10,000 tons/yr)	1,050	
Transfer Station (<10,000 tons/yr)	400	
Large Composter Operation	1,500	
~~Small Composter Operation~~	~~200~~	

TABLE 2. LICENSE TRANSFER FEE

FACILITY	TRANSFER FEE
Major Class II Landfill	$500
Intermediate Class II Landfill	400
Minor Class II Landfill	300
Major Class III Landfill	200
Minor Class III Landfill	150
Major Incinerator	500
Intermediate Incinerator	400
Minor Incinerator	300
Container System (Initial Site)	100
Each Additional Container Site	40
Transfer Station (>10,000 tons/yr)	400
Transfer Station (<10,000 tons/yr)	250
~~Yard Waste Composting at Res. Rec. Fac.~~	~~150~~
Large Composter Operation	400
~~Small Composter Operation~~	~~250~~
~~Other Class II Materials~~	~~200~~

TABLE 3. APPLICATION REVIEW FEE SCHEDULE

FACILITY	APPLICATION REVIEW FEE
Major Class II Landfill	$10,000
Intermediate Class II Landfill	7,500
Minor Class II Landfill	5,000
Major Class III Landfill	3,000
Minor Class III Landfill	2,000
Major Incinerator	10,000
Intermediate Incinerator	7,500
Minor Incinerator	5,000
Container System (Initial Site)	1,000
Each Additional Container Site	100
Transfer Station (>10,000 tons/yr)	7,000
Transfer Station (<10,000 tons/yr)	4,000
~~Yard Waste Composting at Res. Rec. Fac.~~	~~1,000~~
Large Composter Operation	3,000
~~Small Composter Operation~~	~~1,500~~
~~Other Class II Materials~~	~~5,000~~

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA; IMP: 75-10-115, 75-10-204, 75-10-221, MCA

RULE VI (16.14.406) VOLUME-BASED DISPOSAL FEE

(1) Except as provided for in 75-10-214, MCA, and in ~~the attached fee schedules~~ fee Tables 1, 2 and 3, any person licensed to dispose of or incinerate solid waste shall submit to the department an annual fee of $0.31 per ton of solid waste ~~received and~~ incinerated or disposed of at the licensed facility. This volume-based ~~disposal~~ fee shall be submitted to the department in addition to license fees subject to the same schedule as the license fees.

(2)(a) The volume-based fee will be calculated by using one of the following methods:

(i) actual weight of waste managed;

(ii) estimated weight based upon the volume of waste managed;

(iii) estimated weight based upon service area population; or

(iv) special situations (e.g. two or more landfills servicing the same area and population, incinerator ash disposed of in a landfill, acceptance of out-of-district wastes, acceptance of special wastes, etc.).

(b) For the purpose of estimating weight based upon the volume of waste managed, the following formulas apply:

(i) one cubic yard of loose refuse (residential or commercial) shall equal 300 pounds; and

(ii) one cubic yard of compacted refuse (e.g. packer truck) shall equal 700 pounds.

(c) For solid waste management systems that choose not to weigh or measure the volume of waste managed, the following formulas shall be used for the purpose of estimating weight based upon service area population:

POPULATION	TONS PER YEAR
Greater than 5,000	1.04
1,000 - 5,000	0.59
Less than 1,000 and unincorporated areas	0.41

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA; IMP: 75-10-115, 75-10-221, MCA

RULE VII (16.14.407) ~~DETERMINATION OF SYSTEM CAPACITY FOR FEE ASSESSMENT~~ ANNUAL REPORTING; COMPOSTING; SPECIAL WASTES

~~(1) The department shall, by utilizing one of the following methods, determine the system capacity of each solid waste management system for purposes of assessing fees and issuing licenses.~~

~~(a)~~(1) Any person owning or operating facilities that dispose of solid waste through landfilling or incineration shall submit to the department by April 1 of each year, on a form provided by the department, the following information:

~~(i)~~(a) Service areas and population of those areas;

~~(ii)~~(b) Total tonnage of solid waste received and disposed of during the previous year. Facilities that do not operate scales and that measure the volume of waste received and disposed of will use the following conversions to determine tonnage~~:~~;

~~(A)~~(i) loose refuse (residential and commercial) = 300 pounds per cubic yard;

~~(B)~~(ii) compacted refuse (packer truck) = 700 pounds per cubic yard~~;~~.

(c) Facilities that do not operate scales and that do not measure the volume of waste received and disposed of shall estimate the total tonnage of waste received and disposed of in the manner provided in [Rule VI(2)(c)].

~~(iii) Special situations; i.e., two or more landfills servicing the same area and population or acceptance of out-of-district waste;~~

~~(b)~~(2) All ~~commercial composting~~ large composter operations must be ~~at a~~ licensed ~~solid waste management facility~~ by

the department. For the purposes of licensing fees the following definitions apply:

~~(i)~~(a) A small composter operation must meet all the following criteria:

~~(A)~~(i) under two acres active working area;

~~(B)~~(ii) the operation must accept yard waste only;

~~(C)~~(iii) the operation must accept less than 10,000 cubic yards annually; and

~~(D)~~(iv) less than 1000 tons annual production.

~~(ii)~~(b) ~~A large~~ Large composter operations ~~does~~ include all composter operations which do not meet the above criteria and specifically includes the following:

~~(A)~~(i) co-composters; and

~~(B)~~(ii) any facility that accepts sewage sludge for composting.

(3) Small composter operations which accept waste from more than one source are required to register with the department on a form provided by the department. Small composter operations which accept waste from more than one source are not required to be licensed, but may be inspected by the department and must be conducted in accordance with guidelines issued by the department.

~~(c)~~(4) Any person owning or operating a licensed facility ~~facilities~~ that disposes of Group II solid wastes through landfilling ~~shall~~ will not be charged additional fees for composting operations conducted on the same site as the licensed facility. Composting operations must be included in the facility's approved plan of operation.

~~(e)~~(5) The storage, treatment, recycling, recovery, or disposal of used tires must be at a licensed solid waste management facility. Class III facilities that are licensed exclusively for tires must keep records of the number of tires accepted by the facility. For the purpose of fee determinations the following conversion factor will apply:

~~(i)~~(a) the average tire weighs 20 pounds.

~~(d)~~(6) For the purpose of fee determination, Class III solid waste management facilities are divided into the following categories:

~~(i)~~(a) Major facility--disposes of 1000 tons or more of material per year.

~~(ii)~~(b) Minor facility--disposes of less than 1000 tons of material per year.

AUTH: 75-10-115, 75-10-204, 75-10-221, MCA; IMP: 75-10-115, 75-10-204, 75-10-221, MCA

RULE VIII (16.14.408) APPLICATION REVIEW FEES - INITIAL LICENSE OR SUBSTANTIAL CHANGE TO AN EXISTING FACILITY

(1) Application for an initial license for a solid waste management system or substantial change to an existing solid waste management system may be submitted at any time during the license base year. Licenses issued during the base year shall expire at the end of that license base year. The applicant for initial licensing of a facility shall submit the appropriate fees as shown in Table 3, "Application Review Fee Schedule" of

[RULE V]. Any solid waste management system that does not fit into one of the categories shall be assessed fees no greater than major Class II landfill facilities.

(2) Application for substantial change to an existing solid waste management system shall be subject to the fee schedule established for review of new or substantially changed applications contained in Table ~~2~~ 3, "Application Review Fee Schedule".

AUTH: 75-10-115, 75-10-204, MCA; IMP: 75-10-115, 75-10-204, 75-10-221, MCA

RULE IX (16.14.409) CONSOLIDATION OF LICENSES; FEES FOR CONSOLIDATED LICENSES (1) More than one solid waste management facility may be licensed as a part of the same solid waste management system, subject to the following limitations:

(a) No more than one landfill may be consolidated under one solid waste management system license;

(b) No more than one incinerator may be consolidated under one solid waste management system license;

(c) A landfill and an incinerator may not be consolidated under the same license;

(d) All solid waste management facilities consolidated under one solid waste management system license must manage the same or primarily the same solid waste stream;

(e) All solid waste management facilities consolidated under the same solid waste management system license must be owned or operated by the same person; and

(f) All solid waste management facilities consolidated under the same solid waste management system license must be included in the solid waste management system's approved plan of operation.

(2) The limitations provided in (1)(a), (b), and (c) above do not apply to facilities co-located at a single site or at contiguous sites.

(3) Except as otherwise provided in [Rule VII(4)] and in subsection (4) below, solid waste management systems containing more than one solid waste management facility shall be subject to fees equal to the sum of the following:

(a) the applicable fees calculated in accordance with Tables 1, 2 and 3 of [Rule V] for the facility which the department, after consultation with the applicant or licensee, determines to be the major facility included under the license; and

(b) one-half of the applicable fees calculated in accordance with Tables 1, 2 and 3 of [Rule V] for all other facilities consolidated under the same license.

(4) The department will not assess the $0.31 per ton disposal fee of Table 1, [Rule V] for the landfill disposal of incinerator residues in the case where the incinerator facility and the landfill facility are both under a solid waste management system license, or licenses, held by a single person and the per ton fee is assessed for all of the solid wastes received for treatment by the incinerator facility.

AUTH: 75-10-115, 75-10-204, MCA; IMP: 75-10-115, 75-10-204, 75-10-221, MCA

3. The department has thoroughly considered the comments received on the proposed rules. The following is a summary of comments received, along with department responses to these comments.

COMMENT 1: The proposed fee schedules discourage or prohibit recycling efforts.

RESPONSE: The rules as proposed and adopted typically do not apply to recycling operations. Recycling operations generally do not manage wastes, as defined in ARM 16.14.502(23), and therefore are not subject to the licensing and fees applicable to solid waste management systems.

COMMENT 2: The proposed fees for composting operations discourage composting, thereby acting as a disincentive for waste reduction and violating 75-10-221(6), MCA. The $1500 application review fee proposed in [Rule V], Table 3 would be prohibitive of small composting operations.

RESPONSE: The Department has amended the rules to eliminate fees for small composting operations which accept wastes from a single source. The rules also exempt from fees large composting operations conducted at licensed landfills. The Department believes these changes will reduce or eliminate any disincentive for composting.

COMMENT 3: The charging of fees for composting is beyond the intent of the legislature in that composting is not "disposal" of solid waste.

RESPONSE: The Department has the authority to charge licensing fees to all solid waste management systems, not just those that dispose of solid waste (see 75-10-204(6),(7), MCA). Moreover, composting clearly falls within the definition of "disposal" found in 75-10-203(3), MCA.

COMMENT 4: Composting and recycling facilities should not be subject to the volume based fees.

RESPONSE: Composting and recycling facilities are not subject to volume based fees under the rules as proposed or adopted. See [Rule V], Table 1.

COMMENT 5: The proposed rules are unclear as to whether recycling operations are "solid waste management systems". These facilities should be exempted. If the Department does not intend to charge fees to recycling facilities, the Department should change the wording of the proposed rule to clarify that intent.

RESPONSE: The definition of "solid waste management system" is specified by 75-10-203(12), MCA. The department cannot change this definition. The department does not intend to charge a fee to recycling operations which do not manage "wastes", as defined in ARM 16.14.502(23). See also, response to comment number 1.

COMMENT 6: The practice of charging a volume-based fee calculated on service area should stop. This practice provides no incentive for reduction of volume of waste disposed of in landfills and subverts the intent of the legislation.

RESPONSE: The Statement of Legislative Intent for CH. 643, L. 1991 (SB 209) states in relevant part:

> FOR THE PURPOSES OF ESTIMATING THE VOLUME FOR SMALL SOLID WASTE MANAGEMENT SYSTEMS OR FOR SYSTEMS THAT CHOOSE NOT TO WEIGH OR MEASURE THE VOLUME OF WASTE MANAGED, THE FOLLOWING FORMULAS ARE SUGGESTED:

POPULATION	TONS PER YEAR
GREATER THAN 5,000	1.04
1,000 - 5,000	0.59
LESS THAN 1,000 AND UNINCORPORATED AREAS	0.41

This statement clearly indicates the intent of the legislation is to provide for a volume-based fee calculated on service area for certain solid waste management systems.

COMMENT 7: The rules should create new categories for major and minor "Class III Resource Recovery Facilities" with a $500 annual license fee and a $1000 Review Fee.

RESPONSE: Many "resource recovery facilities" fall within the categories established in [Rule V] (e.g. transfer stations). Additionally, because resource recovery facilities may vary greatly in complexity and type of operation, the Department prefers to not specify standard fees for resource recovery facilities not specifically mentioned in [Rule V]. The Department believes the appropriate fees for resource recovery facilities should best be evaluated on a case-by-case basis, within the established fee system. See also, response to comment number 12.

COMMENT 8: The rules should create special categories with lower fees for landfills which accept only one type of waste.

RESPONSE: These types of facilities are subject to the same level of regulation as other landfills and, therefore, should pay full fees.

COMMENT 9: The proposed fees are too high, and are inequitable and discriminatory to small towns.

RESPONSE: Some of the annual fees are provided by statute (see 75-10-115, MCA) and cannot be altered by the Department. The level of the volume-based fee is suggested in the statement of intent for Ch. 643, L.1991 (SB209). The statutory authority for charging fees provides no basis for adopting rules which favor small towns. Regionalization of solid waste management may reduce costs to small towns.

COMMENT 10: Container sites should not be subject to fees. Charging fees for container systems is beyond the intent of the law. The intent of the law was to allow fees only for disposal or incineration of solid waste. Container systems are part of a larger "solid waste management system", and should not be charged separate fees. County sanitarians can properly inspect and control litter at container sites.

RESPONSE: Sections 75-10-204(6) and (7), MCA clearly give the Department the authority to charge fees to all solid waste management systems, not just those which dispose of or incinerate solid waste. The Department has a statutory duty to inspect solid waste management systems for compliance with the applicable laws and rules (75-10-205, MCA). Some counties do not have sanitarians to conduct inspections. The Department has added [new Rule IX], which provides reduced fees for container sites licensed as a part of a larger solid waste management system.

COMMENT 11: Charging fees to "stand alone" container systems and transfer stations while not charging fees to those facilities if they are licensed as a part of a landfill license would provide incentive for consolidation, which is an objective of SB 209.

RESPONSE: The Department has added [new Rule IX] to provide reduced fees for container systems licensed as a part of a landfill license. "Stand alone" container systems and transfer stations will continue to be subject to full fees under [new Rule IX].

COMMENT 12: The category of "other class II materials" should not be included in Table 3 of [Rule V].

RESPONSE: The Department has deleted "other class II materials" from Table 3 of that rule and added language to the text of [Rules V and VIII] to provide maximum fees for facilities not specifically listed in Table 3. See also, response to comment 7.

COMMENT 13: The Department should not charge a volume-based fee to Class III landfills.

RESPONSE: The rules do not charge a volume-based fee to Class III landfills (see Table 1 of [Rule V]).

COMMENT 14: The rules should create a fee which would cover an entire solid waste management system, rather than charging each facility separately.

RESPONSE: The Department has added [new Rule IX] to provide for consolidation of licenses and fees for solid waste management systems which contain more than one facility.

COMMENT 15: Landfills maintaining a groundwater monitoring variance should receive a 50% reduction in the annual fee, since a significant portion of inspection costs are related to groundwater monitoring requirements.

RESPONSE: Only a small portion of the cost of inspecting a facility is related to groundwater monitoring requirements. Additionally, the annual fee for landfills is specified by statute (see responses to comments number 38 and 57).

COMMENT 16: The charging of license transfer fees is unwarranted and beyond the intent of the legislature. The intent of Senate Bill 209 was to allow fees only for landfilling or incineration.

RESPONSE: Section 75-10-221(5), MCA provides that the Department may require the submission of a new application if the management of a solid waste management system has changed. Requiring the submission of a new application would invoke application review fees. The Department believes that the proposed license transfer fee allows flexibility for situations where minimal review may be required by the change in management of a solid waste management system. Additionally, the Department clearly has the authority to charge solid waste management fees for facilities other than landfills and incinerators (see 75-10-204, 221, MCA). Accordingly, the Department declines to change the proposed rule regarding license transfer fees.

COMMENT 17: The application review fees provided in [Rule V] are unreasonable and should be reduced. The applicable statute speaks to fees designed to encourage waste reduction and cover the department's initial review costs.

RESPONSE: The application review fees stated in [Rule V] are based on the estimated costs of review of applications. The Department believes the application review fees are reasonable and within the scope of the authority granted by the applicable statutes.

COMMENT 18: The method of calculation of the volume-based fee should be changed. Some disposal trucks do not compact refuse to 700 pounds per yard.

RESPONSE: The conversion factor of 700 pounds per compacted yard of refuse is suggested in the statement of intent for Ch.

643, L. 1991 (Senate Bill 209). With such a clear directive, the Department does not intend to change the conversion factor. Additionally, the Department believes the conversion factor is a reliable estimate for most packer trucks.

COMMENT 19: The prohibition on transfer of a plan of operation when a facility changes hands should be removed from the rules. Once approved, a plan should be adequate to meet all operators.

RESPONSE: [Rule V(3)] prohibits the transfer of approval of an operating plan prior to licensing only. The rule does not prohibit transfer of an approved plan when a licensed facility changes hands, assuming the plan remains adequate after the facility changes hands.

COMMENT 20: Eddye McClure of Legislative Council commented that, while 75-10-115 and 75-10-221, MCA, contained authority for the department to adopt the standards and fees contained in the proposed rules, there was no express authority in either statute to do so by rule. However, since such express authority does exist in 75-10-204, MCA, she suggested the addition of 75-10-204, MCA, to the citations of department authority to promulgate the rules.

RESPONSE: The rules have been amended to include 75-10-204 and 221, MCA, as authority for these rules.

COMMENT 21: The volume-based fee is unwarranted and unjustified.

RESPONSE: The volume-based fee is authorized by 75-10-115, MCA. The statement of legislative intent for the 1991 amendments to that statute suggests the amount and method of calculating the volume-based fee. The Department believes the volume-based fee is appropriate.

COMMENT 22: The exemption for infectious medical waste facilities found in the definition of "facility" has no legal basis. There is no basis for distinguishing between profit and non-profit facilities. The profit requirement is confusing and difficult to administer.

RESPONSE: Section 75-10-1006, MCA provides the legal basis for exempting infectious waste facilities from the rules. Under that statute, a profession, occupation, or health care facility that generates infectious waste or that operates treatment, storage, or disposal facilities is properly regulated by the board or department of the state which licenses the profession, occupation, or health care facility. The Department has amended the definition of "facility" to remove the "profit" element of the infectious waste exemption and to more closely follow the provisions of 75-10-1006, MCA.

COMMENT 23: The rules should exclude incineration ash from the definition of "residue" and define it separately. Incinerator ash is of an entirely different nature than the other types of residues defined in [Rule III].

RESPONSE: While incinerator ash may be of a different nature than some of the other residues defined in [Rule III], it is never-the-less a residual of a treatment process. Therefore, the Department believes incinerator ash is properly included in the definition.

COMMENT 24: The Department should charge a volume-based fee to Class III landfills. The practice of not charging the volume-based fee to Class III landfills is discriminatory, has no rational basis, and discourages regionalization of waste management. The practice is also inequitable in that it creates a competitive advantage for Class III landfills over Class II landfills. As an alternative to charging a volume-based fee to Class III landfills, the rules should provide a credit for Group III wastes accepted at Class II landfills.

RESPONSE: Due to the nature of Group III wastes, Class III landfills require less regulation and supervision than do Class II landfills. Class II landfills may avoid the volume-based fee for Group III materials by maintaining a separate Class III landfill as a part of the Class II license, as provided in [new Rule IX].

COMMENT 25: The definition of "facility" should be changed to cover only sites where final disposal of waste is accomplished.

RESPONSE: Under the authorizing statutes, all solid waste management systems may be subject to licensure and fees, not just those that control the final disposition of solid waste. Because all solid waste management facilities require licensing and regulation by the Department, all solid waste management facilities should be subject to fees. See also, response to comment number 10.

COMMENT 26: [Rule IV] should be amended to delete "storage, recycling and recovery".

RESPONSE: All "solid waste management systems" are properly subject to fees (see, 75-10-204(6), (7), MCA). Section 75-10-203(12), MCA defines "solid waste management systems to include systems which control the storage, treatment, recycling, recovery, or disposal of solid waste. Thus, "storage, recycling and recovery" is properly included in [Rule IV].

COMMENT 27: More than one landfill on one site should be subject to only one annual license renewal fee. The Department should re-define "facility" to provide for this also.

RESPONSE: The Department has added new [Rule IX] to provide reduced fees for consolidation of solid waste management system licenses. Under the new rule, multiple landfill facilities on one site may be licensed as a single solid waste management system. Because each facility requires separate regulation, the Department cannot eliminate annual fees for consolidated licenses. However, the new rule does provide a reduced annual fee for more than one landfill on one site.

COMMENT 28: The Department should add language to the "authority" rule [Rule II(c)] which would exempt from the volume-based fee trade wastes in a licensed Class II or III landfill owned and operated by the generator.

RESPONSE: During the 1991 session, the Montana legislature amended 75-10-214, MCA to eliminate many of the exemptions available for disposal of trade wastes. Thus, the disposal of trade waste by landfilling is subject to the same regulation as the disposal of any other solid waste. A rule exempting from the volume based fee trade wastes disposed of in a licensed Class II landfill owned and operated by the generator would amount to an unjustifiable expansion of the exemption provided by 75-10-214, MCA. The volume based fee does not apply to wastes disposed of in a licensed class III landfill.

COMMENT 29: The rules should include a definition for the concept of "land application" as an alternative to composting for wood products trade waste.

RESPONSE: Wood products trade waste is a Group III waste subject to the same regulation as any other Group III waste. Because the meaning of the term "land application" can vary greatly depending on the waste involved, a definition may be problematic. Rules concerning acceptable procedures for land application of wastes are not appropriately included in these fee rules.

COMMENT 30: The Department should change the definitions of "dispose or disposal" and "municipal solid waste landfill" to provide exemptions for trade wastes.

RESPONSE: The terms "dispose or disposal" and "municipal solid waste landfill" are defined by statute. The Department does not have the authority to change the statutory definitions.

COMMENT 31: The rules should state that the "electric generating facility" exemption found in 75-10-214, MCA includes co-generating facilities.

RESPONSE: A statement that electric generating facilities include co-generating facilities could expand the exemption provided by 75-10-214, MCA, beyond the intent of the statute. Such a statement is inappropriate in these fee rules.

COMMENT 32: The rules should be amended to add "domestic or residential" to the beginning of the definition of "yard waste".

RESPONSE: This would eliminate the small composter exemption for yard waste from nurseries, city parks, etc., thereby discouraging composting. The Department finds no justification for this suggested amendment.

COMMENT 33: The Department should change "July 1, 1991" to "July 1, 1992" in [Rule V(1)].

RESPONSE: The effective date of the license requirement in [Rule V(1)] is controlled by state statute.

COMMENT 34: Fees should be pro-rated from the time a license is issued.

RESPONSE: The application review fee is based on costs incurred by the Department in reviewing the application. Review costs are incurred regardless of when the license is issued. The Department therefore declines to pro-rate application review fees. The Department also declines to pro-rate transfer fees for the same reason. Rule [V] has been amended to provide for pro-rated annual license fees for the year in which a solid waste management system license is originally issued.

COMMENT 35: The Department should provide information regarding how the fees were determined. The annual review fee should be based on cost of regulation.

RESPONSE: The volume-based fee was based upon the statement of legislative intent for Ch. 643, L. 1991 (SB 209), now codified as 75-10-115, MCA. The Department has amended [Rule VI] to specify the methods of calculating the volume-based fee. The annual license fee for disposal facilities is specified by the legislature in 75-10-115, MCA. The annual license fees for other facilities were determined by an analysis of the costs of inspecting the facilities and processing license renewals. The application review fees and the license transfer fees were determined as a result of a cost analysis conducted by the Department.

COMMENT 36: The annual license fee should not apply in the first year of operation.

RESPONSE: The Department finds no justification for waiving the annual fee in the first year. However, [Rule V] has been amended to provide for pro-rated annual license fees for the year in which a license is originally issued. See also, response to comment number 34.

COMMENT 37: The license review fee and annual license fee should not apply in the same year.

RESPONSE: See responses to comments number 34, 36.

COMMENT 38: The rules should provide for an incentive program by not charging annual fees to a site if no inspection is conducted that year and by reducing fees to sites with an established record of compliance.

RESPONSE: Section 75-10-115, MCA indicates that the annual fee should be reflective of the fixed costs of an annual inspection and license renewal. Thus, the annual fee is intended to cover more than the cost of an annual inspection. Furthermore, that statute specifically states the amount of the annual license fee for major, intermediate, and minor disposal facilities. The Department cannot justify altering the fees set by statute.

COMMENT 39: Clarify that transfer station fees do not apply to the temporary accumulation of trade wastes or define "transfer station" to exclude temporary accumulation of trade wastes.

RESPONSE: The Department has added a definition of "transfer station" to the rules. However, the Department sees no justification for excluding "trade wastes" from the definition. Acceptance of this suggestion could lead to an unjustifiable expansion of the exemptions provided by 75-10-214, MCA. See also, responses to comments 28, 29.

COMMENT 40: The "service area" designation required by the proposed rules should not be used to limit wastes received.

RESPONSE: The Department does not intend to use the "service area" designation to limit wastes received.

COMMENT 41: The definition of "facility" does not clearly state that it applies only to solid waste.

RESPONSE: The fee rules clearly apply only to facilities which control the storage, treatment, recycling, recovery, or disposal of solid waste (see Rule IV and Sections 75-10-115, 204, MCA). Accordingly, it is unnecessary to amend the definition of "facility" to state that it applies only to solid waste.

COMMENT 42: Sludge from water treatment supply plants should be excluded from the definition of solid waste.

RESPONSE: The term "solid waste" is defined by section 75-10-203(11), MCA. That definition specifically includes sludge from water treatment supply plants. The Department has no authority to change the statutory definition.

COMMENT 43: The term "substantial change" is defined to include any change which necessitates eight or more hours of review by the Department. The time period specified in this definition should be expanded.

RESPONSE: The Department has amended proposed Rule III to define "substantial change" as changes which require more than 24 hours of review by the Department.

COMMENT 44: The late penalty stated in [Rule V] conflicts with section 75-10-116, MCA.

RESPONSE: The Department has amended [Rule V] to comply with the statute.

COMMENT 45: The rules allow possible double billing by charging the volume-based fee for both incineration of solid waste and for disposal of the incinerator ash in a landfill.

RESPONSE: The Department has added [new Rule IX] to eliminate double billing of the volume-based fee for incinerators and landfills where the license or licenses are held by the same person. This will eliminate double billing and encourage consolidation of solid waste management systems.

COMMENT 46: The rules should specify how the volume-based fee is calculated using population of service area.

RESPONSE: The Department has amended [Rule VI] to state the method of calculating the volume-based fee using population of service area. That method was suggested in the statement of intent for Ch. 643, L. 1991 (SB 209), now codified as 75-10-115, MCA.

COMMENT 47: The waste generation rates used for calculating the volume-based fee using population of service area are derived from a 1978 plan and do not reflect current rates and should be adjusted.

RESPONSE: The waste generation rates are contained in the statement of intent for Ch. 643, L. 1991 (SB 209). With such a clear legislative direction, the Department does not wish to alter the suggested waste generation rates at this time. Additionally, the Department believes the suggested rates remain appropriate today.

COMMENT 48: Rule VII(1)(a)(ii) indicates that the only way for a facility which does not operate scales to calculate volume is to conduct load counts and then apply the appropriate conversion factor. Facilities without full time personnel would not be able to calculate volume or tonnage as required by the rules.

RESPONSE: The Department has amended [Rule VII] to specify alternative methods of calculating volume for facilities that do not operate scales and that do not measure the volume of waste managed. Specifically, the amended rule provides a method of estimating tonnage based upon population of service area.

COMMENT 49: It is unclear why composter operations and Class III landfills are referred to in [Rules VII(1)(b) and V], since no volume-based fee is charged to those facilities.

RESPONSE: While composter operations and Class III landfills are not subject to the volume-based fee, those facilities may be subject to annual fees, transfer fees, and application review fees. The amount of the annual fees, transfer fees, and application review fees is determined in part by the volume of waste managed. Therefore, composter operations and Class III landfills are properly referred to in [Rules V and VII].

COMMENT 50: Rule VII(1)(e) should specify what is included in "Group II" wastes.

RESPONSE: ARM 16.14.503 specifies what is included in "Group II" wastes. The Department does not wish to duplicate ARM 16.14.503 in these rules.

COMMENT 51: [Rule VIII(2)] contains an obvious mistake in that it refers to table 2 where it should refer to Table 3.

RESPONSE: This mistake has been corrected.

COMMENT 52: The rules should provide that some of the money collected from fees be used to upgrade solid waste management in Montana.

RESPONSE: Section 75-10-117, MCA provides that all revenue from solid waste management fees may be used only for the administration of the laws relating to solid waste management. The Department anticipates that this will result in upgraded solid waste management in Montana.

COMMENT 53: The population threshold in 75-10-207, MCA should be increased from 5,000 to 7,000.

RESPONSE: The department does not have the authority to amend 75-10-207, MCA. That authority rests with the Montana Legislature.

COMMENT 54: "Yard waste" should be defined in the rules.

RESPONSE: "Yard waste" is defined in [Rule III(30)].

COMMENT 55: "Private" container sites may fall within the rules as proposed.

RESPONSE: The Department has added a definition of "container site" which excludes "private" container sites from the application of these rules.

COMMENT 56: The definitions adopted on the state level should be the same as those adopted on the federal level.

RESPONSE: Many of the definitions are controlled by state statute. The Department has no authority to change statutory definitions. Many of the definitions are the same or similar to the federal definitions. The Department believes the definitions are appropriate as adopted.

COMMENT 57: Since industrial trade waste landfills are operated on a non-profit basis and out of business necessity, the annual license fee should be set at one half of those in [proposed Rule V].

RESPONSE: The amount of the annual license fee for landfills is set by 75-10-115, MCA. The Department does not have the authority to change licensing fees set by statute.

DENNIS IVERSON, Director

Certified to the Secretary of State June 15, 1992

Reviewed by:

Eleanor Parker, Attorney

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

In the matter of new rule to reject, modify, or condition permit applications in the Musselshell River and to amend ARM 36.12.1010 definitions	)))))	NOTICE OF AMENDMENT OF ARM 36.12.1010 DEFINITIONS AND ADOPTION OF RULE I (ARM 36.12.1016) MUSSELSHELL RIVER CLOSURE

TO: All Interested Persons

1. On March 16, 1992, the Department of Natural Resources and Conservation published a notice of public hearing on the proposed new rule to reject, modify, or condition permit applications on the North and South Forks of the Musselshell River and the Musselshell River down to the mouth of Flatwillow Creek at page 519, 1992 Montana Administrative Register, Issue number 6. Notices were also published on March 12, 19, and 26 in the Meagher County News; on March 11, 18, and 25 in the Roundup Record Tribune and the Winnett Times; and on March 26, 1992, in the Times Clarion. Notices were mailed on March 16, 1992, to 300 water users in the proposed closure area.

2. On April 29, 1992, at 3:00 p.m., a public hearing was held at the Community Center in Harlowton, Montana, and on April 30, 1992, at 10:00 a.m., a public hearing was held at the Masonic Hall in Roundup, Montana. During the hearings and prescribed comment period the department received comments, oral and/or written, from the following persons: Deadmans Basin Water Users Association, Chairman Henry Bedford of Roundup, Mt.; William Bergin and Gale Stensvad as an individual irrigator and as Chairman of the Lower Musselshell Conservation District, both of Melstone, Mt.; Cassie Cady of Checkerboard Cattle Company, Rodney Cole of Checkerboard Cattle Company, and Dan Berg, all of Martinsdale, Mt; the U.S. Forest Service, Lewis and Clark National Forest, Great Falls, Mt., and The Browning Ranch of Mosby, Mt.

3. The proposed rules are being adopted exactly as proposed.

4. The Department has thoroughly considered all comments received. These comments and the Department's responses are as follows:

COMMENT: The closure should include the first two weeks in May. In the 1980's and 1990's, there have been severe water availability problems on the Musselshell River the first two weeks of May. The irrigators on the lower reaches of the Musselshell River begin irrigating about May 1. The Delphia-Melstone Canal, as well as 14 or 15 other major ditches, traditionally begin operations about the first of May. Many times the Delphia-Melstone Canal is required to release stored water to carry the water needed for irrigation to the users. The issuance of new permits to appropriate water during this

period by the Department has been aggravating the situation because the permitted pumper sees water in the river and thinks it can be appropriated. If the Department continues to issue permits for this time period, the situation will only worsen. After the adjudication process is complete and there are water commissioners on the stream to enforce priorities, new permits could be issued. Until that time the Department should not issue any new permits on the Musselshell River for the first two weeks in May. About the third week in May the snow melt starts and the water supply in the Musselshell River increases dramatically. Then there is water available for the permitted pumpers.

RESPONSE: The Department performed a simplified study using flow records from 1962 to 1990 for the first two weeks of May to determine if there was any evidence to support closing the Musselshell River during this period. It found that even when conservative values for demands are used, water has been available for appropriation on a daily basis at the Musselshell gauge 72.2 percent of the time since 1962. If just the last 10 years were used in the analysis, the time water was available decreases to 60.0 percent of the time. This reduction in available water reflects the extended period of drought the area has experienced.

The water availability problem which occurs the first two weeks of May is an enforcement problem. One solution to that problem could be to petition the court to appoint a water commissioner to distribute the stored water. Section 85-5-101(3), MCA, provides,

> The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may make an order requiring the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

No modification of the rule is made.

COMMENT: The rule should also include tributaries which feed the mainstem of the North and South Forks of the Musselshell River and the mainstem of the Musselshell River down to the mouth of Flatwillow Creek during the months of July, August, and September.

RESPONSE: The study area did not include the tributaries of the Musselshell River; therefore, there is insufficient information to warrant closure of the tributaries which contribute to the flow of the Musselshell River within the closure area. No modification of the rule is made.

COMMENT: One of the commentor's primary water uses is consumptive use by livestock either through developed springs,

diversions from active tributaries, or direct in-stream use. Developing new spring water sources, diverting existing filed consumptive uses into off-stream stock watering tanks, routing springs into stock watering tanks and/or reservoirs, capturing ephemeral drainage flow, and acquiring new consumptive use permits are likely to be included in commentor's management proposals. If the new rule closes tributaries to the Musselshell River, it would inhibit the commentor's ability to change range management in a manner deemed to be most environmentally advantageous.

RESPONSE: Developed springs are considered groundwater and groundwater uses are not affected by the closure. The new rule does not take away, modify, or limit any water right that anyone may have acquired on any drainage within the closure area. The rule only rejects future consumptive use permit applications in the closure area during the closure period that may come before the Department. The new rule does not close any tributary to the Musselshell River. The new rule does not affect applications for change. The point of diversion, the place of use, the purpose of use, and the place of storage of an existing water right may be changed within the closure area. If a reservoir is constructed on any of the tributaries which feed the mainstem of the North and South Forks of the Musselshell River and the mainstem of the Musselshell River down to the mouth of Flatwillow Creek during the months of July, August, and September, the Department would require the installation of measuring devices and an adequate drainage device to release any flow that may occur in the tributary during the closure period. Stock watering directly from a stream is a consumptive use of water. The closure is for new consumptive uses of water during the months of July, August, and September. No information has been presented to justify treating one class of consumptive use different from other classes of consumptive uses. The adverse effect is the same regardless of the type of consumptive use. No modification of the rule is made.

COMMENT: The new rule should allow the Department to accept applications for repairs of any diversions for consumptive uses where the original application was received by the Department prior to the adoption of the new rule.

RESPONSE: A beneficial water use permit is not required to repair or maintain diversions for any water right on any stream. No modification of the rule is made.

COMMENT: Since these rules may be adopted before the final water decrees are determined by the Water Court, the Department should, on a case by case basis, reopen specific areas for additional applications from those who feel they lost water rights during the adjudication process. Such an applicant would be required to show by substantial credible evidence that a valid water right was lost by the adjudication process.

RESPONSE: It is extremely unlikely that a valid water

right would be lost through the adjudication process. The water availability study performed by the Department included all water rights according to Department records. Any other water use would place an additional burden on the stream and would be considered a new water use which would not be allowed for the months of July, August, and September. No modification of the rule is made.

5. No other written or oral comments of testimony were received.

Donald D. MacIntyre
Chief Legal Counsel
Rules Reviewer

Karen Barclay Fagg, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State, June 16, 1992.

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

In the Matter of Amendment of Rule 38.5.3345 Regarding Deferring of Implementation Until January 1, 1993.	))))	NOTICE OF AMENDMENT TO RULE 38.5.3345

TO: All Interested Persons

1. On February 27, 1992 the Department of Public Service Regulation published notice of the proposed amendment of Rule 38.5.3345 regarding deferral of the effective date until January 1, 1993 at page 298, issue number 4 of the 1992 Montana Administrative Register.

2. The Department has amended the rule as proposed.

3. No comments were received.

Danny Oberg

DANNY OBERG, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 15, 1992.

Ron A. McHugh

Reviewed By

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

In the matter of the amendment of rules 46.12.501 and 46.12.502 pertaining to exclusion of medicaid coverage of infertility treatment services	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.501 AND 46.12.502 PERTAINING TO EXCLUSION OF MEDICAID COVERAGE OF INFERTILITY TREATMENT SERVICES

TO: All Interested Persons

1. On May 14, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.501 and 46.12.502 pertaining to exclusion of medicaid coverage of infertility treatment services at page 982 of the 1992 Montana Administrative Register, issue number 9 and on May 28, 1992 the Department of Social and Rehabilitation Services published the corrected notice of the proposed amendment of rules 46.12.501 and 46.12.502 pertaining to exclusion of medicaid coverage of infertility treatment services at page 1105 of the 1992 Montana Administrative Register, issue number 10.

2. The Department has amended rules 46.12.501 and 46.12.502 as proposed.

3. No written comments or testimony were received.

Dana Shea
Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1992.

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

In the matter of the amendment of rules 46.12.515 and 46.12.516 pertaining to medicaid coverage of respiratory care, chemical dependency and chiropractic services for children in kids count/early and periodic screening diagnosis and treatment (EPSDT) program	))))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.515 AND 46.12.516 PERTAINING TO MEDICAID COVERAGE OF RESPIRATORY CARE, CHEMICAL DEPENDENCY AND CHIROPRACTIC SERVICES FOR CHILDREN IN KIDS COUNT/EARLY AND PERIODIC SCREENING DIAGNOSIS AND TREATMENT (EPSDT) PROGRAM

TO: All Interested Persons

1. On April 30, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.515 and 46.12.516 pertaining to medicaid coverage of respiratory care, chemical dependency and chiropractic services for children in kids count/early and periodic screening diagnosis and treatment (EPSDT) program at page 902 of the 1992 Montana Administrative Register, issue number 8.

2. The Department has amended rule 46.12.516 as proposed.

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

46.12.515 KIDS COUNT/EARLY AND PERIODIC SCREENING DIAGNOSIS AND TREATMENT, ALLOWABLE SERVICES Subsections (1) through (1)(g)(iii) remain as proposed.

(iv) WHEN AN ELIGIBLE CHILD RECEIVES OUTPATIENT CHEMICAL DEPENDENCY TREATMENT, AND THE CERTIFIED CHEMICAL DEPENDENCY COUNSELOR CONSULTS WITH THE PARENT AS PART OF THE CHILD'S TREATMENT, THE TIME SPENT WITH THE PARENT SHALL BE BILLED TO MEDICAID UNDER THE CHILD'S NAME. THE PROVIDER SHALL INDICATE ON THE CLAIM THAT THE CHILD IS THE PATIENT AND STATE THE CHILD'S DIAGNOSIS. THE PROVIDER SHALL ALSO INDICATE CONSULTATION WAS WITH THE PARENT.

Subsections (1)(h) through (4) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The Department has received a comment requesting inclusion of family counseling as a part of outpatient chemical dependency treatment.

RESPONSE: The Department has broadened its proposal to provide for reimbursement when an eligible child receives outpatient chemical dependency treatment, and the certified chemical dependency counselor consults with the parent as part of the child's treatment.

COMMENT: The Department received numerous comments in support of the rule amendments as written.

RESPONSE: The Department appreciates such supportive testimony.

Dan Slivo
Rule Reviewer

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1992.

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

In the matter of the amendment of rules 46.12.570, 46.12.571, 46.12.572 and 46.12.573 pertaining to medicaid payments to mental health centers	))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.570, 46.12.571, 46.12.572 AND 46.12.573 PERTAINING TO MEDICAID PAYMENTS TO MENTAL HEALTH CENTERS

TO: All Interested Persons

1. On May 14, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.570, 46.12.571, 46.12.572 and 46.12.573 pertaining to medicaid payments to mental health centers at page 991 of the 1992 Montana Administrative Register, issue number 9.

2. The Department has amended rules 46.12.570, 46.12.571, 46.12.572 and 46.12.573 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: The Department received numerous comments in support of the rule amendments as written.

RESPONSE: The Department appreciates such supportive testimony.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1992.

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

In the matter of the amendment of rule 46.12.3803 pertaining to medically needy income standards	))))	CORRECTED NOTICE OF THE AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICALLY NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On April 30, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.3803 pertaining to medically needy income standards at page 905 of the 1992 Montana Administrative Register, issue number 8 and on June 11, 1992, the Department published the notice of amendment of rule 46.12.3803 at page 1256 of the 1992 Montana Administrative Register, issue number 11.

2. The Department incorrectly computed the Medically Needy income levels specified in the notice of amendment for SSI and AFDC-related individuals and families. The Department has re-computed the Medically Needy income level. The new levels reflect a higher net income level, thus allowing families with higher income to possibly be eligible under the Medically Needy program.

3. The Department has amended the rule as proposed with the following corrections:

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS Subsections (1) through (3)(a) remain as proposed.

(b) Institutionalized recipients must also meet the income criteria of ARM 46.12.4008.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

Family Size	One Month Net Income Level		
1	$ ~~407~~	422	
2	~~417~~	433	
3	~~443~~	461	
4	~~469~~	488	
5	~~548~~	~~571~~	572
6	~~627~~	~~654~~	655
7	~~706~~	738	
8	~~785~~	822	

9	~~800~~	~~861~~	905
10	~~835~~	~~899~~	988
11	~~866~~	~~933~~	1,071
12	~~897~~	~~967~~	1,155
13	~~924~~	~~997~~	1,238
14	~~950~~	~~1,025~~	1,321
15	~~975~~	~~1,052~~	1,404
16	~~997~~	~~1,076~~	1,488

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

4. All portions of the June 11, 1992 notice of amendment not specifically changed by this amended notice remain the same.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1992.

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

In the matter of the amendment of rules 46.25.727 and 46.25.744 pertaining to general relief assistance and general relief medical	))))	NOTICE OF THE AMENDMENT OF RULES 46.25.727 AND 46.25.744 PERTAINING TO GENERAL RELIEF ASSISTANCE AND GENERAL RELIEF MEDICAL

TO: All Interested Persons

1. On April 30, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.25.727 and 46.25.744 pertaining to general relief assistance and general relief medical at page 896 of the 1992 Montana Administrative Register, issue number 8.

2. The Department has amended rule 46.25.727 as proposed.

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

46.25.744 INCOME FOR GENERAL RELIEF MEDICAL Subsections (1) through (4) remain as proposed.

(5) The monthly income levels are:

MONTHLY INCOME LEVELS

Family Size	Monthly Income Level		
1	$ ~~348~~	~~359~~	357
2	~~466~~	483	
3	~~585~~	608	
4	~~704~~	732	
5	~~822~~	~~858~~	857
6	~~941~~	~~983~~	981
7	~~1,059~~	1,107	
8	~~1,178~~	1,233	
9	~~1,297~~	1,358	
10	~~1,415~~	1,482	
11	~~1,534~~	1,607	
12	~~1,653~~	1,733	
13	~~1,771~~	1,857	
14	~~1,890~~	1,982	
15	~~2,009~~	2,106	
16 or more	~~2,127~~	2,232	

AUTH: Sec. 53-2-201, 53-3-206, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-205 and 53-3-206 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: A mathematical calculation was incorrect and the GRM income levels for households of 1, 6 and 5 should be adjusted to reflect correct figures.

RESPONSE: The Department has revised the rule to reflect this correction. The maximum change was for two dollars.

Dawn Sliva
Rule Reviewer

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1992.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the use of registered nurses as first assistants in surgery	))))	DECLARATORY RULING

1. On February 13, 1992, the Board of Nursing filed a notice of Petition for Declaratory Ruling at page 241, issue number 3, 1992 Montana Administrative Register, regarding the use of registered nurses as first assistants in surgery. The Petitioner is Marilyn B. Meyers, Operating Room Manager of Kalispell Regional Hospital.

2. The Board of Nursing received public comments and considered the petition on February 28, 1992, in a regular meeting of the Board.

3. The facts upon which this ruling will be made are as follows:

The Petitioner represents Kalispell Regional Hospital. The hospital is considering the use of registered nurses as first assistants in surgery since reimbursement guidelines are being amended to not authorize use of surgeons as first assistants. The RN first assistant is specifically trained to assist the surgeon in preoperative, intraoperative and postoperative tasks as directed by the surgeon. The Association of Operating Room Nurses has established standards for education and training of those nurses acting as first assistants. The RN first assistant may perform such tasks as tissue handling, providing exposure, using instruments, suturing and providing hemostasis.

4. An informal statement of the Board of Nursing issued in July, 1986, indicated that a registered professional nurse acting as first assistant in surgery was within the scope of practice of a registered professional nurse. The Petitioner seeks to have that position clarified and confirmed in this formal Petition for Declaratory Ruling.

5. The question presented for declaratory ruling is whether the use of registered nurses as first assistants in surgery falls within their scope of practice as defined by section 37-8-102(3)(a), MCA.

6. The Petitioner contends that registered nurses acting as first assistants in surgery are performing within their scope of practice.

7. The Board of Nursing agrees. Section 37-8-102(3)(a) defines the "practice of professional nursing" to include "the administration of medications and treatments prescribed by physicians, dentists, osteopaths or podiatrists authorized by state law to prescribe medications and treatments." The role of an RN first assistant in preoperative preparation, intraoperative assistance and postoperative duties comes within the statute as administration of treatments authorized by physicians. An RN first assistant is specifically educated

and trained for the role and acts under the direction of the surgeon. An institutional policy should specify the qualifications and training necessary and the tasks which the RN is authorized to perform. The Association of Operating Room Nurses and other credentialing entities set standards for education and training.

8. The Board of Nursing hereby issues this Declaratory Ruling that, under the facts presented, the registered nurse is practicing within the scope of practice defined in section 37-8-102(3)(a), MCA, when performing as a first assistant in surgery under the following conditions:

a. The nurse has the training, knowledge, skill and ability to perform this function in accordance with the Association of Operating Room Nurses' standards or equivalent standards;

b. The surgeon is in attendance providing direct supervision and is responsible for the patient; and

c. The institution employing the RN as first assistant has a specific written policy regarding the circumstances in which registered professional nurses may perform as first assistants and specifying the qualifications and training necessary to perform as first assistants.

9. Any interested parties may request judicial review of this Declaratory Ruling by filing a petition for judicial review in the District Court of the state of Montana in and for Lewis and Clark County within thirty (30) days of this ruling pursuant to sections 2-4-501 and 2-4-702, MCA.

DATED this 28th day of May, 1992.

BOARD OF NURSING

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 15, 1992.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the role of licensed practical nurses in Rho-gam injections) DECLARATORY RULING

1. On February 13, 1992, the Board of Nursing published a notice of Petition for Declaratory Ruling at page 243, 1992 Montana Administrative Register, issue number 3, regarding the Petition for Declaratory Ruling of Mary Hackett on the authority of licensed practical nurses to administer Rho-gam injections to Rh negative postpartum patients within their scope of practice.

2. The Board of Nursing received public comment and considered the Petition on February 28, 1992, in a regular meeting of the Board.

3. The facts upon which this ruling are made are as follows:

The Petitioner represents Marcus Daly Hospital in Hamilton. The hospital wants to use licensed practical nurses to give Rho-gam injections to Rh negative postpartum patients. Rho-gam is a premixed and prelabeled blood product which is given intramuscularly by injection to Rh negative postpartum mothers after the birth of an Rh positive infant. Students of a licensed practical nursing program are instructed on the Rh factor problem and treatment. The employer hospital will provide specific training to licensed practical nurses who will be allowed to administer Rho-gam injections.

4. The question presented for declaratory ruling is whether licensed practical nurses who are appropriately trained can administer Rho-gam injections to Rh negative postpartum patients within their scope of practice as defined by section 37-8-102(3)(b), MCA.

5. The Petitioner contends that the administration of Rho-gam injections to Rh negative postpartum patients by licensed practical nurses who are appropriately trained is within the scope of practice of a licensed practical nurse.

6. The Board of Nursing agrees with the Petitioner. Rho-gam is a human blood product injected in Rh negative mothers to prevent the build-up of antibodies against the Rh positive factor recognized from an Rh positive baby. It prevents problems in future pregnancies from the destruction of blood cells. The Rho-gam product is packaged premixed and labeled in a syringe and dispensed with the manufacturer's instructions. Section 37-8-102(3)(b), MCA, indicates that the practice of practical nursing includes "administration of medications and treatments prescribed by a physician, dentist, osteopath or podiatrist authorized by state law to prescribe medications and treatments." The Board concludes that the administration of Rho-gam injections to Rh negative postpartum patients falls within the scope of practice of a licensed

practical nurse as defined by the statute.

7. The Board of Nursing hereby rules that, under the facts presented, it is within the scope of practice of a licensed practical nurse who is appropriately trained to administer Rho-gam injections to Rh negative postpartum patients.

8. Any interested parties may request judicial review of this Declaratory Ruling by filing a petition for judicial review in the District Court of the state of Montana in and for Lewis and Clark County within thirty (30) days of this ruling pursuant to sections 2-4-501 and 2-4-702, MCA.

DATED this 28th day of May, 1992.

BOARD OF NURSING

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

_____
STEVEN J. SHAPIRO, RULE REVIEWER

Certified to the Secretary of State, June 15, 1992.

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 March 31, 1992. This table includes those rules adopted during the period April 1, 1992 through June 30, 1992 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1992, 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 1991 and 1992 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments made in May, 1992, are published. Vacancies scheduled to appear from July 1, 1992, through September 30, 1992, are also listed, as are current recent vacancies due to resignations or other reasons.

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

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 5, 1992.

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: MAY, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Natural Resources and Conservation (Natural Resources & Conservation)			
Ms. Mary Ann Sharon	Governor	Rehberg	5/15/1992
Dillon			1/1/1993
Qualifications (if required): attorney			
Board of Plumbers (Commerce)			
Mr. Thor A. Jackola	Governor	reappointed	5/4/1992
Kalispell			5/4/1996
Qualifications (if required): mechanical engineer			
Board of Real Estate Appraisers (Commerce)			
Ms. Connie G. Clarke	Governor	reappointed	5/1/1992
Miles City			5/1/1995
Qualifications (if required): public member			
Ms. Janet Davis	Governor	reappointed	5/1/1992
Billings			5/1/1995
Qualifications (if required): licensed appraiser			
Board of Realty Regulation (Commerce)			
Ms. Marcia Allen	Governor	reappointed	5/9/1992
Helena			5/9/1996
Qualifications (if required): realty business & democrat from Western Congressional Dist.			
State Library Commission (Commerce)			
Ms. Mary Doggett	Governor	reappointed	5/22/1992
White Sulphur Springs			5/22/1995
Qualifications (if required): none specified			

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Governor)		
Mr. Larry Aber, Columbus	Governor	7/18/1992
Qualifications (if required): none specified		
Father Carl Erickson, Fort Benton	Governor	7/18/1992
Qualifications (if required): none specified		
Mr. Ray Fisher, Philipsburg	Governor	7/18/1992
Qualifications (if required): none specified		
Mr. R.H. (Buff) Hultman, Drummond	Governor	7/18/1992
Qualifications (if required): representative of Region V		
Ms. Ena Simpson, Polson	Governor	7/18/1992
Qualifications (if required): none specified		
Agricultural Development Board (Agriculture)		
Mr. Charles A. Brooke, Helena	Governor	7/1/1992
Qualifications (if required): Director of Department of Commerce		
Mr. Larry Johnson, Kremlin	Governor	7/1/1992
Qualifications (if required): actively engaged in agriculture		
Mr. John C. Witte, Poplar	Governor	7/1/1992
Qualifications (if required): actively engaged in agriculture		
Alfalfa Leaf Cutting Bee Advisory Council (Agriculture)		
Dr. Gary Jensen, Bozeman	Governor	7/1/1992
Qualifications (if required): member from Montana State University Extension Service		
Mr. Allen Whitmer, Bloomfield	Governor	7/1/1992
Qualifications (if required): member of alfalfa seed growers		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Board of Architects (Commerce)		
Ms. Shirley R. Pappin, Great Falls Qualifications (if required): public member	Governor	7/1/1992
Board of Banking (Commerce)		
Mr. Lynn D. Grobel, Glasgow Qualifications (if required): officer of National Bank	Governor	7/1/1992
Mr. Dayton B. Kolstad, Gt. Falls Qualifications (if required): public member	Governor	7/1/1992
Board of Barbers (Commerce)		
Ms. Donna Elaine Buska, Billings Qualifications (if required): Barber	Governor	7/1/1992
Board of Cosmetologists (Commerce)		
Ms. Mary L. Brown, Helena Qualifications (if required): licensed cosmetologist	Governor	7/1/1992
Board of Hearing Aid Dispensers (Commerce)		
Ms. Patricia Ingalls, Butte Qualifications (if required): hearing aid dispenser	Governor	7/1/1992
Board of Medical Examiners (Commerce)		
Dr. Richard W. Beighle, Missoula Qualifications (if required): had degree of doctor of medicine	Governor	9/1/1992
Board of Morticians (Commerce)		
Mr. L. M. Clayton III, Wolf Point Qualifications (if required): licensed mortician	Governor	7/1/1992
Mr. Jack H. Severns, Great Falls Qualifications (if required): public member	Governor	7/1/1992

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Board of Nursing (Commerce)		
Ms. Doris Lorraine Evans, Havre	Governor	7/1/1992
Qualifications (if required): licensed practical nurse		
Dr. Kathleen Long, Bozeman	Governor	7/1/1992
Qualifications (if required): registered professional nurse with 5 yr teaching experience		
Board of Pharmacy (Commerce)		
Mr. R. G. Glatz, Winnett	Governor	7/1/1992
Qualifications (if required): public member		
Board of Physical Therapy Examiners (Commerce)		
Mr. Thomas K. Meagher, Butte	Governor	7/1/1992
Qualifications (if required): practicing physical therapist		
Board of Private Security Patrolmen and Investigators (Commerce)		
Mr. Gary Gray, Great Falls	Governor	8/1/1992
Qualifications (if required):		
Ms. Mary'l G. Luntsford, Kalispell	Governor	8/1/1992
Qualifications (if required): reps. proprietary security organization		
Board of Psychologists (Commerce)		
Dr. Barbara Ann Looby, Livingston	Governor	9/1/1992
Qualifications (if required): licensed psychologist		
Mr. Neil McCaslin, Bozeman	Governor	9/1/1992
Qualifications (if required): public member not involved in psychology or related field		
Board of Public Accountants (Commerce)		
Ms. Elizabeth Hallowell, Helena	Governor	7/1/1992
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Board of Radiologic Technologists (Commerce)		
Dr. Michael Richards, Great Falls	Governor	7/1/1992
Qualifications (if required): doctor of radiology		
Mr. Jim Winter, Great Falls	Governor	7/1/1992
Qualifications (if required): licensed radiologic technologist		
Board of Regents of Higher Education (Education)		
Ms. Katherine Sue Rebish, Missoula	Governor	7/1/1992
Qualifications (if required): full time student at unit of higher education		
Board of Sanitarians (Commerce)		
Mr. Samuel R. Kalafat, Black Eagle	Governor	7/1/1992
Qualifications (if required): not specified		
Board of Trustees of the State Historical Society (Education)		
Mr. Harold L. Poulsen, Great Falls	Governor	7/1/1992
Qualifications (if required): none specified		
Dr. Richard Roeder, Helena	Governor	7/1/1992
Qualifications (if required): none specified		
Mr. Ward A. Shanahan, Helena	Governor	7/1/1992
Qualifications (if required): none specified		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. William F. Osborne, Kalispell	Governor	7/1/1992
Qualifications (if required): not specified		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Burial Preservation Board (Commerce)		
Mr. Germaine DuMonteir, Pablo	Governor	8/22/1992
Qualifications (if required): rep. Little Shell Tribe		
Mr. Gilbert Horn, Harlem	Governor	8/22/1992
Qualifications (if required): rep. Gros Ventre and Assiniboine Tribes		
Mr. Mickey Nelson, Helena	Governor	8/22/1992
Qualifications (if required): rep. from Montana Coroners' Association		
Mr. Richard Periman, Butte	Governor	8/22/1992
Qualifications (if required): rep. Montana archaeological association		
Mr. John Pretty On Top, Crow Agency	Governor	8/22/1992
Qualifications (if required): rep. Crow Tribe		
Mr. John Sunchild, Box Elder	Governor	8/22/1992
Qualifications (if required): rep. Chippewa-Cree Tribe		
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)		
Mr. John L. Delano, Helena	Governor	7/1/1992
Qualifications (if required): 1 of 4 handicapped members on board		
Mr. Ben Havdahl, Helena	Governor	7/1/1992
Qualifications (if required): 1 of 4 handicapped members on board		
Mr. Floyd J. McDowell, Great Falls	Governor	7/1/1992
Qualifications (if required): 1 of 2 non-handicapped, 1 not telecommmunication business		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Council for Montana's Future (Governor)		
Mr. John Bailey, Livingston Qualifications (if required): none specified	Governor	9/15/1992
Mr. Kurt Baltrusch, Glendive Qualifications (if required): none specified	Governor	9/15/1992
Mr. Jerry Black, Shelby Qualifications (if required): none specified	Governor	9/15/1992
Ms. Anne Boothe, Malta Qualifications (if required): none specified	Governor	9/15/1992
Mr. Robert Brown, Bozeman Qualifications (if required): none specified	Governor	9/15/1992
Mr. Tony Colter, Deer Lodge Qualifications (if required): none specified	Governor	9/15/1992
Mr. Jim Crane, Helena Qualifications (if required): none specified	Governor	9/15/1992
Ms. Carol Daly, Kalispell Qualifications (if required): none specified	Governor	9/15/1992
Mr. Michael Grove, White Sulphur Springs Qualifications (if required): none specified	Governor	9/15/1992
Ms. Constance Jones, Sheridan Qualifications (if required): none specified	Governor	9/15/1992
Ms. Alyce Kuehn, Sidney Qualifications (if required): none specified	Governor	9/15/1992

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Council for Montana's Future (Governor) cont.		
Ms. Debbie Leeds, Havre Qualifications (if required): none specified	Governor	9/15/1992
Ms. Jane Lopp, Kalispell Qualifications (if required): none specified	Governor	9/15/1992
Mr. Russ Ritter, Helena Qualifications (if required): none specified	Governor	9/15/1992
Ms. Lynn Robson, Bozeman Qualifications (if required): none specified	Governor	9/15/1992
Ms. Valerie Running Fisher, Missoula Qualifications (if required): none specified	Governor	9/15/1992
Mr. Daniel Smith, Missoula Qualifications (if required): none specified	Governor	9/15/1992
Mr. Alan Solum, Kalispell Qualifications (if required): none specified	Governor	9/15/1992
Mr. David Spencer, Willow Creek Qualifications (if required): none specified	Governor	9/15/1992
Mr. L. Herman Wessell, Billings Qualifications (if required): none specified	Governor	9/15/1992
Mr. Craig Wilson, Billings Qualifications (if required): none specified	Governor	9/15/1992
Mr. Robert Wuttke, Jr., Missoula Qualifications (if required): none specified	Governor	9/15/1992

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Electrical Board (Commerce)		
Mr. Edgar Justesen, Glendive	Governor	7/1/1992
Qualifications (if required): none specified		
Historical Records Advisory Council (Education)		
Ms. Georgia Lomax, Kalispell	Governor	8/21/1992
Qualifications (if required): none specified		
Ms. Kathryn Otto, Helena	Governor	8/21/1992
Qualifications (if required): State Archivist		
Mr. Timothy Alan Bernardis, Crow Agency	Governor	8/21/1992
Qualifications (if required): none specified		
Mr. James Dopp, Missoula	Governor	8/21/1992
Qualifications (if required): none specified		
Ms. Connie Flaherty-Erickson, Helena	Governor	8/21/1992
Qualifications (if required): none specified		
Ms. Peggy Jean Lamberson, Great Falls	Governor	8/21/1992
Qualifications (if required): none specified		
Ms. Wilma Simon-Matte, Harlem	Governor	8/21/1992
Qualifications (if required): none specified		
Mr. Lawrence Sommer, Helena	Governor	8/21/1992
Qualifications (if required): none specified		
Montana Mint Committee (Agriculture)		
Mr. Dale Sonstelie, Kalispell	Governor	7/1/1992
Qualifications (if required): actively involved growing mint		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Rock Creek Advisory Council (Natural Resources and Conservation)		
Ms. Lorraine Gillies, Philipsburg Qualifications (if required): none specified	Director	9/3/1992
Mr. Chris Marchion, Anaconda Qualifications (if required): none specified	Director	9/3/1992
Mr. Greg Munther, Missoula Qualifications (if required): none specified	Director	9/3/1992
Mr. Jim Posewitz, Helena Qualifications (if required): none specified	Director	9/3/1992
Ms. Tracy Stone Manning, Missoula Qualifications (if required): none specified	Director	9/3/1992
Mr. Greg Tollefson, Missoula Qualifications (if required): none specified	Director	9/3/1992
Mr. Wayne Wetzel, Helena Qualifications (if required): none specified	Director	9/3/1992
Special Education Advisory Council (Office of Public Instruction)		
Mr. Tom Arensmeyer, Townsend Qualifications (if required): regular education	Superintendent of Schools	7/1/1992
Ms. Margery Brown, Missoula Qualifications (if required): legislator	Superintendent of Schools	7/1/1992
Ms. Judith Oberst, Helena Qualifications (if required): parent of child with handicapping condition	Superintendent of Schools	7/1/1992

Board/current position holder	Appointed by	Term end
Special Education Advisory Council (Office of Public Instruction) cont.		
Ms. Joanne Putnam, Missoula Qualifications (if required): higher education	Superintendent of Schools	7/1/1992
State Employee Sick Leave Advisory Council (Governor)		
Mr. Jim Currie, Helena Qualifications (if required): none specified	Governor	9/24/1992
Ms. Dorothy M. Farrell, Helena Qualifications (if required): none specified	Governor	9/24/1992
Ms. Valencia Lane, Helena Qualifications (if required): none specified	Governor	9/24/1992
Ms. Patricia C. Lopach, Helena Qualifications (if required): none specified	Governor	9/24/1992
Ms. Judith Meadows, Helena Qualifications (if required): none specified	Governor	9/24/1992
Ms. Sue Romney, Helena Qualifications (if required): none specified	Governor	9/24/1992
Ms. Pam Wintrode, Helena Qualifications (if required): none specified	Governor	9/24/1992
Teachers Retirement Board (Administration)		
Mr. James E. Cowan, Seeley Lake Qualifications (if required): public member	Governor	7/1/1992

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1992 through September 30, 1992

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce)		
Ms. Maureen Averill, Bigfork	Governor	7/1/1992
Qualifications (if required): from Glacier Country		
Mr. Greg A. Bryan, Whitefish	Governor	7/1/1992
Qualifications (if required): not specified		
Mr. Alan Elliott, Billings	Governor	7/1/1992
Qualifications (if required): from Custer Country		
Mr. Kenneth Hickel, Billings	Governor	7/1/1992
Qualifications (if required): representative of Russell Country		
Wheat and Barley Committee (Agriculture)		
Ms. Karen R. Mattson, Chester	Governor	8/20/1992
Qualifications (if required): resides in district III affiliated with Democratic Party		
Mr. Roger L. Simonson, Saco	Governor	8/20/1992
Qualifications (if required): resides in District III affiliated with Republican Party		