RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

TABLE OF CONTENTS

Page Number

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.5007 relating to reduction in work force	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 2.21.5007 RELATING TO REDUCTION IN WORK FORCE

TO: All Interested Persons.

1. On May 8, 1992, at 9 a.m. in Room 136 Mitchell Building, Helena, Montana, a public hearing will be held to consider the proposed amendment of ARM 2.21.5007 relating to reduction in work force.

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

2.21.5007 POLICY (1) - (11) Remain the same.

(12) An employee who is reinstated to a grade lower than the one held at lay-off should be treated as a voluntary demotion under the pay plan rules. The employee receives the same ~~step~~ market ratio as the position from which he was laid-off at the grade assigned to the new position.

(13) Pay for an employee who is demoted as the result of a RIF, but who is not laid-off, ~~may, at the agency's discretion, receive up to a maximum of 180 days of salary protection, depending on budgetary constraints~~ will be administered using pay plan rule 1813, demotions with a change in duties.

(14) Remain the same.

(15) If an individual re-enters state employment after the preference period has expired, that individual's salary shall be ~~step 1~~ the entry rate of the assigned grade. Further, the employee must begin anew earning time toward the qualifying period for annual leave and sick leave. A termination caused by lay-off shall not constitute a break in service for longevity purposes unless the employee has refused to accept a reinstatement offer. Only actual years of service count toward longevity.

(16) - (18) Remain the same.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. The proposed amendment is reasonably necessary because the 1991 Legislature in H.B. 509 adopted a new pay plan which incorporates a market-based pay system. The new system does not use "steps" but instead establishes "entry salaries" and "market ratios" to determine individual employee pay. The amendments incorporate the new terminology. The amendment related to demotions is proposed to make the reduction in work force policy consistent with recent changes to the pay plan rules.

4. Gale Kuglin, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Room 130

Mitchell Building, Helena, Montana 59620 has been designated to preside over and conduct the hearing.

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 Laurie Ekanger,** Administrator, State Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620 no later than May 14, 1992.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Bob Marks, Director
Department of Administration

Certified to the Secretary of State April 6, 1992.

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to examinations) NOTICE OF PROPOSED AMENDMENT OF 8.6.407 EXAMINATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 18, 1992, the Board of Architects proposes to amend the above-stated rule.

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

"8.6.407 EXAMINATION (1) through (2)(c)(ii) will remain the same.

(3) Beginning April 15, 1995, all examination applicants must complete the national council of architectural board's (NCARB) intern development program (IDP) for admission to the licensing examination. The applicant shall request NCARB transmit a complete copy of the applicant's IDP record to the Montana board. Upon receipt of an examination application and the IDP record, the Montana board will make a decision on granting the applicant admission to the licensing examination.

(3) and (4) will remain the same but will be renumbered (4) and (5)."

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

REASON: Protection of the health, safety and welfare of the public is the primary charge of the Board. Therefore appropriate preparation of architects is important. The IDP is the best method to verify the intern's experiences during the three year internship period currently required for registration. Thirty-seven states now require completion of the IDP for registration. Those interns in Montana who have not completed the IDP, will be placed at a disadvantage if they elect to become registered architects in one or more of these 37 states. This requirement will not take effect until June of 1995 so that those currently serving the three-year internship are not penalized.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 16, 1992.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Architects, Lower Level,

Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 16, 1992.

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

BOARD OF ARCHITECTS
ROBERT C. UTZINGER, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 6, 1992.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to dentures	)	NOTICE OF PROPOSED AMENDMENT OF 8.17.808 PRIOR REFERRAL FOR PARTIAL DENTURES AND 8.17.809 INSERT IMMEDIATE DENTURES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 18, 1992, the Board of Dentistry proposes to amend the language in the history notes of the above-stated rules.

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

"8.17.808 PRIOR REFERRAL FOR PARTIAL DENTURES (1) will remain the same."

Auth: ~~This rule is advisory only but may be a correct interpretation of the law;~~ Sec. 37-1-131, 37-29-201, MCA; IMP, Sec. 37-29-403, MCA

REASON: To clarify that the board intends to interpret and enforce the statute as requiring denturists to refer partial denture patients to a dentist before constructing or fitting partial dentures and to eliminate any possible inference that the board merely believes it to be advisable rather than mandatory that such patients be seen by a dentist.

"8.17.809 INSERT IMMEDIATE DENTURES (1) will remain the same."

Auth: ~~This rule is advisory only but may be a correct interpretation of the law;~~ Sec. 37-1-131, 37-29-201, MCA; IMP, Sec. 37-29-402, MCA

REASON: To clarify that the board intends to enforce the statute by use of the time period included in this rule and to eliminate any possible inference that the board believes this to be merely an advisable practice.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 16, 1992.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, Lower Level, Arcade

Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 16, 1992.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 45 based on the 450 persons holding dental or denturitry licenses in Montana.

BOARD OF DENTISTRY
WAYNE L. HANSEN, D.D.S.,
CHAIRMAN

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 6, 1992.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to fees) NOTICE OF PROPOSED AMENDMENT OF 8.17.501 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 18, 1992, the Board of Dentistry proposes to amend the above-stated rule.

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

"8.17.501 FEE SCHEDULE

(1) through (7) will remain the same.

(8) Late renewal penalty fee $50.00

Auth: Sec. 37-1-134, 37-29-201, 37-29-304, MCA; IMP, Sec. 37-1-134, 37-29-304, MCA

REASON: The rule establishes a late renewal penalty fee for denturists in the amount of $50.00. This penalty fee is consistent with the penalty fee charged to dentists and dental hygienists when a licensee does not submit the completed renewal by March 1st each year. The penalty fee covers the costs associated with staff and board member time and materials required to generate and track late renewals.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 16, 1992.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than May 16, 1992.

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

BOARD OF DENTISTRY
WAYNE L. HANSEN, D.D.S.
PRESIDENT

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 6, 1992.

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

In the matter of the proposed 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 audit and reporting standards	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO THE STATE SINGLE AUDIT ACT AND REPEAL OF 8.94.4001, 8.94.4002 AND 8.94.4003

1. On May 6, 1992, at 9:00 a.m., a public hearing will be held in the large downstairs conference room at the Department of Commerce Building, 1424 Ninth Avenue, Helena, Montana, to consider the amendment, adoption and repeal of rules for the implementation of the state single audit act (2-7-501 through 2-7-522, MCA).

2. The proposed new rules will read as follows:

Rule I ACCOUNTING AND FINANCIAL REPORTING STANDARDS

(1) All counties, cities and towns shall adhere to the accounting and financial reporting standards adopted by the governmental accounting standards board (see ARM [Rule XI(1)]).

(2) All counties, cities and towns shall utilize the chart of accounts prescribed by the department in the budgetary, accounting, and reporting system for Montana cities, towns and counties (see ARM [Rule XI(2)].

(3) All local government entities except school districts and associated cooperatives shall file an annual financial report with the department as required by section 2-7-503, MCA.

(4) For counties, cities and towns, the annual financial report must be on a form required by the department or, subject to the approval of the department, in a form that provides at least the same information required by the department's form.

(5) For local government entities required to file an annual financial report with the department other than counties, cities and towns, the report must be on a form required by the department."

Auth: Sec. 2-7-504, 2-7-513, MCA; IMP, Sec. 2-7-504, 2-7-513, MCA

Rule II REPORT FILING FEE (1) As provided by section 2-7-514(2), MCA, each local government entity required to have

an audit under section 2-7-502, MCA, shall pay an annual filing fee to the department.

(2) For purposes of this rule "annual" refers to the fiscal year utilized by the local government entity.

(3) As required by section 2-7-514(2), MCA, the fee schedule shall be based upon the local government entity's annual revenue amounts.

(4) For purposes of this rule "revenue" means all receipts of a local government entity from any source excluding the proceeds from bond issuances and other long-term debt.

(5) Each local government entity except school districts shall pay the annual filing fee to the department at the time the entity files the annual financial report required by section 2-7-503(1), MCA, with the department.

(6) For school districts and associated cooperatives:

(a) as required by section 2-7-514(2), MCA, the superintendent of public instruction shall pay the annual filing fee from the state equalization account, notwithstanding the provisions of section 20-9-343, MCA;

(b) in the case of combined elementary and high school districts, the annual filing fee will be based upon the combined annual revenue amounts of both districts; and

(c) in the case of school districts and associated cooperatives having an audit covering two fiscal years, the department will calculate a separate fee based on the annual revenue amounts for each fiscal year covered by the audit.

(7) The annual filing fees for local government entities are as follows:

Annual Revenues Equal to or Greater Than:	Annual Revenues Less Than:	Fee
$ -0-	$ 200,000 and federal financial assistance less than or equal to $25,000	$ -0-
$ -0-	$ 200,000 and federal financial assistance greater than $25,000	$ 275
$ 200,000	$ 500,000	$ 275
$ 500,000	$ 1,000,000	$ 500
$ 1,000,000	$ 1,500,000	$ 675
$ 1,500,000	$ 2,500,000	$ 775
$ 2,500,000	$ 5,000,000	$ 875
$ 5,000,000	$ 10,000,000	$ 925
$ 10,000,000		$ 975"

Auth: Sec. 2-7-514, MCA; IMP, Sec. 2-7-514, MCA

Rule III PENALTY FOR FAILING TO FILE ANNUAL FINANCIAL REPORT WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION

(1) As provided by section 2-17-517(1), MCA, if a local government entity, other than a school district or associated cooperative, is unable to file its annual financial report with the department within four months of the end of the local government entity's fiscal year as required by section

2-7-503(1), MCA, the department may grant an extension of time in which to file the financial report if the local government entity can demonstrate to the department that it has good cause for not submitting the report within the prescribed time. Good cause will be deemed to exist if the local government entity has exercised ordinary business care and prudence and was nevertheless unable to prepare and properly submit the annual financial report within the prescribed time. The department will determine what constitutes the exercise of ordinary business care and prudence based on the facts of each case.

(2) If a local government entity has failed to file its annual financial report with the department within four months of the end of the local government entity's fiscal year, and if the department has not granted an extension of time in which to file the financial report, the department may issue an order to all state agencies requiring each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the local government entity's annual financial report.

(3) Upon receipt of the required annual financial report, the department will notify each state agency that any financial assistance withheld pursuant to the department's order is to be released to the local government entity."

Auth: Sec. 2-7-517, MCA; IMP, Sec. 2-7-517, MCA

Rule IV PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE (1) As provided by section 2-7-514(2), MCA, local government entities required to submit an annual financial report to the department must pay to the department, at the time the report is submitted, a filing fee as prescribed by ARM [Rule II].

(2) If the required filing fee is not submitted with the annual financial report, the department will notify the local government entity of the filing fee requirement and of the amount due to the department, and of the penalties for failure to pay the required fee.

(3) If the required filing fee is not submitted to the department within 60 days of receipt of the annual report, the department will add to the filing fee a late payment penalty equal to 10% of the required filing fee for each month or portion of a month that the filing fee is delinquent in excess of 60 days.

(4) In addition to imposing the late payment penalty established in (3) above, the department may issue an order to all state agencies requiring each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the required filing fee plus the late payment penalty.

(5) Upon receipt of the required filing fee plus the late payment penalty, the department will notify each state agency that any financial assistance withheld pursuant to the department's order is to be released to the local government entity."

Auth: Sec. 2-7-517, MCA; IMP, Sec. 2-7-517, MCA

Rule V AUDIT AND AUDIT REPORTING STANDARDS (1) All audits performed under section 2-7-503, MCA, must be conducted in accordance with Government Auditing Standards, issued by the comptroller general of the United States (see ARM [RuleXI(3)]), that are applicable to financial audits. Those standards incorporate generally accepted auditing standards as adopted by the American institute of certified public accountants.

(2) Audits must conform to the requirements of the federal Single Audit Act of 1984 (P.L. 98-502) and the OMB Circular A-128 (see ARM [Rule XI(4)]).

(3) All audit reports shall comply with the reporting standards for financial audits prescribed in Government Auditing Standards as established by the comptroller general of the United States, which incorporate the standards of reporting for financial audits prescribed by the American institute of certified public accountants (see ARM [RuleXI(3)]).

(4) For audits conducted under the provisions of the OMB Circular A-128, the audit reports shall comply with the reporting requirements of that circular (see ARM [RuleXI(4)])."

Auth: Sec. 2-7-505 and 2-7-513, MCA; IMP, Sec. 2-7-505, 2-7-513, MCA

Rule VI ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES (1) Local government entity audits conducted under the provisions of Title 2, chapter 7, part 5, MCA, must be conducted by an independent auditor as defined by section 2-7-501(6), MCA. For purposes of this requirement, an "independent auditor" is a federal, state, or local government auditor who meets the standards specified in Government Auditing Standards as established by the comptroller general of the United States; or a licensed accountant who meets the standards specified in Government Auditing Standards as established by the comptroller general of the United States (see ARM [RuleXI(3)]).

(2) In order to conduct audits of local government entities, an independent auditor must be on the roster of independent auditors authorized to conduct such audits that is maintained by the department.

(3) The department will be on the roster of independent auditors authorized to conduct audits of local government entities without completing the application and renewal forms and without paying the fees specified below, and will remain on the roster so long as it meets the standards specified in Government Auditing Standards as established by the comptroller general of the United States.

(4) In order to be placed on the roster, independent auditors must complete an application form prescribed by the department and meet the criteria set out in this section.

(5) Independent auditors with separate offices registered as required by section 37-50-335, MCA, must submit separate application forms for each office that is to be placed on the roster.

(6) To be eligible for inclusion on the roster, an independent auditor must:

(a) if an individual, hold a current Montana certificate as a certified public accountant and hold a current annual permit to engage in the practice of public accounting under section 37-50-314, MCA, or hold a current license as a licensed public accountant, have been licensed on or before December 31, 1970, and hold a current annual permit to engage in the practice of public accounting under section 37-50-314, MCA;

(b) if a partnership or corporation, be currently registered as a partnership of certified public accountants or a corporation of certified public accountants under section 37-50-331 or 37-50-332, MCA, or be currently registered as a partnership of licensed public accountants or a corporation of licensed public accountants under section 37-50-333 or 37-50-334, MCA, and have been registered on or before December 31, 1970;

(c) meet the continuing education requirements specified in Government Auditing Standards, as established by the comptroller general of the United States;

(d) have an external quality control review at least once every 3 years that meets the requirements specified in Government Auditing Standards, as established by the comptroller general of the United States;

(e) not have been restricted in the conduct of governmental auditing by the Montana board of public accountants;

(f) not have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from performing audits by any state or federal department or agency;

(g) not have been deemed ineligible to conduct local government entity audits by the department:

(i) because of failure to conduct local government entity audits under contract with the department during the previous two years in accordance with the audit standards described in ARM [Rule V],

(ii) because of failure during the previous two years to adhere to the terms and conditions of an audit contract with the department, or

(iii) because the independent auditor is more than 90 days delinquent in filing an audit report required under an existing contract with the department and has not obtained the department's written consent to an extension of the contracted filing date.

(7) An independent auditor may be removed by the department from the roster of independent auditors authorized to conduct audits of local government entities for failure to continue to meet the eligibility requirements specified above.

(8) If an independent auditor is removed by the department from the roster as provided in (7) above, the independent auditor must complete the application form prescribed by the department, meet the eligibility requirements set out in (6) above, and pay the fee specified in (11) below in order to again be placed on the roster.

(9) To remain on the roster, an independent auditor must complete and submit to the department on or before June 30 of each year a renewal form prescribed by the department on which the independent auditor certifies that the individual, partnership or corporation continues to meet the eligibility requirements specified above.

(10) To ensure that each independent auditor meets the eligibility requirements specified above, the department may, at any other time during the year, require the independent auditor to submit to the department evidence that the independent auditor meets the above eligibility requirements, including but not limited to documentation of required continuing professional education and the required external quality control review.

(11) At the time of original application to the department for placement on the roster, and at the time the annual renewal form is submitted to the department, each independent auditor, including each office, shall pay to the department a fee of $50.00.

(12) If an independent auditor is removed from the roster, or if an independent auditor does not properly renew for continuance on the roster, any and all contracts for local government entity audits entered into under the provisions of section 2-7-506, MCA, to which the independent auditor is a party are terminated, and the department will notify the local government entities of the termination. If an independent auditor is removed from the roster, the department will not refund any portion of the fee paid to the department by that independent auditor for placement on the roster.

(13) Upon notification of the termination of a contract for a local government entity audit, the local government entity must select another independent auditor from the department's roster of independent auditors authorized to conduct local government audits and present a signed contract to the department for approval within 90 days of notification of the termination.

(14) Upon termination of a contract for a local government entity audit, if the local government entity fails to present a signed contract to the department for approval with the 90 day period in (13) above, the department will designate an independent auditor to perform the audit as provided by section 2-7-506(5), MCA."

Auth: Sec. 2-7-506, MCA; IMP, Sec. 2-7-506, MCA

Rule VII CRITERIA FOR THE SELECTION OF THE INDEPENDENT AUDITOR (1) In selecting an independent auditor to perform an audit under section 2-7-503, MCA, a local government entity shall consider the following criteria:

(a) listing on department's roster of independent auditors authorized to conduct local government audits;

(b) independence, as defined by applicable auditing standards;

(c) demonstrated understanding of the work to be performed;

(d) technical experience of the independent auditor in conducting similar types of local government entity audits;

(e) qualifications of staff to be assigned to the audit;

(f) work history of the independent auditor; and

(g) the proposed audit fee.

(2) The department may require the local government entity to demonstrate that the independent auditor selected is qualified to conduct the audit based on an evaluation of:

(a) the criteria established in (1) above;

(b) any additional information requested by and used by the local government entity in selecting the independent auditor; and

(c) the results of oral interviews of independent auditors conducted by the local government entity, if appropriate."

Auth: Sec. 2-7-506, MCA; IMP, Sec. 2-7-506, MCA

Rule VIII AUDIT CONTRACTS (1) As provided by section 2-7-506(3), MCA, an audit of a local government entity by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government and the independent auditor.

(2) The department must be a party to the contract, and work under the contract may not commence until the contract is signed by the department.

(3) All contracts for conducting audits must be in a form prescribed by the department.

(4) The department will not enter into a contract in which the independent auditor and local government entity have not provided all of the information required by the contract form.

(5) The department will not enter into an audit contract covering more than 3 consecutive fiscal years."

Auth: Sec. 2-7-506, MCA; IMP, Sec. 2-7-506, MCA

Rule IX ACTIONS BY LOCAL GOVERNMENT ENTITY GOVERNING BODIES TO RESOLVE OR CORRECT AUDIT FINDINGS AND PENALTY FOR FAILURE TO DO SO (1) As provided by section 2-7-515, MCA, the local government entity shall adopt measures to correct the findings contained in its audit report and shall submit a copy of the corrective action plan, or response to the audit report findings, to the department within 30 days of the entity's receipt of the audit report.

(2) In the case of school districts or associated cooperatives, a copy of the response or corrective action plan must also be filed with the superintendent of public instruction.

(3) If no findings, deficiencies, or recommendations appear in the audit report, no response or corrective action plan is required to be filed with the department.

(4) The department will review the local government entity's response or corrective action plan and notify the entity in writing upon the acceptance of the response or plan.

(5) If the department does not approve all or any portion of a local government entity's response or corrective action plan, or if the department requires additional information in order to evaluate a response, the department

will contact the entity regarding the response or corrective action plan.

(6) If deemed necessary by the department, the department may also contact the independent auditor who performed the audit to obtain additional information regarding the facts related to the independent auditor's findings and the reasons for the independent auditor's recommendations.

(7) In the case of a school district or associated cooperative audit, the department shall also contact the superintendent of public instruction regarding the acceptability of a school district's or associated cooperative's response or corrective action plan.

(8) If, as a result of the communications described above, the department agrees to accept the local government entity's response or corrective action plan, the department will notify the entity in writing of that acceptance.

(9) If, as a result of the communications described above, the local government entity agrees to revise all or a portion of its response or corrective action plan, it will submit such changes or revisions to the department in writing.

(10) The department will review the local government entity's revised response or corrective action plan and notify the local government entity in writing when the department has accepted the response or plan.

(11) If, after the communications described above, the department still does not approve all or any portion of a local government entity's response or corrective action plan and the entity does not agree to revise its response or corrective action plan so that it is acceptable to the department, the department will notify the entity in writing of its nonacceptance, the reasons for the nonacceptance, and the fact that, pursuant to section 2-7-515, MCA, financial assistance can be withheld from the entity if within 30 days of the date of the notification letter the entity does not develop and submit to the department a response to audit findings or a corrective action plan that is acceptable to the department.

(12) If the department does not receive an acceptable response or corrective action plan within 30 days, it will issue, pursuant to section 2-7-515, MCA, an order to all state agencies requiring each agency to withhold payments of financial assistance from the local government entity pending receipt of an acceptable response or corrective action plan.

(13) In the case of school districts or associated cooperatives, the department will obtain the concurrence of the superintendent of public instruction before issuing an order withholding payments of financial assistance.

(14) Upon receipt by the department of an acceptable response or corrective action plan from the local government entity, the department will notify the entity in writing of the acceptance, and will notify each state agency that any financial assistance withheld pursuant to the department's order is to be released to the local government entity."

Auth: Sec. 2-7-515, MCA; IMP, Sec. 2-7-515, MCA

Rule X REVIEW OF FINANCIAL STATEMENTS (1) As provided by section 2-7-503(3)(b), MCA, the governing body or managing or executive officer of a local government entity that is not required to have an audit based on the criteria established in section 2-7-503(3)(a), MCA, shall at least once every four years, if directed by the department, or, in the case of a school district or associated cooperative, if directed by the department at the request of the superintendent of public instruction, cause a financial review to be conducted of the financial statements of the entity for the preceding fiscal year.

(2) A "financial review" is defined as:

(a) a review of financial statements conducted in accordance with standards established by the American institute of certified public accountants (see ARM [RuleXI(5)]); and

(b) such tests of legal compliance as the department may prescribe in a contract for the type of local government to be reviewed, or, in the case of a school district or associated cooperative, such tests of legal compliance as the department may prescribe in a contract at the request of the superintendent of public instruction.

(3) Financial reviews of a local government entity conducted at the direction of the department must be performed by an independent auditor, as defined by section 2-7-501(6), MCA, who is on the department's roster of independent auditors authorized to conduct audits of local government entities.

(4) Financial reviews required by the department must be performed pursuant to a contract entered into by the local government entity, the independent auditor, and the department. Work may not commence under the contract until it is signed by the department. All contracts for conducting financial reviews must be in a form prescribed by the department.

(5) The compensation to the independent auditor for conducting a financial review must be agreed upon by the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.

(6) The provisions of section 2-7-517(2), MCA, regarding the penalty for failing to pay an audit fee applies to the failure to pay a financial review fee.

(7) Reports on financial reviews must be prepared in accordance with reporting standards established by the American institute of certified public accountants for reviews of financial statements (see ARM [Rule XI(5)]), and in addition must include a report on compliance with the legal compliance matters referred to in (2)(b) above.

(8) The independent auditor shall file copies of the financial review report with the department. In the case of school districts or associated cooperatives, the independent auditor shall also file a copy of the review report with the superintendent of public instruction.

(9) The provisions of section 2-7-515, MCA, and ARM [Rule IX], regarding the actions of local government governing

bodies to resolve and correct audit findings and the penalty for failure to do so apply to financial review reports.

(10) The provisions of section 2-7-522, MCA, regarding audit report reviews by the department apply to financial review reports."

Auth: Sec. 2-7-503, MCA; IMP, Sec. 2-7-503, MCA

Rule XI INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS

(1) The department hereby adopts and incorporates by this reference the accounting and financial reporting standards adopted by the governmental accounting standards board as required standards for counties, cities and towns, as provided by ARM [Rule I].

(a) The standards incorporated by reference in (1), above, contain the generally accepted accounting principles to be followed by state and local governments and the financial reporting requirements to be utilized by those governments.

(b) The Codification of Governmental Accounting and Financial Reporting Standards adopted by reference in (1), above, may be obtained from the Governmental Accounting Standards Board, P.O. Box 5116, Norwalk, CT 06856-5116.

(2) The department hereby adopts and incorporates by this reference the chart of accounts prescribed by the department in the Budgetary, Accounting and Reporting System for Montana Cities, Towns and Counties for use by counties, cities, and towns, as provided by ARM [Rule I].

(a) The chart of accounts incorporated by reference in (2), above, contains the required fund classifications, balance sheet accounts, revenue accounts, expenditure accounts, and objects of expenditure to be used by counties, cities and towns.

(b) The chart of accounts adopted by reference in (2), above, may be obtained from the Montana Department of Commerce, Local Government Services Bureau, Capitol Station, Helena, MT 59620.

(3) The department hereby adopts and incorporates by this reference the Government Auditing Standards established by the comptroller general of the United States for financial audits as required standards for independent auditors in conducting audits of local government entities, as provided by ARM [Rule V].

(a) Government Auditing Standards incorporated by reference in (3), above, contain standards to be followed by an independent auditor in conducting financial audits of local government entities, including general standards, field work standards, and reporting standards.

(b) Government Auditing Standards established by the comptroller general of the United States adopted by reference in (3), above, may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

(4) The department hereby adopts and incorporates by this reference the federal Single Audit Act of 1984 (P.L.98-502) and the OMB Circular A-128, "Audits of State and Local Governments," as requirements to which local government

audits must conform, as provided by ARM [Rule V].

(a) The Act and the Circular incorporated by reference in (4), above, relate to the following:

(i) background on the Act,
(ii) applicability of the Act and Circular,
(iii) scope of audits conducted under the Act and Circular,
(iv) frequency of audits,
(v) internal control review and compliance review requirements,
(vi) requirements relating to subrecipients,
(vii) relation to other audit requirements,
(viii) cognizant agency responsibilities,
(ix) illegal acts or irregularities,
(x) audit report requirements,
(xi) audit resolution,
(xii) audit workpapers and reports,
(xiii) audit costs and auditor selection, and
(xiv) sanctions.

(b) The Act and the Circular adopted by reference in (4), above, are contained in the audit and accounting guide entitled Audits of State and Local Governmental Units, which may be obtained from the American Institute of Certified Public Accountants, Order Department, P.O. Box 1003, New York, NY 10108-1003.

(5) The department hereby adopts and incorporates by this reference the standards for a review of financial statements as established by the American institute of certified public accountants as standards under which financial reviews of local government entities must be conducted, as provided by ARM [Rule X].

(a) The standards adopted by reference in (5), above, contain a definition of a review of financial statements, the accountants reporting obligation, standards for conducting a review of financial statements, and reporting requirements for a review of financial statements.

(b) The standards for a review of financial statements incorporated by reference in (5), above, are contained in the Codification of Statements on Standards for Accounting and Review Services, which may be obtained from the American Institute of Certified Public Accountants, Order Department, P.O. Box 1003, New York, NY 10108-1003."

Auth: Sec. 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA; IMP, Sec.2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

3. ARM 8.94.4001 CRITERIA FOR THE SELECTION OF AN INDEPENDENT ACCOUNTANT/AUDITOR, 8.94.4002 CRITERIA FOR EXECUTING A CONTRACT WITH AN INDEPENDENT ACCOUNTANT/AUDIT, AND 8.94.4003 AUDIT AND REPORTING STANDARDS are being proposed for repeal. The authority section is 2-7-506, MCA and the implementing section is 2-7-506, MCA.

4. If adopted by the Department, the rules and repealer proposed in paragraphs 2 and 3, above, will take effect on July 1, 1992.

5. It is reasonably necessary to adopt the new rules

because sections 2-7-503, 2-7-504, 2-7-505, 2-7-506, 2-7-513, 2-7-514, and 2-7-517, MCA, require the Department to adopt rules and prescribe accounting forms, systems and methods to implement the single audit act. The adoption of these rules will necessitate the repeal of the three rules identified in paragraph 3, above, which deal with the same subject matter.

6. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, no later than May 14, 1992.

7. Richard M. Weddle, attorney, of Helena, Montana, has been designated to preside over and conduct the hearing.

DEPARTMENT OF COMMERCE
LOCAL GOVERNMENT ASSISTANCE
DIVISION

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 6, 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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 16, 1992, the Department of Family Services proposes to amend ARM 11.2.212 pertaining to fair hearings.

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

11.2.212 PROPOSAL FOR DECISION BY HEARING OFFICER

(1) The hearing officer shall make a proposal for decision within sixty (60) days of the ~~request for hearing,~~ date the hearing officer deems the case to be submitted ~~unless a continuance of the hearing has been granted under ARM 11.2.209(2)(a)~~.

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

AUTH: Sec. 52-1-103(19); 2-4-201(2), MCA. IMP: Sec. 52-1-103(19); 2-4-201(2), MCA.

3. The department proposes to delete the requirement that a contested case be decided within 60 days of the request for hearing. Most cases are delayed 30 to 60 days to allow for informal discovery, and scheduling conflicts often result in further delays. Even after the hearing occurs, the parties often take time to submit post-hearing memoranda. Thus, a decision within 60 days of the request for hearing in every case has proved to be an impossible goal.

The proposed amendment requires that a decision be issued 60 days of the date that the case is deemed submitted. "Deemed submitted" means that all items of evidence and memoranda of the parties are in the possession of the hearing officer. In complex cases, the hearing officer may need as many as 60 days to review the record and the applicable law. The department intends that, in the majority of cases, a decision will be issued prior to the end of the 60 day period.

Setting an appropriate period of time for decisions in contested cases is reasonably necessary to implement formal procedures for contested cases as required by Section 2-4-202, MCA.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance

Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 15, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 15, 1992.

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

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, April 6, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.18.107, 11.18.113, 11.19.103, and 11.19.107 pertaining to licensing of community homes for the developmentally and physically disabled	NOTICE OF PROPOSED AMENDMENT OF RULES 11.18.107, 11.18.113, 11.19.103, AND 11.19.107 PERTAINING TO THE LICENSING OF COMMUNITY HOMES FOR THE DEVELOPMENTALLY AND PHYSICALLY DISABLED NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 28, 1992, the Department of Family Services proposes to amend Rules 11.18.107, 11.18.113, 11.19.103, and 11.19.107 pertaining to licensing of community homes for the developmentally and physically disabled.

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

11.18.107 LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules. However, the department may waive in whole or in part procedures for verifying compliance with the requirements of these rules upon receiving written documentation that:

(a) another state agency has already licensed or otherwise approved the operation of the community home, or

(b) a national or state recognized certification process has already been completed and has resulted in certification, accreditation, or other approval of the operation of the community home.

Subsections (2) through (8) remain the same.

AUTH: Sec. 53-20-305, MCA. IMP: Sec. 53-20-305, MCA.

11.18.113 LICENSING PROCEDURES Subsections (1) through (4) remain the same.

(5) The department may waive in whole or in part the requirements of subsection (2) of this rule, and/or any other procedures for checking compliance with the requirements of this subchapter, based on a proper waiver of such procedures under subsection (1) of ARM 11.18.107.

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

AUTH: Sec. 53-20-305, MCA. IMP: Sec. 53-20-305, MCA.

11.19.103 PHYSICALLY DISABLED GROUP HOMES, LICENSE REQUIRED (1) The department will issue a license for a

community home to any license applicant meeting requirements established by these rules. However, the department may waive in whole or in part procedures for verifying compliance with the requirements of these rules upon receiving written documentation that:

(a) another state agency has already licensed or otherwise approved the operation of the community home, or

(b) a national or state recognized certification process has already been completed and has resulted in certification, accreditation, or other approval of the operation of the community home.

Subsections (2) through (6) remain the same.

AUTH: Sec. 52-4-205, MCA. IMP: Sec. 52-4-203, MCA.

11.19.107 PHYSICALLY DISABLED GROUP HOMES, LICENSING PROCEDURES Subsections (1) through (4) remain the same.

(5) The department may waive in whole or in part the requirements of subsection (2) of this rule, and/or any other procedures for checking compliance with the requirements of this subchapter, based on a proper waiver of such procedures under subsection (1) of ARM 11.19.103.

AUTH: Sec. 52-4-205, MCA. IMP: Sec. 52-4-203, MCA.

3. The department proposes to recognize already existing certification or other nationally sanctioned approval processes for community homes for the disabled. Licensing by the department based on the existing approval for a facility by other agencies/processes will reduce duplication. This amendment is reasonably necessary to properly fulfill the department's responsibility for determining the administration, operation, and health and safety requirements for community homes for persons with disabilities.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 15, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 15, 1992.

6. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or

from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, April 6, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 11.12.106 pertaining to preschoolers in foster care, and the amendment of ARM 11.14.101 pertaining to CPS day care benefits.	) NOTICE OF PROPOSED 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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 28, 1992, the Department of Family Services proposes to amend ARM 11.12.106 pertaining to the prohibition of employment of foster parents of preschoolers, and ARM 11.14.101 pertaining to foster parent employment and CPS day care.

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

11.12.606 YOUTH FOSTER HOME, PHYSICAL CARE (1) The foster parent(s) shall ensure quality physical care of children in residence.

(a) Every foster home shall have available the services of a physician.

(b) Medical and dental care including examination and treatment shall be obtained for children as needed.

(i) The child shall have a complete physical examination within 30 days after admission to foster care and yearly thereafter.

(ii) A child who has not had a dental examination within a year prior to placement shall have one within 90 days after admission. Reexamination shall be done at least annually.

(c) Psychiatric, psychological and counseling services including diagnosis and treatment shall be obtained for children as needed.

(d) Treatment of diseases, remedial defects or deformities, and malnutrition upon a physician's recommendation shall be made known to the placing agency by notification by the foster parent(s).

(e) All medication shall be kept in a place inaccessible to children, in their original containers, labeled with the original prescription label.

(f) All children residing in the home under 12 years of age shall be immunized against rubella, tetanus, diphtheria, polio, measles, and, if under 5 years of age, whooping cough. Any child with a history of measles is considered immunized. The medical and immunization history of the child will be recorded on forms provided by the department and kept on file in both the foster home and placing agency.

(g) In an emergency, the foster parent(s) shall make arrangements for emergency care at a nearby hospital, clinic, or

doctor's office and, as soon as possible thereafter, notify the placing agency.

(h) The foster parent(s) shall report to the county ~~welfare~~ office of the department any evidence of suspected child abuse.

(i) The foster parent(s) shall sign a placement agreement with the placing agency that includes the responsibilities of each and shall abide by the provisions therein.

(j) When a preschool child is in foster care one of the foster parents ~~shall~~ should not be employed outside of the home. Placements not conforming with the goal expressed herein must be approved by the appropriate community social worker supervisor working under the supervision of the regional administrator.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.14.101 ~~SUPPLEMENTAL~~ CHILD DAY CARE SERVICES, PURPOSES AND LICENSING (1) Generally, child ~~D~~day care is a supplemental form of care which provides parental care to a child up to the age of ~~between the ages of 6 weeks and 12~~ 13 years except as indicated hereunder by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours. This rule sets out general provisions on day care facility licensing and registration, and day care benefit programs.

Subsection 2 remains the same.

(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 delegated to the ~~district office social worker supervisor III~~ appropriate family resource specialist.

(4) The evaluation and determination of the need and eligibility for day care benefits ~~of~~ for a child and his family is the responsibility of the social worker located at the county ~~welfare~~ office of the department or the appropriate official determining eligibility for a day care program whether such program is administered inside or outside the department ~~with the work incentive program~~.

(a) The parent and the day care operator shall receive written confirmation from the social ~~service~~ worker or other appropriate department representative of the approval of day care, for the opening of day care, for the termination of day care, and the approval of special rates.

(b) Unless a shorter period of time is specified in rules or case plans applying to particular day care services, ~~D~~day care services (appropriateness of plan/arrangement and the financial eligibility for day care services) shall be redetermined every six (6) months, or sooner whenever information indicates eligibility may have changed or the adequacy of the day care plan needs to be reevaluated.

(5) The final authority for approval of a day care ~~placement~~ benefits in any particular case remains the responsibility of the appropriate community social worker supervisor ~~III~~ working under the supervision of the regional administrator. Ultimate

responsibility for the day care program rests with the ~~program and planning division~~ protective services division.

(6) Child Protective Services (CPS) day care may be provided to a single or two parent family. ~~Specific requirements:~~

(a) ~~Protective day care requires~~ Except as otherwise provided, payment for CPS day care requires facts documenting that:

~~(i) The family can be a single or two-parent family.~~

~~(ii)~~ (i) the family is not able to pay for day care, and the situation is documented in the case record;~~.~~

~~(iii)~~ (ii) the child is in need of day care because of danger of neglect or abuse, for physical or emotional reasons that are documented; and

(iii) the parent(s) understands and agrees that CPS day care is limited:

(A) in duration;

(B) as to specific dates and times; and

(C) in accordance with the terms of a case plan developed by the social worker, and may be terminated based upon the success or failure of the parent(s) to alleviate the danger to the child(ren) which necessitated the provision of CPS day care, or based on other considerations relevant to provision of such benefits.

~~(iv) Foster children in exceptional and documented situations, and, after all other requirements for protective day care that are appropriate have been met, upon written approval of the social worker supervisor III.~~

~~(v) Day care is not approved for foster children for the purpose of enabling the foster parent to work.~~

(b) Foster parents generally are not eligible to receive CPS day care. If, however, the attendance of the foster parent(s) is required at training, counseling, or some similar event which is directly connected to the ability of the foster parent(s) to care for the child(ren), CPS day care may be provided for the time the foster parent(s) attends such event. In addition, CPS day care may be provided to enable the foster parent(s) to work if requested by the placing social worker, and if approved by the appropriate community social worker supervisor working under the supervision of the regional administrator. Prior to approving or disapproving work-enabling CPS day care benefits for the foster parent(s), the appropriate community social worker supervisor may consider all facts and circumstances bearing on the department's ability to provide the benefits, and the necessity of the benefits for procuring appropriate foster home care for the child(ren). In addition, payment for work-enabling CPS day care benefits for any foster parent requires documentation that:

(i) either no appropriate foster care placement willing to provide foster home care without CPS day care benefits exists, or the proposed placement would provide a particularly desirable placement for the child and the foster parent(s) is unable or unwilling to provide care without the CPS day care benefits; and

(ii) the foster parent(s) is ineligible for other appropriate day care program benefits.

(c) In addition to the other requirements in this rule, the regional administrator may condition eligibility for work-enabling

CPS day care benefits for foster parents on the current availability of funds to pay for such care while meeting the demands of other department programs.

~~(b)~~ (d) ~~WIN~~ Payment for JOBS related day care benefits requires:

(i) The family is registered for ~~WIN~~ JOBS.

(ii) If the certified registrant is placed in employment, but is no longer receiving an ~~ADC~~ AFDC subsistence grant and meets the other day care eligibility requirements stated in this section, day care services will continue, if requested, for 30 days from the date of entry into employment.

~~(c)~~ (e) Payment for ~~S~~special-need-related or extra meal day care requires that:

(i) ~~That~~ the extra meal is not part of the full day care or full night care services~~,~~;

(ii) ~~That~~ the parents' situation is such as to require the provision of the extra meal (i.e., parent is employed from 7:00 a.m. to 5:30 p.m.). This must be documented in the case record~~,~~;

(iii) ~~That~~ the day care facility is in agreement to provide the extra service~~,~~;

(iv) ~~That~~ the child's needs and best interest are being met through the service provided~~,~~; and

(v) ~~That this~~ the rate has been approved in writing by the ~~district office social worker supervisor III~~ appropriate community social worker supervisor upon receiving a written evaluation for the need from either the social worker or the appropriate resource and referral agency.

~~(d)~~ (f) Payment for ~~S~~special child or exceptional child day care requires:

(i) That the child be between the ages of 0 through 17 years of age and the case record contains written verification of the physical handicaps or retardation from the appropriate authority.

(ii) That a written evaluation ~~on~~of the appropriateness of the day care being given the child in the facility has been submitted to and approved by the ~~district office~~ appropriate community social worker supervisor III~~,~~ ~~which~~ The evaluation shall include:

(A) the long range goal for the family, particularly the child and how day care is incorporated into this plan;

(B) the positives as well as the negatives of this placement;

(C) the steps that would be taken to ensure appropriate adjustments of the parent and child to the placement; and

(D) the plan for follow-up evaluations of the placement.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704, 52-2-713, MCA.

3. The department implements duties from Sections 41-3-1103, 41-3-1142, and 52-2-111, MCA, by adopting rules setting licensing requirements for youth care facilities. In this notice, the department proposes to amend licensing requirements in ARM 11.12.106 to allow for foster parents in certain limited circumstances to place preschoolers in day care. The desirability or necessity of a particular placement may outweigh the fact that a foster parent will not care for the child during the day. This

amendment is reasonably necessary to allow for placements falling into this category. It is also consistent with the proposed change to ARM 11.14.101 in regard to CPS day care for foster parents.

Generally, the department certifies eligibility for day care benefits through administrative rules. The first proposed language change to ARM 11.14.101 clarifies that children under six weeks of age may be eligible to participate in department day care programs. Many parents must enroll their children in day care prior to their reaching the age of six weeks. This proposed amendment to ARM 11.14.101 also updates office names and position titles in regard to approval of care, and makes miscellaneous non-substantive changes designed to clarify the existing scope of this rule.

The proposed amendments to ARM 11.14.101 also address needed changes to procedures for provision of "protective" or "CPS" day care benefits. Currently, ARM 11.14.101, conditions eligibility of parents for CPS day care benefits on the documented need to alleviate the danger of abuse or neglect. However, an amendment is needed to clarify that the specific dates and times, as well as the duration of these benefits, may be limited by a time-table. The amendment identifies the success or failure of the benefits to alleviate the abuse or neglect as one factor controlling the period of time that benefits are provided. The amendment also clarifies that provision of benefits may be controlled by a case plan which sets out specific goals or conditions, or other relevant considerations, in controlling the period of time benefits are provided. The department intends that CPS day care benefits be paid according to the case plan, with the general rule that progress toward alleviating the abuse or neglect is expected from the client. This rule amendment is reasonably necessary to implement these eligibility requirements.

This rule change also concerns foster parent eligibility for CPS day care benefits under ARM 11.14.101. No child may be placed in a foster home which poses a current known risk of abuse or neglect, and therefore foster parents are not eligible for CPS day care on the same terms as parents. However, if foster parents need day care to attend training or some similar event which is directly connected to the caretaking of the foster child, CPS day care benefits may be paid. This clarification is in accordance with current policy and practice.

The proposed amendment to ARM 11.14.101 also addresses payment of CPS day care for the purpose of maintaining/initiating a foster care placement which may not otherwise be financially acceptable/possible because of the expense of day care. The department intends to maintain as many foster care placements as possible without resort to CPS day care benefits. Therefore, the amendment requires approval by the supervisor of the placing social worker prior to payment of work-enabling CPS day care benefits for foster parents. Also under the amendment, regional administrators retain supervisory authority over decisions of social worker supervisors applying the criteria in the proposed amendment.

Social workers have pointed out at least a few instances where no doubt exists as to the best interest of the child being served through provision of CPS day care benefits to allow placement with working foster parents. Moreover, continuing a particular day care arrangement existing prior to the removal of the child into foster care may be beneficial to the child. For example, consider the circumstances of a child who is well adjusted to a particular day care environment prior to placement in foster care. A relative, to whom the child is bonded, is willing to provide foster care but must continue employment. Under these facts, the department should be authorized to spend available funds to maintain foster care with the child's relative through provision of CPS day care benefits.

The amendment requires that the foster parent(s) be ineligible for benefits under other day care programs prior to approving work-enabling CPS day care benefits.

This amendment represents the department's attempt to balance the competing concerns; the need for recruiting foster parents (and subsidizing desirable placements), versus the need of children for full time care by the foster parent(s), and the department's need to allocate scarce resources. Balancing these interests as provided in the amendment is reasonably necessary to determine the conditions upon which the department will pay CPS day care benefits for foster parents.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 17, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 17, 1992.

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

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, April 6, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules pertaining to block grant payment of day care benefits.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES PERTAINING TO BLOCK GRANT PAYMENT OF DAY CARE BENEFITS

TO: All Interested Persons

1. On May 11, 1992, at 1:30 o'clock, p.m., a public hearing will be held in the conference room of the Department of Family Services offices, located at 48 North Last Chance Gulch, Helena, Montana, to consider the proposed adoption of rules pertaining to payment of day care benefits from Federal block grant funds.

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

I. PURPOSE AND GENERAL LIMITATIONS (1) This subchapter of rules pertains to payment for child day care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990." These rules also pertain to subsequent re-funding of this program.

(2) Eligibility of parents and the amount of benefits provided under this subsection depends generally on income as set out in ARM [Rule IV].

(3) Parents may be required to apply for and be denied benefits funded by other child day care programs. For the purpose of this subsection, the phrase "other child day care programs" includes but is not limited to: AFDC training, income disregard child day care services, transitional day care, Pell Grants, JTPA, educational/institutional resources or family resources, and tribal block grant or other tribal sponsored child day care programs.

(4) There are two types of "registration" referred to in this subchapter. All providers must "register" for the purpose of participating in the block grant program. Block grant registration is separate and apart from registration as a group or family day care home. Those operating as a group or family day care home as defined by department rule and the Montana Child Care Act remain subject to day care facility registration rules in addition to requirements for block grant registration under this subchapter.

(5) Eligibility of parents and providers for child day care benefits is contingent on meeting all applicable requirements under this subchapter.

(6) Payment of funds under this subchapter also depends on continued federal funding. Termination of any and all benefits may occur based on the loss or depletion of federal funding.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

II. DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Child day care" means supplemental parental care as defined in ARM 11.14.102(5) provided by either a day care facility or by a legally unregistered provider, for children:

(a) from birth to the age of 13 years; or

(b) under the age of 18 years and physically and mentally incapable of caring for themselves as documented by a physician or licensed or certified psychologist, or under court supervision.

(2) A legally unregistered provider certified under this subchapter may be a relative of the child, and may provide child day care in the home of the parents, notwithstanding the definition of supplemental parental care in ARM 11.14.102(5).

(3) "Copayment" means the portion of child day care expenses paid by parents under the sliding scale established in ARM [Rule IV].

(4) "Day care facility" has the same meaning as in ARM 11.14.102(1).

(5) "Department" means the department of family services.

(6) "Family size" means the number of household members including the parent(s), as the term is defined in this subchapter, and the children of the parent(s), but not including adults living in the household other than the parent(s), unless the income of such adults is counted in computing the family's monthly income under this subchapter.

(7) "Legally unregistered provider" means a person providing child day care under this subchapter who is not required to be registered as a day care facility, including providers whose child day care services are provided in the home of the parent(s).

(8) "Monthly Income" means gross monthly income of the parent(s) residing with the child(ren) and the income of adults in the household who are included in the calculation of family size under this subchapter. The income of a parent not residing with the child(ren) shall be counted as monthly income under this subchapter only in cases where such parent's income is available to support the household of the child(ren). Any child support provided by a parent not residing with the child(ren) to the household of such child(ren) shall be counted as monthly income, and such child support shall be deemed to constitute the extent to which the non-residential parent's income is available to the household. The following will not be counted in determining gross monthly income:

(a) Pell grants;

(b) national merit scholarships;

(c) Carl Perkins federal scholarships;

(d) state student incentive grants;

(e) national direct student loan program funds;

(f) guaranteed student loan program, section 502 funds;

(g) congressional teachers scholarships;

(h) nursing student loans;

(i) other needs-based scholarships;
(j) earned income tax credit;
(k) tribal per capita payments;
(l) VISTA volunteer stipends;
(m) work study grants for which no income is received;
(n) independent living INC payments for youth; and
(o) foster care support services.

(9) "Parent" means the natural parent, guardian, or any other person(s) who may be deemed to bear financial responsibility for procuring child day care for a particular child.

(10) "Provider" means both legally unregistered providers, and day care facilities.

(11) "Subchapter" means ARM [Rule I] through ARM [Rule X].

(12) "Training" means vocational or educational training meeting the requirements of this subchapter.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

III. ELIGIBILITY OF PARENTS FOR PAYMENT (1) In addition to other requirements, to be eligible for payments under this subchapter, one parent (or other adult who is included in the calculation of family size) in the household must be working at least 15 hours per week. The 15-hour-work-week requirement also applies to parents claiming payment under this subchapter for time spent at training, i.e., parents may receive benefits under this subchapter to cover child day care while at training only if a parent (or other adult who is included in the calculation of family size) in the household is employed a minimum of 15 hours per week.

(2) The household of the parent(s) must also meet eligibility requirements based on income under the sliding scale set out in ARM [IV].

(3) The parent(s) may apply for certification/re-certification under this subchapter at the nearest district resource and referral office. District resource and referral offices are located in Billings, Bozeman, Butte, Glasgow, Great Falls, Helena, Kalispell, Miles City, and Missoula. Following completion and submission of all applicable forms, the resource and referral office, in cooperation with the department representative, will approve or deny the application. If approved, the parent(s) will be certified eligible for benefits under this subchapter according to the sliding scale in ARM [Rule IV]. The parent(s) must obtain eligibility re-certification every three months.

(4) Payment may only be made for care provided during time both parents or, in single parent households, the parent, and any other adult included in calculating family size under this subchapter, is/are required to be out of the home to attend work or training. Under no circumstances may payment be made for child day care provided by a parent of the child(ren), even if such parent does not reside in the child's household. In addition, no payment under this subchapter may be made for child day care provided by any person residing in the household,

whether or not such person is included in calculating family size under this subchapter.

(5) Parents previously awarded a bachelor's degree or having completed a recognized vocational course of post-secondary education within five years from the date of application are ineligible for block grant payment under this subchapter for training.

(6) Child day care benefits under this subchapter for training are also limited to:

(a) training for the purpose of obtaining employment in a recognized occupation in which job openings exist in Montana;

(b) training obtained through an approved training institution; and

(c) training for which written verification of satisfactory progress is (or, in cases where the training has just begun, may be) presented by the parent(s).

(7) Parents receiving an AFDC grant are eligible for child day care under this subchapter only if all applicable requirements of this subchapter are met, and only after JOBS, self-initiated, or transitional day care benefits are found by the department to be unavailable.

(8) Parents may only claim payment under this subchapter for child day care provided by:

(a) a legally unregistered provider who is registered and certified under this subchapter; or

(b) a licensed or registered day care facility certified under this subchapter.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

IV. INCOME ELIGIBILITY AND COPAYMENTS (1) The sliding fee scale chart, and other subsections of this rule, set the maximum and minimum benefits to be paid under this subchapter.

(2) The sliding fee scale is based on federal poverty level (FPL) income guidelines, and percentages of the state of Montana median income (SMI), for the federal and state fiscal year of 1991.

(3) There will be no copayment charged if the consumer's income is below the FPL for household size. As income increases, the parent(s) will be charged a percentage of their income (from 0% to 9%). Income is increased by increments of $100.00. Households with income at or below the lower percentage of SMI appearing in the chart for the applicable family size may receive priority over other households for available benefits. Households with income exceeding the higher percentage of SMI appearing in the chart are ineligible for benefits. The department may establish other priorities for distributing available benefits.

(4) The sliding scale is as follows:

Family Size	Monthly Income	Copayment/ Month 1 child	Copayment/ Month 2 children	% of Monthly Income

2	$ 0-740	$ 0		
	741-840	17		2
34%SMI=$623.	841-940	28		3
91FPL=$740.	941-1040	42		4
	1041-1140	57		5
	1141-1240	74		6
	1241-1340	93		7
	1341-1374	110		8
75%SMI=$1374.	1375+ ineligible			

3	$ 0-928	$ 0	$ 0	
	929-1028	20	26	2
34%SMI=$770.	1029-1128	34	44	3
91FPL=$928.	1129-1228	49	64	4
	1229-1328	66	86	5
	1329-1428	86	113	6
	1429-1528	107	140	7
	1529-1628	130	170	8
	1629-1698	136	178	8
75%SMI=$1698.	1700+ ineligible			

4	$ 0-1117	$ 0	$ 0	
	1118-1217	24	31	2
34%SMI=$916.	1218-1317	40	52	3
91FPL=$1117.	1318-1417	57	75	4
	1418-1517	76	100	5
	1518-1617	97	127	6
	1618-1717	120	157	7
	1718-1817	145	190	8
	1818-1917	153	200	8
	1918-2017	182	238	9
75%SMI=$2021.	2018+ ineligible			

5	$ 0-1305	$ 0	$ 0	
	1306-1405	28	37	2
34%SMI=$1063.	1406-1505	45	59	3
91FPL=$1305.	1506-1605	64	84	4
	1606-1705	85	111	5
	1706-1805	108	141	6
	1806-1905	133	174	7
	1906-2005	160	210	8
	2006-2105	189	248	9
	2106-2205	198	259	9
	2206-2305	207	271	9
	2306-2344	234	306	10
75%SMI=$2344.	2345+ ineligible			

(5) The daily/hourly payment rate for child day care services under this subchapter is the applicable rate in ARM 11.5.1002. Once the appropriate rate is multiplied by the number of child day care hours/days in any month which may be paid under this subchapter, the monthly benefit amount paid by the department is reduced by the amount of the copayment.

(6) Each family eligible under this subchapter may receive benefits covering hours/days of child day care for up to a maximum of two children.

(7) The amount of the monthly copayment in the foregoing chart is paid by the parent(s) to the provider regardless of the number of children in care or number of days/hours child day care is provided.

(8) The parent(s) is/are solely responsible for making the copayment to the provider. Parents failing to make copayments to their provider may be de-certified for benefits under this subchapter.

(9) Parents certified under this subchapter for benefits must report immediately any change in:

(a) income, employment, or training which may reasonably be expected to affect their eligibility under this subchapter;

(b) the identity of their provider and/or reduction in the amount of child day care for which payment may be made under this subchapter; and

(c) address or phone number.

(10) Reports under subsection (9) of this rule must be made to the district resource and referral office certifying eligibility for the parent(s). The certifying district resource and referral office may act to change/reduce/deny benefits under this subchapter based on information received from the parent(s) or from any source.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

V. REQUIREMENTS FOR DAY CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) Day care facilities must be in compliance with applicable licensing and registration requirements to receive payment under this subchapter. Loss of eligibility for funds under this subchapter for failing to comply with day care facility licensing and registration requirements is in addition to other remedies available for such violations.

(2) The provider bears responsibility for informing parents for whom benefits are provided that loss of eligibility due to failure to comply with day care facility licensing and registration rules has occurred.

(3) Day care facilities must be certified as eligible for payment under this subchapter through the nearest district resource and referral office. All applicable forms must be completed and submitted to such office for approval.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

VI. LEGALLY UNREGISTERED PROVIDERS: INTRODUCTION Legally

unregistered providers are generally not subject to department licensing or registration requirements applicable to "day care facilities" as the term is defined by statutes and rules. For example, providers caring only for children "related by blood or marriage", as the phrase is defined in the Montana Child Care Act, are not operating as day care facilities under Montana law. Nevertheless, these legally unregistered providers must be properly registered under this subchapter to receive payment for child day care services from block grant funds.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

VII. LEGALLY UNREGISTERED PROVIDERS; BLOCK GRANT REGISTRATION AND CERTIFICATION REQUIREMENTS (1) Application to provide child day care under this subchapter as a legally unregistered provider may be made at the nearest district resource and referral office or department office.

(2) In addition to completing all required application forms for registration and certification under this subchapter, applicants for certification to provide child day care as legally unregistered providers must attest in writing that he or she:

(a) has not been named as the perpetrator in a report substantiating abuse or neglect of a child;

(b) has not been convicted of a crime involving harm to children, including but not limited to physical or sexual harm to children; or

(c) is not facing a pending criminal charge involving harm to children, including but not limited to physical or sexual harm to children.

(3) The provider applicant proposing to provide care outside the home of the parent(s) must also attest in writing that, to the best information and belief of the applicant, no member of the applicant's household, and no person coming in contact with children for whom the provider applicant proposes to provide child day care under this subchapter:

(a) has been named as the perpetrator in a report substantiating abuse or neglect of a child;

(b) has been convicted of a crime involving harm to children, including but not limited to physical or sexual harm to children; or

(c) is facing a pending criminal charge involving harm to children, including but not limited to physical or sexual harm to children.

(4) An applicant for legally unregistered provider status under this subchapter will be denied eligibility if such applicant is included in the AFDC cash assistance payment of the parent(s).

(5) Legally unregistered providers who discriminate as to serving particular parents or children based upon the race, sex, religion, creed, color or national origin of such parents or children are ineligible for benefits under this subchapter.

(6) Legally unregistered providers must also meet the following requirements to be registered under this subchapter:

(a) be eighteen years of age or older;

(b) limit the care they provide to a period less than twenty four hours in any day;

(c) care for no more than two children at a time, not counting the children of the provider over the age of two; and

(d) within six months of application, attend a training session which includes health and safety issues.

(7) The department may require appropriate verification of the attestations and other requirements in this rule, and may deny eligibility based upon inaccuracy or falsification of such attestations, and/or failure to fulfill the other requirements of this rule. Prior to certification, the department may also require disclosure to parents of information known to the department involving any acts of the provider bearing on the provider's ability to care for children.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

VIII. COPY OF CONTRACT FOR SERVICES In addition to registration and certification requirements, providers must enter into a contract with parents for payment under this subchapter on the form provided by the department. The minimum agreed terms filled in on the form must be sufficient to verify selection of the provider by the parent(s) and indicate that the provider is willing to provide the child day care services. Once the contract is executed by the parent(s) and the provider, a copy must be delivered to the district resource and referral office providing registration/certification for the provider.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

IX. PROCEDURE FOR PAYMENT TO PROVIDERS (1) Certified providers may be paid directly by the department or, upon request, the department may pay the parent(s), who in turn, must pay the provider. In the case of direct payment to the parent(s), the parent(s) and/or the provider bear sole responsibility:

(a) for obtaining provider certification through this subchapter prior to claiming payment for covered child day care hours/days under this subchapter; and

(b) for resolving any and all disputes as to proper payment arising between the parent(s) and the provider.

(2) For direct payment to the provider, the provider must submit a voucher for covered child day care hours/days to the department using the form required by the department. The voucher is submitted at the end of each month in which the parent(s) and provider are eligible, whether or not eligibility is for the entire month.

(3) Parents may be de-certified for benefits under this subchapter for failure to reimburse providers for child day care services the department has paid by direct payment to the parent(s).

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

X. OVERPAYMENT, FRAUDULENT OBTAINING OF ASSISTANCE (1) The department may report to the appropriate office of the county attorney, as a theft, the actions of whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device, public assistance to which such person is not entitled under this subchapter.

(2) The department may demand repayment, and may pursue civil remedies for overpayment against any person who may be reported under subsection (1) of this rule for overpayment of benefits.

(3) The department may offset overpayments by prospectively reducing eligibility for benefits under this subchapter.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713, MCA.

3. These rules implement a program designed to provide benefits to working Montana parents in need of financial aid to pay for child day care services for time spent at work or training. The department intends to provide the benefits using a sliding scale which sets income limits for participation in the program, and sets the amount of benefits for eligible parents depending on where the income of the family falls in the scale. Participating providers must meet applicable requirements for protection of children.

Authority for this rule-making is provided by Section 52-2-704, MCA, which authorizes the department to adopt rules to implement the Montana Child Care Act (Act). The Act authorizes the receipt of federal funds for the expansion of child day care programs. The proposed rules provide a means for distributing the federal benefits to the public in compliance with applicable federal regulations. Therefore, Section 52-2-704, MCA, is both a source of authority and a source of direction as to implementation of the statutory authority. Section 52-2-713, MCA, is also implemented by the proposed rules because the rules are directly connected to payment rates through reference to ARM 11.5.1002.

The rules in this notice are reasonably necessary to fulfill the statutory mandate of setting rates, and receiving and disbursing federal funds. In addition, the receipt of federal funds for this program depends on meeting federal requirements.

The federal requirements direct the department to expand choices to parents by providing for payment directly to the parents, and by allowing for participation of providers who are not required to obtain registration or licensure as day care facilities. The federal regulations also allow for state rules making eligibility contingent on provider compliance with requirements for the protection of children in day care. This rule-making is designed to reconcile these somewhat conflicting goals.

For example, the department proposes to require legally unregistered providers to attest to the lack of a history involving harm to children, and allows the department to seek independent verification of the lack of such history. However, the study and other scrutiny of a provider applicant that accompanies initial registration or licensing of a day care facility will not be done prior to block grant registration of legally unregistered providers. Moreover, registration and licensing rules applicable to day care facilities will not apply to legally unregistered providers. Thus, parents retain more responsibility for overseeing the care provided by legally unregistered providers.

Similarly, parents may choose to retain primary responsibility for payment of child day care by receiving payment directly from the department. However, payment will not be made for child day care hours/days provided by a provider who is not certified under this subchapter. Therefore, parents applying for parental direct payment should seek a favorable determination on their own eligibility and certification of their chosen provider prior to reliance on this subchapter for payment of child day care services.

The proposed rules also require chosen providers to enforce reimbursement of parental direct payment and parental copayments. The department does not intend to reimburse providers for the debts of parents who wrongfully or negligently withhold parental direct payment for child day care services, or who fail to make the required copayment. However, parents otherwise eligible may be declared ineligible for failure to make the copayment or for failure to reimburse providers for child day care services paid by parental direct payment.

Legally unregistered status is not available to providers caring for more than two children (not counting the provider's own children over the age of two), even if the care is normally excluded from day care facility registration requirements. The rationale for this restriction is that such care should not be subsidized unless the provider is willing to submit to day care facility licensing and registration procedures.

4. Interested persons 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 the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than May 15, 1992.

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

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, April 6, 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 PUBLIC HEARING FOR PROPOSED 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 May 13, 1992, at 9:00 a.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 rules, the repeal of 16.14.206, and the adoption of new rules I through VII.

2. The proposed amendments require annual county inspections of licensed motor vehicle wrecking facilities, require county inspections of motor vehicle wrecking facilities upon notification of the licensee's intent to discontinue business, require annual accountings from motor vehicle graveyards of all revenues realized from the sale of junk vehicles, provide that the department may deny a license application if the applicant fails to provide requested information, and provide additional shielding requirements and re-organize the rules for purposes of clarity. The proposed new rules provide for the sale of individual junk vehicles collected by county junk vehicle programs from the participating county's motor vehicle graveyard. The repeal of ARM 16.14.206 is proposed because that rule duplicates Section 75-10-505, MCA.

3. The rule to be repealed (16.14.206) is located at page 16-691 of the Administrative Rules of Montana.

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

16.14.201 LICENSE TO OPERATE -- APPLICATION (1) Remains the same but is renumbered as (1)(a).

~~(a)~~(b) All the information requested on the application form must be completed before the department ~~can~~ will act on the application.

(c) The department may deny the application if the applicant fails to provide information requested by the department.

(2) Remains the same.

(3) Before an application ~~will be~~ is approved and a license to operate ~~will be~~ is issued, the department shall inspect the facility and the facility must be in compliance

with the shielding requirements of ARM 16.14.202.
AUTH: 75-10-503, MCA; IMP: 75-10-503, MCA

16.14.202 SHIELDING OF FACILITIES (1)-(2) Remain the same.

(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.

~~(3)(a)~~(b) If a fence is used, the boards may be spaced ~~and/or~~ or slanted to reduce wind load. The space which ~~can~~ may be seen from a broad-side view ~~will~~ may not be more than 1½ inches wide when viewed at any angle from 45° to 90° to the fence. The interval between spaces ~~will~~ may not be less than 7½ inches. Notwithstanding the spacing and interval requirements contained herein, ~~c~~Chain link metal fences with standard fiberglass or ~~other~~ similar inserts are acceptable~~, provided the gap between adjacent slats does not exceed 1½ inches~~. The ~~breaks~~ spacing in the fence ~~may~~ must be ~~vertical or at any angle; they cannot be horizontal~~ no greater than 45° from vertical.

~~(b)~~(c) Screening with shrubs and trees, while not subject to precise measurements, ~~is to~~ must provide a similar degree of shielding at all times of the year. Trees and shrubs can best be used in conjunction with other shielding materials to improve the appearance of the wrecking facility. A berm may also be used~~, constructed of any solid material, including stumps, demolition debris, etc.~~ provided ~~T~~the slopes of the berm are ~~to be~~ covered and graded smooth, with not less than three inches of top soil, and seeded with an adequate seeding formula.

(4) ~~Any s~~Shielding ~~is to~~ must be of sufficient height ~~that none of the~~ to shield junk vehicles on the premises ~~are visible~~ from public view. If a facility is situated in a manner making it impractical to construct a fence or other shielding high enough to shield the facility, a series of fences or other shielding should be used. This is not intended to require that permanent buildings, ~~other structures~~, utility poles, cranes, ~~or~~ derricks, or similar structures be shielded.

~~(5)(a) If a facility is on a hill or hillside making it impractical to construct a fence high enough to shield the yard, a series of fences are to be used. Fences are to be constructed of sound building materials. Rough dimensional lumber or better is acceptable. Slabs are not considered rough dimensional lumber. Plastics or other materials that are placed over the junk vehicles are not acceptable. Trees and shrubs can best be used in conjunction with other shielding materials to improve the appearance of the wrecking facility. Chain link type metal fence with slats inserted is acceptable. Other types of fencing of equivalent permanence, attractiveness, and shielding qualities are also acceptable.~~

(5)~~(b)~~ To preclude misunderstanding, prior approval

should be obtained from the department for fences other than the two types ~~specifically approved~~ specified above (i.e., metal and wood fences). Unless otherwise specifically approved by the department, Nno more than one type of the approved shielding materials ~~is to~~ may be used on any one side of the facility. ~~Trees and shrubs may be placed on the outside of the shielding material. Other sides may use different approved materials.~~ Unless otherwise specifically approved by the department, shielding on any one side of the facility must be of a uniform color.

(6) Remains the same.

(7) The ~~fencing is to~~ shielding must be maintained ~~by the facility operator~~ in a neat and workmanlike manner. ~~It is to~~ and must be replaced or repaired ~~where~~ when necessary ~~by him~~. Damage by vandals or other causes is the risk of the operator and is not to be reason for not maintaining the ~~fence~~ shielding.

(8) ~~The fence is~~ Shielding must not ~~to~~ be used as a billboard. A maximum of two signs not to exceed 32 square feet each, advertising the business conducted on the premises, may be painted on or attached flush to the ~~fence~~ shielding.

AUTH: 75-10-503, MCA; IMP: 75-10-503, MCA

16.14.203 RENEWAL OF LICENSE (1) For licensed motor vehicle wrecking facilities, renewal application ~~will~~ must be made on a forms furnished by the department.

(2) A motor vehicle wrecking facility must be in compliance with, or be operating under a compliance plan that will assure compliance with, 75-10-501 through 542, MCA, and these rules prior to receiving a renewed license.

AUTH: 75-10-503, MCA; IMP: 75-10-503, MCA

16.14.204 DENIAL OF APPLICATION OR CANCELLATION OF LICENSE (1)-(2) Remain the same.

(3) Upon the failure of the applicant or licensee to submit a an acceptable compliance plan within the prescribed time ~~or to submit a plan which is acceptable to the department~~, ~~the applicant or licensee shall be given the opportunity for a hearing on the intent to deny the application or revoke the license~~, the department may deny the application, deny the renewal, or revoke the license. The decision by the department to deny the application, deny the renewal, or revoke the license may be appealed pursuant to 75-10-515, MCA.

AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-515, MCA

16.14.205 ~~DEPARTMENT~~ INSPECTIONS (1) The facility and required operational records ~~will~~ must be made available for inspection ~~by a~~ to an authorized ~~department~~ representative of the department or county at all reasonable business hours. The required operational records must also be made available for inspection by an authorized representative of the department of justice at all reasonable business hours.

(2) Each county, through its designated representative, shall inspect each licensed motor vehicle wrecking facility

within its boundaries at least annually.

(3) Upon notification of a licensee's intent to discontinue business, the county shall inspect the licensee's facility.

AUTH: 75-10-503, 75-10-521, MCA; IMP: 75-10-503, 75-10-521, MCA

16.14.206 CONTROL OF JUNK VEHICLES Repeal

AUTH: 75-10-503, MCA; IMP: 75-10-503, MCA

16.14.207 MOTOR VEHICLE GRAVEYARDS (1) ~~If operated by the county or operated under contract for the county, the~~ Each motor vehicle graveyard is required to be licensed, but no fee is required. The graveyard shall be operated and maintained in accordance with the requirements of this sub-chapter which are applicable to motor vehicle wrecking facilities.

(2) Every motor vehicle graveyard ~~is to~~ shall maintain records on each vehicle placed in ~~it~~ the graveyard.

(a) Each ~~County~~ motor vehicle graveyards ~~are to~~ shall submit ~~their~~ its records on each junk vehicle to the department on a quarterly basis. A form entitled "Motor Vehicle Graveyard Log Sheet" will be furnished by the department to record this information.

(b) ~~A signed title or signed release~~ A properly completed certificate of ownership, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, 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 ~~county~~ motor vehicle graveyard. ~~The title and/or release forms~~ This documentation ~~shall~~ must be submitted to the department as soon as the junk vehicles are ~~crushed and~~ removed from the motor vehicle graveyard.

(3) If the county contracts for the establishment, maintenance, ~~and~~ or operation of its free motor vehicle graveyard, or for the collection of junk vehicles, a copy of the contract ~~is to~~ must be furnished to the department. Prior department approval of the contract is required ~~to contract~~. The contract shall include a provision requiring the contractor to operate the free motor vehicle graveyard in strict compliance with all applicable laws and with the provisions of this sub-chapter. Any failure to operate the free motor vehicle graveyard in accordance with the requirements of the law or ~~rule of the department~~ with the requirements of this sub-chapter will invalidate the contract.

(4) ~~Once a vehicle has been deposited in the free county-operated motor vehicle graveyard, no~~ No salvage ~~will~~ may be permitted from vehicles which have been ~~placed in the yard~~ released to a county junk vehicle program.

(5) ~~Whether the free vehicle graveyard is county owned and operated, or contracted to a private facility, the hours during which the installation will be accessible for vehicle disposal will be determined by county needs.~~ The county shall publish and adequately disseminate in the county the hours of operation and other pertinent information for each motor

vehicle graveyard within its boundaries. ~~The facility will~~ Each motor vehicle graveyard must be supervised when open. ~~This and other pertinent information relating to its operation will be published and adequately disseminated in the county.~~

(6) The department may require periodic reports ~~of the operation~~ from motor vehicle graveyards. ~~A d~~Department representatives ~~will~~ shall have physical access to ~~the facility~~ each motor vehicle graveyard, its records, and operational procedure during reasonable hours of operation.

~~(7) The county commissioners of each county shall designate a representative to act in implementing and enforcing this sub-chapter.~~

(7) Junk vehicles must be placed in an orderly manner within the motor vehicle graveyard site. Stacking the junk vehicles is permissible, provided they remain shielded from public view.

(8) If there are significant changes from the operation, establishment, location, or collection methods specified in the approved county plan, the county shall prepare and submit within six months of such change a new plan for approval by the department.

AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, MCA

16.14.208 DISPOSAL OF JUNK VEHICLES THROUGH STATE DISPOSAL PROGRAM (1) Except as provided in the rules pertaining to the sales of junk vehicles, ~~T~~the county shall notify the department for disposition of any junk vehicles located in ~~the county~~ a motor vehicle graveyard within the boundaries of the county, regardless of the number of vehicles involved.

~~(2) Junk vehicles shall be placed in an orderly manner within the graveyard site. Stacking the junk vehicles is permissible providing they remain shielded from public view.~~

(2) Any junk vehicle designated by the county as eligible for inclusion in a county sale of junk vehicles must be placed in an orderly manner in a separate defined area of the graveyard.

(3) Remains the same.

AUTH: 75-10-503, MCA; IMP: 75-10-503, MCA

16.14.209 ITEMIZED ACCOUNTING BUDGET PROCEDURES -- COUNTY JUNK VEHICLE PROGRAMS (1)-(4) Remain the same.

(5) In addition to the accounting required by (1) and (2) above, an itemized accounting of revenues realized by the county from the sales of junk vehicles must be submitted for each past fiscal year on a form provided by the department. This additional accounting must be submitted before an approval will be granted for the next fiscal year's budget.

AUTH: 75-10-503, MCA; IMP: 75-10-503, MCA

RULE I AUTHORIZED COUNTIES MAY SELL JUNK VEHICLES

(1) A county, with written authorization from the department, may sell junk vehicles from the motor vehicle graveyard to licensed motor vehicle wrecking facilities. This requirement of written authorization applies to motor vehicle grave-

yards operated by a contractor in addition to motor vehicle graveyards operated by the county.
AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, MCA

RULE II APPROVAL OF COUNTY JUNK VEHICLE SALES (1) A county must receive department approval prior to conducting junk vehicle sales.

(2) A county wishing to obtain approval to conduct such sales must submit a plan to the department detailing how the vehicle sales will be noticed, administered, and conducted.

(3) Plans that are submitted which are inconsistent with any of the applicable rules of the department relating to junk vehicles will not be approved.

(4) Upon approval by the department, the county may conduct sales in accordance with the procedures specified in the approved plan. Once approval is granted to the county, it will remain in effect until revoked by the department or until the county requests termination.

(5) If the county desires to make changes in its procedures for sales of junk vehicles, the county must submit an updated plan to the department for approval prior to implementing such changes in its procedures.

(6) If a county fails to comply with the requirements of this subchapter, the department may revoke the approval of the county junk vehicle sale plan.
AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, MCA

RULE III 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, sheriff's release, or release of interest statement signed by the last registered owner of the vehicle may be sold.

(2) Sales shall be conducted on a competitive bidding basis.

(3) Junk vehicles may be sold only to licensed motor vehicle wrecking facilities. All bidders must provide proof of a valid motor vehicle wrecking facility license prior to the sale.

(4) Junk vehicles must be sold as complete units. Portions or component parts of junk vehicles may not be sold.

(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 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) The county shall issue sales receipts and release of interest statements on forms provided by the department.

(7) Payment must be made by the purchaser on the day of the sale in the form of a business check, certified check, guaranteed bank draft or money order.

(8) The purchaser of a vehicle must remove the vehicle from the motor vehicle graveyard within three working days of the date of the sale.
AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, MCA

RULE IV COUNTY TO REPORT JUNK VEHICLE SALES TO THE DEPARTMENT (1) Within 30 days of a county junk vehicle sale, the county shall submit to the department a report of the junk vehicle sale, together with payment equal to the salvage value of each vehicle sold. Salvage value must be calculated in accordance with 75-10-534, MCA. Reports must be submitted on forms provided by the department and shall at a minimum include a description of each vehicle sold and the actual selling price of each vehicle.
AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, MCA

RULE V SALE PROCEEDS TO BE DEPOSITED INTO THE JUNK VEHICLE PROGRAM ACCOUNT (1) Proceeds from county junk vehicle sales must be deposited as follows:

(a) The salvage value of each vehicle sold must be sent to the department for deposit with the state treasurer and placement into the junk vehicle account established pursuant to 75-10-532, MCA.

(b) The 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. If the county retains the excess proceeds, it shall deposit the excess proceeds in the county's junk vehicle program account. If the county does not retain the excess proceeds, it shall remit the excess proceeds to the department within 30 days of the date of the sale.
AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, 75-10-532, 75-10-534, MCA

RULE VI A VEHICLE OWNER MAY REQUEST A VEHICLE NOT BE SOLD (1) The owner or possessor of a vehicle released to the county junk vehicle program may request that a vehicle be disposed of only through crushing and recycling and that the vehicle not be sold. Junk vehicle release forms must include language notifying persons releasing vehicles of this right.

(2) If the owner or possessor of a vehicle released to the county junk vehicle program requests that the vehicle be disposed of only through crushing and recycling and that the vehicle not be sold, the county may not sell the junk vehicle.
AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, MCA

RULE VII REQUIREMENTS FOR PURCHASES FROM COUNTY GRAVEYARD (1) Before any vehicle purchased pursuant to these rules may be removed from the motor vehicle graveyard, the purchaser shall provide a signed affidavit to the appropriate county personnel which states that:

(a) The purchaser maintains and is currently covered by the appropriate liability insurance required by law;

(b) The purchaser is familiar with the motor vehicle equipment requirements of Montana law as they pertain to the safe transport of disabled vehicles, as enforced by the Montana highway patrol, and intends to fully comply with such requirements;

(c) The purchaser is familiar with the department's requirements relating to the proper shielding of a junk vehicle, is in current compliance with such requirements, and intends to fully comply with such requirements.

(2) Any person who, at the time of the sale, is not in current compliance with the shielding requirements found in these regulations may not be permitted to purchase a junk vehicle pursuant to these rules.

AUTH: 75-10-503, MCA; IMP: 75-10-503, 75-10-521, MCA

5. The department is proposing these amendments and adoption of new rules in order to meet the requirements of sections 75-10-503(2) and 521(5), MCA, as adopted by the 1991 Legislature. The 52nd Legislature of the State of Montana amended section 75-10-503, MCA, to require the department to adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities. The adoption of the new rules, and the amendment requiring annual accountings, are proposed in order to comply with that mandate. That Legislature also amended section 75-10-521(5) to require that counties inspect licensed motor vehicle wrecking facilities, consistent with rules adopted by the department. The amendments concerning inspections by counties are proposed in order to implement that statute. The remaining amendments are proposed in order to specify and clarify requirements relating to the licensure and operation of motor vehicle wrecking facilities and motor vehicle graveyards. The repeal of ARM 16.14.206 is proposed in order to eliminate duplication of section 75-10-505, MCA.

6. Interested persons may submit their data, views, or arguments concerning the proposed amendment and adoption, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to J. Mark Stahly, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than 5:00 p.m., May 20, 1992.

7. J. Mark Stahly has been designated to preside over and conduct this hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State April 6, 1992

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE ATTORNEY GENERAL
OF THE STATE OF MONTANA

In the matter of the amendment of model rules 1.3.206, 1.3.207, 1.3.208, 1.3.209, 1.3.212, 1.3.213, 1.3.214, 1.3.218, 1.3.219, 1.3.224 and 1.3.227, and the amendment of the forms attached to the model rules.	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons.

1. On June 11, 1992, the Attorney General proposes to amend Rules 1.3.206, 1.3.207, 1.3.208, 1.3.209, 1.3.212, 1.3.213, 1.3.214, 1.3.218, 1.3.219, 1.3.224, and 1.3.227, model rules, and to amend the sample forms attached to the model rules for the guidance of state agencies.

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

1.3.206 MODEL RULE 3 RULEMAKING, NOTICE (1)(a)-(c) Remain the same.

(2) Notice of agency action must be published within six months of the date on which notice of the proposed action was published. Section 2-4-305~~(6)~~, MCA.

(3) Contents of notice.

(a) Notice of Public Hearing.

(i) As illustrated by sample forms ~~4, 5 and 6~~, infra, the notice must include:

(A)-(I) Remain the same.

(II) Whenever possible the agency should include in the notice ~~a copy~~ the full text of any rule proposed to be adopted, amended or repealed. Summaries and paraphrasing ~~are to~~ may only be used when it is not possible to include a copy of the proposed rule in the notice. Such summaries and paraphrasing must accurately reflect the substance of the proposed agency actions.

(III) Remains the same.

(B) at the end of each rule noticed, a citation to the authority for the proposed rule, and citation to the MCA section or sections being implemented. When an amendment to a rule is proposed the section(s) of the MCA that constitute authority for the amendment and the sections actually implemented by the amendment must be underlined. If ~~the~~ a proposed action implements a policy of a governing board or commission, the notice must include a citation to and description of the policy implemented.

(C) Remains the same.

(b) Notice when agency does not plan to hold a public hearing.

(i) As illustrated by sample forms ~~7~~ 5 through ~~13~~ 8, infra, the notice must include:

(A)-(D) Remain the same.

(E) at the end of each rule noticed, a citation to the authority for the rule and the code section or sections being implemented. When an amendment to a rule is proposed, the section(s) of the MCA that constitute authority for the amendment and the section(s) actually implemented by the amendment must be underlined.

(c) Notice of public hearing when a hearing has been properly requested. When a hearing has been properly requested, the agency must mail notice of the hearing to persons who have requested a public hearing, section 2-4-302. Also, notice must be published in the Montana Administrative Register. Section 2-4-302(2).

~~(ii)~~ (i) As illustrated by sample form ~~13~~ 10, infra, the notice must include~~:~~

~~(A) all information required in section (3)(a)(i) of this rule; and~~

~~(B)~~ notice that the hearing is being held upon request of the requisite number of persons designated in the original notice, section 2-4-302(4), or the Administrative Code Committee of the legislature, section 2-4-402(3)(c), or a governmental agency or subdivision, or an association.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.207 MODEL RULE 4 OPPORTUNITY TO BE HEARD

(1) remains the same.

(2) Public hearing.

(a) remains the same.

(i) The hearing shall be conducted by and under the control of a presiding officer. The presiding officer shall be appointed by the rule maker; that is, the department, board, or administrative officer authorized by law to make rules for the agency. The rule maker retains the ultimate authority and responsibility to ensure that the hearing is conducted in accordance with ~~the Administrative Procedure Act~~ MAPA.

(ii) At the commencement of the hearing, the presiding officer shall ask that any person wishing to submit data, views or arguments orally or in writing submit his name, address, affiliation, whether he favors or opposes the proposed action, and such other information as may be required by the presiding officer for the efficient conduct of the hearing. The presiding officer shall provide an appropriate form for submittal of this information. The presiding officer may allow telephonic testimony at the hearing.

(iii) through (b) Remain the same.

(3) Informal conferences or consultations. In addition to the required rulemaking procedures, an agency may obtain viewpoints and advice concerning proposed rulemaking through informal conferences and consultations or by creating committees

of experts or interested persons or representatives of the general public. Section 2-4-304(2).

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.208 MODEL RULE 5 RULEMAKING, AGENCY ACTION (1) Introduction. Thirty days after publication of notice and following receipt of the presiding officer's report, the rule maker may adopt, amend or repeal rules covered by the notice of intended action. Section 2-4-302(2).

(2) Remains the same.

(a) As illustrated by sample form ~~15~~ 13, infra, the notice must include:

(i) Remains the same.

(ii) if the rule adopts a model code, rule or other publication by reference, a citation to the material adopted, its year, a statement of the general subject matter thereof, and where a copy of the material may be obtained. The material adopted by reference need not be published if publication would be unduly cumbersome, expensive or otherwise inexpedient. Upon request of the secretary of state a copy of the omitted material must be filed with the secretary of state. Section 2-4-307.

(iii) through (3) Remain the same.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.209 MODEL RULE 6 RULEMAKING, EMERGENCY RULES (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice, it may adopt a temporary emergency rule without prior notice or hearing or, as illustrated by sample form ~~16~~ 14, infra, upon any abbreviated notice and hearing that it finds practicable. Section 2-4-303(1).

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

(3) Effective date of ~~temporary~~ emergency rule. An emergency rule becomes effective upon filing a copy with the secretary of state or on a stated date following publication in the Montana Administrative Register. Section 2-4-306(4)(b).

(4) Remains the same.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.212 MODEL RULE 8 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD (1) All parties to contested cases shall be afforded notice of hearing pursuant to section 2-4-601~~(1)~~. As illustrated by sample form ~~17~~ 18, infra, the notice must include:

(a)-(c) Remain the same.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.213 MODEL RULE 9 CONTESTED CASES, EMERGENCY SUSPENSION OF A LICENSE (1) Remains the same.

(a) See sample form ~~17~~ 19.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.214 MODEL RULE 10 CONTESTED CASES, DEFAULT ORDER

(1) Remains the same.

(a) See sample form ~~19~~ 20.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.218 MODEL RULE 14 CONTESTED CASES, HEARING EXAMINERS

(1)-(2) Remain the same.

(3) If a defending party notifies the agency that he will appear at the hearing to contest the intended action, the agency must advise all parties of the appointment of either an agency member or a hearing examiner to manage the case, as illustrated by sample form ~~20~~ 21, infra.

(4) Remains the same.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.219 MODEL RULE 15 CONTESTED CASES, HEARING

(1) through (2)(d) Remain the same.

(3) The hearing may be continued with recesses as determined by the presiding officer. Section 2-4-611~~(2)~~.

(4) through (6) Remain the same.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.224 MODEL RULE 20 CONTESTED CASES, FINAL ORDERS

(1) Remains the same.

(2) See sample form ~~21~~ 22.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

1.3.227 MODEL RULE 22 DECLARATORY RULINGS, CONTENT OF PETITION (1)-(2)(h) Remain the same.

(3) See sample form ~~22~~ 23.

(4) The record in a declaratory ruling proceeding shall include:

(a) the petition;

(b)-(d) Remain the same.

(AUTH: Sec. 2-4-202, MCA; IMP: Sec. 2-4-202, MCA.)

3. The sample forms referred to in the model rules are proposed to be drastically altered to clarify them, to minimize repetitive forms, and to update the forms to current requirements, including the inclusion of IMP: and AUTH: after each proposed adoption, amendment or repeal and the inclusion of the rule reviewer's signature on each notice as required by section 2-4-110, MCA. New forms are proposed to be added to illustrate an amended notice of proposed adoption, amendment, or repeal, a corrected notice of adoption, a notice of proposed adoption of temporary rules and a notice of adoption of temporary rules. Because of fiscal constraints and the expense of publication of such voluminous material, the proposed forms will not be published. However, copies of the proposed forms will be mailed to each department of state government and/or to each agency's rule reviewer. Others may obtain a copy of the proposed forms by contacting Kathy Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401.

4. The Attorney General considers the proposed amendments to the rules and the forms necessary to update them and provide proper guidance to state agencies.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Kathy Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, to be received no later than May 18, 1992.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Kathy Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, to be received no later than May 18, 1992.

7. If the Attorney General receives requests for a public hearing on the proposed changes from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed changes; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the large number of persons directly affected by rulemaking and contested case proceedings.

By: Marc Racicot
MARC RACICOT

Judy Browning
Rule Reviewer

Certified to the Secretary of State April 6, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.116 relating to Net Operating Loss Computations	NOTICE OF PROPOSED AMENDMENT OF ARM 42.15.116 relating to Net Operating Loss Computations

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 29, 1992, the Department of Revenue proposes to amend ARM 42.15.116 relating to net operating loss computations.

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

42.15.116 SPECIAL MONTANA NET OPERATING LOSS COMPUTATIONS (1) through (3) remain the same.

(4) The net operating loss for nonresidents and fractional year residents shall include only those ~~taxable by Montana~~ income/loss and expense items attributable to income from a Montana trade or business.

Example 1: A nonresident has a loss on the operation of a Montana business and income from a separate business located in his state of residence.

Montana business loss	($75,000)
State of residence business income	$85,000
Federal income	$10,000
Income for federal purposes	$10,000
Less state of residency business income	$85,000
Montana loss	($75,000)

Example 2: A nonresident has oil income from Montana and a ranch in his state of residence that shows a loss.

Montana oil income	$100,000
State of residence ranch loss	($140,000)
Loss for federal purposes	($ 40,000)
Loss for federal purposes	($ 40,000)
Less state of residence loss	($140,000)
Montana income	$100,000

Example 3: A nonresident has a loss on the operation of a Montana farm and income from a separate business located in his state of residence.

Montana farm loss	($ 75,000)
State of residence business Income	$ 50,000
Loss for federal purposes	($ 25,000)

Loss for federal purposes	($ 25,000)
Less state of residence business Income	$ 50,000
Montana loss	($ 75,000)

Example 4: An individual moves to Montana and becomes a resident of Montana. He sustains a loss outside Montana before becoming a resident and he also sustains a loss in Montana after becoming a resident.

Out-of-state loss	($ 65,000)
Montana loss	($ 75,000)
Loss for federal	($140,000)

Loss for federal	($140,000)
Less out-of-state loss	($ 65,000)
Montana loss	($ 75,000)

(5) remains the same.

(6) To determine the portion of the federal income tax and motor vehicle fee attributable to income from a Montana trade or business, the net income from the trade or business must be divided by the Montana adjusted gross income to arrive at a percentage. The percentage is multiplied by the federal tax or motor vehicle fee. When calculating the federal tax attributable to trade or business income, the total income figures used for the computation must be for the year the federal tax was incurred.

~~(7) This rule applies to tax years beginning after December 31, 1984.~~

AUTH: Sec. 15-30-305 MCA; IMP: Secs. 15-30-117 and 15-30-110 MCA;

3. ARM 42.15.116 is proposed to be amended in order to eliminate the possibility of nonresidents and part-year residents from increasing their Montana net operating loss by federal taxes attributable to income that was not taxed by Montana.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than May 15, 1992.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments

orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than May 15, 1992.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State April 6, 1992

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I and II relating to liquor licenses	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION of NEW RULES I and II relating to liquor licenses

TO: All Interested Persons:

1. On May 14, 1992, at 9:00 a.m., a public hearing will be held in Room 408 of the Mitchell Building, at Helena, Montana, to consider the adoption of new rules I and II, relating to liquor licenses.

2. New rules I and II, do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The new rules I and II as proposed to be adopted provide as follows:

NEW RULE I MANAGEMENT AGREEMENTS (1) Subject to the terms and conditions stated in this rule, an alcoholic beverage licensee may employ a manager as the licensee's agent to oversee the alcoholic beverages business conducted in the licensee's licensed premises. The manager must either be a natural person or if not, the manager must identify the person who will perform the management function. The manager or the person designated to represent the manager must possess a past record and present status as a business person and citizen which demonstrates that they are likely to operate the licensed establishment on behalf of the licensee in compliance with all applicable laws of the state and local governments.

(2) Within 30 days of employing the manager, an original signed copy of the written management agreement must be filed with the liquor division which clearly discloses the following information:

(a) the manager's name, address, telephone number, mailing address if different from street address, and one of the following:

(i) social security number for individuals; or

(ii) federal identification number for business;

(b) the amount of compensation; and

(c) the specific duties and responsibilities delegated to the manager by the licensee.

(3) The division will review the agreement for compliance with the following standards:

(a) the licensee must retain the possessory interest in the premises through ownership, lease, rent or other agreement with the owner of the premises;

(b) while the agreement may delegate duties to the manager, the licensee must retain ultimate control, liability, responsibility, and accountability for the retail liquor

operation. This control may include, but is not limited to the following:

(i) business hours, types of alcoholic beverage products sold, selling price, level of inventory maintained, and overall business atmosphere as established by licensee;

(ii) licensee has signatory authority over the bank accounts of the business, and unrestricted access to the funds of the operation, whether in the form of initial capitalization or those generated by the business operations;

(iii) licensee maintains an active participation in the business operations sufficient to insure the proper and lawful conduct of the business and executes all reports required by governmental agencies that attest to licensee's ownership and certify compliance with applicable statutes and regulations;

(iv) licensee has unrestricted access to the business premises and its books and records, and retains full and independent authority to make adjustments, alterations, or changes in the business operations at any time;

(v) licensee retains the authority to lawfully discipline or discharge employees for just cause, including the manager, (the authority to discipline employees may be shared with the manager);

(vi) licensee may personally work in the establishment at any time;

(vii) licensee is liable for all business expenses and losses, and the manager is not liable for those expenses or losses, either directly or through an indemnification agreement with the licensee. The licensee may require the manager to do the ministerial act of paying the expenses, but this must be accomplished by using the licensee's funds; and

(viii) the licensee owns the inventory and retains the right to use or dispose of it at will.

(c) the agreement may not be assignable by the manager to a successor manager without the written consent of the licensee;

(d) the agreement may not place any restrictions on the licensee's right to transfer, mortgage, hypothecate, or alienate the license or change the location of the operation of the license without the consent of the manager;

(e) the agreement must be terminable upon the licensee transferring the license, selling the business or otherwise ceasing business operations at the licensee's option;

(f) the agreement must provide for compensation by one of the following:

(i) the compensation of the manager, which may be set as a fixed amount or by a percentage formula, must be commensurate with the duties performed, and cannot consist of all net profits from the business. If a percentage formula is used, the compensation cannot be less than the federal wage and hour standards for an individual; or

(ii) if the licensee's net operating profit, after payment of all sums due to the manager, whether for services as a manager or for other compensation due to the manager under a

security agreement, lease, or other purposes, constitutes at least an economic rate of return, the financial arrangement between the manager and the licensee will not be considered to create an economic interest of the manager in the license;

(g) the management agreement must establish a principal agent, master-servant, employer-employee or other type of agency relationship, making the manager responsible to the licensee for the performance of assigned duties, while the licensee is responsible for the proper performance of the manager.

(4) Management agreements failing to meet any of the standards set forth in subsections (1), (2) and (3) of this rule will be marked as rejected and returned to the licensee together with a written explanation of the reasons for the rejection. If the deficiencies are not corrected within a period of time set by the liquor division, the tendered management agreement will be deemed to be void. Failure of the licensee to terminate operations under a void management agreement constitutes a violation of Montana law and the departmental rules.

AUTH: 16-1-303, MCA; IMP: 16-4-404, MCA

NEW RULE II LAPSE OF LICENSE FOR NONUSE (1) Any retail license not used in a going establishment for a period of 90 consecutive days without department approval shall be lapsed for nonuse in accordance with section 16-3-310, MCA.

(2) For the purpose of this rule "week" refers to any consecutive 7 day period.

(3) An establishment is a going establishment if it meets the following criteria:

(a) It is open at least 20 hours a week for any 4 weeks in a 90-day period, and

(b) Inventory of at least 10 cases of alcoholic beverage is maintained on the premises each day that the establishment is open, and

(c) Alcoholic beverages are displayed for sale in the purchase or consumption area of the establishment each day that the establishment is open, which display must show at least 5 linear feet of product facings, and

(d) The sale of alcoholic beverages is at least $50 each week that the establishment is open.

(4) A licensee who is unable to maintain a going establishment must request in writing the department's approval to close the establishment for a period of greater than 90 days duration.

(a) In the case of an establishment that is operated seasonally, the department must receive a written request from the licensee to close for a specified period greater than 90 days' duration. The department will authorize the closure and will not lapse the license if it determines that the premises is a dude ranch, resort, park hotel, tourist facility or like business. The closure is only effective from the date of the department's letter of authorization through the end of the specified periods.

(b) In the case of closure that was reasonably beyond the control of the licensee, the department must receive from the licensee a written request to exempt a closure greater than 90 days' duration. The department will accept a closure and will not lapse the license if it determines that the cause was due to loss of lease for the premises, destruction of the premises, bankruptcy or foreclosure action, serious illness or death of the licensee, or like circumstances. The closure is only effective for the period specified in the department's letter of acceptance.

AUTH: 16-1-303, MCA; IMP: 16-3-310, MCA

4. The Department is proposing new rule I to provide the public notice of what is an acceptable and proper arrangement between a recorded owner and a party the owner/licensee has entrusted with the day-to-day operation of the alcoholic beverages business, i.e., the manager. A licensee may hire a manager to conduct the day to day operation of the business for a set wage or a percentage of the business profits. Depending on the terms of the agreement, a manager's compensation and his responsibilities and/or authority may provide him a "financial interest" in the alcoholic beverages license, thereby changing the individual's role in the business from employee to owner. The division reviews agreements to determine whether a bonafide employee/employer relationship exists. In come cases, a great deal of discussion between the applicant or licensee and the division will result in amendments to agreements before a proposed operating plan is considered acceptable. The rule will formalize division guidelines for review of these management agreements.

5. The Department is proposing new rule II because the law requires the automatic lapse of a license that is not actually used in a going establishment for 90 days. The proposed rule defines a "going" establishment through a set of four criteria. If a license is used in an establishment that does not meet each of the four criteria, it is subject to automatic lapse for nonuse. The rule provides a licensee an opportunity to avoid automatic lapse under certain circumstances when the criteria cannot be met. The criteria are set very low to allow for a financially difficult period, but not so low that there is little or no evidence of any effort to keep the enterprise going. Since a license is initially issued under a finding of public convenience and necessity, meeting these minimum criteria affirm the essential standard of public convenience and necessity that the issuance of the license, and it's continued ownership by the licensee, will materially promote the public's ability to engage in the licensed activity.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than May 22, 1992.

7. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State April 6, 1992

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I through IV relating to Recycled Material as it Applies to Income Tax	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION of NEW RULES I through IV relating to Recycled Material as it Applies to Income Tax

TO: All Interested Persons:

1. On May 11, 1992, at 9:00 a.m., a public hearing will be held in Room 408 of the Mitchell Building, at Helena, Montana, to consider the adoption of new rules I through IV, relating to recycled material as it applies to income taxes.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The new rules as proposed to be adopted provide as follows:

NEW RULE I ADDITIONAL DEDUCTION FOR PURCHASE OF RECYCLED MATERIAL (1) Businesses, including corporations, individuals and partnerships, may take an additional 5% deduction of the expenses related to the purchase of recycled products used within Montana in their business if the recycled products purchased contain at least 90% reclaimed material.

(2) For a taxpayer paying individual income tax, the deduction is an adjustment to federal adjusted gross income for individual income tax. The deduction is available for tax years 1992 through 1995.

(3) For a corporation paying income/license tax, the deduction is an adjustment to federal taxable income for corporation income/license tax. The deduction is available for tax years 1992 through 1995.

(4) Any deductions claimed are subject to review by the Montana department of revenue. The responsibility to maintain accurate records to substantiate deductions remains with the taxpayer.

AUTH: Sec. 15-32-611, MCA; IMP: Secs. 15-32-601 through 610, MCA.

NEW RULE II DEFINITIONS FOR 25% CREDIT (1) "Finished Product" means a marketable product that has economic value and is ready to be used by a consumer.

(2) "Reclaimed material" is post-consumer material used in manufacturing which is comparable to and used in lieu of virgin material in the production of a finished product.

(3) "Post-consumer material" is only those materials generated by consumers which include households, businesses and industries that have served their intended end uses and have been separated from the solid waste stream.

(4) "Machinery or equipment" is a mechanical unit or system having a depreciable life of more than one year, which collects or processes reclaimable material or is used in the manufacturing of a product from reclaimed material.

(5) "Primarily" means over fifty percent (50%) of time, usage, or other appropriate measure.

(6) "Process or processing" means preparation, treatment or conversion of a product or material by an action, change or function or a series of actions, changes, or functions that bring about a desired end result.

(7) "Beneficial interest" is a taxpayer who has a beneficial interest in a business when he/she is either a sole proprietor, partner or shareholder in a S corporation.

AUTH: Sec. 15-32-611, MCA; IMP: Secs. 15-32-601 through 610, MCA.

NEW RULE III CREDIT FOR INVESTMENTS IN DEPRECIABLE EQUIPMENT OR MACHINERY TO COLLECT, PROCESS OR MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL (1) The 25% credit is available only for the acquisition of machinery and/or equipment that is depreciable, as defined in the Internal Revenue Code Section 167. The machinery and/or equipment must be used in Montana primarily for the collection or processing of reclaimable material or in the manufacture of finished products from reclaimed material.

(2) The basis for the credit is the adjusted basis for tax depreciation purposes. This includes the purchase price, transportation cost (if paid by the purchaser) and the installation cost before depreciation or other reductions. This credit does not increase or decrease the basis for tax purposes. Leased equipment is restricted to capital leases and the credit is calculated on the amount capitalized for balance sheet purposes under generally accepted accounting purposes.

(3) Recycling machinery and/or equipment must be located and operating in Montana on the last day of the taxable year for which the credit is claimed. The machinery or equipment must be used to collect, process, separate, modify, convert or treat solid waste into a product that can be used in place of a raw material for productive use. Examples may include: balers, bob cats, briquetters, compactors, containers, conveyors, conveyor systems, cranes with grapple hooks or magnets, crushers, end loaders, exhaust fans, fork lifts, granulators, lift-gates, magnetic separators, pallet jacks, perforators, pumps, scales, screeners, shears, shredders, two-wheel carts, and vacuum systems. This does not include transportation equipment unless it is specialized to the point that it can only be used to collect and process reclaimable material.

(4) In the instance of the specialized mobile equipment that does qualify and is used both within and outside of Montana, the credit must be prorated using the following calculation:

Days Used In Montana x 25% x Cost of Equipment = Credit allowed
Total Days Used

(5) Absent a specific agreement to the contrary, the owners of a small business corporation, partnership or sole proprietorship must pro-rate the credit in the same proportion as their ownership in the business.

(6) Only a taxpayer that owns an interest either directly or through a passthrough entity such as a partnership or S Corporation and is operating the equipment as the primary user on the last business day of the year may claim the credit.

(7) The credit is limited to the amount of the taxpayer's income or corporation tax liability. Any excess credit is not refundable nor can it be carried back or forward to other tax years.

(8) The Department may disallow a credit resulting from a sale or lease when the overriding purpose of the transaction is not to collect or process reclaimable material or manufacture a product from reclaimed material.

AUTH: Sec. 15-32-611, MCA; IMP: Secs. 15-32-601 through 610, MCA.

NEW RULE IV PERIOD COVERED FOR THE RECLAMATION AND RECYCLING CREDIT (1) The credit is available for tax years 1992 through 1995. The credit must be taken in the tax year in which the machinery/equipment was acquired and placed into service. The only exception is for machinery/equipment acquired and placed into service after January 1, 1990 and before December 31, 1992. The credit for this exception must be taken on the 1992 tax return.

(2) To be eligible for this credit, qualifying equipment must be purchased and installed after January 1, 1990 and prior to January 1, 1996.

(3) Any credit claimed is subject to review by the Montana department of revenue. The responsibility to maintain accurate records to substantiate the credit remains with the taxpayer.

AUTH: Sec. 15-32-611, MCA; IMP: Secs. 15-32-601 through 610, MCA.

4. The Department is proposing the new rules because of statutory requirement to adopt the rules. These rules will clarify who will be eligible for the credit and the deductions.

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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than May 15, 1992.

6. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State April 7, 1992

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

In the matter of the amendment of rule 46.25.742 pertaining to eligibility requirements for general relief medical	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.25.742 PERTAINING TO ELIGIBILITY REQUIREMENTS FOR GENERAL RELIEF MEDICAL

TO: All Interested Persons

1. On May 6, 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 amendment of rule 46.12.742 pertaining to eligibility requirements for general relief medical.

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

46.25.742 PERIODS OF ELIGIBILITY/INELIGIBILITY FOR GENERAL RELIEF MEDICAL Subsections (1) through (3) remain the same.

(a) For the first incident of non-compliance without good cause, the recipient is ineligible for the general relief medical program for a period of one month. This disqualification begins the calendar month after the incident of non-compliance. For purposes of this rule, good cause consists of any circumstances beyond the recipient's control which prevent the recipient from complying with the managed-care plan.

(b) For every subsequent incident of non-compliance, the recipient is ineligible for the general relief medical program for a period of three months. This disqualification begins the calendar month after the incident of non-compliance.

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

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-206, 53-3-209 and 53-3-318 MCA

3. The 52nd Montana Legislature, by the adoption of 53-3-318, MCA, gave the department discretion to develop managed-care systems for General Relief Medical (GRM) recipients. A managed-care system is a program organized to serve the medical needs of individuals in an efficient and cost-effective manner by managing the receipt of medical services for a geographic or otherwise defined population through primary care physicians and other health care providers. Subsections (3) and (4) of 53-3-318, MCA give the department authority to require recipients to participate in a managed-care system as a condition of eligibility for the program.

ARM 46.25.742(3) currently provides that recipients of GRM who are required by the department to participate in a managed-care system will become ineligible for such assistance if they fail to comply. However, the rule does not specify how long the recipient will be ineligible. This change is therefore necessary to establish the length of the ineligibility periods. A recipient will not be ineligible for failure to comply if there was good cause for the failure.

The amended rule provides that the ineligibility period will be one month for the first incident of non-compliance and three months for each subsequent incident. Good cause for failure to comply is considered to be circumstances beyond the control of the recipient which prevent the recipient from complying with the managed-care plan.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than May 14, 1992.

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

Dawn Sliva
Rule Reviewer

Julia E. Rotering
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 6, 1992.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of new rules pertaining to the use of topical medications	)))	NOTICE OF ADOPTION OF NEW RULES PERTAINING TO THE USE OF TOPICAL MEDICATIONS

TO: All Interested Persons:

1. On February 13, 1992, the Board of Physical Therapy Examiners published a notice of public hearing to consider the proposed adoption of new rules pertaining to the use of topical medications at page 174, 1992 Montana Administrative Register, issue number 3. The hearing was held on March 5, 1992, at 10:00 a.m., in the downstairs conference room of the Department of Commerce.

2. The Board has adopted new rules I (8.42.501), II (8.42.502) and III (8.42.503) as proposed but with the following changes:

"8.42.501 USE OF TOPICAL MEDICATIONS (1) through (3) will remain as proposed.

(4) A copy of the written prescription specifying the ~~proper use of the topical medication~~ TOPICAL MEDICATION TO BE APPLIED AND THE METHOD OF APPLICATION (direct application, phonophoresis or iontophoresis) must be retained in the patient's physical therapy medical records. ~~A written prescription shall be present in each patient's chart indicating the topical medication to be applied.~~"

Auth: Sec. 37-11-201, MCA; IMP, Sec. 37-11-106, MCA

"8.42.502 TOPICAL MEDICATION PROTOCOLS (1) will remain the same as proposed.

(a) ~~bacterial~~ BACTERICIDAL agents:

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

(ii) indication: relieve pain and inflammation associated with minor skin disorders and for acute inflammatory conditions ~~(bursitis, tendonitis, TMJ pain)~~.

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

Auth: Sec. 37-11-201, MCA; IMP, Sec. 37-11-106, 37-11-107, MCA

"8.42.503 APPLICATION AND ADMINISTRATION OF TOPICAL MEDICATION (1) through (2) will remain the same.

(3) All topical medication shall be applied or administered in accordance with generally accepted practices in the physical therapy field and in keeping with educational techniques in use at SCHOOLS properly accredited ~~APTA schools~~ BY THE COMMISSION ON ACCREDITATION IN PHYSICAL THERAPY EDUCATION (CAPTE)."

Auth: Sec. 37-11-201, MCA; IMP, Sec. 37-11-106, 37-11-107, MCA

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

COMMENT: Two comments were received stating APTA is no longer the accrediting body for the physical therapy professional programs, and the reference to APTA in proposed rule III(3) is inaccurate.

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

COMMENT: Two comments were received stating the phrase "physical therapy medical records" in new rule I(4) is not consistent with the phrase "patient's chart," also in the same subsection.

RESPONSE: The board acknowledges the inconsistent language, and will amend the rule as shown above.

COMMENT: Two comments were received stating new rule II(1)(a) uses the word "bacterial," when the proper word should be "bactericidal."

RESPONSE: The board concurs with the comments and will amend the rule as shown above.

COMMENT: Rule I(2) on storage of topical medications will require physical therapists to be on the mailing list for the board of pharmacy in order to be informed of storage guidelines.

RESPONSE: Instructions for storage of each topical medication will be found on the package itself, as well as on the accompanying literature. These instructions always accompany any drug dispensed, and will cover any changes in storage requirements, as the dispensing pharmacist will be responsible to let the consumer know of any differences. The further subsections to new rule I clarify basic storage guidelines, including appropriate temperatures, etc.

COMMENT: The medication Fluori Methane should be eliminated from the requirement of a written prescription specifying the proper use in each patient's chart.

RESPONSE: The medication Fluori Methane does require special training for its use. If the medication is prescribed for a patient, they must be taught to use it properly. As Fluori Methane is a legend drug, requiring a prescription, it must be covered by the board's rules, and cannot be excepted. The board has no authority under the statute to exempt certain legend drugs from the rules.

COMMENT: Fluori Methane spray should not be required to be purchased from a pharmacy, as it is not widely available through pharmacies.

RESPONSE: The manufacturer of the Fluori Methane spray does not sell retail, or to physical therapists, but only wholesale to pharmacies. Pharmacies must carry it because the medical practitioners write prescriptions for it. All pharmacies are able to order this drug if necessary.

COMMENT: New rule I(3) should include the phrase "by the physical therapist or under the supervision of a physical

therapist" to include supervised workers in the administration of topical medications.

RESPONSE: Section 37-11-104, MCA, defines physical therapy treatment, and allows the supervision of supportive personnel by the physical therapist, if deemed appropriate. The rule would therefore cover these supportive personnel.

COMMENT: New rule II(1)(c)(ii) lists bursitis, tendonitis, etc., and appears to limit the indications to these specific conditions.

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

COMMENT: Nine comments were received in support of the rules.

RESPONSE: The board acknowledges receipt of the comments.

BOARD OF PHYSICAL THERAPY EXAMINERS
JOYCE DOUGAN, P.T., CHAIRMAN

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 6, 1992.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to renewals) 8.56.608 RENEWALS

TO: All Interested Persons:

1. On February 13, 1992, the Board of Radiologic Technologists published a notice of proposed amendment of the above-stated rule at page 180, 1992 Montana Administrative Register, issue number 3.

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

3. No comments or testimony were received.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JIM WINTER, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 6, 1992.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees	)))	NOTICE OF AMENDMENT OF 8.63.519 FEE AND ASSESSMENT SCHEDULE

TO: All Interested Persons:

1. On February 13, 1992, the Board of Passenger Tramway Safety published a notice of proposed amendment of the above-stated rule at page 182, 1992 Montana Administrative Register, issue number 3.

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

3. No comments or testimony were received.

BOARD OF PASSENGER TRAMWAY SAFETY
TIM PRATHER, CHAIRMAN

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 6, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of a New Rule pertaining to Renewal Requirements	))))	CORRECTED NOTICE OF ADOPTION OF NEW RULE V (10.57.219) PERTAINING TO RENEWAL REQUIREMENTS

TO: All Interested Persons

1. On February 13, 1992, the Board of Public Education published a notice of adoption identified in the above titles on page 230, issue number 3 of the 1992 Montana Administrative Register.

2. **Rule V CONVERSION FROM RENEWAL CREDITS TO RENEWAL UNITS was inadvertently omitted from the notice of adoption. It has been given rule number 10.57.219.**

3. All other sections of the February 13, 1992 notice of adoption remain unchanged.

Bill Thomas
BILL THOMAS, CHAIRPERSON
Board of Public Education

BY: Wayne A Buchanan
Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to Secretary of State April 6, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)	NOTICE OF ADOPTION OF NEW RULE I (10.57.220) PERTAINING TO RECENCY OF CREDIT, REPEAL OF RULE 10.57.208 AND AMENDMENT OF RULE 10.57.401, 10.57.402 AND 10.57.403

To: All Interested Persons

1. On December 12, 1991, the Board of Public Education published a notice of proposed new rule I (10.57.220), the repeal of ARM 10.57.208 and the amendments concerning ARM 10.57.401, 10.57.402 and 10.57.403 on pages 2381-2384 of the 1992 Montana Administrative Register, issue number 23.

2. The Board has repealed ARM 10.57.208 as proposed.

3. The Board is adopting the rules as proposed with following changes:

10.57.220 RECENCY OF CREDIT (1) An applicant for initial certification whose degree is more than 5 but less than 15 years old or an applicant whose period of lapse is 15 years or less must have the following credits earned within the 5 year period preceding the effective date of the certificate:

(a) through (c) will remain the same.

(2) An applicant for initial certification ~~or reinstatement~~ whose degree is over 15 years old or an applicant whose period of lapse is over 15 years must obtain the credits listed in (1) and the following additional credits based on teaching experience:

No teaching or equivalent experience since the original training.	+6 additional qtr credits
1-4 years teaching or equivalent experience.	+4 additional qtr credits
5-10 years teaching or equivalent experience.	+2 additional qtr credits
Over 10 years teaching or equivalent experience.	+0 additional qtr credits

(3) and (4) will remain the same.

10.57.401 CLASS 1 PROFESSIONAL TEACHING CERTIFICATE (1) through (4) will remain the same.

(5) Reinstatement: Lapsed certificates cannot be renewed but the holder may apply for reinstatement provided requirements are

met which are in force at the time reinstatement is requested. A minimum of 6 quarter (4 semester) credits or the equivalent must be earned within the 5-year period preceding the effective date of the certificate, or one year of experience with a master's degree. Effective in 1995, 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate will be required.

(6) Recency of credits:

(a) will remain the same.

(b) An ~~A~~applicants for initial certification ~~or reinstatement~~ whose degree is over 15 years old or an applicant whose period of lapse is over 15 years must meet the requirements listed in ~~the~~ ARM 10.57.220 (1) and (2).

(7) and (8) will remain the same.

10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE (1) through (4) will remain the same.

(5) Recency of credits:

(a) will remain the same.

(b) An ~~A~~applicants for initial certification ~~or reinstatement~~ whose degree is over 15 years old or an applicant whose period of lapse is over 15 years must meet the requirements listed in ~~the~~ ARM 10.57.220 (1) and (2).

(6) through (11) will remain the same.

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) through (3) will remain the same.

(4) Reinstatement: Lapsed certificates cannot be renewed but the holder may apply for reinstatement provided requirements are met which are in force at the time reinstatement is requested. A minimum of 6 quarter (4 semester) credits or the equivalent must be earned within the 5-year period preceding the effective date of the certificate, or one year of experience with a master's degree. Effective in 1995, 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate will be required.

(5) Recency of credit:

(a) will remain the same.

(b) An ~~A~~applicants for initial certification ~~or reinstatement~~ whose degree is over 15 years old or an applicant whose period of lapse is over 15 years must meet the requirements listed in ~~the~~ ARM 10.57.220 (1) and (2).

4. The reason for the change in the rule was amended as follows: Office of Public Instruction has required that all teachers obtaining initial certification have recent credits under five years old. This requirement for recent credit applies to those who allowed their certificates to expire. This requirement for recent credit was contained in 10.57.208 Reinstatement and in subsections on reinstatement under 10.57.401, 10.57.402 and

10.57.403 but was not specifically stated for initial certification or lapsed certificates. This proposal will place in rule those policies under which OPI has operated in absence of an ARM regulation and authorizes that particular procedure.

Bill Thomas

BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Wayne B Buchanan

WAYNE BUCHANAN, EXECUTIVE SECRETARY, BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State April 6, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the proposed amendment of ARM 11.14.324 and 11.14.418 pertaining to overlap day care requirements	))))	NOTICE OF THE AMENDMENT OF ARM 11.14.324 AND 11.14.418 PERTAINING TO OVERLAP DAY CARE REQUIREMENTS

1. On February 27, 1992, the Department of Family Services published notice of the proposed amendment of ARM 11.14.324 and ARM 11.14.418 pertaining to overlap day care requirements, at page 285, issue number 4, of the 1992 Montana Administrative Register.

2. ARM 11.14.324 has been amended as proposed, except for the addition of Section 52-2-704, MCA, as a code provision implemented by the rule:

AUTH: Section 52-2-704, MCA. IMP: Section 52-2-702; 52-2-704, MCA.

3. ARM 11.14.418 has been amended as proposed with the following changes from the previously published proposed amendment, additional language to be deleted interlined:

11.14.418 FAMILY DAY CARE HOMES, OVERLAP CARE

(1) There may be situations, such as before and after school, when the number of children in care over two (2) years of age would exceed for a short period of time the registered capacity.

(a) Overlap of children under two (2) years of age shall not be permitted.

(b) Overlap care shall not exceed three (3) hours total in any child-care day.

(c) Family day care homes ~~that are registered to care for four (4) or fewer children may care for one (1) additional child during the approved overlap time. Family day care homes that are registered to care for five (5) or six (6) children~~ may care for two (2) additional children during the approved overlap time.

(d) Day care facilities providing two shifts of 12-hour care may be granted three (3) hours of overlap for each twelve continuous hours of care upon the written approval of the family resource specialist or other department licensing representative.

(2) If a provider wishes to provide overlap care, the provider shall file a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(3) Overlap care shall not occur until the provider has received written approval of this plan from the department.

AUTH: Section 52-2-704, MCA. IMP: Section 52-2-702; 52-2-704, MCA.

3. The department has thoroughly considered all the comments received:

COMMENT: Section 52-2-704, MCA, should be cited not only as authority for the proposed amendments, but also as a statute implemented by the proposed amendments.

RESPONSE: The department agrees, and has added the citation in this notice.

COMMENT: Family day care homes registered for 4 or fewer children should be allowed to care for 2 additional children instead of only 1 additional child. Family day care homes registered for four or fewer children have a low child to staff ratio in comparison to other facility types even with an additional overlap child.

RESPONSE: The department agrees and has amended this version of ARM 11.14.418 by deleting language differentiating between family day care homes registered for 4 children from those registered for 6 children.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, April 6, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.16.170 pertaining to adult foster care	)))	NOTICE OF AMENDMENT OF RULE 11.16.170 PERTAINING TO ADULT FOSTER CARE

1. On February 27, 1992, the Department of Family Services published notice of the proposed amendment of ARM 11.16.170 pertaining to adult foster care, at page 288, issue number 4, of the 1992 Montana Administrative Register.

2. ARM 11.16.170 has been amended as proposed, except for the deletion of the authority and implementing citations which were incorrectly cited to in the notice of amendment. The statutes properly providing authority for the rule-making, and properly implemented by the rule-making, are as follows:

AUTH: Sec. 52-3-304, MCA. IMP: Sec. 52-3-303, MCA.

3. The department has thoroughly considered all the comments received:

COMMENT: The department should not amend the rule as proposed. Past attempts at combining adult foster care and child day care have resulted in incidents leading to adult protective services investigations and child protective services investigations. While inter-generational mixing may be beneficial to adults and children, the right of the adult foster care resident to choose the times and places that children are present should be preserved. The proposed amendment purports to require that the provider have the ability to care for both residents and children enrolled in the day care during the time the children are in the home. However, many residents need 24-hour attention, and the amount of attention received by a resident should not be reduced while the children are present. In addition, the amendment lacks specific criteria to objectively judge the ability of the provider to care for both groups in the home. Without specific criteria, the provision requiring the ability to care for both groups cannot be enforced. Finally, the purpose of this amendment is to enable care by a single provider known to the department. In that particular case, the mix of clients has been beneficial for both groups. However, the department should not amend a rule to allow for a single home where the two types of care have successfully co-existed.

RESPONSE: Previous attempts to provide child day care in adult foster care homes have occurred without the requirement of prior approval by the department. These attempts were not necessarily limited as to the time both groups would be present in the home. This amendment requires pre-approval for a short period of day care with an objective measure addressing the crucial question,

i.e., whether the provider is able to provide for the needs of both groups of clients. Each situation must be assessed on a case-by-case basis with the issue of ability to provide for clients' needs as the focal point. More specific criteria would make a case-by-case assessment impossible. Furthermore, the amendment requires that the regional administrator consider whether the mixing is beneficial. Therefore, objections of residents may be considered. Finally, the existence of an adult foster care home which has successfully provided care to both groups of clients provides support to, rather than detracts from, the argument for amending the rule. The conditions which allow one home to succeed are not so unique that other homes should be disallowed the opportunity to at least apply for licensure for provision of care to both groups.

COMMENT: Adult day care services should also be allowed in adult foster care homes. Allowing for adult day care in adult foster care homes could result in more adult foster care homes, and more adult foster care homes are needed in Ravalli County.

RESPONSE: The department has not made a decision as to proposing an amendment including adult day care in adult foster care homes. Therefore, the issue is beyond the scope of this rule-making.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John C. Melcher

John Melcher, Rule Reviewer

Certified to the Secretary of State, April 6, 1992.

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

In the Matter of the Amendment of Rules 23.14.402 through 23.14.404 relating to Peace Officers Standards and Training	))))	NOTICE OF AMENDMENT OF RULES 23.14.402 THROUGH 23.14.404

TO: All Interested Persons:

1. On January 16, 1992, the Board of Crime Control published notice of a proposed amendment to the following rules concerning Peace Officer Standards and Training at page 22 of the 1992 Montana Administrative Register, issue number 1.

2. The agency has amended Rules 23.14.402 through 23.14.404 as proposed.

3. No comments or testimony were received.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Administrator

By: Edwin L Hall
EDWIN L. HALL, Administrator
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 3/24/92

Judy Browning
Rule Reviewer

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

In the matter of the amendment and repeal of rules relating to Unemployment Insurance Tax and Contributions, and Benefits	NOTICE OF AMENDMENT AND REPEAL OF RULES RELATING TO UNEMPLOYMENT INSURANCE TAX AND CONTRIBUTIONS, AND BENEFITS

To: All interested persons

1. On January 16, 1992, the Department of Labor and Industry published notice of public hearing on the proposed amendment and repeal of the rules referenced above at page 25 of the 1992 Montana Administrative Register, issue number 1.

2. A public hearing was held on February 7, 1992, and was attended by representatives of the department. 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 by staff of the Legislative Council in the form of written testimony suggesting further clarification of the reasons for the rule change.

3. After consideration of the comments received, the rules are being amended and repealed as proposed.

24.11.333 SELF-EMPLOYMENT APPEALS---NECESSARY PARTIES---DECISIONS BINDING FOR TAX PURPOSES - Is Repealed.

24.11.101 DIVISION ORGANIZATION --- BUREAU ADDRESSES - Is adopted as proposed.

COMMENT: Legislative Council Staff advised that 2-4-201 MCA also is authorization for rulemaking in this instance.

RESPONSE: 2-4-201 MCA authorizes rulemaking for publication of an agency organization, and is added as authority for the above rule.

24.11.442 INITIAL MONETARY DETERMINATION---WAGES---REVISIONS - Is adopted as proposed.

COMMENT: Legislative Council Staff advised that the statement of reasonable necessity should include further detail of the effects of recent legislation.

RESPONSE: Portions of House Bill 726 and House Bill 256 (now ch. 373 and 485, L. 1991) amended certain statutes in Title 39, chapter 51, MCA. For this and future rule response these revised statutes will be cited. 39-51-2105 and 39-51-2201 MCA were amended to revise the criteria for determining the qualifications for benefits, eliminating "20 weeks of work" standard and substituting the standards contained in 39-51-2201(2). In addition, the Board of Labor Appeals decisions effecting "lump sum" payments compelled the adoption of revised

procedures in the treatment of severance pay. To make uniform the "lump sum" payment process to all terminating pay, e.g. sick leave, vacation etc. this rule was revised.

24.11.451 SIX-WEEK RULE - Received no comments and is adopted as proposed.

24.11.458 SELF EMPLOYMENT - Is adopted as proposed.

COMMENT: Legislative Council Staff advised that the statement of reasonable necessity should detail the legislation revising the rule.

RESPONSE: The 1991 Legislature repealed 39-51-2308 MCA concerning disqualification from benefits of a person self-employed. The revised rule adopts the criteria of 39-51-2104 and an individual self-employed will be disqualified from benefits only under 39-51-2304.

24.11.468 FRAUDULENT OVERPAYMENTS - Is adopted as proposed.

COMMENT: Legislative Council Staff recommended more detail regarding the basis for the rule.

RESPONSE: The former 39-51-3201 provided for an 18% interest penalty repayment for making false representation. This formula was difficult to apply in all situations. 39-51-3201 was amended to allow Department discretion and asses interest payments up to 100% of the benefits received. This rule establishes Department policy that the interest penalty assessment will be 33%.

24.11.605 DEFINITIONS - Is adopted as proposed.

COMMENT: Legislative Council Staff recommended more detail regarding the basis for the rule.

RESPONSE: The Legislature enacted ch. 373, L. 1991 amending 39-51-1217 MCA to change the date that the Department utilizes to determine the schedule of rates assigned to the appropriate employer based on the trust fund reserve. This rule is amended to reflect that change of dates.

24.11.606 EXPERIENCE-RATED EMPLOYERS - Is adopted as proposed.

COMMENT: Legislative Council Staff recommended more detail regarding the basis for the rule.

RESPONSE: In the former 39-51-1121 MCA so-called "new" employers were classified as "unrated" employers. 39-51-1121 was amended

in ch. 373, L. 1991 to define a "new" employer, to re-define an experience rated employer as an "eligible, new or deficit" employer. 39-51-1213 MCA was amended to establish a penalty rating for all employers when they have failed to file the appropriate report or paid taxes, penalty or interest due. The rule reflects these changes.

24.11.613 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS-CHARGEABLE EMPLOYERS - Received no comments and is adopted as proposed.

24.11.701 RECORDS TO BE KEPT BY EMPLOYER - Is adopted as proposed.

COMMENT: Legislative Council Staff recommended more detail regarding the basis for this rule.

RESPONSE: 39-51-2105 MCA deleted "weeks of work standard" as a criterion for computation of benefits. This rule eliminates "weeks of work" as a reporting requirement by employers.

24.11.702 QUARTERLY REPORTS BY EMPLOYERS - Received no comments and is adopted as proposed.

24.11.808 WAGES - Is adopted as proposed.

COMMENT: Legislative Council Staff recommended more detail regarding the basis for the rule.

RESPONSE: As "weeks of work" is abolished as a standard for computing benefits it is deleted as a reportable item. The rule reflects this change.

William E. O'Leary,
Rule Reviewer

Mario A. Micone, Commissioner
Department of Labor and Industry

Certified to the Secretary of State April 1, 1992.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF NEW RULES 36.22.703, 36.22.1014, 36.22.1104, 36.22.1105, 36.22.1222 AND 36.22.1223; AND THE AMENDMENT OF RULES 36.22.302, 36.22.307, 36.22.602, 36.22.1001, 36.22.1002, 36.22.1005, 36.22.1012, 36.22.1013, 36.22.1103, 36.22.1204, 36.22.1207, 36.22.1226, 36.22.1227, 36.22.1241 AND 36.22.1242; AND THE REPEAL OF RULE 36.22.1204; PERTAINING TO THE ISSUANCE OF OIL AND GAS DRILLING PERMITS, DRILLING AND PRODUCTION WASTE DISPOSAL PRACTICES, THE FILING OF REPORTS, LOGS, AND OTHER INFORMATION, BLOW-OUT PREVENTION AND SAFETY REQUIREMENTS, SPILL NOTIFICATION REQUIREMENTS, HYDROGEN SULFIDE GAS REPORTING REQUIREMENTS, AND OTHER ENVIRONMENTAL REQUIREMENTS.	CORRECTED NOTICE OF ADOPTION

To: All Interested Persons

1. On March 26, 1992 the department published a notice at page 654 of the amendment and adoption of the above captioned rules.

2. The notice of amendment of Rule 36.22.302 incorrectly listed definition numbers 59-80. The text remains the same but said definitions are renumbered as follows:

36.22.302 DEFINITIONS

(59) through (80) will remain the same but are renumbered (60) through (81).

Certified to the Secretary of State April 6, 1992.

Reviewed by:

Don MacIntyre
DNRC Attorney

Dee Rickman
Assistant Administrator

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

* * * * *

IN THE MATTER of the BOEING COMPANY AND MONTANA AVIATION RESEARCH COMPANY, Petition for Declaratory Ruling on Public Service Commission Jurisdiction Over Performance of a Water System Agreement.	))))))	UTILITY DIVISION DOCKET NO. 92.1.2 DECLARATORY RULING

I. INTRODUCTION

1. On January 10, 1992 the Montana Public Service Commission (Commission) received a Petition for Declaratory Ruling from The Boeing Company (Boeing) and Montana Aviation Research Company (Aviation Research), a wholly owned subsidiary of Boeing (jointly, Boeing and Aviation Research will be referred to herein as "MARCO"). On January 23, 1992, the Commission issued a Notice of Petition for Declaratory Ruling, allowing for comments until February 18, 1992. The Commission has received comments from MARCO, the City of Glasgow (City), Valley County (County), and Valley Park, Inc. (Valley Park).

II. FACTS

2. MARCO proposes to purchase the former Glasgow Air Force Base (the Base) from the County. MARCO, the County, the City, Valley Park, and the North Valley County Water and Sewer District, Inc. (the District) have executed and placed in escrow a Water System Agreement (Agreement). The Agreement provides for the use of existing water supply facilities by the various parties, if MARCO completes acquisition of the Base. Before it will purchase the Base, MARCO requires a determination by the Commission that neither Boeing nor Aviation Research are public utilities or otherwise subject to Commission jurisdiction in delivering water to the District or the City.

3. The existing water supply facilities include a twenty-four mile water pipeline and processing system (transmission system) consisting of an intake on the Missouri River (River), the pipeline itself, several pumping stations, a treatment plant, and various easement and incidental properties. The transmission system is located outside the boundaries of a housing and commercial development area adjacent to the Base, referred to as St. Marie. The existing facilities also include a water distribution system within St. Marie and extending to a few adjacent building sites. The distribution system consists of a main distribution line, elevated storage tank, distribution system piping, service lines, and fire hydrants.

4. MARCO intends to operate an aircraft testing and flight training facility, upon purchasing the Base. MARCO's

interest in the Agreement is to procure a water supply system for its operations at the Base.

5. The residents of St. Marie recently elected to form the District pursuant to Title 7, chapter 13, parts 22 and 23, MCA. The District is responsible for providing water and sewer services to St. Marie. The District desires to acquire a long-term water supply to satisfy the requirements of its commercial and residential customers, including St. Marie and several adjacent commercial facilities.

6. Valley Park owns and is developing the undeveloped portions of St. Marie. Valley Park also needs to ensure that the District has an adequate supply of water to supply water and sewer services to St. Marie. Individuals have purchased about 50 housing units within St. Marie.

7. The County presently owns the transmission and distribution systems and proposes to transfer the obligations and responsibilities it assumed upon acquiring the Base from the federal government in 1979. These obligations include furnishing water and sewer service to the Base and the adjacent housing areas and maintaining and, when necessary, repairing and refurbishing the systems.

8. The City has had an arrangement with the County to alternate usage of the intake facility and the first stage pumping. The City takes the water pumped from the River to a "T" on the pipeline system located about eight miles north of the intake facility. From the "T" the City transports the water to the City through a City-owned pipeline. The City holds its own water right and fully controls its operations, taking the entire flow of water when necessary to satisfy its water needs. The County does not share control or expenses of such operations by the City. The City/County arrangement remains unchanged upon MARCO's proposed purchase of the Base.

9. When the County acquired the Base, it also acquired the entire transmission system to the Base and distribution system in the housing areas. It obligated itself to provide an adequate water supply to the areas adjacent to the Base at "fair and reasonable rates based on current charges in the area." Upon transfer to MARCO, the County will no longer have this obligation.

10. If deemed not a public utility, MARCO will purchase from the County the transmission system from the River to the boundary of St. Marie. The City will continue to use the lower portion of the pipeline, as it has under the existing arrangement with the County, to draw water appropriated by the City from the River in an amount up to 2.5 million gallons per day and transport such water to the City-owned pipeline. The City will continue to distribute its water to its customers.

11. MARCO and the City will use the pipeline on an alternating basis with the City responsible for and conducting all operations when it is drawing water and MARCO responsible for and conducting all operations when it is drawing water. The City will reimburse MARCO for its pro rata share of the operating expenses and capital costs related to the lower pipeline from the intake to the "T."

12. The County will convey to the District the distribution system located within St. Marie. MARCO will transport water through the transmission system (including treatment facilities) and sell treated water in an amount up to 2.0 million gallons per day to the District at a single metered gate at the District's boundary. The price for water to the District, as agreed upon, is fixed for the first five years ($1.12 per 1,000 gallons). The price is then modified to account for a standard price index for the following three years, and thereafter set by fixed formula for perpetuity, with the first five remaining years capped.

13. The District will resell the water to its government, commercial, and residential customers located within St. Marie and on the adjacent property. MARCO will retain a maximum of 500,000 gallons of water per day for its own uses at the base. If necessary, the District, the City, and MARCO have provided for expansion of the capacity of the transmission system. The pipeline is in need of major repair. MARCO will undertake, as necessary, repairs on the transmission system from the River to the St. Marie boundary, to ensure continued use of the transmission and distribution systems. Except for MARCO supplying water to itself, selling water to the District, and reserving uses to the City, no other entity will have access to the transmission system.

14. If MARCO sells the Base property, it must complete all required repairs on the pipeline system and use reasonably good faith efforts to arrange for the purchaser to assume MARCO's obligations. If the purchaser will not assume those obligations, MARCO must convey all of its interest in the lower pipeline to the City and all of its interest in the upper pipeline to the District. The District and the City will continue to receive the share of the water allocated to them. MARCO is required to negotiate a settlement with the District, whereby the District is in the same position as it would have occupied had MARCO not sold the Base.

III. QUESTION PRESENTED

15. The question of law presented to the Commission is whether MARCO, as described in the facts presented by MARCO, is a public utility or common carrier subject to the jurisdiction of the Montana Public Service Commission. The Commission determines that MARCO is not subject to Commission jurisdiction. However, the Commission reaches its opinion on grounds other than those presented in briefs.

IV. ANALYSIS

A. Status as a Public Utility

16. The question of public utility status arises in the delivery of water to either the City or the District. Section 69-3-101, MCA, defines "public utility" and provides exemptions from the definition. A public water utility, pursuant

to definition owns, operates or controls plant or equipment and/or any water right(s) within the state for production, delivery or furnishing for or to other persons, firms, associations or corporations, water for business, manufacturing and/or household use. § 69-3-101(1)(a), MCA. Privately owned and operated water and/or sewer systems that do not serve the public are exempted from the definition. § 69-3-101(2)(a), MCA. Likewise, county water or sewer districts are not public utilities. § 69-3-101(2)(b), MCA.

17. The Commission determines that the MARCO-City relationship does not make MARCO a public utility. MARCO does own plant and equipment. However, pursuant to the provision for joint operation and control, the City produces, delivers, and furnishes water to itself through facilities that it operates and controls. MARCO does not perform the requisite "production, delivery, or furnishing to or for" others. Mere ownership of the facilities does not cause MARCO to fall within the definition of public utility under the entirety of the facts presented. The MARCO-City relationship results from the long-term relationship between the County and the City, in which the City produced, delivered and furnished water to itself. The City pays MARCO only its pro rata share of operating and capital costs.

18. The relationship between MARCO and the District requires a more detailed analysis. Based on the following reasoning, the Commission also determines that the MARCO-District relationship does not make MARCO a public utility. MARCO's primary intent is to purchase an airfield, conduct flight training and aircraft testing operations, and supply itself with water. MARCO has not set out to supply water to another. Incidental to supplying water to itself, MARCO has agreed to supply water to the District. But for MARCO's relationship with the City and the District, no other entity will have access to the pipeline. MARCO will be supplying water to a county water district expressly exempt from public utility regulation by statute (§ 69-3-101(2)(b), MCA). Pursuant to Title 7, Chapter 13, Part 2200, persons within the boundaries of a proposed district vote on the question of creating the district (an election). Upon a favorable vote, a district formed by the election has powers, including the power to acquire a water supply by construction, purchase, lease or otherwise. § 7-13-2218(1), MCA. A district also has the power to sell water or the use of water for household, domestic or similar purposes to municipalities or to consumers located within or outside district boundaries. § 7-13-2218(7), MCA.

19. The District has the obligation to provide water to the consumers within its boundaries. The ultimate consumer interests are the responsibility of the District and not the Commission, which is expressly proscribed from regulating the District. In supplying water to the District, MARCO will not be delivering water to the public but rather to an entity statutorily exempt from Commission regulation.

20. MARCO, not otherwise a public utility, does not acquire public utility status in this limited situation where it

delivers water to the metered gate at the District's boundary. In this situation, MARCO is a privately owned and operated system serving itself and providing water to a county water district. MARCO, therefore, does not serve the public and is exempt from regulation. § 69-3-101(2)(a), MCA. If circumstances should change and MARCO decide to serve the public, the Commission would reexamine the question of its public utility status.

21. This ruling is binding upon MARCO and determines its rights only upon the factual situation presented. If MARCO were otherwise a public utility, then the Commission would exercise its jurisdiction over its provision of water to the District.

22. The sale of water by MARCO will be through this metered gate, in bulk, for resale and distribution to consumers by the District, a self-regulated entity with the right to acquire its water supply and to set its rates and terms for its customers, subject to any restrictions in Title 7, MCA, or other governmental restrictions not found in Title 69, MCA. MARCO's intended operations are outside the definition of "public utility" provided by Section 69-3-101, MCA.

B. Common Carrier Status

23. The Commission will briefly address MARCO's ancillary contention that it is not a "common carrier" pursuant to § 69-11-101, MCA. The Commission has never interpreted, and finds no basis to interpret, chapter 11 as applying to the transportation of water by pipelines.

24. Pursuant to statutory construction, when general and particular provisions are inconsistent, the particular intent controls the general. § 1-2-102, MCA. The Commission cannot infer a general intent in § 69-11-101, MCA, for a "contract for carriage" of "property" from these circumstances. The specific and particular intent of § 69-3-101 et seq., MCA, governs where there is a specific question of delivering water (not the more general "property") on transmission facilities to others. Common carrier concepts are not germane to this situation.

V. DECLARATORY RULING

25. Fully apprised of all premises, the MONTANA PUBLIC SERVICE COMMISSION HEREBY DECLARES that, in furnishing and delivering water to the City of Glasgow and the Valley County Water District, the Boeing Company and Montana Aviation Research Company, individually or jointly, do not hold status as a public utility or common carrier regulated by the Montana Public Service Commission.

Done and Dated this 6th day of March, 1992 by a vote of 4 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1991. This table includes those rules adopted during the period January 1, 1992 through March 31, 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 December 31, 1991, 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.

ADMINISTRATION, Department of, Title 2

2.21.619 and other rules - Holidays, p. 351
2.21.1803 and other rule - Sick Leave Fund, p. 353
2.21.6607 and other rules - Record Keeping, p. 2516
(Public Employees' Retirement Board)
I-III Annual Retirement Benefit Adjustments for Montana Residents, p. 1888, 2402
2.43.404 and other rules - Purchasing Service Credits - Election of Coverage Under New PERS Disability Retirement Provisions - Calculation of Payment of Supplemental Retirement Benefits for Retired Municipal Police Officers, p. 1604, 2216, 35
2.43.431 Purchase of Military Service in the Sheriffs' Retirement System, p. 466
(Teachers' Retirement Board)
I-II Eligibility and Calculation of Annual Benefit Adjustments, p. 2238, 129
2.44.306 and other rules - Crediting Military Service - Payment of Benefits at Death - Payment of Child's Benefit - Bonuses as Compensation - Correcting Errors on Wages Not Reported, p. 1770, 2596
(State Compensation Mutual Insurance Fund)
I and other rules - Construction Industry Premium Credit Program - Classifications and Establishment of Premium Rates, p. 257

AGRICULTURE, Department of, Title 4

STATE AUDITOR, Title 6

COMMERCE, Department of, Title 8

(Board of Sanitarians)
8.60.406 and other rules - Employment Responsibilities - Registration Certificates - Renewals and Fees - Continuing Education - Sanitarian-In-Training - Environmental Sanitation, p. 360
(Board of Social Workers and Professional Counselors)
8.61.401 Definitions, p. 884, 1931
(Board of Passenger Tramway Safety)
8.63.501 and other rule - Adoption of ANSI Standard - Registration of New, Relocated or Major Modifications of Tramways, p. 2323, 202
8.63.501 and other rule - ANSI Standard - Fee and Assessment Schedule, p. 577
8.63.519 Fee and Assessment Schedule, p. 182
(Board of Veterinary Medicine)
8.64.402 Fees - Continuing Education - Definitions - Applications for Certification - Examinations - Continuing Education - Use of Specific Drugs - Supervision - Record Keeping - Unprofessional Conduct with Respect to Embryo Transfer, p. 1625, 2030
(Building Codes Bureau)
8.70.101 and other rules - Incorporation by Reference of Codes and Standards, p. 111
(Weights and Measures Bureau)
8.77.101 and other rules - Scale Pit Clearance - Fees - Voluntary Registration of Servicemen and Service Agencies - Weighing Device License Transfer - Random Inspection of Packages - Liquified Petroleum Gas - Accessibility to Stock Scales, p. 886, 1486
(Financial Division)
8.80.301 Consumer Loan Licensees - Advertising, p. 2186, 137
(Local Government Assistance Division)
I Administration of the 1992 Federal Community Development Block Grant Program, p. 14, 440
(Board of Milk Control)
8.86.301 and other rules - Class I Wholesale Prices - Quota Rules, p. 3, 563
8.86.301 Producer Prices - Quota Rules, p. 1894, 2600
8.86.301 and other rules - Class I Wholesale Price - Statewide Pool and Quota Plan, p. 768, 1550
(Board of County Printing)
8.91.101 and other rule - Organization of the Board - Official Publications and Legal Advertising, p. 184
(Board of Investments)
8.97.1301 and other rules - Definitions Related to General Requirements for All Investments in Mortgages and Loans - Requirements for All Residential, Commercial, Multi-Family, Federally Guaranteed Loans - Economic Development Linked Deposit Programs, p. 772, 1379, 38
8.97.1410 and other rules - Commercial and Multi-Family Loan Programs - General Requirements - Terms and Loan Limits - Offering Checklist - Investment Policy,

10.57.102 and other rules - Teacher Certification - Renewal Requirements, p. 2194, 230
10.57.208 and other rules - Teacher Certification - Recency of Credit - Reinstatement, p. 2381
10.57.208 and other rules - Reinstatement - Class 1 Professional Teaching Certificate - Class 3 Administrative Certificate, p. 2232, 297, 1552
10.57.301 and other rule - Endorsement Information - Foreign Languages, p. 2229, 299, 1553
10.57.403 Class 3 Administrative Certificate, p. 491, 1487
10.57.601 and other rule - Request to Suspend or Revoke a Teacher or Specialist Certificate: Preliminary Action - Notice and Opportunity for Hearing Upon Determination that Substantial Reason Exists to Suspend or Revoke Teacher or Specialist Certificate, p. 219, 1488
10.61.207 Student Transportation, p. 2227, 301, 1554
10.67.102 Withholding of Funds for Non-accredited Status, p. 367

(State Library Commission)

I and other rule - Direct State Aid to Public Libraries for Per Capita and Per Square Mile Served - Reimbursement to Libraries for Interlibrary Loans, p. 1971, 2604

FAMILY SERVICES, Department of, Title 11

I and other rules - Foster Parents - Foster Parent Households - Child Care Staff in Group Homes and Child Care Agencies, p. 1819, 2262
11.5.1002 Day Care Rates, p. 1385, 1934, 2259
11.5.1003 Day Care Benefit Payment on a Monthly Basis, p. 1823, 2261
11.7.604 Foster Care Support Services, p. 893, 1489
11.12.101 and other rules - Youth Care Facilities, p. 1903, 2605
11.14.102 and other rules - Definitions - Health Care Requirements for Children in Group and Family Day Care Homes - Physical Examination of Infants in Day Care Facilities - Use of Non-Disposable Diapers in Day Care Facilities, p. 1534, 45
11.14.324 and other rule - Overlap Day Care Requirements, p. 285
11.16.170 Adult Foster Care, p. 288

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

I Species Hunted on Shooting Preserves, p. 1115, 1555
I-II Emergency Adoption - Listing Wildlife Species Prohibited from Importation - Requiring Genetic Testing of Elk Imports, p. 138
I-II Emergency Adoption - Wildlife Species Prohibited from Importation - Genetic Testing of Elk, p. 1831

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

(Human Rights Commission)

I-VIII Housing Discrimination Procedures - Purpose and Scope of Rules - Definitions - Exemptions - Complaints and Answers - Investigation - Conciliation - Staff Representation of Charging Party - Final Disposition, p. 1912, 2488

24.9.805 and other rules - Records on Age, Sex, and Race - Employment Applications, p. 904, 1841

24.11.333 and other rules - Unemployment Insurance, p. 25

24.16.1509 and other rule - Montana's Minimum Hourly Wage Rate, p. 1546, 2264

24.29.1401 and other rules - Workers' Compensation Medical Services, p. 1975, 2622

24.30.102 and other rules - Occupational Safety - Health and Construction Safety, p. 1660, 2490

STATE LANDS, Department of, Title 26

I-XIV and other rule - Recreational Access Program for State Lands - Weeds, Pests, and Fire Protection on State Lands, p. 1986, 568

26.4.1301A Modification of Existing Coal and Uranium Permits, p. 1983, 232

LIVESTOCK, Department of, Title 32

I Control of Migratory Bison from Herds Affected with a Dangerous Disease, p. 1668, 2494

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Reject Permit Applications for Consumptive Uses and to Modify Permits for Nonconsumptive Uses in Towhead Gulch Basin, p. 1670, 1918, 52

I-X Financial Assistance Available Under the Wastewater Treatment Revolving Fund Act, p. 637, 1952

36.12.103 Water Right Application Fees, p. 634, 1009

36.12.1010 and other rule - Definitions - Rejection, Modification or Conditioning Permit Applications in the Musselshell River, p. 519

36.16.117 Water Reservation Applications in the Upper Missouri Basin, p. 1198, 1951

(Board of Oil and Gas Conservation)

I-XVII Underground Injection Control Program for Class II Injection Wells Under the Federal Safe Drinking Water Act (SDWA), p. 521

36.22.302 and other rules - Issuance of Oil and Gas Drilling Permits - Drilling Procedures - Horizontal Wells - Drilling and Production Waste Disposal Practices - Filing of Reports, Logs and Other Information - Blow-out Prevention and Safety Requirements - Hydrogen

SECRETARY OF STATE, Title 44

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46.10.409 Transitional Child Care, p. 1714, 2284
46.10.510 Excluded Earned Income, p. 391
46.10.803 and other rules - Alternative Work Experience Program, p. 396
46.10.823 Self-Initiated Services, p. 2256, 322
46.12.102 and other rules - Organ Transplantation, p. 1719, 2049
46.12.303 Medicare Signature Requirements, p. 2252, 234
46.12.552 Home Health Services Reimbursement, p. 1138, 1856
46.12.1607 Medicaid Reimbursement to Rural Health Clinics, p. 394
46.12.4002 and other rules - Inpatient Psychiatric Services, p. 2593
46.12.4002 and other rules - Restricting Inpatient Psychiatric Services, p. 2212
46.12.4008 and other rule - Post-Eligibility Application of Patient Income to Cost of Care, p. 191, 673
46.12.4101 Qualified Medicare Beneficiaries, p. 194, 674
46.13.303 and other rules - Low Income Energy Assistance Program, p. 1450, 1857
46.15.102 and other rule - Refugee Assistance, p. 196, 675
46.25.101 and other rule - General Relief Assistance Extension of Benefits, p. 2254, 60
46.25.725 and other rules - General Relief Medical Income and Resources, p. 1209, 1736
46.30.1501 and other rules - Child Support, p. 403