RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of permanent rules to implement the retirement incentive program provided by HB 517) NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On June 15, 1993 at 9:00 am in the Board Meeting Room of the Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana, a public hearing will be held to consider the adoption of permanent rules to replace emergency rules adopted to implement the retirement incentive program authorized by HB 517 during the 1993 Legislature.

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

RULE I ELECTION BY LOCAL GOVERNMENTS TO BE SUBJECT TO THE RETIREMENT INCENTIVE PROGRAM (1) A local government employer with a contract for PERS coverage may file an irrevocable election to be covered by the retirement incentive program with the board. Filing of such an election will cause the local government to be subject to the same statutes and rules as state and university system employers for purposes of the retirement incentive program.

(2) A duly signed and certified written notice of election by a contracting local government employer, on forms provided for this purpose by the retirement division, must be received at or postmarked and sent to the retirement division on or before June 1, 1993.

(3) Such notice of election must contain all the following:

(a) the name of the official governing body of the local governmental entity and the name of its authorized agent(s);

(b) the date on which the governing body authorized the agent(s) to file the notice of election and a copy of the official action which authorized this election;

(c) the signature(s) of the agents(s) authorized to bind the local government employer to such an election; and

(d) the official seal of the local government or, if none, certification of agent(s) signature(s) by a notary public.

AUTH: HB 517, Sec. 1
IMP: HB 517, Sec. 1(4)

RULE II NOTICE TO POTENTIALLY ELIGIBLE EMPLOYEES (1) The retirement division will provide all PERS employers with a listing of their potentially eligible and potentially ineligible employees on or before May 14, 1993. Included with this mailing will be instructions for taking part in the retirement incentive program.

(2) State and university employing agencies, and local

government employers who file written elections to take part in the retirement incentive program, must provide each of their employees who were employed on February 1, 1993 with notice of their potential eligibility or potential ineligibility and a copy of the instructions by no later than June 1, 1993. Participating employers who terminated employees on or after March 1, 1993 due to a reduction in force (RIF) must also provide notice to those former employees of their eligibility status under this program.

(3) Notice and instructions will include:

(a) information about the existence and terms of the retirement incentive program;

(b) each employee's potential eligibility status; and

(c) the employee's rights to obtain more information from the retirement division; to clarify or challenge their eligibility status; to obtain statements for the cost of purchasing service; and to obtain estimates of retirement benefits and applications for retirement.

AUTH: HB 517, Sec. 1
IMP: HB 517, Sec. 1 & 5

RULE III PURCHASE OF ADDITIONAL SERVICE BY EMPLOYERS AS A RETIREMENT INCENTIVE (1) Additional service purchased on behalf of members eligible for the retirement incentive program is limited to three years or restrictions otherwise in place in 19-3-513, MCA and ARM 2.43.432 for purchase of such service. The number of months of active duty military service or service from other public retirement systems purchased by a member after January 1, 1990 will reduce the amount of additional service for which the member is eligible to a combined total of no more than 60 months.

(2) Potentially eligible members must apply for additional service under the retirement incentive program on forms provided by the retirement division prior to their voluntary termination from covered employment during the window period.

(3) Potentially eligible members who are involuntarily terminated must apply for additional service under the retirement incentive program on forms provided by the retirement division on or after May 14, 1993 but prior to January 1, 1994.

(4) Applications initially will be reviewed by the retirement division to determine the number of years of additional service a member is eligible to have purchased on their behalf, the number of years of previously purchased additional service which may need to be refunded, or the number of years of additional service which a member is eligible to purchase on their own behalf. The retirement division may request any additional information it deems necessary from the employer or the member to complete this initial review.

(5) Each application for additional service will then be forwarded by the retirement division to the member's employer for certification of termination date; whether the member's termination is voluntary, due to a reduction in force, or for another reason; and whether the member has taken advantage of other termination benefits provided by state law as an

alternative benefit to this program.

(6) After certification is received from the member's employer that the potentially eligible member has terminated employment during the window period, the application for additional service will be formally reviewed and approved by the board.

(7) The cost of the additional service will be based on the eligible member's final 12 months of credited service, ending with the last full month of service as certified by the member's employer on a regular monthly payroll report. When calculating the cost for purchasing service for a member who is currently working less than full time but whose final average salary will be based on full time service, the final 12-month salary will be proportionally adjusted to reflect the purchase of full-time additional service. The cost for purchasing the service will be billed to the member's former employer after formal approval of the application and the additional service will be utilized when computing the member's retirement benefit.

(8) A statement of the cost of purchasing the additional service will be prepared and sent to the member's former employer after the member has been certified to have terminated. The employer may elect to pay the amount in full within one month of billing, or may select an installment payment plan for a period of up to 10 years which will include interest at an effective annual rate of 8%, compounded monthly. The retirement division will provide early payoff or pay down figures, including recalculation of remaining installment payments, at the request of employers utilizing a monthly or annual installment payment option. Prepayments will not relieve the employer of the obligation to make the next installment payment unless the amount owing is paid in full.

(9) A refund of the costs, including interest, of previously purchased additional service as provided in statute will be made to the eligible member after certification of the member's termination within the window period. A member is not entitled to a refund for any portion of previously purchased military service or service from other public retirement systems, even though such purchases after January 1, 1990 may restrict eligibility for additional service under the provisions of 19-3-513(3), MCA.

AUTH: HB 517, Sec. 1 and 19-3-304, MCA
IMP: HB 517, Sec. 1 & 5 and 19-3-503, MCA

RULE IV RETURN TO EMPLOYMENT WITHIN SAME JURISDICTION

(1) Members who receive the retirement incentive may be reemployed within the same jurisdiction for up to 600 hours during any calendar year. A retired member must both terminate covered employment and receive at least one monthly retirement benefit prior to return to active service. An inactive member choosing to delay retirement may return to active service within the same jurisdiction after a break in service in excess of 5 working days.

(2) Members who receive the retirement incentive, and

return to any type of covered employment within the same jurisdiction, must notify the retirement division within one week of employment. A personal services contract entered into between the member and the same jurisdiction is considered a return to employment and is subject to the 600 hour limitation and reporting requirements.

(3) The employer of a member who received the retirement incentive must report all hours paid to the member after return to work within the same jurisdiction. It is the employer's responsibility to accurately report each PERS member's active duty service or service after retirement to the retirement division.

(4) As described in HB 517, all agencies of the state and all units of the university system are considered one and the same jurisdiction for purposes of the restrictions on return to covered employment for members who received the retirement incentive program. Each individual local government unit with a separate contract for PERS coverage is considered a separate jurisdiction. (For example, a member terminating employment with the Department of Agriculture may not return to employment for more than 600 hours during any calendar year with any state agency or unit of the university system, but may return to work with the City of Helena, without forfeiting the additional service credit purchased on their behalf by their former employer.)

(5) When a member forfeits additional service under this rule, the retirement division will refund the amount the employer paid ,for the service, minus the total retirement benefits paid to the member to that point in time. If the employer has not yet completed payments for the additional service, the maximum amount due will be the total benefits paid until the point of forfeiture, plus interest at an effective annual rate of 8%, compounded monthly from the member's original retirement date.

AUTH: HB 517, Sec. 1 and 19-3-304, MCA
IMP: HB 517, Sec. 1(6) and 19-3-1106, MCA

RULE V INFORMATION TO BE RETAINED BY EMPLOYERS (1) To respond to future requests by the board and the department of administration, state and university employers must document and retain the following information on each employee terminating under the retirement incentive program:

(a) the number and classification of the position vacated;
(b) the FTE;
(c) the salary budgeted for FY 94;
(d) the benefits budgeted for FY 94;
(e) the lump sum payout of sick and annual leave paid;
(f) the cost of additional service purchased;
(g) whether the employee was rehired and, if so, the salary and benefits paid and the number of hours employed, by month, during FY 94 and FY 95.
(h) whether a personal services contract was entered into with the former employee and, if so, the amount and duration of the contract, including the number of hours worked, by month,

during FY 94 and FY 95.

(i) whether the terminating employee's position is refilled by another employee and, if so, the salary and benefits paid and the number of hours employed, by month, during FY 94 and FY 95.

AUTH: HB 517, Sec. 1 and 19-3-304, MCA
IMP: HB 517, Sec. 4

3. The rules are proposed to be adopted to permanently implement the retirement incentive program established by HB 517 during the 1993 Legislature. This act provides an incentive for PERS members to voluntarily terminate employment with the state or university system on or after June 25, 1993 but before January 1, 1994. The permanent rules proposed for hearing at this time are the same as and will replace the emergency rules which were adopted effective May 3, 1993 to implement this same law.

To be covered by this law, local governments must make an election by June 1, 1993. RULE I is necessary to provide the mechanism for local governments to make this election.

A retirement incentive will be provided to PERS members who are eligible for early or regular retirement to voluntarily leave public service or who are involuntarily RIF'd during the window period and for those employees who are involuntarily RIF'd on or after March 1, 1993 but before June 25 and who are eligible and retire on or after June 25, 1993. RULE II must be adopted to provide adequate notice to all potentially eligible PERS members so they may make a free and voluntary election to terminate service within the window period.

The retirement incentive provided to eligible employees will be up to 3 years of employer purchased additional service for which the terminating member is eligible. If the member's previous purchase of additional service prevents eligibility for up to 3 years by the employer, amounts for those previous purchases will be refunded to the member so the employer can purchase the additional service on the member's behalf. Employers can pay for the service in a lump sum or over a period of up to 10 years, including interest. RULE III must be adopted to clarify the amount of additional service for which members are eligible; to specify the application and purchase procedures for both active and RIF'd PERS members; to identify how costs will be determined and employers will be billed; and to specify how and when refunds for previously purchased service will be made to eligible members.

PERS members who take the incentive and return to work within the same jurisdiction for more than 600 hours in any calendar year will forfeit the incentive. RULE IV is necessary to clarify limitations on return to employment; to impose specific reporting requirements on both members and employers if they return to work within the same jurisdiction after taking

advantage of the incentive; and to reiterate and clarify the definition of "same jurisdiction" used to limit reemployment by the law.

A report on the effects of the incentives is to be made to the next legislature. RULE V is necessary to clarify to state and university employers the specific information that will be required to be provided to the Department of Administration and the retirement division in order to study these effects of the window and compile the report required by statute.

These rules are the same as the emergency rules on this topic proposed to be adopted by the Board effective May 3, 1993. The immediate effective date of HB 517, in combination with its impending deadline within which local governments must act to participate (June 1, 1993) and the inside eligibility date for the window (June 25, 1993), required the emergency action also noticed on this date. This notice of public hearing will solicit input from all interested parties so that the permanent rules will consider and reflect the full intent of the legislation.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted no later than June 15, 1993 to:

Mark Cress, Administrator
Public Employees' Retirement Division
1712 Ninth Avenue,
Helena, Montana 59620

5. Kelly Jenkins, legal counsel for the Department of Administration, has been designated to preside over and conduct the hearing.

By: Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on May 3, 1993.

BEFORE THE BOARD
OF THE STATE COMPENSATION MUTUAL INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the repeal of rules relating to the organization of the State Fund, open meetings and the establishment of premium rates.	NOTICE OF PROPOSED REPEAL OF RULES 2.55.101, 2.55.201, 2.55.301, 2.55.302, 2.55.303, 2.55.304, 2.55.305, 2.55.309, 2.55.310, 2.55.315, 2.55.316 RELATING TO THE ORGANIZATION OF THE STATE FUND, OPEN MEETINGS AND THE ESTABLISHMENT OF PREMIUM RATES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 29, 1993, the State Compensation Mutual Insurance Fund will repeal rules which relate to the organization of the state fund, open meetings and the establishment of premium rates, and are found on pages 2-3709 through 2-3713, 2-3727, and 2-3733 through 2-3738 of the Administrative Rules of Montana.

2. The proposed rules for repeal follow:

2.55.101 ORGANIZATIONAL RULE (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.201 OPEN MEETINGS (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.301 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.302 CALCULATION OF EXPERIENCE RATES (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.303 CALCULATION OF CREDIBILITY WEIGHTED RATES (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.304 DETERMINATION OF AGGREGATE REVENUE REQUIREMENTS (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.305 PREMIUM RATESETTING (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.309 EXPERIENCE MODIFICATION FACTOR (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.310 VARIABLE PRICING WITHIN A CLASSIFICATION (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.315 VOLUME DISCOUNT (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

2.55.316 MINIMUM YEARLY PREMIUM (IS HEREBY REPEALED)
(AUTH: 39-71-2316, MCA; IMP: 39-71-2315, MCA)

3. The State Fund proposes this repeal because the rules were voided on November 26, 1991 by a decision of the First Judicial District Court, County of Lewis and Clark, the Honorable Thomas C. Honzel presiding. This decision was not impacted by the appeal of the matter, decided by the Montana Supreme Court on January 4, 1993. Rules were adopted by the Board of Directors of the State Fund following the district court decision on an emergency basis, and formally adopted on February 28, 1992, and as amended, remain in place.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Nancy Butler, State Fund, P.O. Box 4759, Helena, Montana 59604-4759, no later than 5:00 p.m. on June 10, 1993.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he may have to Nancy Butler, State Fund, P.O. Box 4759, Helena, Montana 59604-4759, no later than 5:00 p.m. on June 10, 1993.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,600 persons based on approximately 26,000 policyholders.

Rule Reviewer

Chairman of the Board

Rule Reviewer

Certified to the Secretary of State May 3, 1993.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed adoption of New Rules pertaining to the importation of Mint plants and equipment into Montana; repeal of ARM 4.12.1503 pertaining to field inspection; and amending ARM 4.12.1504 pertaining to mint oil fee.	) NOTICE OF PROPOSED ADOPTION) OF NEW RULES PERTAINING TO) THE IMPORTATION OF MINT) PLANTS AND EQUIPMENT INTO) MONTANA; REPEAL OF ARM) 4.12.1503 PERTAINING TO FIELD) INSPECTION; AND AMENDING ARM) 4.12.1504 PERTAINING TO MINT) OIL FEE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1993, the Department of Agriculture proposes to adopt new rules relating to the importation of Mint plants and equipment into Montana; repeal ARM 4.12.1503 pertaining to mandatory field inspection; and amend ARM 4.12.1504 pertaining to the mint oil fee.

2. The proposed new rules will read as follows:

RULE I DEFINITIONS (1) "Berlese funnel" insect collection method is a procedure used by entomologists whereby mint rootstock stolon samples are placed in a funnel with a light above the stolon tissue. Over a period of time, the insect pests will migrate away from the light, down the funnel, and will be captured for examination.

(2) "Certified" mint rootstock is rootstock which has been grown under an official certification program and been found free of mint wilt and pests. The certification program must meet or exceed the certification standards set forth in rule II.

(3) "Committee" means the Montana Mint Committee established in 2-15-3006.

(4) "Equipment" means any machinery, tools, utensils, and other items used in the planting, propagation, tillage, harvesting, processing, storage, and transportation of mint or mint rootstock, or in the extraction of mint oil.

(5) "Mint" means all varieties and hybrids of plants of the genus "Mentha".

(6) "Mint rootstock" means any propagative plant parts of all varieties and hybrids of plants of the genus "Mentha".

(7) "Mint wilt" means the disease caused by all strains of the pathogen "Verticillium dahliae" that infects mint.

(8) "Pests" includes but is not limited to Root Knot Nematode (Meloidogyne hapla), Mint Root Borer (Fumiboytis fumalis), Mint Flea Beetle (Longitarsus waterhousei), Mint Stem Borer (Pseudobaris nigrina), and noxious weeds.

(9) "Phytosanitary certificate" means a document issued by the department or the plant pest regulatory agency of another state which declares that the mint, mint rootstock, or equipment named on the document is free of mint wilt or pests.

AUTH: 80-11-403, MCA IMP: 80-11-401, MCA

RULE II CONDITIONS GOVERNING IMPORTATION OF MINT AND MINT ROOTSTOCK (1) No mint or mint rootstock shall enter Montana unless the following conditions are met:

(a) The mint or mint rootstock is certified mint or mint rootstock which meets the following criteria:

(i) The acreage from which the imported mint or mint rootstock originates is included in an official mint certification program which has been reviewed prior to importation by the Committee and found to substantially meet or exceed the requirements of this rule; and

(ii) The mint or mint rootstock has been inspected in the state of origin and found to be free of mint wilt and pests. Samples of stolons must be collected from each acre during September of the year of production. One 24 hour Berlese funnel sample per acre must be collected and analyzed to determine that the stolons are free from Mint Root Borer, Mint Stem Borer, and Mint Flea Beetle. Also, during September, samples from each acre of Mint rootstock shall be tested for Root Knot Nematode and Root Lesion Nematode. The tolerance for Root Knot Nematode shall be (0) zero. The level of infestation for Root Lesion Nematode shall be listed on the phytosanitary certificate. The mint or mint rootstock must be inspected according to the following time schedule:

(A) All spearmint rootstock fields shall be inspected during the last two weeks in June. All peppermint rootstock fields shall be inspected during the first two weeks of July; and;

(B) All mint rootstock fields (spearmint and peppermint) shall be inspected a second time between September 15, and September 30; and;

(iii) The person(s) conducting the inspections must be able to demonstrate by education, training, and experience, the expertise necessary to identify mint wilt and mint pests; or

(b) The mint or mint rootstock consists of tissue cultured plants, and 100% of these are sent to Montana State University for testing, and are found to be free of mint wilt and pests. Fees for the testing will be determined by Montana State University.

(2) (a) Each lot of Mint or Mint rootstock shipped into Montana must be accompanied by a phytosanitary certificate which states:

(i) The name, address, and phone number of the shipper; and

(ii) The legal description down to quarter section of the field location(s) where the mint or mint rootstock originated from; and

(iii) The name, address, and phone number of the importer; and

(iv) The legal description down to quarter section of the field location(s) where the imported mint or mint rootstock will be planted; and

(v) A statement that the mint or mint rootstock is certified mint or mint rootstock inspected according to the above defined procedure; and

(vi) A statement declaring that based on inspection of the mint or mint rootstock according to the above defined procedure, no mint wilt and pests have been found, with the exception that the level of Root Lesion Nematode infestation must by stated.

(b) A copy of the phytosanitary certificate must be sent to the Montana Department of Agriculture by the agency responsible for plant pest regulations in the state of origin prior to importation of the mint or mint rootstock.

(3) The importing grower shall notify the Committee in advance of any mint rootstock shipment so that a receiving point inspection may be performed.

(4) If any imported mint or mint rootstock is found to be in violation of these importation rules, the mint or mint rootstocks shall be shipped back to the exporting grower or destroyed at the discretion of the importer. If the mint or mint rootstock has already been planted, the mint shall be destroyed by tillage or chemical means. All such remedial actions shall be at the importing growers expense.

AUTH: 80-11-403, MCA IMP: 80-11-401, MCA

RULE III CONDITIONS GOVERNING IMPORTATION OF MINT EQUIPMENT (1) All used mint equipment imported from another state shall be disinfected using the following procedure: All equipment shall be power washed with an EPA approved disinfecting solution. The Committee may require that the power wash procedure be conducted a second time within 24 hours of the equipments arrival in Montana, and be inspected by the Committee.

(2) A phytosanitary certificate shall be issued on all equipment imported into the state declaring that the equipment has been disinfected as in (1) above.

(3) Mint equipment imported without following the above procedures will be disinfected at the owner's expense and shall be subject to a penalty as specified in 80-11-419.

AUTH: 80-11-403, MCA IMP: 80-11-401, MCA

RULE IV. RIGHT TO CONTEST COMMITTEE ACTION (1) Any action taken by the Committee is subject to the contested case provisions of the Montana Administrative Procedure Act as set out in Title 2, Chapter 4, MCA.

AUTH: 80-11-403, MCA IMP: 80-11-401, MCA

3. ARM 4.12.1503 FIELD INSPECTION which imposes mandatory field inspections, is repealed in its entirety. The full text of this rule can be found on page 4-433 of the Administrative Rules of Montana.

AUTH: 80-11-403, MCA IMP: 80-11-411 and 80-22-411, MCA

4. ARM 4.12.1504 FEE ON ALL MINT OIL PRODUCED

(1) Which will not be made effective until July 1, 1993, is amended as follows: "As allowed by statute, the committee sets the fee at ~~10~~ 8 cents a pound for all mint oil produced in Montana."

AUTH: 80-11-403, MCA IMP: 80-11-401, MCA

Reasons: The reason for the new rules is to regulate the movement of all mint, mint rootstock, and mint equipment imported into Montana. The Montana mint growers have recently received mint rootstock that has shown evidence of disease that has the potential to destroy the entire Montana mint industry. The Montana Mint Committee has determined it necessary to adopt rules necessary to ensure that all Mint rootstock and equipment imported or used in Montana is free of mint pests and diseases. Upon adoption of the proposed rule the Montana Department of Agriculture intends to eliminate the existing mint quarantine which only regulates the importation of mint rootstock in Flathead, and Lake Counties.

ARM 4.12.1503. is repealed in it's entirety based on the passage and approval of House Bill 163 which eliminates mandatory field inspections.

ARM 4.12.1504 is amended to lower the mint oil fee from 10 to 8 cents based on passage and approval of House Bill 163 which lowered the minimum mint oil fee to 5 cents, and the adoption of a motion by the Montana Mint Committee at its December 8, 1992 meeting to lower the mint oil fee to 8 cents.

5. Interested persons may present their data, views, or arguments either orally or in writing to Willard A. Kissinger, Administrator, Plant Industry Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT. 59620-0201, no later than June 11, 1993.

6. If a person who is directly affected by the proposed adoption 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 Willard A. Kissinger, Administrator, Plant Industry Division, Montana Department of Agriculture, P.O. Box 200201, Helena, MT. 59620-0201, no later than June 11, 1993.

7. If the agency receives requests for a public hearing on the proposed adoption 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 agency or subdivision or from any 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 and mailed to all interested persons.

W. Ralph Peck
Deputy Director
Department of Agriculture

Timothy J. Meloy, Attorney
Rule Reviewer
Department of Agriculture

Certified to the secretary of state May 3, 1993.

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

In the matter of the proposed amendment of a rule pertaining to report filing fees paid by local government entities under the Montana Single Audit Act	NOTICE OF PUBLIC HEARING ON THE PROPOSED **AMENDMENT** OF 8.94.4102 REPORT **FILING** FEE

TO: All Interested Persons:

1. On June 2, 1993, at 9:00 a.m., a public hearing will be held in the large downstairs conference room at the Department of Commerce Building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the report filing fee schedule.

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

"8.94.4102 REPORT FILING FEE (1) through (6) will remain the same.

(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~~ $ 225
$ 200,000	$ 500,000	~~$ 275~~ $ 225
$ 500,000	$ 1,000,000	~~$ 500~~ $ 425
$ 1,000,000	$ 1,500,000	~~$ 675~~ $ 575
$ 1,500,000	$ 2,500,000	~~$ 775~~ $ 650
$ 2,500,000	$ 5,000,000	~~$ 875~~ $ 725
$ 5,000,000	$ 10,000,000	~~$ 925~~ $ 775
$ 10,000,000		~~$ 975~~ $ 825"

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

REASON: The proposed amendment to the fee schedule provides for a reduction in the report filing fees. The fees are set based on the requirements of section 2-7-514(2), MCA. That section requires that the fees must be based upon the costs

incurred by the Department in the administration of Title 2, chapter 7, part 5, MCA, and upon the local government entities' revenue amounts. The budget for the Department related to the administration of that part has been reduced for the fiscal year beginning July 1, 1993. In addition, the Department now has more accurate information on total local government entity revenues upon which to base the report filing fees. As a result, the reduction in report filing fees is required to meet the provisions of section 2-7-514, MCA.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, 1424 - 9th Avenue, Helena, Montana 59620, no later than June 10, 1993.

4. Richard M. Weddle has been designated to preside over and conduct the hearing.

LOCAL GOVERNMENT ASSISTANCE DIVISION

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 3, 1993.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed repeal, amendment and adoption or rules relating to special education	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL, AMENDMENT AND ADOPTION OF RULES RELATING TO SPECIAL EDUCATION

To: All interested persons

1. On June 3, 1993, at 1:30 p.m., in the auditorium of the Scott Hart Bldg., 303 N. Roberts, Helena, Montana, a public hearing will be held to consider the proposed repeal, amendment and adoption of rules pertaining to special education.

2. The proposed rules for repeal follow. Full text of the rules is found at pages 10-222 through 10-228, 10-232 through 10-232.3, 10-233 through 10-239, 10-241, 10-243 through 10-245, and 10-248.1 through 10-249, ARM.

10.16.901 PARENTAL NOTIFICATION OF DISTRICT IDENTIFICATION, LOCATION, REFERRAL, AND SCREENING PROCEDURES (IS HEREBY REPEALED)
AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.902 PARENTAL NOTIFICATION AND APPROVAL FOR TESTING, FORMAL EVALUATION AND INTERVIEWING (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

10.16.903 WRITTEN NOTIFICATION BEFORE CHANGE IN EDUCATION PLACEMENT/PROGRAM (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

10.16.904 PLACEMENT/PROGRAM MAINTAINED (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

10.16.1002 STORAGE OF PUPIL RECORDS AND CUSTODY OF ASSESSMENT DATA (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1003 DESTRUCTION OF DATA (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1107 INFORMAL NEGOTIATIONS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1111 ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

10.16.1202 CHILD STUDY TEAM PROCESS (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1203 EVALUATION BY THE CHILD STUDY TEAM (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1204 COMPOSITION OF A CORE CHILD STUDY TEAM (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1205 COMPOSITION OF SPECIFIC CHILD STUDY TEAMS (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1206 RECORD OF CHILD STUDY TEAM (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1208 RECORD OF INDIVIDUALIZED EDUCATION PROGRAM (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1209 PERIODIC REVIEW OF INDIVIDUALIZED EDUCATION PROGRAM (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1211 STUDENT TRANSFERS (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1309 CONTRACTED SERVICES (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, 20-7-422, 20-7-423, MCA; IMP: 20-7-403, MCA)

10.16.1311 RESPONSIBILITIES FOR OUT-OF-DISTRICT SERVICES (IS HEREBY REPEALED)
(AUTH: 20-7-403, 20-7-414, 20-7-422, 20-7-423, MCA; IMP: 20-7-403, MCA)

10.16.1701 SPECIAL EDUCATION TEACHERS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1702 TEACHERS OF HOMEBOUND AND/OR HOSPITALIZED STUDENTS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1703 SPEECH PATHOLOGISTS AND AUDIOLOGISTS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1704 SCHOOL PSYCHOLOGISTS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1705 SUPERVISORS OF SPECIAL EDUCATION TEACHERS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1706 SOCIAL WORKERS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1707 COUNSELORS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1708 NURSES (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1709 PHYSICAL THERAPISTS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1710 OCCUPATIONAL THERAPISTS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1711 VOCATIONAL EDUCATION INSTRUCTORS (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

10.16.1712 AIDES (IS HEREBY REPEALED)
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

3. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules is found at pages 10-226, 10-228 through 10-234, 10-236 and 10-237, 10-238 and 10-239, 10-241 through 10-245, 10-252 and 10-253, and 10-267 through 10-275, ARM.

10.16.1001 SPECIAL EDUCATION REQUIREMENTS (1) School records and confidentiality of information must follow the ~~same provisions established for regular education~~ provisions under the Family Educational ~~and Privacy~~ Rights and Privacy Act (FERPA), and its implementing regulations at 34 Code of Federal Regulations (CFR) Part 99, and must follow the provisions established for special education ~~and The Education for all Handicapped Children Act~~ under the Individuals with Disabilities Education Act (IDEA), and its implementing regulations at 34 CFR 500.560 through 34 CFR 500.576.
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1101 PROTECTION IN EVALUATION PROCEDURES (1) Each local educational agency shall establish and implement procedures to ~~assure~~ insure that testing and evaluation materials and procedures used for evaluation and placement of ~~handicapped children~~ students with disabilities are selected and administered so as not to be racially or culturally discriminatory.

(2) ~~The procedures that are developed by each educational agency shall be established in accordance with the following criteria:~~

~~(a) evaluation and placement procedures are administered in accordance with the procedural safeguards in Rule 10.16.1002; and~~

~~(b) the determination of a child's need for special education and related services is based on a comprehensive~~

~~evaluation, which may include but is not limited to:~~

~~(i) an individual psychological examination;~~

~~(ii) relevant physical information;~~

~~(iii) appropriate achievement, testing, and evaluation of classwork;~~

~~(iv) direct observations in a variety of functioning environments;~~

~~(v) assessment of the social skills and emotional status; and~~

~~(vi) interviews with, or information provided by, important and involved persons in the child's life.~~

~~(c) tests and other materials and procedures used for evaluating a child's abilities have been properly and professionally evaluated for the specific purposes for which they are to be used and meet the test of reasonableness in the opinion of a competent professional personnel.~~

~~(d) the evaluation materials and procedures are provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.~~

~~(e) steps are taken to assure that a test administered to a student with a sensory, motor, speech, hearing, visual or other communicative disability or to a student who is bilingual, accurately reflects the child's ability in the area tested and not the child's impaired communication skill or the fact that the child is not skilled in English.~~

~~(f) whenever individual intelligence tests are administered, steps are taken to assure that judgments about the child's placement are not based solely on an I.Q. score, that a behavioral description and an interpretation of the child's functioning on the various subtests are made by the qualified examiner who administered the test, and that the results of the evaluation are expressed in terms of the child's strengths, weaknesses, and needs.~~

~~(g) the cultural differences of a child are taken into account in interpreting the assessment information.~~

~~(h) no single test or type of test or procedure is used as the sole criterion for determining an appropriate educational program for the child.~~

~~(i) the interpretation of the assessment information and the subsequent determination of the handicapping condition is made by a team.~~

~~(j) all relevant information with regard to the functional abilities of the child is utilized in the determination of a handicapping condition.~~ Local educational agencies shall insure, at a minimum, that tests and other evaluation materials:

(a) are provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so;

(b) have been validated for the specific purpose for which they are used;

(c) are administered by trained personnel in conformance with the instructions provided by their producers;

(d) include those tailored to assess specific areas of educational need and not merely those which are designed to

provide a single general intelligence quotient; and

(e) are selected and administered so as best to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

(3) The local educational agency shall insure that no single procedure is used as the sole criterion for determining eligibility for services and an appropriate educational program for a student.

(4) The student shall be assessed in all areas related to the suspected disability. A comprehensive evaluation means all data needed or that would ordinarily be asked for by a competent professional in the evaluation process.

(a) The child study team report shall document the results of a comprehensive evaluation with a written summary statement of the results of the:

(i) student's vision and hearing screening including date of the screening and the results; and

(ii) student's current social and emotional status; and

(iii) student's current curriculum-based academic performance; and

(iv) student's current classroom performance in relation to chronological age/grade peers; and

(v) observation of student in the student's regular educational setting including behavior relevant to the area of suspected disability noted during the observation of the student and the relationship of that behavior to the student's academic functioning or classroom performance; and

(vi) when appropriate, individual assessments of general intelligence, physical health, communicative status, motor abilities, transitional needs and cultural environment.

(5) A supplementary written report of individualized assessments is required in areas related to specific disabilities as follows:

(a) Autism: psycho-educational assessment including interviews with persons knowledgeable about the student; achievement or academic assessments; adaptive behavior assessments; and speech-language assessments.

(b) Cognitive delay: general cognitive ability assessment, including interviews with persons knowledgeable about the student; achievement or academic assessments; and adaptive behavior assessments.

(c) Child with disabilities: (preschool) developmental assessments or academic and general cognitive ability assessments.

(d) Deafness/blindness: medical or optometric and audiological assessments; speech/language assessments; academic assessments; and adaptive behavior assessments.

(e) Hearing impairment or deafness: medical or audiological assessments; and speech/language assessments.

(f) Orthopedic impairment: medical information relevant to educational performance and access of educational opportunity in the regular educational environment including assessment of fine and gross motor performance and its affect on vocational education and physical education and achievement or academic assessments.

(g) Other health impairment: medical information relevant to educational performance and access of educational opportunity in the regular educational environment.

(h) Serious emotional disturbance: general cognitive ability assessment including interviews with persons knowledgeable about the student; achievement or academic assessments; and adaptive behavior assessments.

(i) Specific learning disability: general cognitive ability assessment including interviews with persons knowledgeable about the student; and achievement or academic assessments. Observation:

(i) At least one team member other than a student's regular teacher shall observe the student's academic performance or behavior in the regular classroom setting.

(ii) In the case of the student of less than school age or out of school, a team member shall observe the student in an environment appropriate for a student of that age.

(j) Speech-language impairment: speech/language assessment.

(k) Traumatic brain injury: medical information; psycho-educational assessment including interviews with persons knowledgeable about the student; achievement or academic assessments; adaptive behavior assessments; and speech-language assessments.

(l) Vision impairment: medical or optometric assessments.

(6) Individuals responsible for preparing a supplementary report of an individualized assessment as part of the comprehensive educational evaluation shall summarize in writing their evaluation results including identifying procedures and instruments used to gain the data, results obtained, and a statement of recommendations and implications for student's educational program. The summary shall be kept in the student's special education record.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403)

10.16.1102 INDEPENDENT EDUCATIONAL EVALUATION (1) Parents shall have the right to an independent educational evaluation of their child at public expense ~~when those~~ if the parents ~~have reason to question the appropriateness of the~~ disagree with the local educational agency's or public agency's educational evaluation. The local educational agency or public agency may initiate a hearing under ARM 10.16.2401 through 10.16.2417 to show that its evaluation is appropriate. If the decision of the hearing officer is that the evaluation is appropriate, the parent~~(s)~~ still has the right to an independent educational evaluation, but not at public expense.

(52) Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the

qualifications of the examiner(s), must be the same as the criteria which the public agency uses when it initiates an evaluation.

(a) The local educational agency or public agency shall identify the criteria it uses when it initiates an evaluation and when it determines the qualifications of the examiner and, upon request of the parent, provide information as to where an independent educational evaluation which meets these criteria may be obtained.

(b) The local educational agency or public agency must ensure that the independent educational evaluation is conducted by a qualified examiner who is not employed by the local educational agency or public agency responsible for the child's education and is otherwise provided at no cost to the parent in accordance with IDEA. The local educational agency may establish criteria to ensure that the cost of a publicly-funded independent educational evaluation is reasonable.

(2~~3~~) The parent~~(s)~~ must direct a request for an independent educational evaluation ~~in writing to the district superintendent or the county superintendent when there is no district superintendent~~ to the local educational agency principal or administrative designee who has authority to provide or supervise the provision of special education services. The parent(s) must state ~~the reason(s) for such an evaluation~~ that a disagreement with the current educational evaluation exists.

~~(a) the parent(s) must allow the local school district to complete a current evaluation (assessment during the school year) before requesting an independent evaluation;~~

~~(b) the parent(s) must sign a consent for evaluation to be conducted by the independent evaluator(s).~~

(3) - (4) remains the same, renumbered (4) - (5).

(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

10.16.1104 SURROGATE PARENTS (1) The ~~state educational~~ local educational agency or public agency in which the student lives shall ensure that the rights of a child are protected when the parents of the child ~~are not known, unavailable,~~ cannot be identified, or the whereabouts of the parents cannot be discovered or the child is a ward of the state~~, including the assignment of an individual to act as a surrogate for the parents~~. ~~This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child~~.

(2) ~~The state or local educational agency may select a surrogate parent in any way permitted under state law.~~ The local educational agency shall develop procedures for:

(a) determining whether a student with disabilities needs a surrogate parent; and

(b) assigning a surrogate parent; and

(c) terminating a surrogate parent appointment.

(3) ~~State and l~~Local educational agencies shall ensure that a person selected as a surrogate parent:

(a) - (b) remains the same.

(4c) A person assigned as a surrogate ~~must~~ is not ~~be~~ an employee of the ~~state or~~ local educational agency or public agency which is involved in the education or care of the child.

(4) same as current (5).

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

(5)(a) - (b) same as current (6)(a) - (b).

(6)(a) - (b) remains the same, renumbered (5)(a) - (b).

(6) The local educational agency may petition a court of competent jurisdiction for termination of the surrogate parent appointment when the child becomes an emancipated adult, the child's parents are identified, the whereabouts of the parents are discovered, the child is no longer a ward of the state or the surrogate parent wishes to discontinue her or his appointment.

(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

10.16.1106 PROTECTION FROM LABELING PROCESS (1) The c~~C~~hild study teams shall ~~assign a diagnostic label~~ identify a disability category for each ~~handicapped child~~ student with a disability following comprehensive evaluation. The ~~label~~ disability category shall relate to various ~~handicapping conditions~~ disabilities defined in ~~this manual~~ section 20-7-401, MCA. The ~~diagnostic label~~ disability category is to be used for reports required by the office of public instruction. A local e~~E~~ducational agenci~~e~~s or public agency should not refer to students, teachers or rooms by ~~diagnostic labels~~ category of disability as such practices do not facilitate ~~treatment~~ education and are often harmful to the ~~individual labeled~~ student with a disability. Parents shall be informed of the ~~diagnostic~~ disability category as it relates to ~~the handicapping condition of~~ their student.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403)

10.16.1108 OPPORTUNITI~~E~~S TO PRESENT COMPLAINTS (1) ~~Each agency shall establish written procedures which provide for parental presentation of complaints with respect to any matter relating to the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education for the child~~ The superintendent of public instruction has established the following procedures to provide for the filing of complaints by individuals or organizations alleging that a Montana local educational agency has failed to provide a student with disabilities a free appropriate public education.

(2) Whenever a complaint has been received~~, the parents shall have an opportunity for an impartial due process hearing,~~ with respect to any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a qualified student, the complainant may request an impartial due process hearing in accordance with ARM 10.16.2401 through 10.16.2417.

(3) If the complainant alleges the notice provided by the local educational or public agency was not adequate under 34 CFR 300.505, the state compliance officer shall investigate the

allegations and if the findings support a conclusion that the notice was inadequate, shall order the issuance of a notice in compliance with that section.
(AUTH: 20-7-402, 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1110 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint that the ~~school district~~ local educational or public agency is violating the ~~Education of the Handicapped Act (20 USC, Sections 1401-1461)~~ Individuals with Disabilities Education Act (20 USC, Sections 1401-1485) or its implementing regulations (34 CFR Part 300), the Montana ~~codes~~ statutes pertaining to special education ~~for exceptional children~~ (~~20~~ MCA Title 20, chapter 7, part 4) or the administrative rules ~~of~~ promulgated by the superintendent of public instruction governing special education (~~10~~ ARM Title 10, chapter 16).

(~~a~~2) The complaint must include:

(~~i~~a) A statement that the ~~school district~~ local educational or public agency has violated a requirement of a federal or state statute, regulation or rule that applies to a student with disabilities or special education.

(~~ii~~b) The facts on which the statement is based.

(~~b~~3) The complaint must be filed with ~~Department of Special Services,~~ the Compliance Officer, Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620.

(~~2~~4) Upon receipt of the written complaint, ~~a confidential file shall be opened in the Department of Special Services~~ the compliance officer shall send written notification to the local education agency and/or the public agency named in the complaint that a complaint has been filed, conduct an appropriate investigation of the allegations and prepare a final report stating the findings and conclusions of the compliance officer. The complaint, investigative records and the final report shall be filed in a confidential file retained by the compliance officer.

(a) ~~Information as to the exact nature of the complaint shall be secured from the person making the complaint and placed in the file.~~ If the complaint addresses matters listed in ARM 10.16.1108, ~~T~~the complainant shall be informed of the right to secure a hearing under the provisions of ~~Rules of Procedure for All School Controversy Contested Cases Before the County Superintendents of the State of Montana (ARM 10.6.103)~~ special education due process procedural rules under ARM 10.16.2401, et seq.. The complainant will be notified that unless s/he requests that their names not be released to the local education agency, the district will be notified of the name of the person(s) filing the complaint.

(b) ~~Department personnel shall also discuss the complaint with the school district or agency involved in the complaint. Confidentiality will be maintained unless it is waived by the complainant.~~ The compliance officer shall send written notice to the named local educational or public agency which includes information about the nature of the allegations in the complaint within 10 days of receipt of the complaint.

(i) The compliance officer shall request the local educational or public agency to file its written response to the allegations within 15 days of receipt of the written notice of filing of complaint by the compliance officer.

(ii) The local educational or public agency may request a 10 day extension of the 15 day period. The compliance officer may grant an extension of 10 days if the district or public agency has shown good cause exists.

(iii) The complainant will be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint and the local educational or public agency's response to the complaint.

(c) The compliance officer shall write a preliminary report in regard to the investigation of the complaint and forward a copy to the local educational or public agency and the complainant within 30 days of the receipt of the complaint. If an onsite investigation has not been conducted within that 30 day period, the report will indicate whether an onsite investigation is required and inform the local educational or public agency of the date of such investigation. The preliminary report will inform the complainant of the opportunity to submit additional information, either orally or in writing about the allegations in the complaint.

(d) Following an appropriate investigation, the compliance officer shall review all relevant information and make an independent determination as to whether the local educational or public agency is violating a requirement of federal or state statute, regulation or rule concerning the provision of a free appropriate public education to a student with disabilities. The compliance officer shall write a final report within 60 days of receipt of the complaint unless an extension of the 60 day period is required by exceptional circumstances which exist with respect to the particular complaint. The final report will address each allegation in the complaint and state findings of fact and legal conclusions, if required. If the compliance officer concludes that an allegation is true and that corrective action is required to comply with federal or state law, the compliance officer will order the corrective action and shall include timelines for implementation of such action. The office of public instruction will provide technical assistance at the request of the local educational or public agency.

~~(3) The Department will write a report of preliminary information and send a copy to the complainant and to the school district or agency within 20 days of the receipt of the complaint.~~

~~(4) If the preliminary report indicates that further inquiry is justified and that the complainant has not been satisfied, a team of Department personnel shall conduct an on-site visit.~~

~~(a) If the team determines that the school district or agency is not in compliance with federal or state statutes, regulations or rules, a detailed compliance report will be written.~~

~~(b) The report will specify the problem, corrective actions~~

~~and time lines and will be sent to the school district or agency and to the complainant within 30 calendar days after receipt of the complaint.~~

~~(5) In the event that within 60 days of the Department's receipt of the complaint, the school district or agency is not implementing the corrective actions within the time lines required by the compliance report, the Department will notify the school district or agency of the sanctions to be imposed.~~

~~(a) The Department will give the school district or agency an opportunity for a hearing prior to the execution of the sanctions. The hearing will be conducted according to the provisions of the Montana Administrative Procedures Act.~~

~~(b) An extension of time may be granted only if exceptional circumstances exist with respect to the complaint.~~

~~(6)~~ (e) At any time during this process, if the ~~Department~~ compliance officer determines that the complaint has been resolved and compliance is achieved, ~~it~~ the compliance officer shall inform the complainant and the local educational or public agency of that fact in writing. The complainant ~~is~~ shall be given an opportunity to respond before the complaint is considered closed.

~~(7) The parties involved may request that the Secretary, U.S. Department of Education, review the final decision of the Department.~~

(f) If the complainant disagrees with the decision of the compliance officer, the complainant may request that the Secretary, U.S. Department of Education, Federal Office Building, 400 Maryland Ave. SW, Washington, DC 20202, review the decision.

(g) If within 60 days of issuance of the final report, the local educational or public agency has not implemented the corrective action required by the final report, the office of public instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:

(i) recommending to the board of public education withholding state education funds;

(ii) denial in whole or part IDEA-B federal funds; or

(iii) recommending to the board of public education a change in accreditation status.

(h) If the local educational or public agency alleges that the state education agency has violated a state or federal special education statute, regulation or rule in ordering the corrective action required by the final report, the state education agency shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401(c)(2) through (7), and the Montana Administrative Procedure Act, sections 2-4-601 through 2-4-711, MCA, prior to implementing sanctions.

(AUTH: 20-7-402, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1201 ~~SCREENING AND REFERRAL PROCESS AND~~ LOCAL EDUCATIONAL AGENCY CHILD FIND ~~RESPONSIBILITIES~~ (1) Each ~~school district~~ local educational agency ~~must screen and develop criteria for further assessment for its students annually to~~

~~determine potential candidates for special education~~ shall establish procedures to ensure that all students with disabilities living within the jurisdiction of the local educational agency regardless of the severity of their disability are identified, located, and evaluated including a practical method to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(a) The procedures shall include a method to screen and develop criteria for further assessment for children between the ages of birth to 21 including all children in public and private agencies operated within the local educational agency legal boundaries.

(b) The written procedures shall describe the methods for collecting, maintaining and reporting current and accurate data on all student identification activities. At a minimum, the procedures must:

(i) name the title of the person responsible for the coordination, implementation and documentation of the procedures; and

(ii) describe student identification activities including audiological, health, speech/language and visual screening, and review of screening processes for children who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, or waiver of learner outcomes (accreditation standards); and

(iii) describe the role and responsibilities, if any, of other public or private agencies; and

(iv) ensure the collection and use of data are subject to the confidentiality requirements of these rules.

(2) ~~Each school district is responsible for developing a referral process for children and youth who have been or are being considered for retention, delayed admittance, or considered as a possible referral to a child study team.~~ Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the local educational agency jurisdiction of the activity.

~~(3) Each school is responsible for establishing a child find process.~~

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1204 COMPOSITION OF A CHILD STUDY TEAM (1) ~~A child study team shall consist of a regular classroom teacher, principal, or designee, and a special education person who may serve the child. Parents shall be afforded the opportunity to participate in the child study process. Generally, school psychologists and speech pathologists will complement any team.~~ The evaluation is made by the multidisciplinary child study team including the following members:

(a) A local educational agency principal or administrative designee who has authority to provide or supervise the provision

of special education services:

(i) if the local educational agency does not employ a principal, the county school superintendent or special education cooperative director.

(b) The student's regular education teacher:

(i) if the student has more than one regular education teacher, one of the regular education teachers or a school counselor may represent the teachers;

(ii) if the student is not enrolled in public school, a regular education teacher who teaches grades or subjects appropriate for the student's age; and

(iii) if the student is age 5 and not enrolled in public school, the regular education teacher shall be a teacher with elementary education endorsement. If the student is age 3 or 4, a regular education teacher is not required to participate.

(c) The student's special education teacher when the student is already receiving special education;

(i) if the student is not receiving special education, the special education teacher who will be most likely to serve the student in the event that the student needs special education services shall be appointed; and

(ii) if the student is suspected of having a speech/language impairment, the special education teacher may be the speech/language pathologist.

(d) one or both of the student's parents.

(e) the student, where appropriate.

(f) when the student is enrolled in a private school, a representative from the private school; and

(g) at least one teacher or other specialist with knowledge in the area of suspected disability. For specific disabilities, the following specialists or teachers are required:

(i) serious emotional disturbance or specific learning disability or cognitive delay: a school psychologist.

(ii) speech/language impairment, deaf/blindness, traumatic brain injury: a speech/language pathologist;

(iii) autism: a school psychologist and speech/language pathologist; and

(iv) deafness or hearing impairment: a speech/language pathologist or audiologist.

(2) ~~In addition to the required professional members on a particular child study team, utilization of other expertise is recommended and required in many instances. The child study team may determine what other specialties may be needed to complete an appropriate evaluation.~~ The local educational agency may invite other specialists when such specialists are needed to complete a comprehensive evaluation.

~~(3) The secondary school core child study team will require other individuals at the discretion of the parents or agency to accommodate a particular student's needs (i.e., vocational rehabilitation, counselor, psychologist, nurse, special needs counselor, etc.).~~

(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403, MCA)

10.16.1207 ~~DEVELOPMENT~~ CONTENT OF INDIVIDUALIZED EDUCATION PROGRAM ~~(1) Services provided directly to a child via special education shall begin only when a comprehensive child study team evaluation has been conducted and when written parental/guardian approval of the written individualized education program has been developed. Written parental consent of special education placement shall also be obtained prior to placing the child in the program.~~

(2) remains the same, renumbered (1).

(~~3~~2) The term "individualized education program" means a written statement for each ~~handicapped child~~ student with a disability that is developed ~~in a meeting by a representative of the local educational agency who shall be qualified to supervise the provision of the specially designed instruction to meet the unique needs of handicapped children, regular and/or special education teacher(s) who have direct responsibility for implementing the child's individualized program, the parents or guardian of the child, and whenever appropriate, the child~~ and implemented in accordance with RULE XLVI and RULE XLVII.

~~(4) The statement shall include at least these items:~~

~~(a) a statement of the present levels of educational performance of such child (baseline data);~~

~~(b) a statement of annual goals;~~

~~(c) short term instructional objectives (in addition to the basic academic and life skills objectives, psychometer objectives must also be considered);~~

~~(d) a statement of the specific educational services to be provided to such child and the extent to which such child will be able to participate in regular educational programs;~~

~~(e) the projected date for initiation and anticipated duration of such services; and~~

~~(f) appropriate objective criteria and evaluation procedures and schedules for determining on at least an annual basis, whether instructional objectives are being achieved.~~

~~(5) When individualized education plans are developed for secondary special education students, the following points should carefully be considered:~~

~~(a) whether a total basic skills focus is still realistic;~~

~~(b) whether the service thrust and focus should be developed, compensatory and adjustment skills; and~~

~~(c) whether utilization of a vocational program is appropriate.~~

(3) The individualized education program shall include:

(a) a statement of the student's present levels of educational performance;

(b) a statement of annual goals including short term instructional objectives;

(c) a statement of the specific special education and related services to be provided to the student, and the extent to which the student will be able to participate in regular educational programs;

(i) a description of participation with children without disabilities including the opportunity to participate in the variety of educational programs and services available to

children without disabilities; and

(ii) a description of participation in physical education program;

(d) the projected dates for initiation of services and the anticipated duration of the services; and

(e) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(4) For any student who is 16 years old and at a younger age if appropriate, and for any student who is fourteen years old and is receiving special education and related services more than 50 percent of the school day, the individualized education program shall include a statement of transition services to be provided, if any, including consideration of instruction, community experiences, development of employment and other post-school adult living objectives, and when appropriate acquisition of daily living skills and functional vocational evaluation.

(a) For students who need transition services, the IEP must include a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(b) For students who do not need transition services, the IEP must include a statement to that effect and the basis upon which the determination was made.

(5) Each individualized education program team member shall sign the report. The individualized education program shall be placed in the student's special education record.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1213 PARENTAL INVOLVEMENT (1) ~~Parents~~ Each local educational agency or public agency shall ~~be afforded~~ afford parents the opportunity to participate in the child study team process, ~~individual planning conferences,~~ and individualized education program meetings ~~and periodic educational program reviews. They also shall be afforded the opportunity to assist in scheduling the meetings at a mutually agreed on time and place.~~

(2) ~~The child study team may evaluate the child providing they have written parental consent. Planning conferences and periodic program reviews may be conducted without the parent in attendance only if there is sufficient documentation of attempts/efforts to arrange a mutually agreed on time and place or if the parents waive their right to participate, in accordance with due process procedures~~ Each local educational agency or public agency shall take whatever action is necessary to ensure parent participation, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

~~(3) In cases where it is not possible or practical for the parent to attend, other alternatives may be attempted including individual or conference telephone calls.~~

~~(4) To assure active parent participation, an interpreter may accompany the parents to allow communication in their native or primary language.~~

~~(5) The responsibility for initiating and conducting the individual planning conference rests with the local educational agency.~~

(6~~3~~) No parent of a child placed in a special education ~~program~~ and related services will be required to perform duties not required of any other parent whose child is enrolled in the ~~public schools unless specifically agreed to by both parties in writing~~ local educational agency.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1301 ~~SERVICES IN GENERAL~~ LEAST RESTRICTIVE ENVIRONMENT ~~(1) Individual assistance for a handicapped student shall be accomplished through utilization of the least restrictive educational alternative. Under the least restrictive educational alternative, handicapped students shall be educated, whenever possible, with students who are not handicapped. Removal of handicapped children from the regular educational environment (e.g., placement in special classes housed in separate school facilities) will only occur when the nature or severity of the handicap is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.~~

~~(2) To meet the needs of each handicapped person, districts should afford children access to a variety of instructional and service options. Services will be developed as availability of qualified staff permits. Small school districts with a minimal number of handicapped students should seek to serve those students with programs and services coordinated with nearby districts and/or through special education cooperatives.~~

(1) Each local educational agency shall insure:

(a) That to the maximum extent appropriate, students with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and

(b) that special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) Each local educational agency shall insure that:

(a) each student's educational placement is determined at least annually, is based on his or her individualized education program, and is as close as possible to the student's home;

(b) various alternative placements are available to the extent necessary to implement the individualized education program for each student with disabilities;

(c) unless a student's individualized education program requires some other arrangement, the student is educated in the school which he or she would attend if not disabled;

(d) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the student or on the quality of services which he or she needs; and

(e) in providing or arranging for the provision of

nonacademic and extra curricular services and activities, including meals, recess periods, and the services and activities set forth in ARM 10.16.1310, and each student with disabilities participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of that student.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1305 ~~RESOURCE SERVICE IS NON-CATEGORICAL~~ CONTINUUM OF SERVICES ~~A resource service may serve a combination of handicapping conditions as long as the needs of the children assigned to the service are appropriately met through this option.~~ (1) Each local educational agency shall insure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. The continuum of alternative placements shall:

(a) include instruction in regular classes, special classes, special schools, home instruction and instruction conducted in hospitals, institutions and other settings; and

(b) make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(2) Each local educational agency shall provide each student with disabilities the opportunity to participate in the physical education program available to children without disabilities unless the student needs adapted physical education as prescribed in the student's individualized education program.

(a) Adapted physical education is defined as specially designed physical education as prescribed in the IEP which allows the student opportunity for active participation in the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance and individual and group games and sports including intramural and lifetime sports appropriate to his or her individual needs.

(b) A student may be eligible for adapted physical education if a significant deficit in the student's fine or gross motor performance exists and the student's ability to perform the physical education competencies required by the local educational agency's health enhancement curriculum is adversely affected.

(c) A student's special education program may singularly be adapted physical education.

(3) Each local educational agency shall provide each student with disabilities the opportunity to participate in the regular vocational education program available to children without disabilities unless the student needs specially designed vocational education as prescribed in the student's individualized education program.

(a) Vocational education means organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advance degree. Such programs shall

include competency-based applied learning, occupation-specific skills necessary for economic independence as a productive and contributing member of society and applied technology education.

(4) Each local educational agency shall take steps necessary to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in those services including counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, and referrals to agencies which provide assistance to persons with disabilities.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1308 ~~SERVICES TO HOMEBOUND AND/OR HOSPITALIZED STUDENTS~~ SPECIAL EDUCATION IN HOME, HOSPITAL OR INDIVIDUALIZED SETTINGS (1) ~~Services to any homebound and/or hospitalized students may be provided when a medical doctor verifies that a student is hospitalized or provides medical documentation and reasons for the student's need to remain out of school.~~ For the purpose of providing special education and related services, a local educational agency may place a student with disabilities in her or his home or hospital only when an individualized education program has been developed in accordance with RULE XLVI, and when a medical doctor verifies that the student's medical condition prohibits the student from attending school.

~~(2) When the child study team has completed a comprehensive education evaluation, and determine the child to be handicapped, the service may be extended to the student following completion of an individualized education program.~~

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1310 OUT-OF-DISTRICT ~~SERVICES~~ PLACEMENT BY THE LOCAL EDUCATIONAL AGENCY (1) ~~If a school district is unable to provide services for its resident handicapped students or unable to provide services through cooperative services, the school district may have to use out-of district placement. The decision to place a child out-of district must be recommended by the resident district child study team and approved by the resident district board of trustees. Placement made independently of the public school by the parents and/or other agencies relieves the public school of all financial obligations.~~ If the local educational agency has attempted to develop a placement alternative tailored to the needs of the individual with disabilities and the local educational agency cannot provide a free appropriate public education, the local educational agency may place the student in another local educational agency for the purpose of providing special education and related services in accordance with RULE XLVII and RULE XLVIII.

(2) ~~When a child is handicapped to such a degree that a totally controlled environment is needed, residential school placement may be essential. Room and board and out-of-state tuition costs are considered allowable costs in the district's special education budget. The public school is only responsible~~

~~for room and board and educational costs. Other services such as psychiatric therapy and/or medical treatment must be deleted from the special education costs and assumed by parents and/or other agencies. An out-of-district placement must be approved by the Superintendent of Public Instruction.~~ A student with disabilities may be placed in a residential school or facility for the purposes of providing special education and related services only when the nature and severity of the disability requires a totally controlled environment.

(a) A totally controlled environment refers to one or more of the following conditions:

(i) a 24-hour program of care and instruction is required;

(ii) extreme degrees of consistency of approach between living and school environments are required;

(iii) a total immersion of the student in a treatment program is required in order for educational progress to occur; or

(iv) placement in day treatment programs even with supportive aids and services does not meet individual student needs.

~~(3) A district~~

(b) A local educational agency must first make a reasonable attempt to secure and utilize in-state residential schools or ~~facilities resources~~ before making an out-of-state placement ~~will be approved~~ in a residential school or facility.

~~(4) It is the resident district's responsibility to convene the child study team and set the time and place for conducting a review of the child's needs and educational placement. The receiving district is responsible for providing program monitoring and assisting the resident district with conducting an annual review of the child's program and progress. The receiving district shall provide pertinent data regarding the child's program and progress to the resident district and parents.~~

~~(5) The resident district and receiving district should form a joint child study team to consider the evaluation data and explore program options.~~

~~(6) A cooperative staff may provide supportive services when such services are not available through the local district.~~

~~(7) The resident school district is required to budget for room and board costs in its special education budget. Budget approval does not mean the school district has authorization to send a specific child out of district. Approval shall also be obtained from the school district or agency which is providing the services. Program evaluation is the responsibility of both the resident school district and the providing school district or agency.~~

~~(8) If a handicapped child is placed out-of-state, tuition charges are covered under Contracted Services.~~

(9~~3~~) ~~It is the responsibility of the resident school district to~~ The local educational agency shall be responsible for ensuring that ~~an out-of-district living~~ residential school or facility meets state education standards and makes available special education and related services in accordance with IDEA.

The local educational agency shall ensure that related services including room and board are provided by qualified personnel and in ~~a~~ an appropriately licensed facility. ~~An inquiry should be made to the local social and rehabilitation services division to secure appropriate facilities. The local division can provide the school district with a list of homes which are licensed and/or procedures by which a home can be licensed. Payment schedules should follow rates set by social and rehabilitation services division. Any deviation from that schedule should be based on severity of handicap and shall receive concurrence from social and rehabilitation services and approval from the Superintendent of Public Instruction.~~

(4) Before a local educational agency places a student with disabilities in, or refers a student to another local educational agency or a private school or facility for the purpose of providing special education and related services, the local educational agency shall initiate and conduct a meeting to develop an individualized education program for the student.

(a) For the purposes of placement, the local educational agency shall ensure that a representative of the local educational agency which will provide the special education services or the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the local educational agency which will provide the special educational services or the private school or facility.

(b) After the initial placement, the local educational agency or the private school or facility which provides the special education services, shall initiate any meetings to review and revise the student's individualized education program.

(i) The local educational agency which provides the special education services or the private school or facility shall notify the local educational agency which placed the student and the parent of the student of the IEP meeting and attempt to arrange the meeting at a mutually agreeable time and place.

(ii) The local educational agency which initially placed the student shall ensure that the parents and a representative of the local educational agency which placed the student are involved in any decision about the student's individualized educational program and agree to any proposed changes in the program before those changes are implemented.

(c) The local educational agency which initially placed the student, the local educational agency which provides the special education services, the private school or facility or the parents of the student may request an IEP meeting at any time.
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

10.16.1902 PROGRAM NARRATIVE (1) ~~The program narrative must describe the total special education program within a given district and shall include the following components:~~ Each local educational agency or education cooperative must have a written program narrative that describes policies and procedures for the provision of special education and related services within the

local educational agency or education cooperative. The program narrative shall include the following components:

(a) ~~identification~~ Written procedures to insure:

(i) ~~screening; and~~ that all students residing within the jurisdiction of the local educational agency who are disabled and in need of special education and related services are identified, located and evaluated including students in all public and private agencies and institutions within its jurisdiction;

(ii) ~~number of students receiving services.~~ that confidentiality of personally identifiable information meets the standards of 34 CFR 300.221;

(iii) implementation and use of the office of public instruction comprehensive system of personnel development;

(iv) that in meeting the goal under 34 CFR 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of students with disabilities;

(v) that to the maximum extent practicable, and consistent with 34 CFR 300.550 through 300.553 of subpart E, the local educational agency provides special services to enable students with disabilities to participate in regular educational programs including the types of alternative placements that are available for students with disabilities, and the number of students within each disability category who are served in each type of placement;

(vi) that the local educational agency complies with 34 CFR 300.530 through 300.534;

(vii) that the local educational agency complies with 34 CFR 300.340 through 300.349; and

(viii) procedural safeguards.

(b) ~~referral.~~ Written statement for a goal of providing full educational opportunity to all students with disabilities, aged birth through 21 and a date when the goal will be accomplished; and

~~(i) sources of student performance, information; and~~

~~(ii) referral contact.~~

(c) ~~staffing~~ Copy of local educational agency special education policies and forms.

~~(i) pre-staffings;~~

~~(ii) child study team; and~~

~~(iii) staffing format.~~

~~(d) personnel.~~

~~(i) administration (special education);~~

~~(ii) teachers; and~~

~~(iii) supportive personnel.~~

~~(e) evaluation.~~

~~(i) student; and~~

~~(ii) program.~~

~~(f) facilities.~~

~~(g) needs or deficiencies.~~

~~(h) additional information.~~

(2) ~~If a school district does not provide special education services and does not submit a budget, it still must screen its~~

~~students annually for handicapping conditions. This process must be described in narrative form and submitted to the superintendent of public instruction for approval.~~ If a local educational agency participates in an education cooperative under sections 20-7-451 and 20-7-457, MCA, the local educational agency must submit a single program narrative through the cooperative.
(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

10.16.2401 SCOPE OF RULES (1) These rules govern the procedure for conducting all due process hearings concerning and arising from the education of ~~handicapped children~~ students with disabilities in this state. All rules promulgated by former state superintendents of public instruction with regard to special education due process hearings contrary to these rules are hereby repealed.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

10.16.2402 INITIATING SPECIAL EDUCATION DUE PROCESS PROCEDURE PROCESS (1) Impartial due process matters involving educating ~~handicapped children~~ students with disabilities may be initiated by a parent, legal guardian or surrogate parent of a ~~handicapped child~~ student with disabilities if the parent disagrees with a decision of a school district for which notice to parents is required.

(2) Impartial due process hearings involving educating ~~handicapped children~~ students with disabilities may be initiated by a school district board of trustees or governing authority of the state-operated facility when, after reasonable efforts at mediation, a parent, legal guardian or surrogate parent either fails to provide a written parental consent for a proposed educational action, or provides a formal disapproval of education actions. A hearing may also be initiated by a school district board of trustees to show that its educational evaluation is appropriate whenever an independent evaluation is requested by the parent, legal guardian or surrogate parent.

(3) remains the same.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

10.16.2405 CONFERENCE AND INFORMAL DISPOSITION

(1) remains the same.

(2) This conference of informal disposition may occur at any time prior to the issuing of the final findings of fact, conclusions of law and order of the impartial hearing officer. The parties may informally confer to resolve the special education controversy by stipulation, agreed settlement, consent order, or default. To be effective, any agreement made at such conference must be reduced to writing and signed by all parties. An agreed resolution shall end the proceedings ~~and bar further proceedings~~ upon formal action of the hearing officer unless a party to the hearing appeals the decision under ARM 10.16.2417.

(3) remains the same.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

10.16.2406 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES (1) - (2) remains the same.

(3) Individual privacy. The impartial hearing officer shall provide for provisions to insure the privacy of matters before him/her as is required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and ~~may request that~~ to have the hearing be open to the public. The impartial hearing officer shall also provide or allow an opportunity for the student with disabilities to be present at the hearing upon request of the parent, guardian, surrogate parent or the student with disabilities who is the subject of the hearing.

(4) Location of hearing. The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the ~~parties~~ parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named school district is located.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

10.16.2408 DISCOVERY METHODS (1) - (1)(d) remains the same.

(2) Any evidence to be introduced at the hearing or on file shall be ~~made available for disclosure to all parties~~ disclosed to the opposing party at least ~~five~~ 5 days before the hearing or the evidence will not be admitted.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

10.16.2416 RECORD (1) - (1)(f) remains the same.

(2) Any party to a hearing has the right to obtain written or electronic verbatim record of the hearings. A transcript of the impartial due process hearing shall be taken by a certified court reporter and transcribed and made available upon request of either party to the hearing. The state superintendent of public instruction will pay costs associated with the transcription of the record taken by the court reporter.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

10.16.2417 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) - (8) remains the same.

(9) The office of public instruction, after deleting any personally identifiable information, shall transmit those findings and decisions to the state special education advisory panel and make those findings and decisions available to the public.
(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

4. The rules, as proposed to be adopted, provide as follows.

RULE I SPECIAL EDUCATION DEFINITIONS (1) The following definitions apply to the special education rules:

(a) Consent: incorporate by reference 34 Code of Federal Regulations (CFR) 300.500.

(b) Day: refers to calendar days unless otherwise designated in rule.

(c) Individualized education program (IEP): incorporate by reference 34 CFR 300.340.

(d) Local educational agency (LEA): the local public school district or the state agency authorized to provide education to residents of a state operated facility.

(e) Native language: when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(f) Parent: means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 CFR 300.514. The term does not include the state if the child is a ward of the state.

(g) Public agency: includes the state educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the State which are responsible for providing education to children with disabilities.

(h) Private school student: incorporate by reference 34 CFR 300.450.

(i) Qualified: means that a person has met OPI approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

(j) Related services: incorporate by reference 34 CFR 300.16.

(k) State education agency: the office of public instruction.

(l) Special education: incorporate by reference 34 CFR 300.17.

(m) Transition services: Incorporate by reference 34 CFR 300.18.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE II OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR FREE APPROPRIATE PUBLIC EDUCATION (FAPE) (1) The office of public instruction shall insure that all students with disabilities, ages 3-18 inclusive who are entitled to a free appropriate public education, are provided a free appropriate public education in accordance with Individuals With Disabilities Education Act (IDEA) or federal and state statutes and regulations.

(2) The office of public instruction shall insure that when local educational agencies provide education to individuals ages 19-21 inclusive, individuals with disabilities are provided a free appropriate public education in accordance with IDEA.

(3) The office of public instruction shall insure that all students with disabilities referred to or placed in private schools by a public agency receive the rights and protections under IDEA or federal and state statutes and regulations.

(4) If a local educational agency fails to provide a free appropriate public education for a student with disabilities in accordance with IDEA or federal and state statutes and regulations, the office of public instruction shall take

immediate steps to ensure a free appropriate public education (FAPE) is made available to the student with disabilities.

(a) The office of public instruction may initiate one or more of the following options to ensure that a free appropriate public education is made available for the individual with disabilities:

(i) provide FAPE directly;

(ii) contract for services to provide FAPE;

(iii) provide an out-of-district placement in accordance with least restrictive environment regulations of IDEA;

(iv) recommend to the board of public education withholding of state education funds;

(v) deny in whole or part IDEA-B federal funds; or

(vi) recommend to the board of public education a change in accreditation status.

(b) Any costs incurred by the office of public instruction to provide FAPE to a student with disabilities due to failure of the local educational agency to provide FAPE, may be recovered from the local educational agency through a reduction in state education funds upon recommendation of the office of public instruction and hearing before the board of public education. (AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE III OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING (1) The office of public instruction shall provide an ongoing and systematic monitoring process to ensure compliance with all applicable statutes and regulations. The procedures shall apply to all educational programs for students with disabilities including those administered by other state agencies and educational programs for students with disabilities referred to or placed in private schools by a public agency.

(a) The procedures shall include:

(i) on-site visitations of special education services in the local educational agencies; and

(ii) state level review of local educational agency applications, individualized education programs and inquiries by parents, complaints and due process requests; and, whenever a local educational agency submits documentation in support of request for funds, the individual's eligibility for services under IDEA; and

(iii) procedures for identification of noncompliance and its correction including:

(A) the local educational agency's response to the findings; and

(B) written documentation verifying immediate discontinuance of the violation, elimination of any continuing effects of past violations and prevention of the occurrence of any future violations and the steps taken to address the violation; and

(C) verification of compliance by the office of public instruction.

(2) If a local educational agency fails to voluntarily take steps to correct an identified deficiency or fails to take any of the actions specified in a local educational agency correc-

tive action plan, the office of public instruction shall notify the local educational agency in writing of the actions the office of public instruction intends to take in order to enforce compliance with state and federal law.

(a) The notice shall include a statement of the actions the office of public instruction intends to take, right to a hearing and consequence of the local educational agency's continued noncompliance on its accreditation status and approval for state and federal funding of special education services.

(b) The office of public instruction may initiate one or more of the options to under RULE II to ensure compliance.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE IV INTERAGENCY AGREEMENTS (1) The office of public instruction shall develop and implement interagency agreements with the board of public education, departments of social and rehabilitation services, health and environmental sciences, corrections and human services, family services for the purpose of describing the role that each of these agencies plays in providing for special education or related services.

(2) The interagency agreement shall define the financial responsibility of each agency for providing a free appropriate public education and establish procedures for resolving interagency disputes among parties to the agreement; and establish procedures under which school districts may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(3) The interagency agreement shall designate the rules, regulations and educational standards applicable to educational services administered by other public agencies and the monitoring role of the office of public instruction.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE V INTERAGENCY COORDINATION FOR PART H, IDEA (1) The office of public instruction shall develop and implement interagency agreements with the department of social and rehabilitation services for the purpose of coordinating on transition matters between Part H and Part B of IDEA.

(2) The agreement shall include policies and procedures relating to a smooth transition for those individuals participating in the early intervention program under Part H of IDEA who will participate in preschool programs assisted under IDEA, including:

(a) determining financial responsibilities of agencies;

(b) identifying responsibilities for performing evaluations;

(c) developing and implementing educational programs;

(d) coordinating communication between agencies; and

(e) a method of ensuring that when a student with disabilities turns age 3, an individualized education program has been developed and implemented by the student's third birthday.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE VI NOTICE OF AVAILABILITY OF FEDERAL FUNDS (1) The office of public instruction shall annually provide written notice of the availability of federal funds under IDEA.

(2) The notice shall include:

(a) procedures for applicants to follow in completing and submitting application for federal funds under IDEA;

(b) amount of the federal funds and the period during which the local education agency may obligate funds;

(c) goals and objectives for use of the funds;

(d) description of state and federal requirements to which the local educational agency must comply in making application for funds;

(e) office of public instruction's procedure for approving applications;

(f) requirements for project narrative reports and fiscal reports;

(g) a statement of a local educational agency's obligation to make the application and any evaluations, periodic program plans, or reports required by the office of public instruction for this project available for public inspection; and

(h) an application form and an offer of technical assistance from the office of public instruction.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE VII OFFICE OF PUBLIC INSTRUCTION APPROVAL OF PROGRAM NARRATIVE FOR SPECIAL EDUCATION AND RELATED SERVICES (1) The office of public instruction shall approve a local educational agency or education cooperative program narrative that meets the education standards of the office of public instruction and the board of public education. Each program narrative shall be approved at least once every 5 years and when significant amendments to the program narrative are made.

(2) Approval procedures shall include compliance of the local educational agency's program narrative in accordance with ARM 10.16.1902, completion of narrative according to instructions and timelines, and verification of implementation of procedures identified in the program narrative through review of the local educational agency's annual application for federal or state special education funds, child count and special education monitoring results.

(3) If a local educational agency or education cooperative makes a significant amendment to its program narrative, the local educational agency or education cooperative shall follow the same procedures for submitting the original program narrative.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE VIII OFFICE OF PUBLIC INSTRUCTION APPROVAL/ DISAPPROVAL OF APPLICATIONS FOR FEDERAL FUNDS (1) Local educational agency federal funds applications shall be consistent with state and federal regulations and be completed according to application instructions and timelines as stated in notice of availability of federal funds and shall include written assurance that special education and related services

are provided in accordance with the state plan and the local educational agency's program narrative.

(2) The office of public instruction approval procedures shall include:

(a) consideration of a local educational agency's response to onsite program monitoring, complaint investigation or due process hearing decisions which are adverse to the local educational agency;

(b) consideration of any previous office of public instruction or board of public education decisions resulting in withholding of funds;

(c) determination of maintenance of fiscal effort; and

(d) consideration of an approved program narrative.

(3) The office of public instruction shall provide written notice of approval of the application and federal funds award which shall include:

(a) amount of the funds approved;

(b) the period during which the local educational agency may obligate funds; and

(c) statement of federal requirements which apply to the use of the funds.

(4) The office of public instruction shall provide written notice which meets the requirements of U.S. education department general administration regulations (EDGAR) of disapproval of the application and subgrant award.

(5) If a local educational agency or education cooperative makes a significant amendment to its application for federal funds, the local educational agency or education cooperative shall follow the procedures for submitting the original application.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE IX OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS; OPPORTUNITY FOR HEARING (1) If a local educational agency alleges that the office of public instruction violates a state or federal statute or regulation with regard to the disapproval of, or failure to approve the application or project in whole or in part, or failure to provide federal funds in amounts in accordance with requirements of statutes and regulations, the local educational agency shall request a hearing within 30 days of the receipt of notice of proposed disapproval of funds by the office of public instruction.

(a) The request shall be made in writing by the board of trustees of the local educational agency to the state superintendent of public instruction.

(b) The request shall include a statement of the specific allegations of violation of state or federal statute or regulation by the office of public instruction and be signed by the chairperson of the board of trustees.

(2) Within 30 days after receipt of the request, the office of public instruction shall hold a hearing on the record and shall review its action.

(a) At least 5 days prior to the hearing, the office of public instruction shall make available at reasonable times and

places all records of the agency pertaining to the appeal of the local educational agency including records of other local education agencies.

(b) The proceedings for the hearing shall follow IDEA, and its implementing regulations.

(3) No later than 10 days after the hearings, the office of public instruction shall issue its written decision including findings of fact and reasons for the ruling. The office of public instruction shall send a copy of the written decision and findings of fact and reasons for ruling to the board of trustees of the local educational agency.

(4) If the office of public instruction determines that its action was contrary to state or federal statutes or regulations under IDEA, the office of public instruction shall rescind its action.

(5) If the office of public instruction does not rescind its final action after the hearing procedure is completed, a local educational agency may appeal the decision to the secretary of the department of education. The local educational agency must appeal within 20 days of receipt of the written decision and findings of fact and reason for ruling.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE X CONFIDENTIALITY IN CHILD FIND (1) The office of public instruction shall give notice which is adequate to fully inform parents about the requirements under 34 CFR 300.128 and 34 CFR 300.561.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE XI OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT (1) The office of public instruction shall annually direct local educational agencies and other state operated educational programs to count the number of students with disabilities receiving special education and related services on December 1.

(2) In notifying local educational agencies and state operated programs of their responsibility, the office of public instruction shall identify:

(a) procedures to follow in completing, submitting and verifying the count;

(b) personally identifiable information required and statement of maintenance of confidentiality;

(c) a statement of a local educational agency's and state operated program's obligation to ensure an accurate count; and

(d) an offer of technical assistance from the office of public instruction.

(3) The office of public instruction shall provide written assurance to the U.S. department of education that an unduplicated and accurate count has been made and that students with disabilities counted on December 1 had an individualized education program implemented on the date the count was taken.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE XII MISCLASSIFIED CHILDREN (1) Prior to December 1 of each year, the office of public instruction shall notify all local education agencies regarding their responsibility to identify, report and aid in the recovery of funds appropriated for services to misclassified children.

(2) If the office of public instruction determines that IDEA funds have been made available to a local educational agency as the result of misclassified children, the office of public instruction must immediately implement procedures to recover funds.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE XIII PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN (1) The state superintendent of public instruction shall send written notice of IDEA funds made available to a local educational agency as the result of misclassified children.

(a) The notice shall include a statement of the number of misclassified children, means by which the misclassified children were discovered, specific determination of each occurrence of misclassification, and amount, schedule of payment, options for resolving and method of returning funds for misclassified children to the office of public instruction.

(b) The notice must also include a statement of the local educational agency's right to a hearing.

(2) A local educational agency shall have 14 days from receipt of the notice in which to reply in writing to the office of public instruction regarding the accuracy or completeness of its findings.

(3) Upon receipt of the written reply from the local educational agency, the office of public instruction shall review, and if necessary, revise its findings. The office of public instruction shall send written response of its review of the local educational agency reply within 14 days of receipt of the reply.

(4) If a local educational agency disagrees with the findings of the office of public instruction in regard to IDEA funds made available to the local educational agency as a result of misclassified children, the local educational agency may request a hearing under RULE IX.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE XIV FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN (1) If the local educational agency fails to reimburse office of public instruction according to schedule for payments stated in the written notice for funds made available to local educational agency as a result of misclassified children, the office of public instruction shall implement state procedures under RULE III.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE XV STATE ADVISORY PANEL (1) The state superintendent shall appoint members to the state advisory panel for special education comprised of at least one representative of each of

the following groups: individuals with disabilities, teachers of students with disabilities, parents of a student with disabilities, state and local education officials, special education administrators. The state superintendent may expand the advisory panel to include additional persons to provide an appropriate balance between professional groups and consumers-advocates.

(2) The state advisory panel for special education shall:

(a) advise the office of public instruction of unmet needs within Montana in the education of students with disabilities;

(b) comment publicly on the Montana state plan for special education and rules or regulations proposed for issuance by the state and the procedures for distribution of funds under IDEA;

(c) assist the office of public instruction in developing and reporting such information and evaluations as may assist the secretary of the U.S. department of education in the performance of any of the requirements of the IDEA; and

(d) annually review the findings and decisions of due process hearings conducted within Montana.

(3) The state advisory panel for special education shall:

(a) submit an annual report of panel activities and suggestions to the office of public instruction by July 1 of each year and shall make the report available to the public in a manner consistent with other public reporting requirements under IDEA;

(b) maintain official minutes which shall be made available to the public upon request;

(c) publicly announce all advisory panel meetings and agenda items prior to the meeting and conduct meetings open to the public; and

(d) provide interpreters and other necessary services at panel meetings for panel members or participants.

(4) The advisory panel shall serve without compensation but the office of public instruction must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

RULE XVI LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) The local educational agency (LEA) in which the student with disabilities lives is responsible for ensuring that the student has available a free, appropriate public education.

(2) To the extent consistent with their number and location, the local educational agency shall make provision for the participation of private school students with disabilities in special education and related services provided by the local educational agency.

(a) The LEA shall ensure the provision of special education and related services designed to meet the needs of private school students with disabilities living within the legal boundaries of the local educational agency.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XVII LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PRESCHOOL SPECIAL EDUCATION AND RELATED SERVICES (1) The local educational agency shall provide a free appropriate public education to all students with disabilities who qualify for special education and related services under IDEA, Part B beginning on the student's 3rd birthday.
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XVIII LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES (1) The local educational agency shall have procedures to ensure continuation of a free appropriate public education for students with disabilities when promoting the student from preschool to elementary school and from elementary school to junior high or middle school and from junior high or middle school to high school.

(2) Whenever a student with disabilities is receiving special education and related services in a setting not defined by the school's learner outcomes (accreditation standards) and the student is age 14 on or before September 10th of the school year, the responsibility for ensuring a free appropriate public education changes from the elementary local educational agency to the high school local educational agency.
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XIX LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT (1) Each local educational agency shall count the number of students with disabilities receiving special education and related services on December 1 of each year and submit the count to the office of public instruction by December 10 of that year.

(a) The count shall include only those students with disabilities who:

(i) are identified in accordance with RULE XXXII through RULE XLV and have an individualized education program in effect on the date the count is taken;

(ii) are enrolled in public or private school within the jurisdiction of the local educational agency boundaries; and

(iii) are not receiving special education and related services funded solely by other federal agencies.

(b) Students with disabilities shall be identified on the count by:

(i) student initials;

(ii) gender;

(iii) birthdate;

(iv) category of disability; and

(v) any other information the office of public instruction requires to ensure an unduplicated count.

(2) The child count shall be submitted on forms provided by the office of public instruction and shall include written assurance that students with disabilities counted on December 1 had an individualized education program implemented on the day the count was taken.

(3) If December 1 falls on a Saturday or Sunday, the count shall be taken on the first Monday following December 1.

(4) Each local educational agency shall report any corrections in child count to the office of public instruction on or before February 25 of the year following the date of the count.
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XX LOCAL EDUCATIONAL AGENCY FEDERAL FUNDS APPLICATIONS (1) In order to receive federal entitlement funds under IDEA, a local educational agency shall annually submit an application to the office of public instruction in accordance with application instructions and within announced timelines.

(2) The application shall meet the requirements of section 436 of the General Education Provisions Act, and include:

(a) Written assurances to the office of public instruction that the local educational agency:

(i) provides special education and related services in accord with the local educational agency's program narrative under IDEA; and

(ii) uses accounting system that permits identification of use of designated funds.

(b) Written descriptions of how the applicant will, in the ensuing project period year, use:

(i) IDEA funds;

(ii) the office of public instruction comprehensive system of personnel development; and

(iii) facilities, services and personnel for delivery of special education and related services.

(c) Signed debarment and certifications as required.

(d) Data, reports and information to enable the office of public instruction to perform its duties.

(e) Written description of how the applicant will meet the federal requirements for participation of students enrolled in private schools including:

(i) the number of students identified as eligible to receive benefits under IDEA who are enrolled in private schools with the jurisdiction of the applicant; and

(ii) the number who will receive benefits under IDEA; and

(iii) the basis upon which students are selected; and

(iv) the manner and extent to which consultation was conducted with representatives of private school students; and

(v) the places and times that the students will receive benefits under IDEA and the differences, if any, between the program benefits the applicant will provide to private school students and students enrolled in the local educational agency, and the reasons for the differences.

(3) If a local educational agency makes a significant amendment to its application, the local educational agency shall follow the procedures for submitting an original application under IDEA. The office of public instruction shall follow the same review and approval procedures as required for an original application.
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XXI TYPES OF APPLICATIONS FOR FEDERAL FUNDS: SINGLE/CONSOLIDATED (1) A local educational agency may submit either a single district application or a consolidated application unless one of the following conditions apply:

(a) a local educational agency which enters into a cooperative interlocal agreement as provided in sections 20-7-451 and 20-7-457, MCA, shall submit a single consolidated application; and

(b) a local educational agency which generates less than $7500 in entitlement funds under IDEA, Part B or which is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities shall submit a consolidated application.

(2) A local educational agency may submit a single district application if it has:

(a) an entitlement of $7500 or more; and

(b) established, satisfactory to the office of public instruction, special education and related services which provide a free appropriate public education to students with disabilities.

(3) A consolidated application shall meet the same requirements as a single district application.

(a) If the cooperative interlocal agreement does not specifically delegate the power to apply for IDEA funds on behalf of the participating local educational agency to a prime applicant, each participating local educational agency must delegate to the prime applicant the authority to apply for IDEA funds.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XXII WRITTEN NOTICE (1) Written notice which meets the requirements of the written notice of Part B of the Individuals with Disabilities Education Act (IDEA) must be given to the parent of a child with disabilities a reasonable time before the local educational agency:

(a) proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or

(b) refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

(2) The written notice must include:

(a) a full explanation of all of the procedural safeguards available to the parents under Subpart E of Part B of IDEA;

(b) a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(c) a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(d) a description of any other factors which are relevant to the agency's proposal or refusal.

(3) The notice must be:

(a) written in language understandable to the general public; and

(b) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(4) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) that the parent understands the content of the notice; and

(c) that there is written evidence that the requirements in paragraph (4)(a) and (b) of this section have been met. (AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

RULE XXIII PARENTAL CONSENT (1) Written parental consent to conduct an initial evaluation must be obtained by the local educational agency or public agency a reasonable time prior to the evaluation process.

(a) Written parental approval applies only to those procedures used selectively with an individual student (i.e., individual intelligence measures, audiometric evaluation, speech, voice, language evaluation and diagnostic skill testing) and not to basic tests administered to all children in school (i.e., yearly achievement measures, vision screening, hearing screening and speech screening).

(b) The local educational agency shall maintain written documentation of the date the notice of intent to conduct an evaluation was sent to the parent and the date of parental consent for the evaluation.

(2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services must be obtained by the local educational agency or public agency prior to the placement. The local educational agency shall maintain written documentation of the date of parental consent for initial or annual placement.

(3) Except for initial evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or the student.

(a) When parental consent for initial evaluation or initial placement is refused, the local educational agency or public agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing under ARM 10.16.2401 through 10.16.2417, to determine if the student may be initially evaluated or initially provided special education and related services without parental consent.

(i) If the hearing officer upholds the local educational agency or public agency, the local educational agency or public agency may initially evaluate or initially provide special education and related services to the student without parental consent subject to the parent's right to bring a civil action.

(b) When parental consent for annual placement is withheld but not specifically refused or revoked, the local educational agency or public agency shall informally attempt to obtain consent from the parent.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency or public agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be placed in the special education and related services according to the student's individualized education program (IEP) 15 days from the date of the notice.

(ii) If no response from the parent is obtained, the local educational agency or public agency shall place the student in special education and related services according to the student's IEP without parent consent subject to the parent's right to an impartial due process hearing under ARM 10.16.2401 through 10.16.2417.

(c) When parental consent for annual placement is refused or revoked, the local educational agency or public agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing under ARM 10.16.2401 through 10.16.2417.

(d) A parent may revoke consent at any time. If the parent revokes consent, the parent and the local educational agency have the right to due process procedures under ARM 10.16.2401 through 10.16.2417.

(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

RULE XXIV PARENTAL INVOLVEMENT IN INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP) MEETING (1) Each local educational agency or public agency shall take steps to ensure that one or both of the parents of a student with a disability are present at the individualized educational program (IEP) meeting or are afforded the opportunity to participate in the IEP meeting including:

(a) notifying the parent of the meeting early enough to insure that they will have an opportunity to attend; and

(b) scheduling the meeting at a mutually agreed upon date, time and place.

(i) The notice for an IEP meeting shall include information about the purpose, time and location of the meeting and who will be in attendance.

(ii) If the purpose of the IEP meeting includes the consideration of transition services for a student, the notice must also indicate this purpose and that the agency will invite the student and a representative of any other agency that will be involved in transition planning.

(2) An IEP meeting may be conducted without a parent in attendance if the local educational agency or public agency is unable to convince the parent to attend.

(a) If neither parent can attend the IEP meeting, the local educational agency or public agency shall use other methods of ensuring parent participation, including individual or conference telephone calls, personal contact or written

correspondence.

(b) The local educational agency must maintain documentation in the special education record demonstrating a reasonable effort in attempting to convince the parent to attend the IEP meeting including detailed records of telephone calls or visits made to the parent and copies of correspondence to the parent and responses received.

(c) The local educational agency or public agency shall take steps to ensure that the parent understands the proceedings at the IEP meeting.

(d) Upon request by the parent, the local educational agency or public agency shall give the parent a copy of the individualized education program (IEP).

(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

RULE XXV STUDENT'S STATUS DURING PROCEEDINGS (1) During the pendency of any complaint, due process hearing or judicial proceeding, unless the local educational agency and the parent of the student agree otherwise, the student with disabilities shall remain in the student's present educational placement.

(a) If the complaint or due process hearing involves an application for initial enrollment to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(b) If the complaint or due process hearing involves a student age 3-5 who is not eligible for regular enrollment in public school, the student is not eligible for placement in the public school until the student reaches the age of eligibility for enrollment.

(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

RULE XXVI STUDENT'S STATUS DURING EXCLUSION FROM SCHOOL (1) The local educational agency may suspend a student with disabilities provided that the child study team has determined:

(a) the behavior which results in the suspension that is a direct manifestation of the student's disability; and

(b) the length of the suspension is no more than 10 consecutive days or a series of suspensions does not amount to a significant change in placement. In determining significant change in placement, the local educational agency shall consider the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

(2) If the behavior of the student with disabilities poses an immediate threat to the student's safety or the safety of others, the local educational agency may suspend him or her for no more than 10 days.

(a) Exclusion from school which constitutes a significant change in placement as defined in subsection (1)(b) above, may occur only if the local educational agency and parent agree to the change in placement or a court of jurisdiction grants appropriate relief.

(b) If the student is removed from his/her educational placement for more than 10 days by court order, the local

educational agency must ensure that the student with disabilities receives special education and related services. (AUTH: 20-7-403, 20-7-414; IMP: 20-7-403)

RULE XXVII SPECIAL EDUCATION RECORDS (1) Special education records means all personally identifiable information which is directly related to a student and is collected and maintained by the local educational agency or by a person acting for such agency or program for the purpose of implementing IDEA.

(a) For the purposes of this section, education records includes records, files, documents and other materials such as handwritten notes, computer printouts, audio and video tape, film or microfiche which is personally identifiable.

(b) For the purposes of this section, education records does not include:

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the records and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(ii) records of law enforcement unit of an educational agency which are maintained apart from education records;

(iii) records related to an individual who is employed by the local educational agency or state operated program;

(iv) records identified by the local educational agency as directory information.

(2) Each special education record shall include access log, referral, permission for evaluation, evaluation data including summaries of assessments, test protocols and other information that are not subject to sole possession requirements of FERPA, child study team reports, individualized education programs, and periodic reviews of the individualized education program.

(3) Only authorized school officials determined by the LEA to have legitimate educational interests in accord with the Family Educational Rights and Privacy Act (FERPA) shall have access to special education records.
(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XXVIII PARENTAL CONSENT FOR RECORDS (1) Parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized school officials of the local educational agency collecting or using the information under these rules or used for any purpose other than meeting a requirement under IDEA. The local educational agency may not release information from special education records to local educational agencies without parental consent unless authorized to do so under FERPA or these rules.

(2) A local educational agency may disclose personally identifiable information from the special education records of a student without written parent consent if the disclosure is to authorized school officials or to officials of another local educational agency or state operated program in which the student seeks or intends to enroll subject to the following:

(a) the local educational agency makes a reasonable attempt to notify the parent of the transfer of records except when the transfer is initiated by the parent; or

(b) the local educational agency has a policy that special education records are forwarded within 5 days upon written request to a local educational agency in which the student seeks or intends to enroll.

(3) A local educational agency may disclose personally identifiable information from the special education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent except as provided for in FERPA.

(4) In the event that parents refuse to consent, the local educational agency may request an impartial due process hearing in accordance with ARM 10.16.2401 through 10.16.2417 to resolve the controversy.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XXIX REFERRAL (1) A school district shall establish a referral process which includes a method for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) The referral must include a statement of the reasons for referral, a description of any options the school district considered including documentation of regular education interventions and the reasons why those options were rejected, and the signature of the person making the referral.

(b) Referral shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree which requires special education and related services.

(c) If a comprehensive educational evaluation is warranted, the school district shall obtain consent of the parent before conducting a comprehensive educational evaluation.

(2) If, after receiving a referral, a child study team determines that a comprehensive evaluation is not necessary, the district shall notify the parent in writing of its decision, including a description of any options the school district considered and the reasons why those options were rejected and a full explanations of all of the procedural safeguards available under subpart E of IDEA.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403)

RULE XXX COMPREHENSIVE EDUCATIONAL EVALUATION PROCESS (1) Before any action is taken with respect to the initial placement of a student with disabilities in a special education program, a full and individual evaluation of the student's educational needs must be conducted in accordance with the requirements of ARM 10.16.1101.

(2) An evaluation based on procedures required in (1) of this rule shall be conducted at least every three years or more frequently if conditions warrant or if the student's parent or teacher requests an evaluation.

(3) Before conducting an initial comprehensive educational evaluation, the local educational agency shall obtain written parental consent according to RULE XXIII.

(4) In interpreting evaluation data and in making program decisions, the child study team shall:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(b) Insure that information obtained from all of these sources is documented on the child study team report and carefully considered;

(c) Insure that decisions made by the child study team include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

(d) Insure that program decisions are made in conformity with the least restrictive environment requirements.

(5) The child study team shall determine whether the evaluation is adequate and whether the student has a disability which adversely affects the student's educational performance and because of that disability needs special education.

(6) The child study team shall prepare a written report of the results of the evaluation. The report shall include a summary statement of the basis for making the determination that the student has a disability and needs special education and related services. Each local educational agency team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusions.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403)

RULE XXXI COMPOSITION OF A CHILD STUDY TEAM (1) The evaluation is made by the multidisciplinary child study team including the following members:

(a) A local educational agency principal or administrative designee who has authority to provide or supervise the provision of special education services:

(i) if the local educational agency does not employ a principal, the county school superintendent or special education cooperative director.

(b) The student's regular education teacher:

(i) if the student has more than one regular education teacher, one of the regular education teachers or a school counselor may represent the teachers;

(ii) if the student is not enrolled in public school, a regular education teacher who teaches grades or subjects appropriate for the student's age; and

(iii) if the student is age 5 and not enrolled in public school, the regular education teacher shall be a teacher with elementary education endorsement. If the student is age 3 or 4, a regular education teacher is not required to participate.

(c) The student's special education teacher when the student is already receiving special education:

(i) if the student is not receiving special education, the special education teacher who will be most likely to serve the student in the event that the student needs special education services shall be appointed; and

(ii) if the student is suspected of having a speech/language impairment, the special education teacher may be the speech/language pathologist.

(d) one or both of the student's parents.

(e) the student, where appropriate.

(f) when the student is enrolled in a private school, a representative from the private school; and

(g) at least one teacher or other specialist with knowledge in the area of suspected disability. For specific disabilities, the following specialists or teachers are required:

(i) serious emotional disturbance or specific learning disability or cognitive delay; a school psychologist.

(ii) speech/language impairment, deaf/blindness, traumatic brain injury; a speech/language pathologist;

(iii) autism; a school psychologist and speech/language pathologist; and

(iv) deafness or hearing impairment; a speech/language pathologist or audiologist.

(2) The local educational agency may invite other specialists when such specialists are needed to complete a comprehensive evaluation.

(AUTH: 20-7-403, 20-7-414; IMP: 20-7-403, MCA)

RULE XXXII CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM (1) The student may be identified as having autism if written documentation supports the existence of a developmental disability that was present before the student was three years old and if the student has a communication disability in verbal or nonverbal communication and social interaction.

(2) The student may not be identified as having autism if the student has a hearing impairment, serious emotional disturbance or global cognitive defects in which the student exhibit "autistic-like" behavior.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XXXIII CRITERIA FOR IDENTIFICATION OF A CHILD WITH DISABILITIES AGE 3-5 (1) A student may be identified as being a child with disabilities if the child is 3, 4, or 5 years old and experiences a severe delay in development. A severe delay in development means:

(a) the child functions at a developmental level 2 or more standard deviations below the norm in any one area of development or 1.5 standard deviations below the norm in 2 or more areas of development; and

(b) the areas of development include one or more of the following areas: cognitive development, physical development, communication development, social and emotional development, or adaptive functioning skills.

(2) The student may not be identified as a child with

disabilities if the student's delay in development is due to factors related to environment, economic disadvantage, or cultural difference.
(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XXXIV CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING COGNITIVE DELAY (1) The student may be identified as having cognitive delay if the student has a significantly subaverage general intellectual functioning and significant deficits in adaptive behavior and educational performance, especially in the area of application of basic academic skills in daily life activities.

(2) General intellectual functioning means performance on a standardized intelligence test that measures general cognitive ability rather than one limited facet of ability.

(a) Significantly subaverage general intellectual functioning is defined as two or more standard deviations below the population mean on a standardized intelligence test. Error in test measurement requires clinical judgment for students who score near two standard deviations below the mean.

(b) The presence of subaverage general intellectual functioning must occur during the developmental period defined as the period of time between conception and the 18th birthday.

(3) Deficits in adaptive behavior is defined as significant limitations in the student's effectiveness in meeting the standards of personal independence, interpersonal communication, and social responsibility expected for the student's age/grade peers and cultural group as measured by standardized instruments or professionally recognized scales.
(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XXXV CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAF-BLINDNESS (1) The student has both deafness or hearing impairment and vision impairment and severe communication problems that severely restricts the student's ability to communicate and participate in education programs solely for students with deafness or blindness. Written documentation shall include description of:

(a) existence of a hearing impairment, deafness and vision impairment as defined in RULE XXXVI, RULE XXXVIII, and RULE XLV;

(b) significant deficits in speech/language performance as defined in RULE XXXVIII; and

(c) the impact of impairments on other developmental and educational problems is so severe that multiple disabilities special education and related services are required.
(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XXXVI CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING DEAFNESS (1) The student has a hearing impairment so severe that the student is impaired in processing linguistic information, with or without amplification, to the extent that prevents the auditory channel from being the primary mode of learning speech and language.

(2) The student's educational performance is adversely

affected as documented by specific examples. The results and analysis of a current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually is required prior to identification.
(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XXXVII CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE (1) The student has emotional disturbance if an emotional or behavioral condition exists in which one or more of the following characteristics are present:

(a) an inability to build or maintain satisfactory relationships with peers and teachers;

(b) inappropriate types of behavior or feelings under normal circumstances including behaviors which are psychotic or bizarre in nature or behaviors which are atypical and for which no observable reason exists;

(c) a general, pervasive mood of unhappiness or depression including major depression and dysthymia but excluding normal grief reactions;

(d) a tendency to develop physical symptoms or fears associated with personal or school problems including separation anxiety, avoidant disorder and overanxious disorder; or

(e) schizophrenia.

(2) For each of the conditions in subsection (1), the condition must meet the criteria of having been present to a marked degree, over a long period of time and adversely affecting the student's educational performance.

(3) The student may not be identified as having emotional disturbance if:

(a) learning problems are primarily because of visual impairment, hearing impairment, orthopedic impairment, cognitive delay, cultural factors or limited educational opportunity; or

(b) common disciplinary problem behaviors (e.g., truancy, smoking, breaking school conduct rules) are the sole criteria for determining existence of emotional disturbance. Common disciplinary problem behaviors cannot be used as the sole criteria for recommending special education and related services.

(4) The student may be identified as having emotional disturbance only when:

(a) the student has been observed by two or more persons at separate times and places, each of which cite and corroborate specific behaviors which, in the aggregate, provide foundation for probable concern for emotional disturbance;

(b) the local educational agency has attempted at least two intervention techniques. These interventions may include, but are not limited to, changes in student's regular class schedule, curriculum, and/or teacher, school counseling or use of community resources; and

(c) written documentation of the observations and interventions are provided. Written documentation shall include:

(i) dated and signed documented anecdotal records of

behavioral observations made in multiple settings (i.e., in addition to the classroom setting consider playground, cafeteria, school bus, hallway, etc.) and showing that the student's disability is evident in other than the school classroom environment;

(ii) a social or developmental history compiled directly from the parent(s) and/or records, when parents are not available; and

(iii) documentation of at least two different intervention techniques that have been tried in the regular classroom and the effect of each.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XXXVIII CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING A HEARING IMPAIRMENT (1) The student may be identified as having a hearing impairment if the student has an organic hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided, or has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to adversely affect educational performance. Adversely affect the student's educational performance means that the student's ability to learn in the regular education setting remains severely affected even when classroom interventions are applied or accommodations provided, to the degree that the student needs special education and related services.

(2) Each school district shall ensure that auditory trainers or hearing aids worn in school by students with hearing impairments are functioning properly.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XXXIX CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT (1) The student has an orthopedic impairment as diagnosed or confirmed by a qualified medical practitioner which substantially limits normal function of muscles and joints due to congenital anomaly, disease or permanent injury and adversely affects the student's ability to learn or participate in education programs. "Substantially limits" requires specific examples of the adverse impact of the orthopedic impairment on the student's educational performance and written documentation of:

(a) the effect of the orthopedic impairment on the student's ability to participate in educational programs including vocational and physical education programs;

(b) the effect of medications, treatments or other medical interventions on the student's educational performance;

(c) the results of a physical therapy and/or occupational therapy evaluation which describes the need for therapy as related to educational performance; and

(d) accommodations or interventions tried in regular education including, if appropriate, modifications to program requirements, schedules or facilities.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XL CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING MULTIPLE DISABILITIES (1) The student shall be considered as a full-time special education student, i.e., that they spend more than 50 percent of their time in school receiving special education or related services.

(2) The student shall have a minimum of two concomitant disabilities, one of which must be cognitive delay, hearing impairment, deafness, visual impairment, orthopedic impairment or other health impairment.

(a) If the student has only two, one cannot be a speech-language impairment or specific learning disability.

(b) The student cannot be identified as having deaf/blindness.

(3) Each disability shall be individually identified in accordance with RULE XXXII through RULE XLV.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XLI CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT (1) The student may be identified as having other health impairments if the student has chronic or acute health problems, or disorders of the cardiorespiratory or central nervous systems, or other profound health circumstances, or degenerative health or medical condition as diagnosed or confirmed by a physician which substantially limits the student's strength, vitality or alertness or ability to learn or participate in education programs.

(2) Substantially limits means that the student's ability to learn in the regular education setting remains severely affected even when classroom interventions are applied or accommodations provided, to the degree that the student needs special education and related services. Written documentation shall include specific examples of the adverse affect of the medical condition on the student's educational performance including school attendance, effect of medications, treatments or other medical interventions, and written documentation of the interventions or accommodations.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XLII CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age and ability levels:

(a) the student's rate of achievement relative to the student's age and ability levels remains below expectations and the student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (1)(b);

(b) the student has a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning; and

(c) the severe discrepancy between ability and achievement is not correctable without special education and related services.

(i) For initial identification, a severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in subsection (1)(b) when adjusted for regression to the mean. Error in test measurement requires clinical judgment for students who score near 2 standard deviations below the population mean.

(ii) When standardized test instruments do not provide valid assessment results for determining the two standard deviation discrepancy, any alternative assessment procedure utilized shall determine that a discrepancy between ability and achievement exists at a level of severity similar to a two standard deviation discrepancy. In making this judgment, the child study team shall document the basis for concluding that standardized test instruments when applied to this student are not valid and verify with specific examples that the student's ability to learn in the regular education setting in one or more of the areas listed in subsection (1)(b) remains severely affected even when classroom interventions are applied.

(2) The student may not be identified as having a specific learning disability if the severe discrepancy between ability and achievement is primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay or emotional disturbance, or environmental, cultural or economic factors.

(3) The student may be identified as having a specific learning disability only when written documentation supports that:

(a) the student has had opportunities to learn commensurate with the student's age and abilities;

(b) at least two intervention techniques have been tried in the regular classroom and that the student's ability remains severely affected; and

(c) educationally relevant medical findings, if any, have been considered.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XLIII CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPEECH-LANGUAGE IMPAIRMENT (1) The student may be identified as having a speech-language impairment if the student has a significant deviation in speech such as fluency, articulation or voice, or in ability to decode or encode oral language which involves phonology, morphology, semantics or pragmatics or a combination thereof.

(a) The student has a significant deviation in oral performance if the student's performance on standardized test is 2 standard deviations below the population mean, or between 1.5 and 2 standard deviations below the population mean and there is documented evidence over a 6 month period prior to the current evaluation of no improvement in the speech-language performance of the student even with regular classroom interventions.

(b) For articulation, a significant deviation is consistent

articulation errors persisting one year beyond the highest age when 90 percent of the students have acquired the sounds based upon specific developmental norms.

(c) If norm referenced procedures are not used, alternative assessment procedures must substantiate a significant deviation from the norm.

(2) The student may be identified as having a speech-language impairment only when written documentation of the student's interpersonal communication effectiveness in a variety of educational settings by the teacher and parent and speech-language pathologist, and others as appropriate supports the adverse educational affect of the speech-language impairment.

(3) The student may not be identified as having a speech-language impairment if the speech or language problems primarily result from environmental or cultural factors.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XLIV CRITERIA FOR IDENTIFICATION AS HAVING TRAUMATIC BRAIN INJURY (1) The student may be identified as having traumatic brain injury if the student has:

(a) an acquired injury to the brain caused by external physical force as diagnosed or confirmed by a physician;

(b) the injury results in total or partial functional disability or psycho-social disability, or both; and

(c) the student's educational performance is adversely affected to the degree that the student needs special education related services.

(2) Written documentation shall include specific examples of the severe effect of the injury on the student's educational performance including school attendance, loss or retention of previously acquired skills and knowledge, and student's social/interpersonal skills.

(3) The student may not be identified as having a traumatic brain injury if the disability is primarily due to injury to the brain that is congenital, degenerative, or a result of infection or disease.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XLV CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT (1) The student may be identified as having a visual impairment if the student has a:

(a) visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than twenty (20) degrees in the better eye with correction; and

(b) needs special education and related services.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE XLVI INDIVIDUALIZED EDUCATION PROGRAM (IEP) IMPLEMENTATION (1) At the beginning of each school year, each local educational agency shall have in effect an individualized education program for each child with disabilities who is receiving special education and related services from that agency. An individualized education program shall:

(a) be in effect before special education and related services are provided to a student; and

(b) be implemented as soon as possible following the meeting under RULE XLVII.

(2) Each local educational agency shall initiate and conduct meetings for the purpose of developing, periodically reviewing and, if appropriate, revising each student's individualized education program.

(a) A meeting to develop an individualized education program for a student must be held within 30 days of the initial determination that the student with disabilities needs special education and related services.

(b) The individualized education program of each student shall be reviewed in accordance with 34 CFR 300.340-300.550.

(i) A meeting for this purpose shall be held at least once a year.

(ii) The periodic review of the IEP shall include documentation of the student's performance in meeting the annual goals and short term objectives identified on the student's IEP.

(3) Within a short time of enrollment of a student with disabilities, a local educational agency shall initiate procedures to develop, review and, if appropriate, revise the individualized education program.

(a) If a student with disabilities enrolls with a copy of the student's current individualized education program, the local educational agency in which the student enrolls may adopt the student's current IEP if an IEP meeting is held in conformance with RULE XLVII and the parent and local educational agency agree on the placement.

(b) If a student with disabilities enrolls without a copy of the student's current IEP, the local educational agency in which the student enrolls shall initiate procedures to determine the student's eligibility for services under IDEA and, if appropriate, develop an IEP.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XLVII COMPOSITION OF INDIVIDUALIZED EDUCATION PROGRAM TEAM (1) The individualized education program meeting shall include the following participants:

(a) principal or administrative designee or representative of the local educational agency, other than the student's special education teacher who is qualified to provide, or supervise the provision of, special education; and

(b) the student's regular education teachers and special education teachers who have responsibility for implementing the student's individualized education program.

(i) If the student has more than one teacher, the local educational agency shall designate which teacher will participate in the meeting. A school counselor may represent the regular education teacher.

(ii) If the student is identified as having a speech/language impairment, the special education teacher could be the speech/language pathologist.

(iii) If the student is age 3 or 4 a regular education

teacher is not required.

(c) one or both of the student's parents; and

(d) whenever appropriate, the student.

(2) For a student with disabilities who has been evaluated for the first time, the local educational agency shall insure that a member of the evaluation team or a representative of the local educational agency who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation.

(3) For a student with disabilities who is enrolled in a private school and receives special education and related services from the local educational agency, the local educational agency shall insure that a representative of the private school attends each meeting.

(a) If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(b) If the representative does not attend the meeting, the local educational agency shall keep documentation of its attempts to insure participation by the private school.

(4) If the purpose of the meeting is the consideration of transition services for a student with disabilities, the local educational agency shall insure that the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services participates in the meeting.

(a) If the student with disabilities does not attend, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

(b) If a representative of an agency invited to participate does not attend the meeting, the local educational agency shall take other steps such as individual or conference telephone calls, written correspondence or agency visits to obtain the participation of the other agency in the planning of any transition services.

(5) In interpreting evaluation data and in making placement decisions, the local educational agency shall insure that the placement decision is made by persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE XLVIII RELATED SERVICES (1) A student shall be considered eligible to receive related services only when the related service is necessary for the student to benefit from the student's special education and the student has an IEP developed in accordance with IDEA and the related service is:

(a) necessary to support achievement of one or more of the goals or short-term objectives on the student's IEP; and

(b) needed during school hours or during prescribed educational activity.

(2) Each related service must be identified on the student's IEP, the projected dates for initiation of services and the anticipated duration of the services identified, and,

when appropriate, goals and short-term objectives developed.

(3) Related services shall be provided at no cost to the parent.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE IL IEP ACCOUNTABILITY (1) No local educational agency, teacher or other person may be held accountable if a student with disabilities does not achieve the growth projected in the annual goals and short term instructional objectives identified in the student's IEP.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE L DETERMINING LEAST RESTRICTIVE ENVIRONMENT (1) In determining the educational placement of a student with disabilities, the individualized education program team must:

(a) review and draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior and a review of previous annual reviews of individualized education programs; and

(b) ensure that information obtained from all of these sources is documented and carefully considered; and

(c) ensure that the placement decision is made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

(2) The individualized education program team must insure that all decisions regarding the student's placement are made in conformance with RULE L and ARM 10.16.1310, and that placement is not based upon the category of disability.

(3) The educational placement of a student with disabilities shall be with students without disabilities in chronologically age appropriate classroom settings and schools unless otherwise determined by the individualized education program team.

(4) If the educational placement of a student with disabilities is outside of the regular educational environment, the student shall be placed in the educational setting that affords the student most interaction with children without disabilities and which meets the requirements of the individualized education program.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE LI COMPARABILITY (1) Services, equipment, supplies, facilities and space allocation for special education and related services must be comparable to services, equipment and facilities for students without disabilities.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE LII LENGTH OF SCHOOL DAY, SCHOOL YEAR (1) A student with disabilities shall receive the same opportunity to attend school under provisions of section 20-1-302, MCA, as students without disabilities unless the individualized education program requires other arrangements.

(2) The individualized education program team shall determine at least annually whether a student with disabilities receives an extended school year program. The determination of eligibility for extended school year program shall include a statement that:

(a) identifies goals and objectives on the individualized education program which must be addressed in a continuous program to prevent significant skill regression; and

(b) indicates the student's inability to maintain learned skills over a break in educational programming and the student's inability to recover her or his loss limits the student's educational progress.

(3) For students who are eligible for special education or special education and related services under IDEA and whose third birthday occurs during the summer prior to the school year in which he or she is eligible for services from the local educational agency, the individualized education program team shall consider whether the student receives an extended school year program.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE LIII PROMOTION/RETENTION OF STUDENTS WITH DISABILITIES (1) A student with disabilities shall be promoted or retained according to local educational agency criteria unless specific learner outcomes are waived in the student's IEP.

(2) A student with disabilities who has completed a prescribed course of studies shall be eligible for graduation from high school.

(a) A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study.

(b) Documentation of completion of the annual goals shall be included in the periodic review of the IEP.

(AUTH: 20-7-403, 20-7-414, MCA; IMP: 20-7-403, MCA)

RULE LIV COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (1) The office of public instruction shall establish procedures for the development and conduct of a comprehensive system of personnel development which includes inservice, preservice, and technical assistance training for regular education teachers, special education teachers, school administrators and related service providers. The procedures shall include:

(a) An annual statewide needs assessment to be conducted before June 1 of each year to determine if:

(i) a sufficient number of qualified personnel are available in the state;

(ii) inservice and technical assistance personnel development programs are needed in specific areas related to the provision of special education and related services; and

(iii) preservice preparation of new personnel is needed.

(b) An annual program plan which provides a detailed structure for personnel planning and focuses on preservice and inservice education needs and which describes procedures for:

(i) acquiring, reviewing and disseminating to regular and special education teachers, teacher aides and instructional assistants, administrators and related service providers significant information about promising educational practices proven effective through research or demonstration;

(ii) providing technical assistance to local education agencies, educational cooperatives, state operated programs and private programs serving state agency placed students with disabilities; and

(iii) identifying state, local and regional resources which will assist in meeting the state's personnel preparation needs.

(2) The superintendent of public instruction shall appoint a comprehensive system of personnel development council to ensure that public and private institutions of higher education and other agencies and organizations having an interest in the preparation of personnel for the education of students with disabilities have an opportunity to participate fully in the development, review and annual updating of the state comprehensive system of personnel development. The council shall:

(a) develop a long-range personnel development plan and evaluate effectiveness of state personnel training activities in meeting the plan and make recommendations for inservice, preservice and technical assistance programs on an annual basis;

(b) establish procedures to ensure collaboration and coordination of office of public instruction and local educational agency efforts in the utilization of current technology and training techniques in meeting the personnel development needs and use of appropriate networks, linkages and databases; and

(c) prepare a written report on recommendations regarding personnel preparation to the superintendent of public instruction and the state special education advisory panel.
(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE LV SPECIAL EDUCATION PROFESSIONAL STAFF QUALIFICATIONS (1) Any teacher providing special education and related services to students with disabilities shall hold a current Montana teaching certificate with appropriate endorsements.

(a) A special education teacher must hold a current Montana teaching certificate with an endorsement in special education.

(b) A teacher of homebound or hospitalized students must hold a current Montana teaching certificate.

(c) A school psychologist must hold a current Montana Class 6 teaching certificate.

(d) Supervisors of special education teaching personnel must have a Class III administrator's certificate with a principal's endorsement or a supervisor's endorsement in special education.

(2) All special education and related services for students with disabilities shall be provided under the direction of qualified personnel.

(3) Each local educational agency must require that each

administrator which provides or supervises the provision of special education and related services to students with disabilities, obtains specific skills which enable the administrator to deal effectively with students with disabilities. These skills may be obtained through formal training or inservice training.

(4) Each local educational agency must require that each teacher who implements education services to students with disabilities, obtains specific skills which enable the teacher to deal effectively with students with disabilities under the teacher's supervision. These skills may be obtained through formal training or inservice training or consultation.

(5) A professional person (i.e., occupational therapist, physical therapist, social worker, psychiatrist, nurse, audiologist, speech/language pathologist, recreational therapist, professional counselor or physician) providing special education and related services to students with disabilities under this section shall hold a license from the appropriate state authority and meet the appropriate professional requirements that are based on the highest entry level requirements in the State applicable to the profession or discipline.

(6) A teacher aide or instructional assistant shall meet current office of public instruction accreditation standards under ARM 10.55.707.

(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE LVI LOCAL EDUCATIONAL AGENCY RESPONSIBILITY SPECIAL EDUCATION AND RELATED SERVICES FOR PRIVATE SCHOOL STUDENTS

(1) A local educational agency shall provide students with disabilities enrolled in private schools with a genuine opportunity for equitable participation in special education and related services in accordance with 34 CFR 76.650 through 34 CFR 76.670.

(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE LVII VOLUNTARY ENROLLMENT IN NONPUBLIC SCHOOLS BY PARENTS

(1) If the local educational agency where the student lives has made available a free appropriate public education to a student with disabilities and the student is voluntarily enrolled in a private school by the student's parent, the local educational agency in which the private school is located is responsible for services under 34 CFR 300.450.

(2) If a student with disabilities is voluntarily enrolled by the student's parent in a private school outside of the local educational agency where the student lives, the local educational agency where the student lives shall make available a free appropriate public education.

(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE LVIII SPECIAL EDUCATION AND RELATED SERVICES WHEN STUDENT IS RESIDENT OF ANOTHER LOCAL EDUCATIONAL AGENCY

(1) If a student with disabilities attends a local

educational agency outside of the district of residence of the student because of the actions of another public agency such as departments of family services or social and rehabilitation services or corrections and human services, the local educational agency in which the student lives shall initiate meetings to develop, review or revise the student's individualized education program.

(a) The local educational agency shall ensure participation in the IEP meeting by a representative of the district of residence.

(b) If the representative cannot attend, the agency shall use other methods to ensure participation by the district of residence.

(2) If a student with disabilities attends a local educational agency outside of the district of residence of the student when such local educational agency has open enrollment policies, the local educational agency which provides education to the student shall ensure that the student receives a free appropriate public education.

(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

RULE LVIX RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY (1) If a student with disabilities is placed by a public agency, such as departments of family services or social and rehabilitation services or corrections and human services, in a residential treatment facility or children's psychiatric hospital according to section 20-7-435, MCA, the residential treatment facility or hospital shall initiate meetings to develop, review or revise the student's individualized education program.

(a) The residential treatment facility or children's psychiatric hospital shall ensure participation in the IEP meeting by a representative of the local educational agency in which the facility is located. If the representative cannot attend, the residential treatment facility or hospital shall use other methods to ensure participation by local educational agency in which the facility is located.

(b) The local educational agency in which the facility is located shall ensure that the parents and the district of residence representative are involved in any decision about the student's individualized educational program and agree to any proposed changes in the program before those changes are implemented.

(c) The local educational agency in which the facility is located and the office of public instruction are responsible for ensuring compliance with IDEA.

(AUTH: 20-7-402, 20-7-403, MCA; IMP: 20-7-403, MCA)

5. The rules and rule changes are necessary to conform our rules to Federal and State law and to receive Federal funds.

6. Interested persons may submit their data, views or arguments concerning the proposed rule changes in writing to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on June 14, 1993.

7. An official of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

Kathleen F. Holden
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State May 3, 1993

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.12.401 pertaining to administration of youth group homes.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 11.12.401 PERTAINING TO ADMINISTRATION OF YOUTH GROUP HOMES.

TO: All Interested Persons.

1. On June 2, 1993, at 1:30 p.m., a public hearing will be held in the second-floor conference room of the Department of Family Services, located at 48 North Last Chance Gulch, Helena, Montana, to consider the amendment of Rule 11.12.401 pertaining to administration of youth group homes.

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

11.12.401 YOUTH GROUP HOME, ADMINISTRATION (1) The youth group home shall be a nonprofit or for profit corporation registered under the laws of Montana or under direct administration of a unit of state, local or tribal government.

(2) No group home staff person shall:

(a) serve as a member of the board of directors of the corporation; or

(b) exercise some or all of the powers that would be otherwise exercised by the board of directors of the corporation.

(3) No group home shall be located in a structure which was the private residence of a group home staff person prior to incorporation.

(4) The prohibitions provided under subsections (2) and (3) of this rule apply to facilities submitting their initial application for licensure as a group home after [the effective date of this amendment].

Subsections (2) through (4) remain the same except they are re-numbered (5) through (7).

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

3. The proposed amendment is reasonably necessary to prohibit development of youth group home corporations controlled by staff, and/or youth group homes located in a structure which was previously the private residence of the staff.

Recently, families operating youth foster care homes have requested re-licensure as youth group homes, and have formed corporations for the purpose of meeting the incorporation requirement of ARM 11.12.401. These homes have been licensed as

youth group homes, and the department does not intend that their group home licensure or re-licensure be discontinued under this rule-making.

However, this rule-making proposes to prohibit further creation of staff-run corporations or corporations located in the former private residences of the staff. Proliferation of youth group homes through incorporation of private residences threatens the ability of the department to maintain continuity of services in youth group homes.

Corporations dependent on control by single family in the former residence of the family are less likely to continue in existence in the event the family experiences some substantial change. Facilities that are not dependent on the ability of the staff to use the facility as a private residence generally operate through changes in staff, changes in the corporation's board of directors, and changes in the officers of the corporation.

This rule-making is authorized as reasonably necessary to implement the system of children's services required under Section 52-2-111, MCA, and a system of youth care facility licensure mandated under Section 41-3-1142, MCA.

4. Interested persons may submit their data, views or arguments to the proposed amendment 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 June 11, 1993.

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

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, May 3, 1993.

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

In the matter of the amendment of rules 16.14.501-505, 508, 509, 514, 516, 520-521, 526, 701-708, 710-711, 713-715, 717 and new rules I-IV dealing with solid waste management	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND ADOPTION OF NEW RULES I-IV

(Solid Waste)

To: All Interested Persons

1. On June 2, 1993, at 9:00 a.m., the department will hold a public hearing in Room 325 of the State Capitol, Helena, Montana, to consider the amendment of the above-captioned rules and the adoption of new rules.

2. The effective date of these amendments and new rules will be October 9, 1993, with the exception of Rule IV, which will be effective April 9, 1994.

3. The proposed amendments and new rules appear as follows (new material is underlined; material to be deleted is interlined):

16.14.501 PURPOSE AND APPLICABILITY (1) The purpose of this subchapter is to provide uniform standards ~~for~~ governing the storage, treatment, recycling, recovery, and disposal of solid wastes~~, including hazardous wastes, and for the transport of hazardous wastes~~.

(2) ~~Integration with the Montana Water Pollution Control Act. Point source discharges of pollutants into state waters, including but not limited to industrial wastewater effluents, or industrial waste as defined in section 75-5-103(2), MCA, are governed by permit rules established pursuant to Title 75, chapter 5, MCA.~~ The rules in this subchapter are adopted to discharge the department's responsibilities under Title 75, chapter 10, part 2 MCA, "The Montana Solid Waste Management Act", by adopting rules governing solid waste management systems.

(3) These rules apply to owners and operators of solid waste management systems, except as otherwise specifically provided in this subchapter.

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

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

(1) Remains the same.

(2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with [RULE II].

(3) "Active portion" means that part of a facility or unit

that has received or is receiving wastes and that has not been closed in accordance with [RULE II].

(4) "Airport" means a public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(5) "Aquifer" means any geologic formation, group of formations, or part of a formation capable of yielding significant quantities of ground water to wells or springs.

~~(2) "Board" means the board of health and environmental sciences provided for in section 2-15-2104, MCA.~~

(6) "Clean fill" means soil, dirt, sand, gravel, rocks and rebar-free concrete, emplaced free of charge to the person placing the fill, in order to adjust or create topographic irregularities for agricultural or construction purposes.

(7) "Closed unit" means any solid waste disposal unit, trench, cell or area that no longer receives solid waste and has been closed in accordance with department rules.

(8) "Closure" means the process by which an owner or operator of a facility closes all or part of a facility in accordance with a department approved closure plan and all applicable closure requirements specified in [RULE II].

(9) "Compacted soil liner" means recompacted native or amended soil with a minimum thickness of three feet with adequate moisture content and compaction to achieve a hydraulic conductivity of less than or equal to 1×10^{-7} cm/sec.

(10) "Construction and demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(11) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

(12) "Cost" means all expenses associated with the permitting, licensing, design, construction, environmental compliance, operation, maintenance, groundwater monitoring, corrective action, closure and post-closure care of any facility.

~~(3) "Department" means the department of health and environmental sciences, provided for in sections 2-15-2101 to 2-15-2103, MCA.~~

(13) "Director" means the chief administrative officer of the department of health and environmental sciences.

(14) "Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

~~(4) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or onto the land so that the solid waste or hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground waters.~~

(5) Remains the same but is renumbered (15).

(16) "Existing unit" means any solid waste disposal unit

that is receiving solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

~~(6)~~(17) "Facility" means a manufacturing, processing or assembly establishment; a transportation terminal; or a treatment, storage or disposal unit operated by a person at one site. The term includes all contiguous land and structures, other appurtenances, and improvements on the land (licensed or unlicensed) used for the storage, treatment or disposal of solid waste.

(7) Remains the same but is renumbered (18).

(19) "Ground water class" means a ground water quality classification established in ARM 16.20.1002.

(20) "Ground water quality standards" means the standards for ground water quality set fourth in ARM 16.20.1003.

~~(8) "Hazardous waste" or "hazardous solid waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means, excluding wood chips and wood used for manufacturing or fuel purposes. The specific wastes which are "hazardous wastes" are those solid wastes classified by EPA's rules (40 CFR 250.1) as hazardous wastes.~~

~~(9) "Hazardous waste management" or "hazardous solid waste management" means the management of the storage, transport, treatment, recycling, recovery, or disposal of hazardous wastes.~~

~~(10) "Household refuse" means all solid waste that normally originates in a residential environment. Minor amounts of hazardous wastes are contemplated to be within the scope of this term.~~

(21) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of the federal Resource Conservation and Recovery Act (RCRA). The term includes, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment.

(22) "Infectious waste" means waste defined in 75-10-1003(4), MCA.

(23) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding

manure spreading operations) for agricultural purposes or for treatment and disposal.

(24) "Landfill" means an area of land or an excavation where wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

(25) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing disposal unit.

~~(11)~~(26) "Leachate" means ~~contaminated water which is produced when rain or other water passes through~~ a liquid which has contacted, passed through, or emerged from solid waste ~~in solid waste disposal sites, picking up various mineral, organic and other contaminants~~ and contains soluble, suspended, or miscible materials removed from the waste.

(27) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

(28) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees celsius and atmospheric pressure.

~~(12) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous solid waste during its transportation from the point of generation to the point of disposal, treatment, or storage.~~

(29) "Maximum horizontal acceleration" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(30) "Municipal solid waste landfill unit (or MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(31) "New unit" means any solid waste disposal unit that has not received waste prior to October 9, 1993.

(32) "Open burning" means the combustion of solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion,

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(c) Control of the emission of the combustion products.

(33) "Operator" means the person responsible for the overall operation of a facility or part of a facility.

(34) "Owner" means the person who owns a facility or part of a facility.

(35) "PCB wastes" means those polychlorinated biphenyls or PCB items subject to regulation under 40 CFR Part 761.

~~(13) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity whether or ganized for profit or not.~~

(36) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(14) Remains the same but is renumbered (37).

(38) "Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR 261.5.

~~(15) "Resource recovery" means the recovery of material or energy from solid waste.~~

~~(16) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting converting to energy, or otherwise separating and preparing solid waste for reuse.~~

~~(17) "Resource recovery system" means a solid waste management system which provides for the collection, separation recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.~~

(39) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(40) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(41) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(42) "Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(43) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during the preliminary treatment of domestic sewage in a treatment plant.

~~(18) "Solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish, refuse,~~

~~hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood by-products and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood by-products.~~

~~(19)~~(44) "Solid waste management system", as defined in 75-10-203, MCA, means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. ~~Such a system may be composed of one or more solid waste management facilities. This term includes both hazardous and non-hazardous solid waste management systems.~~ In addition, for the purposes of this definition, the department does not consider a container site to be a component of a solid waste management system.

~~(20) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.~~

(45) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a solid waste management system that is necessary for protection of human health and the environment.

(46) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, human made excavation, or diked area formed primarily of earthen materials (although it may be lined with human made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(47) "Transfer station" means a solid waste management facility that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles (public, commercial or private) and placed in other transportation units for movement to another solid waste management facility.

~~(21) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.~~

~~(22) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it non-hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.~~

(48) "Unit" means a discrete area of land or an excavation used for the landfilling or other disposal of solid waste.

(49) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this

aquifer within the facility's property boundary.

(23) Remains the same but is renumbered (50).

(51) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(52) "Waste pile" or "pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

(53) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

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

16.14.503 WASTE GROUPS (1) Solid wastes are grouped based on physical and chemical characteristics which determine the degree of care required in handling and disposal and the potential of the wastes for causing environmental degradation or public health hazards. Solid wastes are categorized into ~~three~~ two groups:

~~(a) Group I wastes include and are limited to those solid wastes classified or identified by EPA as hazardous wastes in 40 CFR 250.1. Examples may or may not include the following:~~

~~(i) municipal and domestic wastes such as septic tank pumpings, raw sewage sludge, chemical toilet wastes, infectious medical wastes, and incinerator ashes; and~~

~~(ii) commercial and industrial wastes such as sludges from air and water pollution control equipment, ashes and dusts from incinerators and air pollution control devices, caustics, acids, waste chemicals, paint sludges, spent cleaning fluids and solvents, petroleum wastes, discarded chemical containers, chemical fertilizers, pesticides, and discarded unrinsed pesticide containers.~~

~~(b)~~(a) Group II wastes include decomposable wastes and mixed solid wastes containing decomposable material but exclude regulated hazardous wastes. Examples include, but are not limited to, the following:

(i) municipal and domestic solid wastes such as garbage and putrescible organic materials, paper, cardboard, cloth, glass, metal, plastics, street sweepings, yard and garden wastes, digested sewage treatment sludges, water treatment sludges, ashes, dead animals, offal, discarded appliances, abandoned automobiles, and hospital and medical facility wastes, provided that infectious ~~medical~~ wastes have been ~~sterilized or safely contained~~ rendered non-infectious to prevent the danger of disease; and

(ii) commercial and industrial solid wastes such as packaging materials, liquid or solid industrial process wastes which are chemically or biologically decomposable, crop residues, manure, chemical fertilizers, construction and demolition wastes, asphalt, and emptied pesticide containers which have been triple rinsed or processed by methods approved by the department.

~~(c)~~(b) Group III wastes include wood wastes and non-water soluble~~, essentially inert~~ solids. Examples include, but are not limited to, the following:

(i)-(iii) Remain the same.

(2) Clean fill is not regulated under this subchapter.

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

16.14.504 DISPOSAL ~~SITE~~ FACILITY CLASSIFICATIONS (1) Disposal ~~sites~~ facilities are classified according to their respective abilities to handle various types of solid waste. Systems of acceptable disposal may entail containment of waste with assured protection against leachate migration or may take advantage of natural treatment processes such as evaporation, chemical and microbiological degradation, filtration, adsorption and attenuation. Solid waste management facilities may involve ponds, pits, lagoons, land spreading areas, impoundments, or landfills. Although ~~sites~~ facilities are broadly classified as to the solid waste groups they may accept, specific restrictions may be placed by the department on individual disposal ~~sites~~ units or disposal areas. As an example, many Class II landfills may not be acceptable ~~sites~~ places for the disposal of Group II liquids or sludges. Such restrictions, if any are warranted, shall be specified on the solid waste management system license.

(2) There are ~~three~~ two types of disposal ~~sites,~~ facilities: ~~Class I,~~ Class II and Class III.

~~(a) Generally, sites licensed as a Class I site may accept solid waste from Groups I, II and III. Such a site usually is able to accept all kinds of solid waste.~~

~~(b)~~(a) Generally, ~~sites~~ facilities licensed to operate as Class II solid waste management systems ~~sites~~ are capable of receiving Group II and Group III wastes but not ~~Group I, or~~ regulated hazardous~~,~~ wastes. Household ~~refuse~~ waste, although it may contain some ~~Group I solid~~ household hazardous waste or other non-regulated hazardous waste, may be disposed of at Class II ~~sites~~ landfills.

~~(c)~~(b) ~~Sites~~ Facilities licensed as Class III ~~sites~~ landfills may accept only Group III wastes which are primarily inert wastes.

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

16.14.505 STANDARDS FOR SOLID WASTE ~~DISPOSAL SITES~~ MANAGEMENT FACILITIES (1) There are ~~a number of~~ locational and design requirements with which ~~all three site~~ both facility classifications must comply. In addition, there are other requirements that are applicable only to specific classifications. The general locational requirements that all ~~sites~~ facilities must meet include:

(a) A sufficient acreage of suitable land ~~shall~~ must be available for ~~the~~ solid waste ~~disposal area~~ management;

(b) Remains the same.

(c) ~~Sites~~ Facilities may not be located in a 100 year floodplain;

(d) ~~Sites~~ Facilities may be located only in areas which

will prevent the pollution of ground and surface waters and public ~~or~~ and private water supply systems;

(e) Drainage structures must be installed where necessary to prevent surface runoff from entering ~~disposal area~~ waste management areas;

(f) Where underlying geological formations contain rock fractures or fissures which may lead to pollution of the ground water or areas in which springs exist that are hydraulically connected to ~~the~~ a proposed ~~site~~ disposal facility, only Class III ~~sites~~ disposal facilities may be approved; and

(g) ~~Sites shall~~ Facilities must be located to allow for reclamation and reuse of the land.

~~(2) General soil and hydrogeological requirements. The following table shall be used in evaluating the natural site characteristics of proposed solid waste disposal systems and in classifying disposal sites. However, disposal site locations unable to meet these criteria may still be used, providing that the operational and maintenance plan contains sufficient information to demonstrate that surface and groundwaters will be protected to the same degree as those sites able to meet the criteria of the following table. The plan must contain detailed descriptions of the waste treatment procedures, impermeable liners, leachate control systems or other engineered systems which may be utilized in the disposal system. Where the requirements regarding permeability and depth to water table cannot be met, the department may require that the disposal facility include provisions for monitoring leachate and groundwater. This monitoring will be required for all Class I disposal sites unable to meet the restrictions.~~

~~(See next page for table)~~

~~CLASS~~

~~Criteria~~	~~I~~	~~II~~	~~III~~
~~Soil Type~~	~~OH, CH, CL, SC, GC~~	~~MH, OL, ML, CM, CM~~	~~GW, GP, SW, SP~~
~~Permeability (vertical and lateral)~~			
~~Cm per sec~~	~~K < 10^{-6}~~	~~K = 10^{-6} to 10^{-3}~~	~~K > 10^{-3}~~
~~Feet per year~~	~~K < 1~~	~~K = 1 to 1035~~	~~K > 1035~~
~~Water Table~~	~~100 feet minimum~~	~~10 to 20 feet minimum~~	~~Not Applicable~~

~~OH -- organic clays of medium to high plasticity, organic silts~~
~~CH -- inorganic clays of high plasticity, fat clays~~
~~CL -- inorganic clays of low to medium plasticity, gravelly clays,~~

~~sandy clays, silty clays, lean clays~~
~~SC -- clayey sands, sand clay mixtures~~
~~GC -- clayey gravels, gravel-sand-clay mixtures~~
~~MH -- inorganic silts, micaceous or diatomaceous, fine sandy or silty soils, elastic silts~~
~~ML -- inorganic silts and very fine sands, rock flour, silty o r clayey fine sands or clayey silts with slight plasticity~~
~~OL -- organic silts, and organic silt clays of low plasticity~~
~~SM -- silty sands, sand silt mixtures~~
~~GM -- silty gravels, gravel-sand-silt mixtures~~
~~GW -- well graded gravels or gravel-sand mixtures, little or no fines~~
~~GP -- poorly graded gravels or gravel-sand mixtures, little or no fines~~
~~SW -- well graded sands or gravelly sands, little or no fines~~
~~SP -- poorly graded sands or gravelly sands, little or no fines~~

~~(3)~~(2) Special requirements include:

(a) ~~Class I sites. Sites~~ Facilities licensed and operated as Class ~~I sites~~ II landfills must confine solid waste and leachate to the disposal ~~site~~ facility, unless department approval is obtained for treatment at another facility. If there is a potential for leachate migration, it must be demonstrated to the satisfaction of the department that leachate will only migrate to underlying formations which have no hydraulic continuity with any state waters according to the criteria specified in [RULE I].

(b) ~~Class II sites.~~ Adequate separation of Group II wastes from underlying or adjacent water must be provided. The extent of the separation required ~~shall~~ must be established on a case-by-case basis, considering terrain, ~~and the~~ type of underlying soil formations, and facility design.

(c) The following airport safety requirements apply to all facilities which manage Group II waste:

(i) Facilities may not be located or operated within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway used by only piston-type aircraft unless the owner or operator can demonstrate to the department's satisfaction that the facility is designed and can be operated so that it does not pose a bird hazard to aircraft. That demonstration must be submitted to the department and the Federal Aviation Administration (FAA) and placed in the facility's operating record.

(ii) An owner or operator proposing to license a facility or a lateral expansion within a five mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the FAA.

(iii) The owner or operator (or applicant in the case of a new license application) must submit copies of the required notifications and responses received from the affected airport and FAA within 30 days of the date they were sent or received.

(d) New disposal units or lateral expansions may not be located in wetlands.

(e) New disposal units or lateral expansions may not be

located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the disposal unit and will be protective of human health and the environment.

(f) Class II disposal units or lateral expansions may not be located in seismic impact zones, unless the owner or operator demonstrates to the department that all containment structures, including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(g) Owners or operators of new Class II disposal units, existing Class II disposal units, and lateral expansions located in an unstable area must demonstrate to the department that engineering measures have been incorporated into the unit's design to ensure that the integrity of the structural components of the landfill unit will not be disrupted. The department will consider the following factors, at a minimum, when determining whether an area is unstable:

(i) On-site or local soil conditions that may result in significant differential settling;

(ii) On-site or local geologic or geomorphic features; and

(iii) On-site or local human-made features or events (both surface and subsurface).

(h)(i) Existing facilities that cannot make the demonstration specified in (2)(c) pertaining to airports, (1)(c) pertaining to floodplains, or (2)(g) pertaining to unstable areas, must close by October 9, 1996, in accordance with [RULE II] and conduct post-closure activities in accordance with [RULE III].

(ii) The deadline for closure required by (h)(i) of this rule may be extended up to two years if the owner or operator demonstrates to the department that:

(A) There is no available waste management alternative; and

(B) There is no immediate threat to human health and the environment.

(i) Owners and operators should be aware that Montana has local water quality protection districts. This protection program may impose additional requirements on owners or operators of solid waste management systems other than those set forth in this subchapter.

~~(c)~~(j) Class III ~~sites. While such sites cannot~~ landfills may not be located on the banks of or in a live or intermittent stream~~, they may be approved for~~ or water saturated areas, such as marshes or deep gravel pits which contain exposed groundwater. AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA

16.14.508 APPLICATION FOR ~~NON-HAZARDOUS~~ SOLID WASTE MANAGEMENT SYSTEM LICENSE Any ~~person~~ owner or operator wishing to establish a ~~non-hazardous~~ solid waste management system shall first submit an original application and three copies for a license to the department. The application must be signed by the person responsible for the overall operation of the facility. The department shall furnish application forms to interested

persons. Such forms shall require at least the following information:

(1) Remains the same.

(2) legal and general description and ownership status of the proposed locations, including the land owner's name and address;

(3) documentation of ownership of the property or documentation demonstrating that the applicant has the right to operate a solid waste management system on the property.

~~(3)~~(4) total acreage of proposed ~~site~~ facility;

~~(4)~~(5) population size and centers to be served by the proposed ~~site~~ facility;

(6) name, address, and location of any public airports within five miles of the proposed facility;

(7) location of any lakes, rivers, streams, springs, or bogs, onsite or within two miles of the facility boundary;

(8) facility location in relation to the base floodplain of nearby drainages;

~~(5)~~(9) pertinent water quality information;

~~(6)~~(10) geological, hydrological, and soil information, including at least the following:

(a) Class II disposal facilities must submit geological, hydrological, and soil information that includes the following at a minimum:

(i) a hydrogeological and soils study as specified in 16.14.703;

(ii) types and regional thickness of unconsolidated soils materials;

(iii) types and regional thickness of consolidated bedrock materials;

(iv) regional and local geologic structure, including bedrock strike and dip, and fracture patterns;

(v) geological hazards including but not limited to slope stability, faulting, folding, rockfall, landslides, subsidence, or erosion potential, that may affect the design and operation of the facility for solid waste management;

(vi) depth to and thickness of perched groundwater zones and uppermost aquifers;

(vii) information regarding any domestic wells within one mile of the site boundary, including well location, well depth, depth to water, screened intervals, yields and aquifers tapped;

(viii) an evaluation of the potential for impacts to existing surface water and groundwater quality from the proposed facility for solid waste management;

(b) Transfer station and Class III disposal facility applications are required to submit sufficient soils, hydrologic and geologic information so that the department can evaluate the proposed safety and environmental impact of the proposed design;

~~(7)~~(11) present uses of adjacent lands and the owner's name and current address;

~~(8)~~(12) zoning information;

(13) site maps and plans, drawn to a convenient common scale, that show the location and dimensions of any planned excavations, buildings, roads, fencing, access, or other struc-

tures proposed on-site;

(14) in addition to the above required site plan, all facilities which manage Group II waste must submit technical design specifications and a site plan that includes the following:

(a) the type, quantity, and location of any material that will be required for use as a daily and intermediate cover over the life of the site and facility;

(b) the type and quantity of any material that will be required for use as liner material or final cover, including its compaction density and moisture content specifications, the design permeability, and construction quality control and construction quality assurance plans;

(c) the location and depth of cut for any liners;

(d) the location and depths of any proposed fill or processing areas;

(e) the location, dimensions, and grades of any surface water diversion structures;

(f) the location and dimensions of any surface water containment structures, including those designed to impound contaminated runoff leachate, sludge, or liquids for evaporative treatment;

(g) the location of any proposed monitoring points for surface water, groundwater quality, and explosive gases;

(h) the location, type, and dimensions of any fencing to be placed on-site;

(i) the final contours and grades of any fill surface after closure;

(j) the location of each discrete phase of development;

(k) the design details and specifications of any final cap, liner, and leachate collection and removal system, including construction quality control and assurance plans and testing for construction of these elements of design;

(l) a location map showing all the proposed structures and areas for unloading, baling, compacting, storage, and loading, including the dimensions, elevations, and floor plans for these structures and areas, including the general process flow; and

(m) the design details and specifications of the facility's drainage, septic and water supply systems;

~~(9)~~(15) other maps, drawings~~, etc., if necessary~~ related to the design or environmental impact of the proposed facility;

~~(10)~~(16) name and address of individual operator; ~~and~~

~~(11)~~(17) proposed operation and maintenance plan~~.~~;

(18) other information necessary for the department to comply with the Montana Environmental Policy Act (MEPA), Title 75, Chapter 1, parts 1-3, MCA;

(19) closure and post-closure care plans; and

(20) financial assurance required by [RULE IV].

AUTH: 75-10-204, 75-10-221, MCA; IMP: 75-10-204, 75-10-221, MCA

16.14.509 OPERATION AND MAINTENANCE PLAN REQUIREMENTS

(1) Each proposed solid waste management system will be evaluated on a case-by-case basis, taking into consideration the physical characteristics of the ~~disposal site~~ system, the types

and amounts of wastes, and the operation and maintenance plan for that system.

(2) The operation and maintenance plan shall include:

(a) if for use by the public, what days and times the ~~facility~~ components of the system will be open;

(b)-(g) Remain the same.

(h) plan for reclamation of the disposal ~~site~~ facility and the land's ultimate use as required under [RULE II].

(i) any methane monitoring plans required under ARM 16.14.521;

(j) any groundwater monitoring plan required under ARM 16.14.701, et. seq.; and

(k) any plans required for composting or for handling of special waste streams.

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

16.14.514 APPEAL OF DENIAL OR REVOCATION (1) If the department's final decision is to deny the license application or to revoke an existing license to operate a solid waste management system ~~or a license to transport hazardous waste~~, the applicant (or licensee) and the local health officer have an opportunity to appeal the decision to the board. The department shall inform them of this right in the letter of denial or revocation. An appeal, if one is sought, must be filed with the board within 30 days after the notice of denial or revocation of license is received.

(2) If the department issues a license but the local health officer refuses to validate it, the applicant or any person aggrieved by the local health officer's decision may appeal the local health officer's decision to the board. An appeal must be filed within 30 days after receipt of written notice of the local health officer's decision.

(3) The act does not provide ~~the public~~ third parties with the right of appeal to the board from a decision made by the department ~~and the local health officer~~ to issue, revoke, or deny a license.

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-223, 75-10-224, MCA

16.14.516 DURATION OF LICENSE (1) Solid waste management system licenses ~~and hazardous waste transport licenses, once issued, remain in effect until~~ are valid through the June 30 following the date of issuance, unless earlier surrendered by the licensee or ~~until~~ revoked by the department in accordance with 75-10-224, MCA.

(2) Licenses may be renewed on an annual basis by submission of an application for renewal and payment of fees as specified in ARM 16.14.405.

(3) Licenses are not transferable to other ~~persons or~~ locations.

(4) Facilities must be constructed and operated within five years of the original date of license issuance or else re-apply for a new license, regardless of whether license renewal fees have been paid.

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-221, MCA

16.14.520 GENERAL OPERATIONAL AND MAINTENANCE REQUIREMENTS -- SOLID WASTE MANAGEMENT SYSTEMS (1) Remains the same.

(2) Open burning at all ~~sites~~ facilities is prohibited unless a permit has been obtained from the department.

(3) Open burning must be conducted in accordance with rules adopted by the department regulating open burning found in ARM 16.8.1301-16.8.1308.

~~(3)~~(4) Dumping of solid waste ~~shall~~ must be confined to areas within the disposal ~~site~~ facility that can be effectively maintained and operated in accordance with this subchapter. This ~~shall~~ must be controlled by supervision, fencing, signs or similar means approved by the department.

(5) Owners or operators of all solid waste management systems must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

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

~~(5)~~(7) ~~Flies and other insects, as well as rodents, shall be effectively controlled.~~ Owners or operators of all solid waste management systems must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

~~(6)~~(8) Salvaging of materials at all ~~sites~~ facilities is expressly prohibited unless the ~~licensee~~ owner or operator demonstrates to the department's satisfaction that it can be done ~~properly~~ in a manner protective of human health and the environment.

(9) The department hereby adopts and incorporates by reference ARM 16.8.1301-1308, which set standards for open burning. Copies of ARM 16.8.1301-1308 are available from the department's Solid and Hazardous Waste Bureau, Cogswell Building, Helena, MT 59620 [(406) 444-1430].

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

16.14.521 SPECIFIC OPERATIONAL AND MAINTENANCE REQUIREMENTS -- SOLID WASTE MANAGEMENT SYSTEMS (1)~~(a) Due to the hazardous nature of the waste that may be processed at Class I sites, strict supervision is required when such sites are open. Sites shall be fenced to prevent unauthorized access.~~

~~(b) All Class I sites using landfilling methods shall cover Group I wastes with a minimum of twelve (12) inches of suitable earth cover material after each operating day and at least four (4) feet of earth cover material within one week after the final deposit of solid waste. These steps must be taken unless the department is satisfied that the licensee has shown good cause for not covering.~~

~~(c) Where other solid waste management methods are proposed to dispose of Group I wastes, the operation and maintenance plan must demonstrate to the department's satisfaction that such disposal methods pose no danger to man and the environment. Group II wastes disposed at Class I sites shall satisfy all Class II disposal requirements.~~

~~(2)~~(a) All Class II ~~sites~~ facilities using landfilling

methods shall compact and cover solid waste with a layer of at least six inches of approved earth cover material at the end of each operating day ~~and at least two feet of approved earth cover material within one week after the final deposit of solid waste at any portion of the site~~ or at more frequent intervals if necessary to control disease vectors, fires, odors, blowing litter, and scavenging. Alternative daily cover materials such as geotextile fabrics, foams, compost, or other materials may be used in place of the six inches of approved earthen cover material only when approved by the department. The use of alternative daily cover materials must be done under a plan of operations approved of in advance by the department. The plan of operations for the use of alternative daily cover materials must include provisions for the application of six inches of approved earthen cover material at least once per week. The owner or operator must demonstrate to the department that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Any portion of a Class II landfill unit that will not receive additional waste within 90 days must have an intermediate cover of at least one foot of approved earthen materials. These steps must be taken unless the department is satisfied that the licensee has shown good cause for not covering.

(b) Remains the same.

(c) ~~Sites shall~~ Landfills must be fenced to prevent unauthorized access and ~~shall~~ must be supervised when open.

(d) Where ~~refuse containers~~ transfer stations are utilized as part of a management system for Group II solid wastes, all containers ~~shall~~ must be maintained and kept in a sanitary manner and emptied at least once a week.

(e) Owners or operators of all Class II landfill units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes or polychlorinated biphenyls (PCB) wastes. This program must include, at a minimum:

(i) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(ii) Records of any inspections;

(iii) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(iv) Notification of the department if a regulated hazardous waste or PCB waste is discovered at the facility.

(f) Owners or operators of all Class II landfill units must ensure that:

(i) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(ii) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(g) Owners or operators of all Class II landfill units must implement a department approved routine methane monitoring pro-

gram that ensures that the standards of (f) of this subsection are met and that meets the following requirements:

(i) The type and frequency of monitoring must be determined based on the following factors:

(A) Soil conditions;

(B) The hydrogeologic conditions surrounding the facility;

(C) The hydraulic conditions surrounding the facility; and

(D) The location of facility structures and property boundaries.

(ii) The minimum frequency of monitoring must be quarterly.

(h) If methane gas levels exceeding the limits specified in (f) of this subsection are detected, the owner or operator must:

(i) Immediately take all necessary steps to ensure protection of human health and notify the state director;

(ii) Within seven days of detection, place in the operating record and notify the department in writing of the methane gas levels detected and a description of the steps taken to protect human health; and

(iii) Within 60 days of detection, implement a department approved remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the department that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(i) Owners or operators of all solid waste management systems must ensure that the units do not violate any applicable requirements developed under a state implementation plan (SIP) approved or promulgated by the EPA administrator pursuant to section 110 of the Clean Air Act, as amended.

(j) Owners or operators of all Class II disposal units must design, construct, and maintain:

(i) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(ii) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(k) Run-off from the active portion of the disposal unit must be handled in accordance with (1) of this subsection.

(l) Class II disposal units may not:

(i) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the federal Clean Water Act, including, but not limited to, the national pollutant discharge elimination system (NPDES) requirements, pursuant to section 402 or the Montana pollutant discharge elimination system (MPDES) requirements found in ARM 16.20.1301 et seq.

(ii) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under section 208 or 319 of the federal Clean Water Act, as amended.

(m)(i) Bulk or noncontainerized liquid waste may not be placed in Class II disposal units unless:

(A) Approved of in advance by the department; and

(B) The waste is either:

(I) household waste other than septic waste; or

(II) leachate or gas condensate derived from the disposal unit and the disposal unit, whether it is a new or existing disposal or lateral expansion, and is designed with a composite liner and leachate collection system as described in [RULE I].

(ii) In order to obtain this exemption, the owner or operator must place a demonstration in the operating record showing that the conditions of (II) have been met and notify the department for prior approval.

(n) Containers holding liquid waste may not be placed in a Class II disposal unit unless:

(i) The container is a small container similar in size to that normally found in household waste;

(ii) The container is designed to hold liquids for use other than storage; or

(iii) The waste is household waste.

(o) Class II landfill facilities that receive 20,000 tons or more of waste per year must weigh or otherwise accurately record all volumes of waste entering the facility.

(p) The owner or operator of a Class II disposal unit must record and retain at the facility or at an alternative location approved by the department, an operating record containing the following information as it becomes available:

(i) Any location restriction demonstration required under this subchapter;

(ii) Inspection records, training procedures, and notification procedures required under this sub-chapter;

(iii) Gas monitoring results from monitoring and any remediation plans required by this sub-chapter;

(iv) Any design documentation for construction or the placement of leachate or gas condensate in a landfill unit as required under this sub-chapter;

(v) Any demonstration, certification, finding, monitoring, testing, or analytical data required by department ground water monitoring regulations found in ARM 16.14.701, et. seq.;

(vi) Closure and post-closure care plans and any monitoring, testing, or analytical data required by this subchapter;

(vii) Any cost estimates and financial assurance documentation required by this subchapter;

(viii) Any information demonstrating compliance with and approval of the small community exemption; and

(ix) Any waste quantity records required under this subchapter.

(q) The owner/operator must notify the department when the documents from (p) of this subsection have been placed in or added to the operating record, and all information contained in the operating record must be furnished to the department and be made available at all reasonable times for inspection by the department and the public.

(i) Notification and department approval is required if the operating record is to be kept at a location other than the licensed facility.

(ii) The operating record is considered to be part of the

solid waste management facility, regardless of its actual physical location, and must be made available at all reasonable times for inspection by the department and the public.

~~(3)~~(2) Although Class III ~~sites~~ landfills are not required to ~~be covered~~ cover wastes in disposal areas by earth materials daily, ~~they~~ the wastes ~~shall~~ must be covered ~~periodically~~ at least quarterly with six inches of a department approved earthen cover material.

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

(4) The department hereby adopts and incorporates by reference:

(a) The standards governing water pollution discharges contained in the federal Clean Water Act and ARM 16.20.1301 et seq.; and

(b) The standards governing nonpoint source pollutant discharges contained in Montana water quality management plans approved pursuant to sections 208 or 319 of the federal Clean Water Act.

(c) Copies of the Clean Water Act, water quality management plans, and ARM 16.20.1301 et seq. may be obtained from the department's Solid and Hazardous Waste Bureau, Cogswell Building, Helena, MT 59620 [(406) 444-1430].

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

16.14.526 ENFORCEMENT (1)-(2) Remain the same.

(3) The department may seek a civil penalty from persons who store, treat, transport or dispose of ~~hazardous~~ waste in violation of this subchapter or Title 75, chapter 10, part 2, MCA.

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

16.14.701 PURPOSE AND APPLICABILITY (1) The purpose of this subchapter is to provide uniform standards for ~~monitoring~~ ground water monitoring and corrective action at ~~municipal solid waste landfills and other disposal sites that at any time accepted household waste, that were in operation as of October 1, 1989, and that serve a geographic area with a population of 5,000 or more persons~~ Class II disposal facilities. For purposes of this rule, "Class II disposal facility" has the meaning expressed in ARM 16.14.504.

(2) Compliance with the requirements of this subchapter must be implemented according to the following schedule:

(a) Unless the department approves a small community exemption under [RULE I(16)] for disposal units that serve a geographic area with a population of 4,999 persons or less, all new Class II units must be in compliance with this subchapter and initial sampling must be completed before waste can be placed in the unit;

(b) Existing Class II units and lateral expansions that serve a geographic area with a population of 5,000 or more persons must be in compliance with all requirements of this subchapter and have commenced ground water monitoring by October 9, 1993; and

(c) Existing Class II disposal units and lateral expansions

that serve a geographic area with a population of 4,999 persons or less, unless they have successfully petitioned the department for a small community exemption as specified in [RULE I(16)] must comply with this subchapter according to the following schedule:

(i) Existing Class II disposal units and lateral expansions less than one mile from a drinking water intake (surface or subsurface) must be in compliance and have commenced ground water monitoring by October 9, 1994;

(ii) Existing Class II disposal units and lateral expansions greater than one mile but less than two miles from a drinking water intake (surface or subsurface) must be in compliance and have commenced ground water monitoring by October 9, 1995;

(iii) Existing Class II disposal units and lateral expansions greater than two miles from a drinking water intake (surface or subsurface) must be in compliance and have commenced ground water monitoring by October 9, 1996.

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA

16.14.702 DEFINITIONS Unless the context requires otherwise, in this part the following definitions apply:

(1)-(3) Remain the same.

(4) "Aquifer" means any geologic formation, group of formations, or part of a formation ~~that has the ability to store and transmit water and contains sufficient saturated permeable material to sustain a yield of at least one gallon per minute of groundwater to wells or springs~~ capable of yielding significant quantities of ground water to wells or springs.

(5) "Aquitard" means a geologic formation, group of formations, or part of a formation, exhibiting low permeability and having little or no intrinsic permeability, that is stratigraphically adjacent to one or more aquifers and through which ~~practically~~ virtually no water moves. The hydraulic conductivity within ~~the~~ an aquitard is much lower than in adjacent aquifers and is not sufficient to allow the completion of water supply wells within it. An aquitard is also ~~Also~~ known as a "confining bed", "confining layer", or "confining unit".

(6) "Assessment monitoring" means the monitoring that is required whenever a preventive action level has been detected in the ground water for one or more of the constituents in Table 1 (ARM 16.14.706).

(7) "Bentonite seal" is an impervious layer of hydrated bentonite (i.e. sodium montmorillonite) (e.g. granular or powdered) placed between the well casing and the borehole wall, one to two feet above the filter/gravel pack adjacent to the screened interval for the purpose of sealing and restricting ground water movement to the particular aquifer/zone designated for monitoring in each well. The minimum sealing thickness must be one and one-half inches around the outside of the casing on all sides, except for driven wells in accordance with ARM 36.21.806(2).

~~(6) "Board" means the board of health and environmental sciences provided for in 2-15-2104, MCA.~~

(7)-(12) Remain the same but are renumbered (8)-(13).

~~(13) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21,~~

~~MCA.~~

(14) Remains the same.

~~(15) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwater.~~

(15) "Detection monitoring" means the ground water monitoring required by this subchapter, including sampling procedures specified in ARM 16.14.706(4).

(16) Remains the same.

(17) "Enforcement standard" means a numerical value expressing the concentration of a substance in ground water triggering assessment monitoring or corrective action, as specified in this subchapter ~~which is adopted below and authorized by 75-10-207, MCA~~.

(18) "Existing unit" means any solid waste disposal unit that is receiving solid waste as of October 9, 1993, and received it immediately prior to that date as well. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

(18) Remains the same but is renumbered (19).

~~(19)~~(20) "Filter pack/gravel pack" means a clean silica sand or sand and gravel mixture that is installed in the annular space between the borehole wall and the well screen or developed in-situ, extending an appropriate distance above and below the screen or monitoring device/point, for the purpose of retaining and stabilizing the particles from the adjacent strata.

~~(20)~~(21) "Ground water" means all water below ~~ground~~ the land surface.

(22) "Ground water class" means a ground water quality classification established in ARM 16.20.1002.

(23) "Ground water quality standards" means the standards for ground water quality set forth in ARM 16.20.1003.

~~(21)~~(24) "Grout" means an impervious or low permeability material placed in the annulus between the well casing or the riser pipe and the borehole wall to maintain the alignment of the casing and to act as a seal to prevent movement of ground water or surface water within the annular space. ~~Also means~~ It also includes the material placed in a borehole to plug the borehole during abandonment.

(22)-(25) Remain the same but are renumbered (25)-(28).

(29) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

(26) Remains the same but is renumbered (30).

~~(27)~~(31) "Lateral expansion" means ~~development of an adjacent contiguous solid waste disposal property or area outside the current area licensed to receive solid waste~~ a horizontal expansion of the waste boundaries of an existing disposal unit.

~~(28)~~(32) "Leachate" means a liquid that has contacted, passed through or emerged from solid waste and contains soluble,

suspended, or miscible materials removed from such waste.

(29) Remains the same but is renumbered (33).

~~(30) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundment, injection wells, or waste piles.~~

(34) "Municipal solid waste landfill unit (or MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

(35) "New unit" means any solid waste disposal unit that has not received waste prior to October 9, 1993.

(31)-(33) Remain the same but are renumbered (36)-(38).

~~(34) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.~~

(35) Remains the same but is renumbered (39).

~~(36)~~(40) "Point of standards application" means the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in ground water is measured for purposes of determining whether a ground water quality standard, a statistically significant increase over background, a preventive action limit or an enforcement standard has been attained or exceeded.

(37) Remains the same but is renumbered (41).

~~(38)~~(42) "Preventive action limit (PAL)" means a numerical value expressing the maximum allowable concentration of a substance in ground water, triggering assessment monitoring. The PAL is equal to the enforcement standard, or a statistically significant increase above background concentration, or a statistically significant decrease in pH.

(39) Remains the same but is renumbered (43).

(44) "Qualified ground water scientist" is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective action.

(40)-(41) Remain the same but are renumbered (45)-(46).

(47) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials

(although it may be lined with human-made materials), is designed to hold an accumulation of liquid wastes or wastes containing free liquids and is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(42)-(43) Remain the same but are renumbered (48)-(49).

(50) "Unit" means a discrete area of land or an excavation used for the landfilling or other disposal of solid waste.

(51) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(44)-(46) Remain the same but are renumbered (52)-(54).

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA

16.14.703 HYDROGEOLOGICAL AND SOILS STUDY (1) All facilities ~~designated by 75-10-207(1), MCA,~~ required to monitor ground water are required to prepare a site specific hydrogeological and soils report of the facility. Four copies of the report must be transmitted to the department. The report must contain sufficient data and plans to provide the department with a sound basis to determine the adequacy of the proposed ground water monitoring system. At a minimum, the scope of each report will include the following components:

(a) The owner or operator shall conduct a program to evaluate hydrogeologic conditions at the facility. This program shall provide the following information:

(i) A description of the regional and facility specific geologic and hydrogeologic characteristics affecting ground water flow beneath the facility, including:

(A)-(F) Remain the same.

(G) characterization of seasonal variations in the groundwater flow regime; ~~and~~

(H) resource value of the uppermost aquifer.; and

(I) identification and description of the confining layers present, both above and below the saturated zone(s).

(ii) An analysis of any topographic features that might influence the ground water flow system (springs, sinkholes, lineaments, outcrops, rivers, and other surface water or topographical features.

(iii) Based on field data, tests, and cores, preparation of a representative and accurate classification and description of the hydrogeologic units which overlie the uppermost aquifer or which may be part of the leachate migration pathways at the facility (including saturated and unsaturated units), including:

(A) hydraulic conductivity, effective porosity, and porosity (from slug testing, pumping tests or laboratory methods);

(B)-(D) Remain the same.

(iv) Based on field studies and cores, structural geology and hydrogeological cross sections ~~will be prepared~~ showing the extent (depth, thickness, lateral extent) of hydrogeological units which may be part of the leachate migration pathways and identifying:

(A) laterally extensive and hydrogeologically significant sand and gravel layers in unconsolidated deposits~~;~~.

(B) cross sections should include significant aquifers beneath the uppermost aquifer, particularly if the uppermost aquifer is thin or laterally discontinuous, as well as applicable confining layers;

(C)-(F) Remain the same.

(v) Remains the same.

(vi) A description of manmade influences that may affect the hydrogeology of the site (schedules and volumes of production for local water supply wells, pipelines, drains, ditches, septic tanks, etc.).

(vii)-(ix) Remain the same.

(x) ~~The owner or operator shall conduct a program to characterize~~ characterization of the soil and rock units above the water table in the vicinity of the landfill~~. Such characterization shall include~~ , including, but not ~~be~~ limited to, the following information:

(A)-(B) Remain the same.

(C) unsaturated zone hydraulic conductivity;

(D)-(J) Remain the same.

(K) soil boring information ~~must be~~ gathered in the following manner:

(I)-(II) Remain the same.

(III) Sufficient soil borings must be done to define the soil and bedrock conditions ~~within the areas required in section (a)(v)(C) of this rule~~. The initial drilling must include borings positioned throughout the site; within each geomorphic feature including ridges, knolls, depressions, and drainage swales; and within any geophysical anomalies already identified. The minimum required number of borings for this initial drilling is as follows:

0-10 acres	15 borings
11-20 acres	add one boring per additional acre
20-40 acres	add one boring per additional two acres
41 or more acres	add one boring per additional four acres

Seventy five per cent (75%) of the required number of boring may be conducted with a backhoe to a depth of ten (10) feet.

(IV)-(VI) Remain the same.

(xi) Remains the same.

(b) Remains the same.

(c) The hydrogeological and soils report must be completed for new and existing facilities ~~as defined in 75-10-207, MCA,~~ within the following time frames:

(i)-(ii) Remain the same.

(iii) ~~existing~~ facilities which serve a geographic area with a population of 5,000 or more persons that accepted solid waste after October 1, 1989, and ~~are currently undergoing closure~~ have ceased taking waste prior to October 9, 1993, must submit to the department a complete report. The report must be submitted no later than one year after the department requests the report. Closure will not be final until the department approves of the

report.

(d) A work plan must be submitted to the department for approval at least 180 days in advance of any applicable deadline specified in ARM 16.14.701(2).

AUTH: 75-10-204(5), MCA; IMP: 75-10-204, 75-10-207, MCA

16.14.704 LOCATION AND NUMBER OF MONITORING WELLS (1) The background groundwater quality monitoring well(s) must be located so as to monitor the quality of ground water representative of the ground water ~~entering the facility waste disposal areas~~ passing the relevant point of compliance that has not been affected by leakage from the unit. At least one background water quality monitoring well is required at all facilities. At least two background wells must be installed at facilities where statistics will be utilized for ground water quality data evaluation unless it can be demonstrated to the department's satisfaction that a single well will suffice for the statistical test method chosen for ARM 16.14.706.

(a) A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground water quality that is as representative or more representative than that provided by the upgradient wells and will represent the quality of ground water passing the relevant point of compliance.

(2) Downgradient ground water quality monitoring wells must be capable of detecting a ~~release of leachate~~ migration of hazardous constituents from active and closed waste disposal areas. The number and location of downgradient monitoring wells must be approved in writing by the department. At least two downgradient monitoring wells are required, although the department may require more.

(a) The downgradient monitoring system must be installed at the relevant point of compliance specified by the department that ensures detection of ground water contamination in the uppermost aquifer. When physical obstacles preclude installation of ground water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically downgradient from the relevant point of compliance specified by the department.

(3) Remains the same.

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA

16.14.705 MONITORING WELL CONSTRUCTION (1) All ground water monitoring wells ~~shall~~ must be constructed by a licensed monitoring well constructor pursuant to 37-43-302, MCA, to the standards contained in ARM 36.21.801-36.21.808, and as required by this section, so as to obtain representative static water level data and ground water samples. An owner or operator may request from the department a waiver of the requirements listed

in this rule for wells already constructed by the date of implementation of this rule. However, this waiver can only apply to wells previously approved by the department.

(2) Water samples may not be collected from piezometers unless constructed to specifications for standard monitoring wells.

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

~~(3)~~(4) ~~Drills~~ Drill rigs and all downhole equipment ~~should~~ must be cleaned in accordance with technically accepted procedures prior to initiation of drilling on site. If site investigation is conducted at an existing landfill ~~site~~ facility, then the rig and all downhole equipment ~~should~~ must be decontaminated between each borehole.

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

~~(5)~~(6) A hydrogeologist, qualified ground water scientist, or other qualified person shall:

(a) observe and direct the drilling of all borings, the installation and development of all wells and all in-field hydraulic conductivity tests. ~~The hydrogeologist or other qualified person shall~~;

(b) demonstrate their competency in hydrogeology by submitting to the department a statement of qualifications before commencing work~~.~~; and ~~The hydrogeologist shall also~~

(c) visually describe and classify all of the geologic samples derived from boring and well cuttings or samples.

~~(6)~~(7) All monitoring wells ~~shall~~ must be constructed:

(a) to minimize the potential for contaminants to enter the ground water or to move from one major soil unit or bedrock formation to another~~.~~;

(b) with a difference of 3 to 5 inches between the outer diameter of the casing/screen and the inner diameter of the surface of the borehole to facilitate placement of the filter pack, as well as annular sealants; and

(c) with grout or other seal material extended down to within five feet of the zone being monitored.

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

~~(9)~~(10) All ground water monitoring wells ~~shall~~ must be properly developed to remove fine soil particles, drill cuttings and drilling fluids from the vicinity of the well screen. After development the ground water must be tested for pH, temperature, specific conductance and total suspended solids. If liquid drilling fluids were used during well construction, a sample must also be tested for chemical oxygen demand. After development, all wells ~~shall~~ must be repeatedly measured for static water level until stabilized measurements are obtained.

~~(10)~~(11) Ground water monitoring well information must be reported on department approved forms. The department will provide forms for reporting ground water monitoring well construction, boring log information, well development, and other ground water monitoring information as required by the department, including:

(a)-(f) Remain the same.

(g) the thickness of the filter/gravel pack (i.e. the spacing differential between the outer diameter of the casing/-

screen and the inner diameter of the surface of the borehole);

(g)-(k) Remain the same but are renumbered (h)-(l).

~~(11)~~(12) ~~Recommendations~~ Requirements for drilling are as follows:

(a) In order to create a stable, open, vertical well hole for installation of the well screen and riser, one of the following drilling methods ~~are~~ must be utilized, listed in decreasing order of preference:

(i)-(iii) Remains the same.

(iv) Reverse circulation drilling ~~fluid~~ is preferred to wet rotary drilling.

(v) Remains the same.

(b) Remains the same.

(c) All materials used in construction ~~should~~ must be free of chemicals, paint, coatings, etc., that could leach. Decontamination of all downhole assemblies must be performed, using steam or an appropriate alternative.

(d) When assembling a well screen, riser, and sampler, there ~~should~~ must be a stable borehole. The order of steps ~~then should~~ to complete the well must be:

(i)-(ii) Remain the same.

(iii) placement of the filter/gravel pack;

~~(iv) placement of the filter;~~

(v)-(viii) Remain the same but are renumbered (iv)-(vii).

(e) Well development ~~should~~ must be continued until representative formation water, free of the effects of well construction, is obtained and the specific conductance, temperature, and pH have stabilized.

(13) The department hereby adopts and incorporates by reference ARM 36.21.801-36.21.808, which contain standards for construction of water wells. Copies of ARM 36.21.801-36.21.808 are available from the department's Solid and Hazardous Waste Bureau, Cogswell Building, Helena, MT 59620 [(406) 444-1430].

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.706 SAMPLING AND ANALYSIS PLAN (1) The owner or operator or their consultant shall prepare or have prepared a sampling and analysis plan (SAP) for use during all groundwater sampling activities in and around the facility. The SAP shall include:

(a) a sampling plan including:

(i)-(iii) Remain the same.

(iv) sampling procedures, including:

(A)-(B) Remain the same.

(C) the order of sample collections~~:~~:

(I) by well location or sampling point number; and

(II) according to required analytical parameter/chemical constituent analyses;

(D)-(G) Remain the same.

(H) analytical parameters, including:

(I) Table 1 parameters;

(II) laboratory and analytical methods, according to approved U.S. EPA method numbers, including practical quantitation limits and detection limits;

(III)-(IV) Remain the same.

(v) Remains the same.

(b)-(c) Remain the same.

(2)-(3) Remain the same.

(4) Once established at a disposal unit, ground water monitoring must be conducted throughout the active life and post-closure care period of that disposal unit as specified in [RULE III]. The minimum ground water sampling frequency ~~shall~~ must be twice per year, at least three months apart, at high and low ground water periods, unless otherwise specified in writing by the department. The high and low water ground water level periods will be determined through first year monthly water level measurements. The direction of ground water flow must be determined each time ground water elevations are measured.

(5) Static water level elevation ~~shall~~ must be measured and recorded to the nearest 0.05 foot in each ground water monitoring well immediately prior to sampling. The elevations ~~shall~~ must be reported in feet above mean sea level or local datum. The measuring point ~~shall~~ must be the top of the well casing and ~~shall be~~ identified on the well itself if the top of the casing is not level. Water elevations in all wells must be measured in a sufficiently short time so as to avoid temporal variation.

(6)-(7) Remain the same.

(8) Unless otherwise specified in writing by the department the parameters listed herein as Table 1 ~~shall~~ must be monitored in the detection monitoring program.

(9) Analysis of the parameters listed in Table 1 must be conducted by an analytical laboratory that will follow the analytical methods referenced in EPA's "Methods for Chemical Analysis of Water and Wastes" EPA-600, and "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846, third edition, September, 1986), unless alternative methods are approved in advance by the department in writing. The metals parameters required for laboratory analysis must be for the dissolved metals concentration in the ground water, unless another alternative for analysis is approved in writing by the department on an individual facility basis. Practical quantitation limits (PQL) and detection limits for all chemical analyses ~~shall~~ must be in accordance with SW-846 and the EPA 600 series and must be listed with the results of analyses of each sample.

(10) The owner/operator must establish background ground water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters and constituents required according to Table 1 of this subchapter if detection monitoring is required or Table 2 of this subchapter if assessment monitoring is required. Background ground water quality may be established at wells that are not located hydraulically upgradient from the disposal unit if any of the following conditions exist:

(a) Hydrogeologic conditions do not allow the owner/operator to determine what wells are hydraulically upgradient;

(b) Physical obstacles preclude installation of an upgradient background monitoring well location; or

(c) Sampling at other well will provide an indication of background quality that is representative or more representative

than that provided by the upgradient wells.

(11) The number of samples collected to establish ground water quality data must be consistent with the appropriate statistical procedures determined in (12) below. Sampling procedures will be those specified in (1)(a)(iv) above.

(12) The owner or operator must use one of the following statistical methods in evaluating ground water monitoring data for each hazardous constituent, use the method chosen separately for each hazardous constituent in each well, and specify in the operating record and to the department which method will be used:

(a) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination, including estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(b) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination, including estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(c) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(d) A control chart approach that gives control limits for each constituent.

(e) Another statistical test method that meets the performance standards of (13) of this rule. The owner or operator must place a justification for this alternative in the operating record and notify the department of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of (13) of this rule.

(13) Any statistical method chosen under (12) of this rule shall comply with the following performance standards, as appropriate:

(a) The statistical method used to evaluate ground water monitoring data must be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data must be transformed or a distribution-free theory test must be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground water protection standard, the test must be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period must be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not

apply to tolerance intervals, prediction intervals, or control charts.

(c) If a control chart approach is used to evaluate ground water monitoring data, the specific type of control chart and its associated parameter values must be protective of human health and the environment. The parameters must be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(d) If a tolerance interval or a predictional interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be protective of human health and the environment. These parameters must be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(e) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (POL) that is used in the statistical method must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(f) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(14) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular approved ground water monitoring program that applies to the disposal unit.

(a) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground water quality of each parameter or constituent at each monitoring well designated pursuant to ARM 16.14.704(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under (12) and (13) of this rule.

(b) Within 15 days after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

~~(10)~~(15) Field records of all monitoring activities ~~shall~~ must be prepared in sufficient detail to document whether the ground water sampling plan has been followed. The facility owner or operator shall retain all field sampling records in the operating record for ~~at least ten years~~ the active life and post-closure care periods of all Class II disposal units at the facility. The field records ~~shall~~ must be available for department and public inspection on request. The owner or operator shall submit sampling results and water elevation data within 90 days after sampling. A report describing any deviations from the

approved sampling plan or analytical procedures ~~shall~~ must be submitted at the same time and placed in the operating record.

(16)(a) The department hereby adopts and incorporates by reference:

(i) EPA's "Methods for Chemical Analysis of Water and Wastes", (EPA-600); and

(ii) EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", (SW-846), third edition, September, 1986.

(b) Both of the above documents prescribe standards for testing water for certain parameters. Copies may be obtained from the department's Solid and Hazardous Waste Bureau, Cogswell Building, Helena, MT 59620 [(406) 444-14301.

TABLE 1 - GROUND WATER MONITORING PARAMETERS

~~1. Ammonia (as N)~~
~~2. Bicarbonate (HCO_3)~~
~~3. Calcium~~
~~4. Carbonate~~
~~5. Chloride~~
~~6. Iron~~
~~7. Magnesium~~
~~8. Manganese, dissolved~~
~~9. Nitrate (as N)~~
~~10. Potassium~~
~~11. Sodium~~
~~12. Sulfate (SO_4)~~
~~13. Chemical Oxygen Demand (COD)~~
~~14. Total Dissolved Solids~~
~~15. Total Suspended Solids~~
~~16. Specific conductance~~
~~17. pH~~
~~18. Arsenic~~
~~19. Barium~~
~~20. Cadmium~~
~~21. Chromium~~
~~22. Cyanide~~
~~23. Lead~~
~~24. Mercury~~
~~25. Selenium~~
~~26. Silver~~

~~27. The following volatile organic compounds (VOCs by EPA method 8240):~~

~~• Benzene~~
~~• Bromochloromethane~~
~~• Bromodichloromethane~~
~~• cis-1,3-Dichloropropene~~
~~• Trans-1,3-Dichloropropene~~
~~• 1,4-Difluorobenzene~~
~~• Ethylbenzene~~
~~• Ethyl methacrylate~~
~~• 4-Bromofluorobenzene~~
~~• Bromoform~~
~~• Bromomethane~~
~~• Carbon tetrachloride~~
~~• Chlorobenzene~~
~~• Chlorodibromomethane~~
~~• Chloroethane~~
~~• 2-Chloroethyl vinyl ether~~
~~• Chloroform~~
~~• Chloromethane~~
~~• Dibromomethane~~
~~• Dichlorodifluoromethane~~
~~• 1,1-Dichloroethane~~
~~• 1,2-Dichloroethane~~
~~• Iodomethane~~
~~• Methylene chloride~~
~~• 1,1-Dichloroethene~~
~~• trans-1,2-Dichloroethane~~
~~• Styrene~~
~~• 1,1,2,2-Tetrachloroethane~~
~~• Toluene~~
~~• 1,1,1-Trichloroethane~~
~~• 1,1,2-Trichloroethane~~
~~• Trichloroethene~~
~~• Trichlorofluoromethane~~
~~• 1,2,3-Trichloropropane~~
~~• Vinyl acetate~~
~~• Vinyl chloride~~
~~• Xylene~~

1. Ammonia (as N)
2. Antimony
18. Nitrate (as N)
19. Nickel

3. Arsenic
4. Barium
5. Bicarbonate (HCO_3)
6. Cadmium
7. Calcium
8. Carbonate
9. Chloride
10. Chromium
11. Copper
12. Cyanide
13. Iron
14. Lead
15. Magnesium
16. Manganese
17. Mercury
20. Potassium
21. Selenium
22. Silver
23. Sodium
24. Sulfate (SO_4)
25. Thallium
26. Vanadium
27. Zinc
28. Chemical Oxygen Demand (COD)
29. pH
30. Specific conductance
31. Total Dissolved Solids
32. Total Suspended Solids

27. The following volatile organic compounds (VOCs by EPA method 8260):

- Acetone
- Acrylonitrile
- Benzene
- Bromochloromethane
- Bromodichloromethane
- Bromoform
- Carbon disulfide
- Carbon tetrachloride
- Chlorobenzene
- Chloroethane
- Chloroform
- Chlorodibromomethane
- 1,2-Dibromo-3-chloropropane (DBCP)
- 1,2-Dibromomethane; (EDB)
- o-Dichlorobenzene; 1,2-Dichlorobenzene
- p-Dichlorobenzene; 1,1-Dichlorobenzene
- trans-1,4-Dichloro-2-butene
- 1,1-Dichloroethane
- 1,2-Dichloroethane
- 1,1-Dichloroethylene
- cis-1,2-Dichloroethylene
- trans-1,2-Dichloroethylene
- 1,2-Dichloropropane
- cis-1,3-Dichloropropene
- trans-1,3-Dichloropropene
- Ethylbenzene
- 2-Hexanone; Methyl butyl ketone
- Methyl bromide; Bromomethane
- Methyl chloride; Chloromethane
- Methylene bromide; Dibromomethane
- Methylene chloride
- Methyl ethyl ketone; MEK
- Methyl iodide; Iodomethane
- 4-Methyl-2-pentanone; Methyl isobutyl ketone
- Styrene
- 1,1,1,2-Tetrachloroethane
- 1,1,2,2-Tetrachloroethane
- Tetrachloroethylene
- Toluene
- 1,1,1-Trichloroethane
- 1,1,2-Trichloroethane
- Trichloroethene
- Trichlorofluoromethane
- 1,2,3-Trichloropropane
- Vinyl acetate
- Vinyl chloride
- Xylenes

TABLE 2 - LIST OF HAZARDOUS INORGANIC AND ORGANIC CONSTITUENTS[1]

Common Name[2]	CAS RN[3]	Chemical Abstracts Service Index Name[4]	Suggested Methods[5]	PQL (µg/L)[6]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100	200
			8270	10
Acenaphthylene	208-96-8	Acenaphthylene	8100	200
			8270	10
Acetone	67-64-1	2-Propanone	8260	100
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	20
Acrolein	107-02-8	2-Propenal	8030	5
			8260	100
Acrylonitrile	107-13-1	2-Propenenitrile	8030	5
			8260	200
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1α,4α,4aβ,5α,8α,8aβ)-	8080	0.05
			8270	10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010	5
			8260	10
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine	8270	20
Anthracene	120-12-7	Anthracene	8100	200
			8270	10
Antimony	(Total)	Antimony	6010	300
			7040	2000
			7041	30
Arsenic	(Total)	Arsenic	6010	500
			7060	10
			7061	20
Barium	(Total)	Barium	6010	20
			7080	1000
Benzene	71-43-2	Benzene	8020	2
			8021	0.1
			8260	5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100	200
			8270	10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100	200
			8270	10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100	200
			8270	10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100	200
			8270	10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100	200
			8270	10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010	3
			7090	50
			7091	2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-	8080	0.05
			8270	10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-	8080	0.05
			8270	20
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-	8080	0.1
			8270	20
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-	8080	0.05
			8270	20
Bis(2-chloroethoxy)-methane	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	8110	5
			8270	10
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-	8110	3
			8270	10
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether; DCIP, See note 7	108-60-1	Propane, 2,2'-oxybis[1-chloro-	8110	10
			8270	10

Common Name[2]	CAS RN[3]	Chemical Abstracts Service Index Name[4]	Suggested Methods[5]	PQL (µg/L)[6]
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	8060	20
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	8021	0.1
			8260	5
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	8010	1
			8021	0.2
			8260	5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010	2
			8021	15
			8260	5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8110	25
			8270	10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060	5
			8270	10
Cadmium	(Total)	Cadmium	6010	40
			7130	50
			7131	1
Carbon disulfide	75-15-0	Carbon disulfide	8260	100
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010	1
			8021	0.1
			8260	10
Chlordane	See Note 8	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	8080	0.1
			8270	50
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010	2
			8020	2
			8021	0.1
			8260	5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester	8270	10
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	8040	5
			8270	20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010	5
			8021	1
			8260	10
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	8010	0.5
			8021	0.2
			8260	5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120	10
			8270	10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040	5
			8270	10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8110	40
			8270	10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010	50
			8260	20
Chromium	(Total)	Chromium	6010	70
			7190	500
			7191	10
Chrysene	218-01-9	Chrysene	8100	200
			8270	10
Cobalt	(Total)	Cobalt	6010	70
			7200	500
			7201	10
Copper	(Total)	Copper	6010	60
			7210	200
			7211	10
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	200
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenylidene)bis[4-chloro-	8080	0.05
			8270	10

Common Name[2]	CAS RN[3]	Chemical Abstracts Service Index Name[4]	Suggested Methods[5]	PQL (µg/L)[6]
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100	200
			8270	10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010	1
			8021	0.3
			8260	5
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-	8011	0.1
			8021	30
			8260	25
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	8011	0.1
			8021	10
			8260	5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060	5
			8270	10
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010	2
			8020	5
			8021	0.5
			8120	10
			8260	5
			8270	10
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-	8010	5
			8020	5
			8021	0.2
			8120	10
			8260	5
			8270	10
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010	2
			8020	5
			8021	0.1
			8120	15
			8260	5
			8270	10
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8260	100
Dichlorodifluoromethane; CFC 12;	75-71-8	Methane, dichlorodifluoro-	8021	0.5
			8260	5
1,1-Dichloroethane; Ethylidene chloride	75-34-3	Ethane, 1,1-dichloro-	8010	1
			8021	0.5
			8260	5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-	8010	0.5
			8021	0.3
			8260	5
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010	1
			8021	0.5
			8260	5
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	8021	0.2
			8260	5
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010	1
			8021	0.5
			8260	5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040	5
			8270	10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	8010	0.5
			8021	0.05
			8260	5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	8021	0.3
			8260	5
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	8021	0.5
			8260	15
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	8021	0.2
			8260	5

Common Name[2]	CAS RN[3]	Chemical Abstracts Service Index Name[4]	Suggested Methods[5]	PQL (µg/L)[6]
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010	20
			8260	10
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010	5
			8260	10
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aα,2β,2aα,3β,6β,6aα,7β,7aα)-	8080	0.05
			8270	10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060	5
			8270	10
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	8141	5
			8270	20
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	8141	3
			8270	20
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	8270	10
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	8040	5
			8270	10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060	5
			8270	10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	20
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040	150
			8270	50
2,4-Dinitrophenol;	51-28-5	Phenol, 2,4-dinitro-	8040	150
			8270	50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090	0.2
			8270	10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl- 1,3-dinitro-	8090	0.1
			8270	10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150	1
			8270	20
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060	30
			8270	10
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	8140	2
			8141	0.5
			8270	10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,	8080	0.1
			8270	20
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β,9aα)-	8080	0.05
			8270	20
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3,3-dioxide	8080	0.5
			8270	10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aβ,3a,6a,6aβ,7β,7aα)-	8080	0.1
			8270	20
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β,2aβ,4β,4aβ,5β,6aβ,6bβ,7R*)-	8080	0.2
			8270	10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020	2
			8221	0.05
			8260	5
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015	5
			8260	10
			8270	10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	20
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl] phenyl] O,O-dimethyl ester	8270	20
Fluoranthene	206-44-0	Fluoranthene	8100	200
			8270	10
Fluorene	86-73-7	9H-Fluorene	8100	200
			8270	10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	8080	0.05
			8270	10

Common Name[2]	CAS RN[3]	Chemical Abstracts Service Index Name[4]	Suggested Methods[5]	PQL (µg/L)[6]
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7- ... heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ,2α,5α,5aβ,6β,6aα)	8080	1
			8270	10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120	0.5
			8270	10
Hexachlorobutadiene ...	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	8021	0.5
			8120	5
			8260	10
			8270	10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120	5
			8270	10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120	0.5
			8260	10
			8270	10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	8260	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	8100	200
			8270	10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015	50
			8240	100
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10- ..... hexachloro-1,4,4a,5,8,8a hexahydro- (1α,4α,4aβ,5β,8β,8aβ)-	8270	20
			8260	10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090	60
			8270	10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, ... 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	8270	20
Lead	(Total)	Lead	6010	400
			7420	1000
			7421	10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015	5
			8260	100
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'(2-thienylmethyl)-	8270	100
Methoxychlor	72-43-5	Benzene,1,1'-(2,2,2,trichloroethylidene)bis[4-methoxy-	8080	2
			8270	10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010	20
			8021	10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010	1
			8021	0.3
			8260	10
3-Methylcholanthrene ..	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	8015	10
			8260	100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010	40
			8260	10
Methyl methacrylate ...	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015	2
			8260	30
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene ...	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl ..... O-(4-nitrophenyl) ester	8140	0.5
			8141	1
			8270	10
4-Methyl-2-pentanone; . Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015	5
			8260	100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010	15
			8021	20
			8260	10
Methylene chloride; ... Dichloromethane	75-09-2	Methane, dichloro-	8010	5
			8021	0.2
			8260	10

Common Name[2]	CAS RN[3]	Chemical Abstracts Service Index Name[4]	Suggested Methods[5]	PQL (µg/L)[6]
Naphthalene	91-20-3	Naphthalene	8021	0.5
			8100	200
			8260	5
			8270	10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010	150
			7520	400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090	40
			8270	10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040	5
			8270	10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040	10
			8270	50
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8070	5
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-	8070	10
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	8141	0.5
			8270	10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040	5
			8270	50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)	8270	20
Phenanthrene	85-01-8	Phenanthrene	8100	200
			8270	10
Phenol	108-95-2	Phenol	8040	1
			8270	10
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	8140	2
			8141	0.5
			8270	10
Polychlorinated biphenyls; PCBs; Aroclors	See Note 9	1,1'-Biphenyl, chloro derivatives	8080	50
			8270	200
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015	60
			8260	150
Pyrene	129-00-0	Pyrene	8100	200
			8270	10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	8270	10
Selenium	(Total)	Selenium	6010	750
			7740	20
			7741	20
Silver	(Total)	Silver	6010	70
			7760	100
			7761	10
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020	1
			8021	0.1
			8260	10

Common Name[2]	CAS RN[3]	Chemical Abstracts Service Index Name[4]	Suggested Methods[5]	PQL (µg/L)[6]
Sulfide	18496-25-8	Sulfide	9030	4000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010	5
			8021	0.05
			8260	5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010	0.5
			8021	0.1
			8260	5
Tetrachloroethylene; Tetrachloroethane; ... chloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	8010	0.5
			8021	0.5
			8260	5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Thallium	(Total)	Thallium	6010	400
			7840	1000
			7841	10
Tin	(Total)	Tin	6010	40
Toluene	108-88-3	Benzene, methyl-	8020	2
			8021	0.1
			8260	5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	See Note 10	Toxaphene	8080	2
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8021	0.3
			8120	0.5
			8260	10
			8270	10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8010	0.3
			8021	0.3
			8260	5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010	0.2
			8260	5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010	1
			8021	0.2
			8260	5
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	8010	10
			8021	0.3
			8260	5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040	5
			8270	10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010	10
			8021	5
			8260	15
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethylester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Total)	Vanadium	6010	80
			7910	2000
			7911	40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8260	50
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	8010	2
			8021	0.4
			8260	10
Xylene (total)	See Note 11	Benzene, dimethyl-	8020	5
			8021	0.2
			8260	5
Zinc	(Total)	Zinc	6010	20
			7950	50
			7951	0.5

Notes

1. The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.
2. Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
3. Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

4. CAS index are those used in the 9th Collective Index.

5. Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

6. Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

7. This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2'-oxybis[2-chloro- (CAS RN 39638-32-9).

8. Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.

9. Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

10. Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

11. Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.707 REPORTING AND PLANNING REQUIREMENTS (1) Remains the same.

(2) If no major plan or report is being prepared at the time of new well construction, development, or rehabilitation, then all required documentation of this work ~~shall~~ must be submitted to the department within 90 days of the start of work on the well. Otherwise the well construction and development details will be attached as an appendix to the major plan or report.

(3) Remains the same.

(4) A copy of all plans, reports, studies and other ground water monitoring methods or activities must be supplied to the department and placed in the operating record.

(5) Revisions, changes, and additional requirements of the department must be incorporated into the operating records at a facility.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.708 DEFINITION OF EXTENT OF CONTAMINATION (1) ~~If an exceedance or a definitive trend towards exceedance (or a significant decrease in pH) of an enforcement standard or preventative action limit for any Table 1 [ARM 16.14.706] constituent is detected in samples from any facility groundwater monitoring wells, then the department may require the owner or operator to take one or more of the following actions:~~ (a) If ground water concentration(s) in samples from any facility ground water monitoring well(s) for any Table 1 (ARM 16.14.706) constituent equal or exceed an enforcement standard or show a significant statistical increase above background levels or a statistically significant decrease in pH occurs, the owner or operator must:

~~(a) resample one or more of the monitoring wells;~~

(i) Notify the department in writing within 14 days of the discovery. The notification must specify the parameters and the well(s) involved;

(ii) Begin a program of assessment monitoring and resample all of the ground water monitoring wells for constituents of Table 2 (ARM 16.14.706) within 90 days;

(iii) Collect and analyze a minimum of at least one sample from each downgradient well for Table 2 constituents during each sampling event;

(iv) For any constituent detected in the downgradient wells as a result of the complete Table 2 analysis, collect and analyze a minimum of four independent samples from each well (downgradient and upgradient) to establish background for the constituents detected;

(v) During continued assessment monitoring:

(A) Sample all wells for all Table 2 constituents at least annually;

(B) Sample all wells at least semi-annually for all Table 1 constituents and all Table 2 constituents detected in the initial, or subsequent annual, Table 2 sampling; and

(C) Collect and analyze at least one sample from each well (background and downgradient) during each sampling event.

(b) The department may delete any of the Table 2 constituents required under assessment monitoring if it can be demon-

strated that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The department may designate an appropriate alternate subset of wells to be sampled for Table 2 constituents during continued assessment monitoring.

(d) The department may specify an alternative sampling frequency for the full set of Table 2 constituents, or the Table 1 constituents and Table 2 constituents detected during the full Table 2 analysis. The frequency must be no less than annual and must be based on:

(i) the lithology of the aquifer and unsaturated zone;

(ii) the hydraulic conductivity of the aquifer and unsaturated zone;

(iii) ground water flow rates;

(iv) the minimum distance between upgradient edge of the disposal unit and downgradient monitoring well screen (minimum distance of travel);

(v) the resource value of the aquifer; and

(vi) the nature (fate and transport) of any constituents detected in response to this section.

(d) The department may require the owner or operator to sample public or private water supply wells or springs and to determine water level elevations in such wells to determine the extent of ground water contamination.

(e) The relevant point of compliance (POC) to determine if an enforcement standard or preventive action limit has been attained or exceeded is specified as no more than 150 meters beyond the waste management unit boundary and must be located on land owned by the owner of the disposal unit.

(i) The downgradient monitoring system must be installed at the POC specified by the department that ensures detection of ground water contamination in the uppermost aquifer.

(ii) When physical obstacles preclude installation of ground water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically downgradient from the POC specified by the department that ensures detection of groundwater contamination in the uppermost aquifer.

(f) The department may approve a multi-unit ground water monitoring system instead of separate ground water monitoring systems for each disposal unit when the facility has several units, provided the multi-unit ground water monitoring system meets the requirement of ARM 16.14.704, and the department determines it is equally or more protective of human health and the environment as individual monitoring systems for each unit. An owner or operator of a facility may submit a written request for approval of a multi-unit ground water monitoring system. The requirements shall include an evaluation of at least the following factors:

(i) the hydrogeologic characteristics of the facility and surrounding land;

(ii) the climatic factors of the area;

(iii) the volume and physical characteristics of the leachate;

(iv) proximity of ground water users;
(v) the age, and design of the site;
(vi) the classification and quality of ground water;
(vii) the types of waste accepted at the disposal units; and
(viii) the number, spacing, and orientation of the disposal units.

(g) The owner or operator must place in the operating record and submit to the department the results of any sampling required under this rule within 14 days of the receipt of results by the owner or operator.

(h) The owner or operator must notify the department of any detection of any Table 2 (ARM 16.14.706) constituents within 14 days of the receipt of results by the owner or operator. A copy of the notice must be placed in the operating record.

(i) The owner or operator may demonstrate that a source other than a disposal unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground water scientist and approved by the department and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the detection monitoring program pursuant to ARM 16.14.706. If a successful demonstration is not made within 90 days, the owner or operator must comply with this rule and initiate assessment monitoring.

~~(b) increase the frequency of ground water sampling;~~
~~(c) conduct monitoring for additional parameters;~~
~~(d) install additional monitoring wells to define the nature and extent of contamination; or~~
~~(e) prepare a ground water corrective action plan including an assessment of the impacts and a schedule of implementation for corrective action.~~

(2) If the concentrations of all Table 2 (ARM 16.14.706) constituents are shown to be at or below background values, using the statistical procedures in ARM 16.14.706, for two consecutive semi-annual sampling events, the owner or operator must notify the department of this finding and may return to detection monitoring for Table 1 (ARM 16.14.706) constituents.

(3) If the concentrations of any Table 2 (ARM 16.14.706) constituents are above background values, but all concentrations are below the ground water protection standard established under the Montana ground water quality standards, using the statistical procedures in ARM 16.14.706, the owner or operator must continue assessment monitoring on at least a semi-annual basis for all Table 1 (ARM 16.14.706) constituents and all Table 2 constituents detected in the initial assessment monitoring.

(4) If one or more Table 2 (ARM 16.14.706) constituents are detected at statistically significant levels above the ground water protection standard established under (5) of this rule in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the Table 2 constituents that have exceeded the ground water

protection standard and notify the department and all appropriate local government officials. The owner or operator also:

(a)(i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well for all Table 2 constituents;

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells; and

(iv) Must initiate an assessment of corrective measures within 60 days; or

(b) May demonstrate that a source other than a disposal unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground water scientist and approved by the department and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this rule, and may return to detection monitoring if the Table 2 (ARM 16.14.706) constituents are at or below background as specified in (2) of this rule. Until a successful demonstration is made, the owner or operator must comply with (4) of this rule, including initiating an assessment of corrective measures.

(5) The ground water protection standard (enforcement standard) for each Table 1 and Table 2 (ARM 16.14.706) constituent must be:

(a) For constituents for which a maximum contaminant level (MCL) has been promulgated under the Montana ground water quality standards, the MCL for that constituent;

(b) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with ARM 16.14.706;

(c) For constituents for which the background level is higher than the MCL identified under (5)(a) of this rule or health based levels identified under 5(d) of this rule, the background concentration; or

(d) The department may establish alternative ground water protection standards (enforcement standards) for which MCLs have not been established based on the following criteria:

(i) The level is derived in a manner consistent with U.S. EPA guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(ii) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR, Part 792) or equivalent;

(iii) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the 1×10^{-4} to 1×10^{-6} range;

and

(iv) For systemic toxicants, the level represents a concentration to which the human population could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subsection, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

~~(2) The department may require the owner or operator to sample public or private water supply wells or springs and to determine water level elevations in such wells to determine the extent of groundwater contamination.~~

~~(3) The point of standards application (PSA) to determine if a preventive action limit or enforcement standard has been attained or exceeded is specified as no more than 450 feet beyond any waste disposal areas. The department may expand or reduce the PSA if the department determines it is equally or more protective of public health and natural resources. An owner or operator of a facility may submit a written request for approval of an expansion or reduction of the PSA. The requirements shall include an evaluation of at least the following factors:~~

~~(a) the hydrogeologic characteristics of the facility and surrounding land;~~

~~(b) the climatic factors of the area;~~

~~(c) the volume and physical characteristics of the leachate;~~

~~(d) proximity of groundwater users;~~

~~(e) the age and design of the site; and~~

~~(f) the quality of groundwater.~~

~~(4) An owner or operator of a facility is required to notify the department in writing within 15 days of the discovery of an exceedence of an enforcement standard or a preventive action limit. The notification shall specify the parameters for which standards have been exceeded and the wells at which the exceedence occurred. The department may require the facility to immediately resample some or all of the groundwater monitoring wells to confirm the exceedence.~~

~~(5) Upon receipt of a notification that an enforcement standard or preventive action limit has been attained or exceeded, the department shall evaluate the information. If further information is necessary to assess the nature and extent of contamination, the department may require the owner or operator to prepare and submit a groundwater monitoring parameter exceedence report within 60 days unless an alternative deadline is specified in writing by the department. The report shall assess the cause and significance of the exceedence and shall propose a response. Based on the evaluation of the report the department may specify responses to be implemented by the owner or operator of the facility.~~

~~(6) The owner or operator of a facility may request the department to grant an exemption or increase in a preventative action limit or enforcement standard for a solid waste disposal facility at a location where a preventive action limit or enforcement standard has been attained or exceeded. A request for a department exemption shall be submitted in writing to the~~

~~department and shall include the following:~~

~~(a) A list of the specific wells and parameters for which an exemption is being requested; and~~

~~(b) Any other information the department deems necessary to ensure the department's decision is protective of public health and natural resources.~~

~~(7) An exemption request is not considered complete until all information required by the department is submitted. The department may set alternate concentration limits in its response to the exemption request only under the following circumstances:~~

~~(a) the preventive action limits for indicator parameters have not been set by the department;~~

~~(b) the parameter for which an exemption is requested is elevated due to background conditions; or~~

~~(c) the department determines the alternate concentration limit is equally protective of public health and natural resources as the preventative action limit or enforcement standard.~~

(6)(a) Within 60 days of finding that any of the constituents listed in Table 2 (ARM 16.14.706) have been detected at a statistically significant level exceeding the ground water protection standards defined under (5) of this rule, the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time, not to exceed an additional 60 days, and be submitted to the department.

(b) The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in this rule.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under (7) of this rule, addressing at least the following:

(i) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(ii) The time required to begin and complete the remedy;

(iii) The costs of remedy implementation; and

(iv) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

(7)(a) Based on the results of the corrective measures assessment conducted under (6) of this rule, the owner or operator must select a remedy that, at a minimum, meets the standards listed in (b) of this subsection. The owner or operator must notify the department, within 14 days of selecting a remedy, that a report has been placed in the operating record describing the selected remedy and how it meets the standards in (b) of this subsection.

(b) Remedies must:

(i) Be protective of human health and the environment;

(ii) Attain the ground water protection standard as specified pursuant to (5) of this rule;

(iii) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Table 2 (ARM 16.14.706) constituents into the environment that may pose a threat to human health or the environment; and

(iv) Comply with standards for management of wastes as specified in (8) of this rule.

(v) Be approved by the department.

(c) In selecting a remedy that meets the standards of (7)(b) of this rule, the owner or operator shall consider the following evaluation factors:

(i) The long and short-term effectiveness and protectiveness of the potential remedy(ies), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(A) Magnitude of reduction of existing risks;

(B) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(C) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(D) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(E) Time until full protection is achieved;

(F) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(G) Long-term reliability of the engineering and institutional controls; and

(H) Potential need for replacement of the remedy.

(ii) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(A) The extent to which containment practices will reduce further releases;

(B) The extent to which treatment technologies may be used.

(iii) The ease or difficulty of implementing a potential remedy(ies) based on consideration of the following types of factors:

(A) degree of difficulty associated with constructing the technology;

(B) expected operational reliability of the technologies;

(C) need to coordinate with and obtain necessary approvals and permits from other agencies;

(D) availability of necessary equipment and specialists; and

(E) available capacity and location of needed treatment, storage, and disposal services.

(iv) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(v) The degree to which community concerns are addressed by a potential remedy(ies).

(d) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in (d)(i)-(viii) below. The owner or operator must consider the following factors in determining the schedule of remedial activities:

(i) Extent and nature of contamination;

(ii) Practical capabilities of remedial technologies in achieving compliance with ground water protection standards established under (5) of this rule and other objectives of the remedy;

(iii) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(iv) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(v) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(vi) Resource value of the aquifer including:

(A) current and future uses;

(B) proximity and withdrawal rate of users;

(C) ground water quantity and quality;

(D) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(E) the hydrogeologic characteristic of the facility and surrounding land;

(F) ground water removal and treatment costs; and

(G) the cost and availability of alternative water supplies.

(vii) Practicable capability of the owner or operator; and

(viii) Other relevant factors.

(e) The department may determine that remediation of a release of Table 2 (ARM 16.14.706) constituent from a disposal unit is not necessary if the owner or operator demonstrates to the department that:

(i) The ground water is additionally contaminated by substances that have originated from a source other than a disposal unit and those substances are present in concentrations such that cleanup of the release from the disposal unit would provide no significant reduction in risk to actual or potential receptors; or

(ii) The constituent(s) is present in ground water that:

(A) Is not currently or reasonably expected to be a source of drinking water; and

(B) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground water protec-

tion standards established under (5) of this rule; or

(iii) Remediation of the release(s) is technically impracticable; or

(iv) Remediation results in unacceptable cross-media impacts.

(f) A determination by the department pursuant to (7)(e) of this rule will not affect the authority of the state to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate the ground water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

(8)(a) Based on the schedule established under (7)(d) of this rule for initiation and completion of remedial activities, the owner/operator must:

(i) Establish and implement a corrective action ground water monitoring program that:

(A) at a minimum, meets the requirements of an assessment monitoring program under this rule;

(B) indicates the effectiveness of the corrective action remedy; and

(C) demonstrates compliance with ground water protection standard pursuant to (5) of this rule.

(ii) Implement the corrective action remedy selected under (7) of this rule; and

(iii) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to (7) of this rule. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(A) time required to develop and implement a final remedy;

(B) actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(C) actual or potential contamination of drinking water supplies or sensitive ecosystems;

(D) further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(E) weather conditions that may cause hazardous constituents to migrate or be released;

(F) risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(G) other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with the requirements of (7)(b) of this rule are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes

the determination specified in (8)(c) of this rule.

(c) If the owner or operator determines that compliance with the requirements of (7)(b) of this rule cannot be practically achieved with any currently available methods, the owner or operator must:

(i) Obtain certification of a qualified ground water scientist and approval by the department that compliance with requirements under (7)(b) of this rule cannot be practically achieved with any currently available methods;

(ii) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(iii) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(A) Technically practicable; and

(B) Consistent with the overall objective of the remedy.

(iv) Submit to the department for approval a report justifying the alternative measures 14 days prior to implementing the alternative measures and place a copy of the report in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under (7) of this rule, or an interim measure required under (9)(a)(iii) of this rule, must be managed in a manner:

(i) That is protective of human health and the environment; and

(ii) That complies with applicable federal Resource Conservation and Recovery Act requirements.

(e) Remedies selected pursuant to (7) of this rule must be considered complete when:

(i) The owner or operator complies with the ground water protection standards established under (5) of this rule at all points within the plume of contamination that lie beyond the ground water monitoring well system established under ARM 16.14.704.

(ii) Compliance with the ground water protection standards established under (5) of this rule has been achieved by demonstrating that concentrations of Table 2 (ARM 16.14.706) constituents have not exceeded the ground water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in ARM 16.14.706(12) and (13). The department may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of Table 2 (ARM 16.14.706) constituents have not exceeded the ground water protection standard(s), taking into consideration:

(A) extent and concentration of the release(s);

(B) behavior characteristics of the hazardous constituents in the ground water;

(C) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(D) characteristics of the ground water.

(iii) All actions required to complete the remedy have been

satisfied.

(f) Upon completion of the remedy, the owner or operator must supply the department within 14 days with a certification that the remedy has been completed in compliance with the requirements of (8)(e) of this rule and a copy must be placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground water scientist and approved by the department.

(g) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under (8)(e) of this rule, the owner or operator will be released from the requirements for financial assurance for corrective action under [RULE IV].

(9)(a) The department hereby adopts and incorporates by reference:

(i) 51 FR 33992, 34006, 34014, and 34028 (September 24, 1986), containing EPA guidelines for assessing the health risks of environmental pollutants; and

(ii) 40 CFR, Part 792, setting standards ensuring scientifically valid laboratory studies.

(b) Copies of the above may be obtained from the department's Solid and Hazardous Waste Bureau, Cogswell Building, Helena, MT 59620 [(406) 444-1430].

AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA

16.14.710 LATERAL LANDFILL EXPANSION (1) Lateral landfill expansions ~~to a facility~~ outside the current area licensed to receive solid waste will be considered by the department as equivalent to licensing a new facility under 75-10-221, MCA. Lateral landfill expansion ~~of the facility~~ outside the current area licensed to receive solid waste will not be allowed by the department until the required studies and plans are approved by the department and a license to operate a solid waste management system is issued by the department.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.711 MONITORING DURING CLOSURE (1) Remains the same.

(2) If a facility undergoes closure prior to January 1, 1993, the department will require a minimum of six semi-annual sampling episodes for Table 1 (ARM 16.14.706) parameters prior to approving final closure. These sampling events must occur after the last date the ~~site~~ facility received waste. If no exceedence of preventative action limits or enforcement standards occurs for any Table 1 (ARM 16.14.706) constituent, then ground water monitoring at the closed landfill may be discontinued contingent upon written approval obtained from the department. Depending on the site-specific hydrogeology study, the department reserves the right to increase or decrease the number of ground water sampling events required during closure approval.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.713 MONITORING WELL ABANDONMENT (1) Remains the same.

(2) All boreholes not completed as a monitoring well, piezometer, or water supply well ~~shall~~ must be abandoned immediately after drilling and completion of soil testing.

(3)-(4) Remain the same.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.714 NO MIGRATION DEMONSTRATION (1) Ground water monitoring at a facility may be waived by the department if the facility owner or operator can demonstrate there is no potential for ~~leachate~~ hazardous constituents to contaminate ~~groundwater~~ the uppermost aquifer.

(2) No-migration petitions must be accompanied by facility specific data and studies and must be certified by a qualified hydrogeologist. Non-migration demonstrations must be based on:

(a) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(b) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(3)-(4) Remain the same.

(5) The department may require the installation of vadose zone monitoring devices, piezometers or saturated zone monitor wells as part of a ongoing no migration demonstration.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.715 MONITORING WELL NETWORK MAINTENANCE (1)-(2) Remain the same.

(3) Maintenance activities shall continue for the active life and post-closure care period of the facility. If monitoring is to be discontinued at any or all wells, proper abandonment procedures must be followed.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

16.14.717 INSPECTIONS (1) Remains the same.

(2) The department may request duplicate samples for independent analysis or to conduct independent sampling at facilities.

AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA

RULE I DESIGN CRITERIA FOR LANDFILLS (1) New Class II landfill units and lateral expansions must be constructed:

(a) In accordance with a design approved by the department that ensures that the concentration values listed in Table 1 at the end of this rule will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the department; or

(b) With a composite liner and a leachate collection system meeting the following requirements:

(i) The composite liner shall consist of two components. The upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consist-

ing of high density polyethylene (HDPE) must be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(ii) The leachate collection and removal system must be designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

(2) When approving a design under (1)(a) of this rule, the department shall consider at least the following factors:

(a) The hydrogeologic characteristics of the facility and surrounding land, including depth to groundwater, value and uses of the uppermost and any regional aquifers, type, depth, and hydraulic conductivity of soils and lithology below the waste disposal areas;

(b) The climatic factors of the area;

(c) The estimated volume and physical and chemical characteristics of the leachate;

(d) The hydraulic conductivity of the barrier layer;

(e) The barrier layer thickness;

(f) The slope of the barrier layer; and

(g) The hydraulic head on the barrier layer;

(3) A design of a landfill unit pursuant to (1)(a) of this rule must include a leachate collection and removal system and a barrier layer.

(4) The barrier layer must be an engineered improvement that may include, but is not limited to the following:

(a) compacted soil liner as defined in ARM 16.14.502;

(b) geosynthetic clay liners;

(c) soil admixtures;

(d) geomembranes;

(e) polymers;

(f) Natural lithology when the uppermost soil layer of the landfill base is recompacted to achieve a minimum final thickness of 12 inches with a hydraulic conductivity of less than or equal to 1 x 10^{-7} cm/sec; and

(g) Variations or combinations of design components described in this section that achieve compliance with (1)(a) of this rule.

(5) A barrier layer is not required for landfill units at a facility that has a department-approved no migration petition as specified in ARM 16.14.714.

(6) The leachate collection and removal system must be designed and constructed:

(a) to maintain less than a 30 centimeter (12-inch) depth of leachate at any point over the barrier layer or base of the landfill unit; and

(b) When a compacted soil liner or recompacted natural lithology is used as the barrier layer, to ensure that the minimum slope at the base of the overlying leachate collection layer is at least 2% and side slopes do not exceed 33%.

(7) The leachate collection system must be designed with consideration of the following factors and must be approved by the department:

(a) sized to water balance calculations or using other accepted engineering methods approved by the department;

(b) waste type;
(c) slope length;
(d) percent slope;
(e) barrier layer;
(f) hydraulic conductivity of the drainage layer; and
(g) long term performance during the active life and post closure care period.

(8) The leachate removal system must be designed, constructed, and operated to:

(a) Allow the leachate collection system to perform as designed;

(b) Allow for the safe removal of and treatment of the collected leachate; and

(c) Account for potential increased hydraulic head in the removal system.

(9) The returning of leachate to the landfill unit or the recirculation of leachate in the landfill unit may be done only in landfill units that have a composite liner system.

(10) The relevant point of compliance specified by the department must be no more than 150 meters from the waste management unit boundary and must be located on land owned by the owner of the landfill unit.

(11) In determining the relevant point of compliance, the department shall consider at least the following factors:

(a) The hydrogeologic characteristics of the facility and surrounding land;

(b) The volume and physical and chemical characteristics of the leachate;

(c) The quantity, quality, and detection of flow of ground water;

(d) The proximity and withdrawal rate of the ground water users;

(e) The availability of alternative drinking water supplies;

(f) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water; and

(g) Public health, safety, and welfare effects.

(12) Verification of construction of the final cap, liner, and leachate collection and removal system approved by the department is required by means of construction quality control (CQC) and construction quality assurance (CQA) plans and testing for construction of these elements of design in accordance with submitted specifications.

(13) CQC and CQA plans must be approved by the department.

(14) A report of all CQC and CQA procedures and results of all testing and monitoring provisions performed during construction of the design features for a landfill unit as specified in the approved plans must be submitted to the department and approved in writing before acceptance of waste by a landfill unit is allowed.

(15)(a) Owners or operators of all existing landfill units, new landfill units and lateral expansions that meet the criteria

for a small community exemption and are approved by the department are not required to comply with this rule.

(b) Petitions requesting the small community exemption must be in writing and must contain sufficient information for the department to make its determination.

(c) Any change in a facility's compliance with the mandated criteria automatically revokes the exemption and the facility must comply with all applicable requirements in this subchapter and the requirements for ground water monitoring found in ARM Title 16, chapter 14, subchapter 7.

(d) The department must be notified of any change in the facility's eligibility under the following criteria within 30 days of the change.

(16) The small community exemption will be approved only if all of the following criteria are met:

(a) There is no evidence of existing ground water contamination; and

(b) The landfill receives less than 20 tons per day of all types of solid waste, based on an annual average; and

(c) The landfill is in an area that annually receives less than 25 inches of precipitation; and

(d) The landfill serves a community that has no practicable waste management alternative. For the purposes of this section, the lack of a practicable waste management alternative may be demonstrated by the following:

(i) No access to licensed Class II landfill within 100 miles of the community; and

(ii) The cost per household of using an alternative disposal method, and the cost per household of complying with the requirements of the landfill design section and ground water detection monitoring distributed over the entire estimated active life of the landfill, will each exceed on an annual basis 1% of the median household income for the service area.

TABLE 1

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01

Silver	0.05
Toxaphene	0.005
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

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

RULE II CLOSURE REQUIREMENTS FOR LANDFILLS (1) Closure criteria for Class II landfills are as follows:

(a) Owners or operators of all Class II landfill units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

(i) Have a permeability less than or equal to the permeability of any bottom liner, barrier layer, or natural subsoils present, or a permeability no greater than 1 x 10^{-5} cm/sec, whichever is less;

(ii) Minimize infiltration through the closed unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material;

(iii) Minimize erosion of the final cover by the use of a seed bed layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth and protecting the infiltration layer from frost effects and rooting damage; and

(iv) Revegetate the final cover with native plant growth within one year of placement of the final cover. The department may approve alternative revegetation plant species or an extension in the time requirement for revegetation.

(b) The department may approve an alternative final cover design that includes:

(i) An infiltration layer that achieves reduction in infiltration at least equivalent to the infiltration layer specified in (1)(a)(i) and (ii) of this rule; and

(ii) An erosion layer that provides protection from wind and water erosion equivalent to the erosion layer specified in (1)(a)(iii) and (vi) of this rule.

(c) The owner or operator must prepare a written closure plan that describes the steps necessary to close all landfill units at any point during their active life in accordance with the cover design requirements in (1)(a) or (b) of this rule, as applicable. The closure plan, at a minimum, must include the following information:

(i) A description of the final cover, designed in accordance with (1)(a) or (b) of this rule, and the methods and procedures to be used to install the cover;

(ii) An estimate of the largest area of the Class II landfill unit ever requiring a final cover as required under (1)(a) of this rule at any time during the active life;

(iii) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(iv) A schedule for completing all activities necessary to

satisfy the closure criteria in (1)(a) of this rule.

(d) The owner or operator must submit a closure plan to the department for approval and place it in the operating record no later than October 9, 1993, or at the time of application for license for a new landfill, the placement of wastes in a new Class II landfill unit, or the lateral expansion of an existing unit.

(e) Prior to beginning closure of each landfill unit as specified in (1)(a) or (b) of this rule, an owner or operator must notify the department that a notice of the intent to close the unit has been placed in the operating record.

(f) The owner or operator must begin closure activities of each Class II landfill unit no later than 30 days after the date on which the Class II landfill unit receives the known final receipt of wastes or, if the Class II landfill unit has remaining capacity and there is a reasonable likelihood that the Class II landfill unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the department if the owner or operator demonstrates that the Class II landfill unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed Class II landfill unit. Any portion of a Class II landfill unit that will not receive additional waste within 90 days must have an intermediate cover of at least one foot of approved earthen materials.

(g) The owner or operator of all Class II landfill units must complete closure activities of each Class II unit in accordance with the closure plan within 180 days following the beginning of closure as specified in (1)(f) of this rule. Extensions of the closure period may be granted by the department if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and he has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed Class II landfill unit.

(h) Following closure of each Class II landfill unit, the owner or operator must notify the department that closure has been completed in accordance with the closure plan. A certification, signed by an independent registered professional engineer, or the department, verifying that closure has been completed in accordance with the closure plan, must be placed in the operating record. Upon receipt of the notification of closure the department will:

(i) place the landfill in interim closure status and hold in abeyance any fees due under ARM 16.14.405 until closure compliance is verified by the department; and

(ii) schedule an inspection to verify closure plan compliance.

(i) Following closure of all Class II landfill units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the department that the notation has been recorded and a copy has been placed in

the operating record. The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(i) the land has been used as a landfill facility; and

(ii) its use is restricted under [RULE III(1)(c)(iii)].

(j) The owner or operator may request permission from the department to remove the notation from the deed if all wastes are removed from the facility.

(2) Class III landfill units must be closed under a department approved plan that includes at a minimum:

(a) two feet of final cover; and

(b) grading and seeding to prevent erosion.

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

RULE III POST CLOSURE CARE REQUIREMENTS FOR CLASS II LANDFILLS (1) Post closure care for Class II landfills:

(a) Following closure of each Class II landfill unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under (b) of this subsection, and consist of at least the following:

(i) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(ii) Maintaining and operating the leachate collection system in accordance with the requirements in [RULE I]. The department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(iii) Monitoring the ground water in accordance with the requirements of ARM Title 16, chapter 14, subchapter 7, and maintaining the ground water monitoring system, if applicable; and

(iv) Maintaining and operating the gas monitoring system in accordance with the requirements of ARM 16.14.521.

(b) The length of the post-closure care period may be:

(i) decreased by the department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the department; or

(ii) increased by the department if the department determines that the lengthened period is necessary to protect human health and the environment.

(c) The owner or operator of all Class II landfill units must prepare a written post-closure plan that includes, at a minimum, the following information:

(i) A description of the monitoring and maintenance activities required in [RULE III(1)(a)] for each Class II landfill unit, and the frequency at which these activities will be performed;

(ii) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(iii) A description of the planned uses of the property

during the post-closure period. Post-closure use of the property must not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in these rules. The department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) The owner or operator must submit to the department a post-closure plan for approval and place a copy of that plan in the operating record no later than October 9, 1993, or by the initial receipt of waste, whichever is later.

(e) Following completion of the post-closure care period for each Class II landfill unit, the owner or operator must submit to the department a certification, signed by an independent registered professional engineer for approval by the department, verifying that post-closure care has been completed in accordance with the post-closure plan. A copy of the approved document must be placed in the operating record.

(2)(a) The department hereby adopts and incorporates by reference:

(i) the ground water monitoring requirements contained in ARM Title 16, chapter 14, subchapter 7; and

(ii) ARM 16.14.521, containing requirements for maintaining and operating gas monitoring systems.

(b) Copies of the above rules may be obtained from the department's Solid and Hazardous Waste Bureau, Cogswell Building, Helena, MT 59620 [(406) 444-1430].

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

RULE IV FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS II LANDFILLS (1)(a) The requirements of this rule apply to owners and operators of all Class II landfill units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. Subdivisions of state government, such as counties, cities or towns, whose debts and liabilities are not directly the debts and liabilities of the state, are subject to this rule.

(b) The requirements of this rule are effective April 9, 1994.

(2) Financial assurance for closure:

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all Class II landfill units ever requiring a final cover as required under [RULE II] at any time during the active life in accordance with the closure plan. The owner or operator must submit a copy to the department and place the estimate in the operating record.

(i) The cost estimate must equal the cost of closing the largest area of all Class II landfill units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expen-

sive, as indicated by its closure plan (see [RULE II(1)(c)(ii)]).

(ii) During the active life of the Class II landfill unit, the owner or operator must annually adjust the closure cost estimate for inflation and any other changes and submit this information to the department as part of the annual report required under ARM 16.14.407.

(iii) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under (2)(b) of this rule if changes to the closure plan or Class II landfill unit conditions increase the maximum cost of closure at any time during the remaining active life.

(iv) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under (2)(b) of this rule if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the Class II landfill unit. The owner or operator must obtain the approval of the department for the reduction of the closure cost estimate and the amount of financial assurance required. Copies of the demonstration and department approval must be placed in the operating record.

(b) The owner or operator of each Class II landfill unit must establish financial assurance for closure of the Class II landfill unit in compliance with (5) of this rule. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with [RULE II(1)(h) and (i)].

(3) The following financial assurance for post-closure care must be provided:

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the Class II landfill unit in compliance with the post-closure plan developed under [RULE III]. The post-closure cost estimate used to demonstrate financial assurance in (3)(b) of this rule must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must submit a copy of the estimate to the department and place a copy in the operating record. Estimates must meet the following requirements:

(i) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(ii) During the active life of the Class II landfill unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(iii) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under (3)(b) of this rule if changes in the post-closure plan or Class II landfill unit conditions increase the maximum costs of post-closure care.

(iv) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under (3)(b) of this rule if the cost estimate exceeds the maximum

costs of post-closure care remaining over the post-closure care period. The owner or operator must obtain approval from the department for the reduction of the post-closure cost estimate and the amount of financial assurance and place a copy of the justification in the operating record.

(v) Any changes required above under (3)(a)(ii), (iii), or (iv) must be reported to the department as part of the report required under ARM 16.14.407.

(b) The owner or operator of each Class II landfill unit must establish, in a manner in accordance with (5) of this rule, financial assurance for the costs of post-closure care as required under [RULE III]. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with [RULE III(1)(e)].

(4) The following financial assurance for corrective action must be provided:

(a) An owner or operator of a Class II landfill unit required to undertake a corrective action program under ARM 16.14.708 must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under ARM 16.14.708. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must submit the estimate to the department for approval and place a copy in the operating record. The estimate must meet the following requirements:

(i) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with ARM 16.14.708(8)(f).

(ii) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under (4)(b) of this rule if changes in the corrective action program or Class II landfill unit conditions increase the maximum costs of corrective action.

(iii) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under (4)(b) of this rule if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must receive approval from the department for the reduction of the corrective action cost estimate and the reduction in the amount of financial assurance. The justification for the reduction of the corrective action cost estimate and the amount of financial assurance must be placed in the operating record.

(b) The owner or operator of each Class II landfill unit required to undertake a corrective action program under ARM 16.14.708, must establish, in a manner in accordance with this rule, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with ARM 16.14.708(8)(f) and (g).

(5) The mechanisms used to demonstrate financial assurance under this rule must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in (a)-(g) of this subsection (5).

(a)(i) An owner or operator may satisfy the requirements of this rule by establishing a trust fund which conforms to the requirements of this rule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be placed in the facility's operating record.

(ii) Payments into the trust fund must be made annually by the owner or operator or over the remaining life of the Class II landfill unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in (4)(a)(ii) of this rule. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (CE-CV)/Y$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(iv) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, divided by the number of years in the corrective action pay-in period as defined in (5)(a)(ii) of this rule. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (RB-CV)/Y$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in period.

(v) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this section (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 16.14.708.

(vi) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in (5)(f) of this rule, the initial payment into the trust fund must

be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of (5)(a) of this rule, as applicable.

(vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is approved by the department. The owner or operator must provide the department with the documentation of the justification for reimbursement for approval and records of any reimbursement.

(viii) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b) of this rule.

(b) A surety bond may be used to guarantee payment or performance under the following circumstances:

(i) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the effective date of this section, (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 16.14.708. The owner or operator must submit a copy of the bond to the department and place a copy in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. department of the treasury and licensed to do business in Montana.

(ii) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever is applicable, except as provided in (5)(g) of this rule.

(iii) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(iv) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of (5)(a) except the requirements for initial payment and subsequent annual payments specified in (5)(a)(ii)-(v) of this rule.

(v) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(vi) Under the terms of the bond, the surety may cancel the

bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

(vii) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with (2)(b), (3)(b), or (4)(b) of this rule.

(c)(i) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the effective date of this section, (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 16.14.708. The owner or operator must supply the department with a copy of the letter of credit and place a copy of the letter of credit in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(ii) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(iii) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable, except as provided in [Rule IV] or (5)(a) of this rule. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(iv) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this rule or if the owner or operator is released from the requirements of this rule in accordance with (2)(b), (3)(b), or (4)(b) of this rule.

(d)(i) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this subsection (d). The insurance must be effective before the initial receipt of waste or before the effective date of this rule (April 9, 1994), whichever is later. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more

states, specifically including Montana. Proof of insurance must be supplied to the department.

(ii) The closure or post-closure care insurance policy must guarantee that funds will be available to close the Class II landfill unit whenever final closure occurs or to provide post-closure care for the Class II landfill unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(iii) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in (5)(a) of this rule. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(iv) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record and written approval is received from the department in advance. The owner or operator must file the documentation of the justification for reimbursement with the department and place it in the operating record. Notice that reimbursement has been received must also be filed with the department and placed in the operating record.

(v) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(vi) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(vii) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85%

of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. treasury for 26-week treasury securities.

(viii) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection (d) or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b) of this rule.

(e) Local governmental entities who are owners or operators may satisfy the requirements of this subsection (e) through their taxing and bonding authority as long as there is a commitment by local governmental entity or entities, approved by the department, that meets criteria specified in (5)(h) of this rule. A demonstration must be made to the department and placed in the operating record, of the ability of the governmental entity or entities to fully fund liabilities under this section. Such a demonstration should include, but is not limited to:

(i) excess bonding capability available;

(ii) bond rating of the entity or entities;

(iii) excess taxation capability available under any governmental tax limitation laws;

(iv) voter prior approval of any tax increases, if required; and

(v) any other information that will make it possible for the department to accurately assess the ability to meet the criteria specified in (5)(h) of this rule.

(f) An owner or operator may satisfy the requirements of this rule by obtaining any other mechanism that meets the criteria specified in (5)(h) of this rule, and that is approved by the department.

(g) An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be as specified in (a)-(f) of this subsection (5), except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated.

(h) The language of the mechanisms listed in (a)-(f) of this subsection (5) must ensure that the instruments satisfy the following criteria:

(i) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(ii) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(iii) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later

than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 16.14.708, until the owner or operator is released from the financial assurance requirements under (2)(b), (3)(b), or (4)(b) of this rule.

(iv) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.

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

4. The new rules and most of the proposed amendments are necessary to bring current rules in line with U.S. Environmental Protection Agency regulations so that the Montana Solid Waste Program may gain approval by the EPA to enforce its own program in place of the EPA regulations. In addition, the balance of the proposed amendments are necessary to avoid conflict with hazardous waste rules found in Title 16, Chapter 44 of the Montana Administrative Rules of Montana and to comply with the Administrative Procedure Act's prohibition of unnecessary repetition in rules of language already in the statutes.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to J. Mark Stahly, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 10, 1993.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 3, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of Rules I through VIII, the amendment of rule 46.8.102 and the repeal of rule 46.8.105 pertaining to individual habilitation plans	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I THROUGH VIII, THE AMENDMENT OF RULE 46.8.102 AND THE REPEAL OF RULE 46.8.105 PERTAINING TO INDIVIDUAL HABILITATION PLANS

TO: All Interested Persons

1. On June 3, 1993, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through VIII, the amendment of rule 46.8.102 and the repeal of rule 46.8.105 pertaining to individual habilitation plans.

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

[RULE I] INDIVIDUAL PLANS: PURPOSE (1) An individual plan identifies the supports that are necessary to achieve independence, dignity and personal fulfillment for a person receiving developmental disabilities services. The individual plan ensures that the provision of developmental disabilities services is systematic and that training is designed to enhance the development of the person receiving services.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

[RULE II] INDIVIDUAL PLAN: IMPLEMENTATION (1) A single, comprehensive individual plan must be developed and maintained by an individual planning team for each recipient of state funded developmental disabilities services. Individual plans are not required for persons who are only recipients of one or more of the following services:

(a) family;
(b) transportation;
(c) adaptive equipment; or
(d) respite.

(2) An initial individual plan must be developed by the individual planning team within 30 calendar days of a person's entry into a service program, implemented within two calendar weeks of the date of its adoption unless otherwise specified by the team, and formally reviewed and revised at intervals determined by the team. A plan must be formally reviewed and revised

as necessary within 12 months from the initial or previously reviewed individual plan.

(3) When a person moves from services in one community to services in another community a service coordination agreement must be in place prior to entry into the new service. The agreement is developed by members of the designated individual planning team at the new service with participation preferably in person, but a least in writing, of a representative from the sending team. The service coordination agreement identifies critical service and training objectives for the person to be implemented immediately upon entry into the new service.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

[RULE III] INDIVIDUAL PLANS: COMPOSITION OF INDIVIDUAL PLANNING TEAM (1) The individual planning team should include the following persons if available and willing to participate:

(a) the person receiving services;

(b) the advocate of the person receiving services, unless the person does not have an advocate;

(c) the parents of the person receiving services or other family member(s), if the person is a minor or if the person, even though an adult, requests their participation;

(d) the legal guardian of the person receiving services, unless the person does not have a guardian;

(e) the case manager of the person receiving services;

(f) at least one staff person from each service program who works directly with the person receiving services;

(g) the qualified mental retardation professional (QMRP) or designee from the institution of origin if the person receiving services has not yet been formally discharged from that institution;

(h) in cases where the person receiving services is currently enrolled in a public school, the persons designated to develop an individualized education plan (IEP);

(i) a staff member of the division; and

(j) any professionals such as psychologists, medical personnel and other professionals as needed.

(2) If the person receiving services, a legal guardian or parent of a minor is unable to participate in the meeting, the reasons for that absence must be documented in writing by the case manager.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

[RULE IV] INDIVIDUAL PLAN: COMPONENTS (1) Each individual plan must include the following:

(a) any results of comprehensive assessments, both formal and informal, of the person receiving services, which identify current abilities and needs. Assessments must include, but are not limited to, the following:

(i) a physical examination, a health assessment and a dental examination completed at appropriate intervals as determined by the health professional;

(ii) a living skills assessment completed within 60 calendar days prior to the individual planning meeting;

(iii) developmental, educational, employment, social or leisure assessments completed or updated within 60 calendar days prior to the individual planning meeting unless the team determines and documents in the individual plan that an assessment should be conducted at other than annual intervals;

(iv) a self assessment;

(v) other reassessments as needed and identified by the person's individual planning team;

(b) the goals toward which the activities outlined in the plan will be directed;

(c) the specific objectives directed toward accomplishing the goals; and

(d) a summary of medical, dental, and other health related appointments and records for the period since the last individual planning meeting. The summary must include the health professionals' names, the dates of service, the results of the person's most recent health examinations, a list of any prescribed medications, the current methods of administration for any prescription medication, and the purpose of each medication.

(2) The objectives of an individual plan must be prioritized, stated separately in behavioral terms, specifying single outcomes.

(a) An objective must include the following elements:

(i) a statement of the conditions, as appropriate, in which the behavior is to occur;

(ii) an objective, measurable description of the behavior;

(iii) a statement of the acceptable level of performance;

(iv) the names of persons, along with their affiliations, who have been assigned responsibility for implementation of each objective;

(v) the dates by which the programs for each objective assigned by the individual planning team are to be implemented; and

(vi) the date by which each objective is expected to be met.

(3) The individual plan must be signed by all persons who have participated in developing the plan, including the person receiving services. Each participant must indicate whether the person agrees or disagrees with the plan. Each participant must acknowledge the confidential nature of the information presented and discussed.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

[RULE V] INDIVIDUAL PLAN: STATUS REPORTS AND ANNUAL PLANNING MEETING (1) For each person receiving services, an individual plan status report must be produced on a quarterly basis.

(a) Each corporation providing services for the person receiving services must assign a representative to participate in the development of the quarterly individual plan status report.

(b) A copy of the individual plan status report must be provided to the case manager and the regional developmental disabilities division office.

(c) An individual plan status report must include the following:

(i) a summary of progress toward the attainment of the objectives listed in the individual plan;

(ii) the need for or the action taken to assure progress; and

(iii) the need, if any, to reconvene the individual planning team.

(d) The case manager will, depending on the individual plan status report:

(i) discuss the information with an assigned representative from the corporation;

(ii) observe the implementation of objectives;

(iii) review individual progress data to determine if there is a sufficient lack of progress to necessitate notification of the individual planning team; and

(iv) send individual plan status reports to other planning team members upon request.

(2) The individual planning team must meet at least annually to formally review the goals and objectives established at the previous planning meeting. In reviewing the previous plan, the team shall:

(a) analyze progress data for each objective selected at the last team meeting;

(b) modify the goals and objectives as necessary;

(c) determine satisfaction with current services and supports; and

(d) determine further services and supports that are needed.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

[RULE VI] INDIVIDUAL PLAN: DUTIES OF THE CASE MANAGER (1) The duties of the case manager in the individual planning process are:

(a) to prepare the person receiving services for the individual planning meeting by asking if the person would like the assistance of an advocate, by obtaining input and eliciting the person's preferences before the meeting and assisting the person in communicating those preferences to the team during the meeting;

(b) to schedule any individual planning meeting and obtain prior to the meeting, the names of additional team members the person receiving services would like to invite;

(c) to notify in writing, except for meetings called in emergency situations when written notification is impossible, all individual planning team members of the name of the person receiving services for whom the meeting is being held, and the date, time and place of the meeting at least two weeks prior to the scheduled date of the meeting;

(d) to explain the purpose of the individual planning meeting to the person receiving services and other team members and inform the person and family members of their rights and responsibilities under the individual planning process;

(e) to inform team members of the confidentiality of personal information;

(f) to inform members that all individual planning decisions are made by consensus or through the appeal process if there is a lack of consensus;

(g) to conduct the individual planning meeting;

(h) to document issues discussed at the individual planning meeting, to compile all planning forms, and to disseminate within two weeks of the team meeting copies of all documents and forms to all individual planning team members and to any other person that the person receiving services authorizes to receive documents;

(i) to interpret all documents and forms of the individual planning process to the person receiving services and any person designated to act on behalf of the person; and

(j) to facilitate the transition, including movement, of the person receiving services to another service or corporation.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

[RULE VII] INDIVIDUAL PLAN: DECISION MAKING (1) All decisions of an individual planning team must be made by consensus.

(2) If an individual planning team does not have consensus on a matter, the team must adjourn for no more than five working days, to allow time for possible resolution of the matter at issue.

(3) A team member who disagrees with the plan or wishes to comment on a matter in the plan, must notify the case manager in writing within five working days of receipt of the plan or modification to the plan.

(4) The case manager must schedule an individual planning meeting within five working days of receiving written notice that a team member disagrees with the plan or a modification to the plan.

(5) At the individual planning meeting held to reconsider a matter upon which there is disagreement, if a consensus is not reached, the unresolved issues must be clearly stated in the meeting summary. The written summary will be sent to each team member.

(6) Each individual planning team member who wishes to express a view point about issues upon which there is disagreement must submit in writing to the case manager the reasons for agreement or disagreement. The case manager will write a cover letter outlining the issues to the regional manager and the regional administrator of the department of family services within ten working days of the previous individual planning meeting. The meeting summary and any written materials submitted by team members are to accompany the letter.

(7) The regional manager and the regional administrator of the department of family services will, within ten days of the receipt of a letter from a case manager relating to an appeal, review the matter at issue and after consideration of the meeting summary and any written materials submitted by team members will arrive at a decision in the matter.

(8) If any individual planning team member is dissatisfied with the decision of the regional manager and the regional administrator of the department of family services, the team member must notify the case manager in writing within five working days of receipt of the regional manager's decision. The case manager must refer the appeal immediately to the individual planning appeal committee.

(9) In cases where an appeal occurs involving a person who is currently enrolled in public school, the following procedures will apply:

(a) if the appeal arises in a situation where a team member is appealing an issue which impacts an individualized education program (IEP), federal and state authorities governing the IEP process shall have precedence over the appeal process in this rule;

(b) if the appeal arises in a situation where a team member is appealing an issue which does not concern the IEP, the appeal process in this rule shall apply.

(10) The decision of the individual planning appeal committee is the final administrative decision of the department.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

[RULE VIII] INDIVIDUAL PLAN: APPEAL COMMITTEE (1) The individual planning appeal committee is appointed by the administrator of the developmental disabilities division.

(2) The individual planning appeal committee will be composed of:

(i) a person receiving services;

(ii) a parent, guardian or advocate;

(iii) a representative of the developmental disabilities division;

(iv) a representative of the department of family services; and

(v) a service provider.

(3) The appeal committee will establish and make available its own operating procedures.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 MCA

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

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

Subsections (1) through (5) remain the same.

(6) "Advocate" means a person who:

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

(b) is not an employee of any agency directly providing services to the person receiving services; and

(c) who is acknowledged by the person receiving services to be the person's advocate currently.

Subsection (6) remains the same in text but will be renumbered (7).

~~(7) "Area manager" means a person employed by the developmental disabilities division in one of three field-based supervisory positions.~~

Subsections (8) through (17) remain the same.

~~(18) "Home based services" mean services provided to children who live in foster homes or natural homes.~~

Subsections (19) through (20) remain the same in text but will be renumbered (18) through (19).

(~~21~~20) "Individual ~~habilitation~~ plan" means a written plan for training and action developed for a ~~developmentally disabled~~ person with developmental disabilities by the individual ~~habilitation~~ planning ~~(IHP)~~ team on the basis of a skill assessment and determination of the strengths and needs of the person.

(~~22~~21) "Individual ~~habilitation~~ planning team" means an interdisciplinary team composed of those persons specified in ARM 46.8.105(3) that identifies and evaluates ~~a client's~~ the needs of a person receiving services, develops an individual ~~habilitation~~ plan to meet those needs, periodically reviews the ~~client's~~ person's response to the plan and revises the plan accordingly.

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

Subsection (23) remains the same.

(24) "Regional manager" means a person employed by the developmental disabilities division in one of five field-based supervisory positions.

Subsections (24) through (30) remain the same in text but will be renumbered (25) through (31).

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203, 53-20-204 and 53-20-205 MCA

4. The rule 46.8.105 as proposed to be repealed is on pages 46-493 through 46-498 of the Administrative Rules of Montana.

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

5. The conduct of individual planning for persons with developmental disabilities who are recipients of state funded services is required by state law at 53-20-203(8), MCA. The individual planning process provides an integrated multidisciplinary approach to making determinations about the provision of developmental disabilities services and the requirements that may be imposed on persons receiving those services. The process includes the recipient of the services and those persons who represent the interests of the recipient.

These proposed rules are a revision of the provisions that appear in ARM 46.8.105. ARM 46.8.105 is proposed for repeal and replacement by the proposed rules of this notice. The proposed rules will provide a more accessible and comprehensible format than does ARM 46.8.105.

Generally, the proposed rules will govern the implementation of the statutory mandate for individual planning by providing procedures for the conduct of planning, and providing for the composition and responsibilities of an individual planning team that implements the planning process in relation to a recipient.

Proposed Rule I, "Purpose", provides a necessary statement of purpose for the individual planning process.

Proposed Rule II, "Implementation", is necessary to state the requirement for a plan, provide appropriate time periods for the implementation of a plan and provide a procedure for transitions in planning when a recipient changes services. These provisions are important to assuring timely development and delivery of services.

Proposed Rule III, "Composition of Individual Planning Team", is necessary to establish the participants in the individual planning team. The identification of the participants assures that the team is multidisciplinary in nature and inclusive of persons who have legitimate interest in the recipient's well-being.

Proposed Rule IV, "Components", is necessary to identify and describe the components of the individual plan. The required components assure that the individual planning team is knowledgeable about the recipient's needs, problems, services and service settings. The objectives required by the rule assure that the individual planning team provides the recipient with opportunities and guidance in developing knowledge and various skills.

Proposed Rule V, "Monitoring", is necessary to assure that the status of the recipient's knowledge and skill development is monitored in a manner, degree and frequency that are necessary to ascertain the current status of the recipient's progress.

Proposed Rule VI, "Duties of the Case Manager", is necessary to provide the case manager with the tasks that will assure that the individual planning process is well coordinated and managed.

Proposed Rule VII, "Decision Making", is necessary to provide an appropriate due process for the resolution of matters that are at issue before an individual planning team.

Proposed Rule VIII, "Appeal Committee", is necessary to state the composition of the committee established to hear appeals in the individual planning process brought under proposed Rule VII. The proposed rule also provides the committee with authority to provide operating procedures for the conduct of appeals before it.

The proposed amendments to ARM 46.8.102 are necessary to change certain terms to conform with current nomenclature and to provide definitions for certain terms that are in need of definition so as to provide a better understanding of the rules.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

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

In the matter of the amendment of rules 46.8.1203, 46.8.1204, 46.8.1206, 46.8.1207, 46.8.1208, 46.8.1211, 46.8.1213, 46.8.1215, 46.8.1216, 46.8.1218, 46.8.1219 and 46.8.1220 and the repeal of rule 46.8.1210 pertaining to developmental disabilities aversive procedures	)))))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.8.1203, 46.8.1204, 46.8.1206, 46.8.1207, 46.8.1208, 46.8.1211, 46.8.1213, 46.8.1215, 46.8.1216, 46.8.1218, 46.8.1219 AND 46.8.1220 AND THE REPEAL OF RULE 46.8.1210 PERTAINING TO DEVELOPMENTAL DISABILITIES AVERSIVE PROCEDURES

TO: All Interested Persons

1. On June 3, 1993, at 10:30 a.m, a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.8.1203, 46.8.1204, 46.8.1206, 46.8.1207, 46.8.1208, 46.8.1211, 46.8.1213, 46.8.1215, 46.8.1216, 46.8.1218, 46.8.1219 and 46.8.1220 and the repeal of rule 46.8.1210 pertaining to developmental disabilities aversive procedures.

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

46.8.1203 AVERSIVE PROCEDURES: USE ~~OF AVERSIVE PROCEDURES~~
Subsections (1) and (2) remain the same.
(3) Aversive procedures may only be used for ameliorating maladaptive target behaviors.
Subsection (3) remains the same but will be renumbered (4).

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1204 AVERSIVE PROCEDURES: DEFINITIONS ~~FOR AVERSIVE PROCEDURES~~ For purposes of this sub-chapter, the following definitions apply:
(1) "~~Advocacy/consumer~~ Advocate" means a trained citizen advocate, representative of the Montana advocacy program, special friend or the parent/guardian of a person with developmental disabilities.
(2) "Alternative behavior" means a behavior that can, but is not likely to occur at the same time as a maladaptive target behavior.
(~~2~~3) "Antecedent stimulus modification" means arranging the environment that exists at the time of the occurrence of the

maladaptive target behavior in such a way ~~prior to the occurrence of a behavior~~ that the maladaptive target behavior becomes less likely to occur.

(~~3~~4) "Aversive" means any stimulus or event from which a person will seek to escape, avoid or terminate, if given an opportunity to do so.

(5) "Aversive procedure" means a procedure as defined in and implemented in this subchapter that is aversive in nature and is implemented for the purpose of ameliorating a maladaptive target behavior.

(~~4~~6) "Contingent exercise" means a method of decreasing a maladaptive target behavior by requiring a person who engages in the undesired behavior to perform exercises or movements ~~for thirty (30) seconds or less. The movement or exercise is~~ that are not topographically similar to the maladaptive target behavior.

(~~5~~7) "Contingent observation" means a method of decreasing a maladaptive target behavior by telling a person they are engaging in a maladaptive target behavior and asking ~~a~~ the person ~~who engages in the undesired behavior to remove himself from~~ to not participate in the ongoing activity for a short period of time, to be seated nearby and to observe others engaging in ~~that ongoing activity who are behaving appropriately~~ a specific appropriate behavior. The trainer concurrently attends to and reinforces those persons behaving appropriately. The person who is observing the behavior may rejoin the activity group after a few minutes of observation ~~and after indicating that he will~~ if the person agrees to behave appropriately. The person who rejoins the group is then reinforced by the trainer when the person exhibits the appropriate behavior.

(8) "Contingent access to social activities and personal possessions including personal funds" means that upon the occurrence of a specified maladaptive target behavior, a person's attendance at social activities and use of personal possessions including personal funds is restricted.

(9) "Corporal punishment" means aversive stimulation that is inflicted directly on the body following a specific maladaptive target behavior that decreases the probability of the behavior occurring in the future. Examples would include but not be limited to spanking, electric shock, lemon juice into the mouth, etc.

(10) "Deceleration program" means the use of systematic program techniques or procedures to decrease the rate of specific maladaptive target behaviors. These deceleration programs must include nonaversive procedures such as: functional analysis of the behavior, teaching replacement behaviors, positive reinforcement, antecedent stimulus modification, differential reinforcement, etc. Systematic deceleration program procedures might also include the use of aversive procedures as defined by this rule.

Subsection (6) remains the same in text but will be renumbered (11).

(a) differential reinforcement of other behaviors;

(b) differential reinforcement of incompatible behaviors;

(c) differential reinforcement of other behaviors on a progressive schedule;

(d) differential reinforcement of alternative behavior; and

(e) differential reinforcement of low rate behavior.

(~~a~~12) "Differential reinforcement of other behaviors (DRO)" means that reinforcement ~~that follows the lapse of a specific period of time provided that~~ occurs at the end of the interval if the maladaptive target behavior has not occurred during ~~the~~ that interval.

(13) "Differential reinforcement of other behavior on a progressive schedule (DROP)" means that the amount a reinforcement will be increased for consecutive intervals in which the specified maladaptive target behavior does not occur, to a maximum level of reinforcement. Once the person has reached the highest level of reinforcement, the amount of reinforcement remains at this level as long as the maladaptive target behavior does not occur. When the maladaptive target behavior does occur, the level of reinforcement returns to the smallest amount.

(~~b~~14) "Differential reinforcement of incompatible behaviors (DRI)" means that reinforcement ~~that follows an alternative response that is topographically incompatible with the maladaptive target behavior~~ occurs following a specified incompatible behavior. The maladaptive target behavior is concurrently placed on extinction.

(15) "Differential reinforcement of alternative behavior (DRA or Alt-R)" means that reinforcement occurs following a specified alternative behavior. The maladaptive target behavior is concurrently placed on extinction.

(16) "Differential reinforcement of low rate behavior (DRL)" means that reinforcement occurs only when the maladaptive target behavior occurs at or below a specified rate.

(~~7~~17) "Educational fine" means a system of decreasing maladaptive target behavior based upon a token or point system. A small fine is levied contingent upon the occurrence of a maladaptive target behavior. Each fine must be accompanied by a teaching episode which includes a description of the ~~inappropriate~~ maladaptive target behavior, the amount of the fine, instruction on the appropriate forms of ~~the~~ behavior, and the opportunity for the person to "earn back" a portion of the fine for practicing the appropriate behaviors.

(~~8~~18) "Exclusion time out" means a method of decreasing a maladaptive target behavior by requiring a person to leave an ongoing reinforcing situation for a period of time, contingent on the occurrence of some previously specified maladaptive target behavior. Unlike contingent observation, the person is not instructed to observe the appropriate behavior of others.

(19) "Extinction" means that a previously reinforced behavior is no longer followed with the reinforcing consequence. This makes it likely that over time the behavior will diminish. Extinction is different from punishment in that with extinction the reinforcer is simply no longer given when the target behavior occurs.

(20) "Functional analysis" means the assessment of many variables prior to intervening on a behavior. This assessment could include but not be limited to a review of the following: historical events; antecedent events; consequences; environmental factors such as reinforcer preferences and efficiency, expectations of others, environmental pollutants such as noise and crowding, etc.; and the communicative functions of behavior.

(~~9~~21) "Graduated guidance" means systematically providing the minimum degree of physical assistance necessary to ensure that a desired behavior occurs. Graduated guidance is a technique combining physical guidance and fading in which the physical guidance is systematically and gradually reduced and faded according to the person's responsiveness. Graduated guidance techniques do not include physical restraint as a primary component. Graduated guidance is assistive rather than restrictive and does not involve forced compliance.

(22) "Incompatible behavior" means a behavior that is opposite to and cannot be emitted at the same time as a maladaptive target behavior.

(~~10~~23) "Individual program plan (IPP)" means a written set of procedures designed to meet a specific behavioral objective relating to a person's adaptive behavior, ~~and which f~~For the purposes of decelerating maladaptive target behaviors an individual program plan includes at least the following components:

(a) ~~Target behavior -- a~~ A clear objective description of the maladaptive target behavior to be reduced or eliminated.

(b) ~~Incompatible behavior -- a~~ A clear objective description of the incompatible or alternative appropriate responses which will be reinforced.

(c) A list of programs to teach replacement behaviors that serve the same behavioral function identified through a functional analysis or review of the maladaptive target behaviors.

(e~~d~~) ~~Baseline -- a~~ A baseline measurement of the level of the target behavior before intervention.

Subsections (10)(d) through (10)(d)(iv) remain the same in text but will be renumbered (23)(e) through (23)(e)(iv).

(e~~f~~) Deceleration procedures which specify:

(i) the name of the procedure which will be employed as a consequence for the maladaptive target behavior;

Subsections (10)(e)(ii) through (10)(e)(iv) remain the same in text but will be renumbered (23)(f)(ii) through (23)(f)(iv).

(v) a limit on the use of any aversive procedure ~~(e.g., maximum number of applications~~ in ~~any~~ one incident or time period~~)~~.

Subsections (10)(f) through (10)(f)(vii) remain the same in text but will be renumbered (23)(g) through (23)(g)(vii).

(viii) data based criterion for terminating the procedure if it is not effective~~;~~; and

(ix) a description of how data will be systematically shared and reviewed across program settings.

Subsection (11) remains the same in text but will be renumbered (24).

(~~12~~25) "Mechanical restraint" means physically restricting a person's movement through the use upon the person of any mechanical or ~~restricting~~ restrictive device.

(~~13~~26) "Modeling with positive reinforcement" means a ~~procedure whereby the appropriate behavior of one person is reinforced in the hopes that another person will imitate it therefore increasing the appropriate behavior.~~ the reinforcement of a specified and appropriate behavior of one or more persons in order to induce a second person to imitate that appropriate behavior. The second person then receives reinforcers if that person displays the appropriate behavior.

(27) "Nonexclusionary time out" means that, following the occurrence of a maladaptive target behavior, a stimulus is introduced which indicates for the person that reinforcement will not occur for some specified period of time. The person remains in the activity, but does not receive reinforcers during the period of time that the stimulus is present.

(~~14~~28) "Overcorrection" means a technique used to decrease a maladaptive target behavior. ~~There are three (3)~~ The two main types of overcorrection~~:~~ are restitutional overcorrection and positive practice overcorrection.

~~(a) "Restitutional overcorrection" means a form of overcorrection requiring a person engaging in a maladaptive target behavior to restore the environment to its previous state and improve on the previous conditions.~~

~~(b) "Positive practice overcorrection" means a form of overcorrection requiring a person engaging in a maladaptive target behavior to intensely practice appropriate alternative behavior.~~

~~(c) "Required relaxation" means a form of overcorrection requiring a person to lie quietly (i.e., on a bed) for a period of time after the occurrence of some previously identified maladaptive target behavior.~~

Subsection (15) remains the same in text but will be renumbered (29).

(~~16~~30) "Positive practice overcorrection" ~~see overcorrection.~~ means a form of overcorrection requiring a person engaging in a maladaptive target behavior to intensely practice appropriate alternative behavior.

(31) "Positive reinforcement" means specifically adding an event or stimulus following the occurrence of a target behavior that increases the probability of the behavior being maintained or occurring more frequently in the future.

(32) "Punishment" means specifically adding an event or stimulus following the occurrence of a target behavior that decreases the probability of the behavior being maintained or occurring more frequently in the future.

(~~17~~33) "Required relaxation" ~~see overcorrection.~~ means requiring a person to lie quietly for a period of time after the occurrence of a maladaptive target behavior.

Subsection (18) remains the same in text but will be renumbered (34).

(~~19~~35) "Restitution" means a procedures used to decrease a ~~specified~~ maladaptive target behavior by directing a person to restore the person's environment. Variations include:

(a) simple restoration; and

(b) restorational overcorrection.

(~~a~~36) "Restitutional overcorrection" ~~- see "overcorrection".~~ means a form of overcorrection requiring a person engaging in a maladaptive target behavior to restore the environment to its previous state and improve on the previous conditions.

(~~b~~41) "Simple restitution" means restoring the environment to the state that existed before a disruptive event occurred. ~~(e.g., cleaning up spilled milk).~~ Simple restitution does not include forced compliance by physically forcing a person to comply. Simple restitution should instead be accomplished by verbal and gestural cues, prompts or graduated guidance.

Subsection (20) remains the same in text but will be renumbered (37).

(~~21~~38) "Satiation" means ~~a condition in which a person is continuously presented with~~ that a reinforcer ~~to the extent that it~~ loses its reinforcing effect due to the extent that it is continuously presented.

(~~22~~39) "Seclusion time out" means a method of decreasing a maladaptive target behavior by requiring a person to leave an ongoing reinforcing activity and go to a closed room for a period of time. Seclusion time out is contingent on the occurrence of some previously specified maladaptive target behavior. ~~Time out is predicated upon the assumption that the environment~~ The room to which the person must go ~~is~~ must not be reinforcing in any manner.

(~~23~~40) "Self-reinforcement" means a contingen~~cies~~y established by ~~an individual~~ a person to control ~~his or her own~~ that person's behavior through the delivery of reinforcement. The reinforcers remain under control of the ~~individual~~ person and ~~he or she~~ the person is free to violate the contingencies at any time.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1206 AVERSIVE PROCEDURES: SYSTEMATIC PROGRAM REVIEW

Subsection (1) remains the same.

(2) Systematic program review serves two functions. First, it ensures that any proposed aversive procedure is professionally justified. Second, it ensures that a person's right to be free from aversive, intrusive procedures is balanced against ~~his or her right to~~ the person's interests in receiving services and treatment whenever a decision regarding the use of aversive procedures is made.

(3) In order for review functions to be adequately carried out, and at the same time ensure a responsive system, the generally accepted procedures for modifying maladaptive target behaviors are divided into the following ~~four~~ three classifications:

Subsection (3)(a) remains the same.
(b) Level I aversive procedures; and
(c) Level II aversive procedures~~; and~~.
~~(d) Level III procedures.~~
Subsection (4) remains the same.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1207 AVERSIVE PROCEDURES: APPROVAL CRITERIA ~~FOR AVERSIVE PROGRAMS~~ (1) In general, the following criteria ~~are relied upon in~~ govern the approval of proposed programs incorporating aversive procedures:

(a) ~~that~~ the proposed individual program plan must meets the minimum requirements specified in these rules;

(b) ~~that~~ previous attempts to modify the maladaptive target behavior using less restrictive procedures have ~~been made~~ not proven to be effective, or the situation is so serious that a restrictive procedure is immediately warranted;

(c) ~~that~~ the proposed procedure is a reasonable response to the person's maladaptive target behavior in that:

Subsections (1)(c)(i) and (ii) remain the same.

(iii) the maladaptive target behavior is so serious that the person's ~~right to~~ interests in receiving services and treatment outweighs the right to the least restrictive training procedures and as a result the procedure is warranted.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1208 AVERSIVE PROCEDURES: CLASSIFICATION AND CONDITIONS GOVERNING USE OF PROCEDURES (1) Nonaversive procedures.

(a) Nonaversive procedures are appropriate for use during daily interactions and as such require no prior approval.

(b) Nonaversive procedures. ~~W~~when used to systematically address a specific inappropriate behavior, ~~these procedures~~ must be incorporated into an individual program plan (IPP) and must address an objective specified in the person's individual ~~habilitation~~ plan.

(~~b~~c) Nonaversive procedures include:

(i) schedule changes or antecedent stimulus modification;

(ii) differential reinforcement of other behaviors;

(iii) differential reinforcement of ~~incompatible~~ other behaviors on a progressive schedule;

(iv) differential reinforcement of incompatible behavior;

(v) differential reinforcement of alternative behavior;

(vi) differential reinforcement of low rate behavior;

(~~iv~~vii) simple restitution where the client does not physically resist. The duration of the restitution may not exceed ~~twenty (~~20~~)~~ minutes ~~per day~~ total in a 24 hour period from midnight to midnight; ~~and~~

(~~v~~viii) modeling with positive reinforcement~~.~~; and

(ix) self reinforcement

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

(i) contingent observation ~~where manual guidance or~~ without restraint ~~are not necessary and~~ the duration of which does not exceed 20 minutes per episode or 60 minutes total in a 24 hour period from midnight to midnight.

(ii) restriction of social activities; ~~and~~

(iii) ~~self reinforcement.~~ response cost;

(iv) educational fines;

(v) contingent use of personal spending money; and

(vi) contingent use of personal possessions.

(b) Level I aversive procedures ~~are considered aversive/deprivation procedures and as such~~ may only be used ~~under the following conditions~~:

Subsection (2)(b)(i) remains the same.

(ii) with the approval ~~of~~ by the person's individual ~~habilitation~~ planning team ~~as provided for in this chapter~~ including a division representative; and

Subsections (2)(b)(iii) through (3)(a) remain the same.

(i) restitutional and positive practice overcorrection ~~where the duration does not exceed 20 minutes each episode or 60 minutes total per 24 hour period~~;

(ii) contingent exercise ~~where the duration does not exceed 20 minutes each episode or 60 minutes total per 24 hour period~~;

(iii) nonexclusionary time out;

(~~iii~~iv) exclusion time out ~~where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period~~;

(~~iv~~v) seclusion time out ~~where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period~~;

(~~v~~vi) required relaxation ~~where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period~~;

~~(vi) response cost;~~

~~(vii) educational fines;~~

(vii~~i~~) contingent observation with ~~manual guidance or~~ restraint or with over ~~twenty (~~20~~)~~ minutes duration each episode or 60 minutes total duration in a 24 hour period from midnight to midnight;

(~~ix~~viii) physical restraint ~~where the duration does not exceed 30 minutes each episode or 90 minutes total per 24 hour period; and~~

(ix) mechanical restraint; and

(x) ~~contingent use of personal money and personal possessions~~ satiation.

(b) Level II aversive procedures are ~~more restrictive than level I aversive procedures~~ the most restrictive employed in the habilitation process and as such they may only be used ~~under the following conditions~~:

Subsection (3)(b)(i) remains the same.

(ii) with the approval by the person's ~~IHP~~ individual planning team including a division representative;

(iii) with the initial review and approval by the developmental disabilities program review committee;

(~~iii~~iv) with the ongoing review and approval by the ~~area~~ regional manager; and

~~(iv) with the review and approval by the area program review committee at a regularly scheduled meeting; and~~

(v) with the written consent of the person's parent if the person is under eighteen (18) years of age, or the person's legal guardian~~s~~, if one has been appointed by the court.

(c) ~~Level II aversive procedure approval.~~ The developmental disabilities program review committee (DDPRC) will respond in writing at its regularly scheduled meeting regarding requests for level II aversive procedures approval.

~~(i) The area manager must approve or disapprove proposed level II aversive procedures in accordance with the provisions of this rule.~~

~~(ii) The area manager will respond within five (5) working days to a request for level II aversive procedures approval.~~

Subsection (3)(c)(iii) remains the same in text but is renumbered (3)(d).

(~~A~~i) documentation of ~~IHP~~ individual planning team approval of the procedure;

Subsection (3)(c)(iii)(B) remains the same in text but is renumbered (3)(d)(ii).

(~~B~~iii) documentation of the failure of less restrictive procedures including data from previous individual program plans and a brief summary of each procedure that has been used. In the absence of such documentation, strong justification for the use of aversive or deprivation procedures and an explanation for the lack of documentation must be supplied;

Subsections (3)(c)(iii)(D) and (E) remain the same in text but will be renumbered (3)(d)(iv) and (v).

~~(iv) The area manager will submit the program to the area program review committee for review as provided for in ARM 46.8.1210.~~

(e) The regional manager must review and approve or disapprove level II procedures on an ongoing basis in accordance with the provisions of the rules of this subchapter.

(~~e~~f) The ~~area~~ regional manager may request that the developmental disabilities program review committee (DDPRC) review a level II procedure, if a more thorough review may be warranted or if the level II procedure is changed significantly from the initial review by the developmental disabilities program review committee.

~~(4) Level III aversive procedures.~~

~~(a) Level III aversive procedures include:~~

~~(i) mechanical restraint;~~

~~(ii) satiation;~~

~~(iii) overcorrection where the duration exceeds 20 minutes each episode or 60 minutes total in a 24 hour period;~~

~~(iv) contingent exercise where the duration exceeds 20 minutes each episode or 60 minutes total per 24 hour period;~~

~~(v) exclusion time out where the duration exceeds 30 minutes each episode or 90 minutes total in a 24 hour period;~~

~~(vi) seclusion time out where the duration exceeds 30 minutes each episode or 90 minutes total in a 24 hour period;~~

~~(vii) required relaxation where the duration exceeds 30 minutes each episode or 90 minutes total in a 24 hour period;~~

~~(viii) noxious substances used to provide aversive stimulation to any of the senses (sight, hearing, smell, taste, touch) and all procedures which elicit a startle response; and~~

~~(ix) physical restraint where the duration exceeds 30 minutes each episode or 90 minutes total in a 24 hour period.~~

~~(b) Level III aversive procedures are the most restrictive employed in the habilitation process and, as such, they may only be used under the following conditions:~~

~~(i) as part of a written individual program plan developed in accordance with the requirements specified in this chapter;~~

~~(ii) with the approval by the person's individual habilitation planning team including a division representative;~~

~~(iii) With the review and approval by the developmental disabilities program review committee; and~~

~~(iv) with the written consent of the person's parent if the person is under eighteen (18) years of age, or the person's legal guardian, if one has been appointed by the court.~~

~~(c) Level III aversive procedures approval.~~

~~(i) The DDPRC will respond in writing at its regularly scheduled meeting regarding requests for level III aversive procedures approval. The following information must accompany any request for level III approval in order to considered:~~

~~(A) documentation of IHP team approval of the procedure;~~

~~(B) a copy of the proposed individual program plan which conforms to the requirements specified in this chapter;~~

~~(C) documentation of the failure of less restrictive procedures, including data from previous IPP's and a brief summary of each procedure that has been employed. In the absence of such documentation, strong justification for the use of aversive procedures must be supplied, as well as an explanation for the lack of documentation;~~

~~(D) written endorsement from a physician for any procedure which might affect the person's health; and~~

~~(E) written consent from the person's parent if the person is under eighteen (18) years of age or the person's legal guardian if one has been appointed by the courts.~~

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1211 AVERSIVE PROCEDURES: DEVELOPMENTAL DISABILITIES PROGRAM REVIEW COMMITTEE (1) The developmental disabilities program review committee (DDPRC) ~~shall be~~ is a standing committee appointed by, and responsible to, the division administrator. The ~~make-up of the~~ committee shall ~~represent~~ have representatives from at least the following three disciplines:

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

(a) ~~recommend to the division administrator approval or disapproval of~~ provide for initial review and approval of

proposed level ~~III~~ II aversive procedures in accordance with the ~~provisions of these~~ rules of this subchapter;

(b) ~~conduct periodic ongoing reviews of currently approved level III aversive procedures in accordance with its own published guidelines;~~ either remand the ongoing review and approval of the approved procedure to the regional manager or retain the ongoing review and approval of the approved procedure;

(c) review a sample of the level II ~~approval decisions made by area~~ procedures that are the responsibility of the regional managers in order to provide feedback to the division administrator regarding the reliability and appropriateness of the ongoing level II procedure reviews and approvals; ~~and~~

(d) annually review the ongoing review process for level II procedures in each of the regional offices and make recommendations to the administrator concerning the conduct of the level II procedure reviews and approvals by the regional offices;

(e) periodically complete ongoing data reviews and approvals of a sample of level II procedures in lieu of the regional manager in order to facilitate ongoing involvement of the DDPRC in programs the committee initially approved; and

(~~d~~f) publish and update as needed guidelines for the use of aversive procedures.

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

(d) a set of descriptors which specifies guidelines for the minimum elements of each type of aversive procedure in levels II ~~and III~~. Each descriptor shall be based on a review of the professional literature and contain a justification for each element specified;

Subsection (3)(e) remains the same.

(f) a set of reliability procedures for the review of a sample of the level II aversive procedures approved on an ongoing basis by each ~~area~~ regional manager;

(g) guidelines for the periodic review of ongoing level II ~~and level III~~ aversive procedures;

Subsections (3)(h) and (i) remain the same.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1213 AVERSIVE PROCEDURES: RESTRICTION OF ANY CLIENT RIGHTS Subsections (1) through (1)(b) remain the same.

(c) the right to an individual ~~habilitation~~ plan;

Subsections (1)(d) through (h) remain the same.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1215 AVERSIVE PROCEDURES: EMERGENCY PROCEDURES

(1) Emergencies are those situations for which no approved individual program plan exists and which if not dealt with may result in injury to the client or other persons or in significant amounts of property destruction.

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

(c) Seclusion time out ~~(time out~~ in a room ~~must~~ that conforms to the minimum requirements established by the developmental disabilities program review committee (DDPRC) and, that has been ~~be~~ approved by the ~~area~~ regional manager prior to ~~its~~ use~~)~~.

(3) All instances of the use of emergency procedures must be reported, in writing, to the ~~area~~ regional manager within 48 hours. Such reports shall include at a minimum the time and date of the incident, the persons involved, the type and duration of the incident, a description of the cause(s) leading to it, any witnesses to the incident, the procedures employed, and other significant details. If an emergency procedure is used three ~~(3)~~ times in a six ~~(6)~~ month period, a written individual program plan must be developed.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1216 AVERSIVE PROCEDURES; REIMPOSITION OF DECELERATION PROGRAM Subsections (1) through (1)(f) remain the same.

~~(2) Level III deceleration program may not be reimposed upon the reoccurrence of a subject behavior.~~

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1218 AVERSIVE PROCEDURES; APPEAL PROCESS (1) Any decision to recommend approval or disapproval of a proposed level II ~~or level III~~ procedure may be appealed by a member of the person's ~~IHP~~ individual planning team.

(a) Upon receipt of an appeal notice, ~~the division administrator will conduct~~ an administrative review of the matter will be conducted. If the appellant remains dissatisfied after the administrative review, the matter ~~will~~ may be ~~considered by~~ appealed to the ~~department director~~ division administrator who will render a final administrative decision for the department.

(b) The ~~director will~~ division administrator upon review of the committee's decision ~~and~~ may request ~~briefs or oral~~ written arguments and other materials from the committee and the appellant. ~~The director's decision shall be the final administrative decision.~~

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1219 AVERSIVE PROCEDURES; STAFF CERTIFICATION (1) Any provider employee who implements a level II ~~or level III~~ aversive procedure must be able to carry out the procedure as it is written. A person's ability to implement a procedure must be documented in one of the following ways:

Subsections (1)(a) through (1)(b)(i) remains the same.

(ii) The supervisor observes each employee in a role play situation and documents ~~his or her~~ the employee's ability to implement the procedure; and

(iii) The corporation maintains a list of those employees who have been observed and are considered capable of implementing the procedure. The list should specify the dates that an employee demonstrated competency and the name of staff who certified the employee.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

46.8.1220 AVERSIVE PROCEDURES: UNCLASSIFIED PROCEDURES

(1) Proposed aversive procedures which have not been classified will be reviewed by the developmental disabilities program review committee (DDPRC). The DDPRC will classify the aversive procedure as either nonaversive, level I, or II ~~or III~~ for purpose of review in the future.

AUTH: Sec. 53-2-201 and 53-20-204 MCA
IMP: Sec. 53-20-203 and 53-20-205 MCA

3. The rule 46.8.1210 as proposed to be repealed is on page 46-587 of the Administrative Rules of Montana.

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

4. The rules on aversive procedures provide the procedural and substantive criteria to govern on an individual basis the use of certain types of training in developmental disabilities service settings that may prove to be aversive to recipients of the services.

Generally, the amendments proposed in this notice are intended to restructure the system that provides approval and oversight of the use of aversive procedures in the training of recipients. The restructuring is necessary due to changes in the nature of procedures generally used and due to the identification of problems in the current system.

The amendment proposed to ARM 46.8.1203, "Use", is necessary to explicitly state the limitation of the use of aversive procedures to training that is necessitated by the presence of maladaptive behaviors. This limitation, while fundamental to the system, was not previously stated.

The amendments proposed to ARM 46.8.1204, "Definitions", are necessary to change certain terms to conform with current nomenclature and usage in the field of developmental disabilities and to provide definitions for certain terms that are in need of definition so as to provide a better understanding of the rules.

The amendments proposed to ARM 46.8.1206, "Systematic Program Review", make changes to the language that are necessary to conform terminology with current nomenclature and usage in the field of developmental disabilities and to remove a reference to the deleted Level III procedures classification.

The amendments proposed to ARM 46.8.1207, "Approval Criteria", make changes to the language that are necessary to improve comprehension and to conform terminology with current nomenclature and usage in the field of developmental disabilities.

The amendments proposed to ARM 46.8.1208, "Classification and Conditions Governing Use of Procedures", restructure and redefine the classification system and the review and approval process in relation to aversive procedures. The changes are necessary in order to improve the process, to accommodate changes in the nature and occurrence of aversive procedures, to improve the comprehension of the rule and to conform the terminology of the rule with current nomenclature and usage in the field of developmental disabilities.

The amendments proposed to ARM 46.8.1211, "Developmental Disabilities Program Review Committee", are necessary to provide revisions to the responsibilities of the program review committee that reflect the restructuring of the aversive procedures process.

The amendments proposed to ARM 46.8.1213, "Restriction of Any Client Rights", are necessary to conform the terminology of the rule with current nomenclature and usage in the field of developmental disabilities.

The amendments proposed to ARM 46.8.1215, "Emergency Procedures", are necessary to improve the comprehension of the rule and to conform the terminology of the rule with current nomenclature and usage in the field of developmental disabilities.

The amendment proposed to ARM 46.8.1216, "Reimposition of Deceleration Program", is necessary to remove a reference to the deleted Level III procedures classification.

The amendments proposed to ARM 46.8.1218, "Appeal Process", change the responsibility for the final administrative decision from the director of the Department to the administrator of the developmental disabilities division, remove a reference to the Level III procedures classification and provide for certain changes in language. The changes are necessary to place the final appeal at a more appropriate level within the Department, to improve the comprehension of the rule and to remove a reference to the deleted Level III procedures classification.

The amendments to ARM 46.8.1219, "Staff Certification", remove a reference to the deleted Level III procedures classification,

provide for certain changes in language and provide further criteria relating to documentation of an employee's ability to conduct a certain procedure. The changes are necessary to remove a reference to the deleted Level III procedures classification, to conform the terminology of the rule with current nomenclature and usage in the field of developmental disabilities, and to provide further assurance of employee competence in conducting procedures.

The amendments to ARM 46.8.1220, "Unclassified Procedures", are necessary to remove a reference to the deleted Level III procedures classification.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

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

In the matter of the amendment of rules 46.12.4002, 46.12.4004 and 46.12.4006 pertaining to AFDC-related institutionalized individuals	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.4002, 46.12.4004 AND 46.12.4006 PERTAINING TO AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS

TO: All Interested Persons

1. On June 3, 1993, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.4002, 46.12.4004 and 46.12.4006 pertaining to AFDC-related institutionalized individuals.

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

46.12.4002 GROUPS COVERED, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsections (1) through (1)(b) remain the same.

(c) Individuals under age 21 receiving active treatment as inpatients in psychiatric facilities or programs provided that the youth is in the custody of the department of family services or has been committed to the department of family services by district court pursuant to 41-3-403, 41-3-404, 41-3-406 or 41-5-523, MCA.

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

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

46.12.4004 NON-FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs pursuant to the requirements of ARM 46.12.4002(1)(c), the nonfinancial requirements for medicaid under this subchapter, whether as categorically needy or medically needy, consist of the age requirement and applicable service requirements.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

46.12.4006 FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs pursuant to the requirements of ARM 46.12.4002(1)(c), the financial requirements for medicaid under this subchapter as categorically needy are the AFDC financial requirements which are set forth in ARM 46.10.401 through 406 and 46.10.505 through 514. These will be used to determine whether:

(3) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs pursuant to the requirements of ARM 46.12.4002(1)(c) who are ineligible under subsection (2) because of excess income, the financial requirements for medicaid under this subchapter as medically needy are the medically needy financial requirements for noninstitutionalized AFDC-related families and children which are set forth in subchapter 38. The financial provisions of this subchapter which apply to individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3) apply identically to the above described individuals under 21.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

3. The department has the authority pursuant to sections 53-6-113 and 53-6-131, MCA to adopt rules governing eligibility for the Montana medicaid program. In addition, section 53-6-101, MCA provides the department with authority to determine what federally defined optional services will be provided in Montana. The proposed rule amendments are necessary to effectuate these statutory provisions. The proposed rule amendments are necessary to make changes to current eligibility requirements for those persons under 21 years of age receiving inpatient psychiatric treatment. The changes will provide cost savings in the medicaid program as necessitated by the reduction in legislative appropriations in House Bill 2 as passed by the 53rd Montana Legislature.

The legislature has determined that in general it is more equitable to apply the same medicaid eligibility rules to youths receiving inpatient psychiatric treatment as apply to other applicants for medicaid. Specifically, it is appropriate to consider the resources and income of the individuals' parents. However, the legislature has weighed against this the need to guarantee inpatient psychiatric treatment to youths in the custody of the Department of Family Services (DFS). To accommodate these opposing concerns, the department has proposed the modified coverage group insuring treatment for youths in DFS' custody.

Under the proposed amendments, children in the custody of DFS will be eligible for medicaid without consideration of parental income or resources if a court has made a finding pursuant to sections 41-3-406 or 41-5-523, MCA that the youth is a "youth in need of care", a "youth in need of supervision", or "a delinquent youth" and has determined that it is necessary to commit or place the youth in the custody of DFS, or if the youth has otherwise been placed in the care and custody of DFS. Other youths receiving inpatient psychiatric treatment will be eligible for medicaid if they qualify under the eligibility rules applicable to any other applicant for medicaid, which require consideration of parental income and resources. They may also have to meet the other eligibility requirements as applicable for AFDC-related medicaid, such as deprivation of parental support.

Amendments to ARM 46.12.4002, 46.12.4004 and 46.12.4006 will require inclusion of parental income when determining eligibility for persons under age 21 who are receiving inpatient treatment in a psychiatric facility unless they are in the custody of the Department of Family Services (DFS). The amendments to eligibility in this area will bring this aspect of the program into accord with other areas of eligibility for medicaid services. This more restrictive eligibility requirement will result in a savings to the medicaid program.

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 June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

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

In the matter of the amendment of rule 46.10.403 pertaining to AFDC assistance standards	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.403 PERTAINING TO AFDC ASSISTANCE STANDARDS

TO: All Interested Persons

1. On June 3, 1993, at 3:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.403 pertaining to AFDC assistance standards.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) and (2) remain the same.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~540~~ 553	$ ~~196~~ 202
2	~~731~~ 749	~~316~~ 326
3	~~919~~ 945	~~433~~ 446
4	~~1,108~~ 1,140	~~549~~ 564
5	~~1,297~~ 1,336	~~657~~ 675
6	~~1,486~~ 1,532	~~759~~ 779
7	~~1,676~~ 1,726	~~860~~ 884
8	~~1,865~~ 1,922	~~955~~ 981
9	~~1,954~~ 2,015	~~1,043~~ 1,073
10	~~2,041~~ 2,103	~~1,130~~ 1,162
11	~~2,118~~ 2,181	~~1,206~~ 1,240
12	~~2,196~~ 2,261	~~1,284~~ 1,319
13	~~2,263~~ 2,329	~~1,351~~ 1,388
14	~~2,327~~ 2,396	~~1,415~~ 1,454
15	~~2,388~~ 2,461	~~1,478~~ 1,519
16	~~2,442~~ 2,516	~~1,532~~ 1,574

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~196~~ 202	$ ~~74~~ 76
2	~~385~~ 396	~~196~~ 202
3	~~577~~ 594	~~316~~ 326
4	~~768~~ 790	~~433~~ 446
5	~~958~~ 986	~~548~~ 562
6	~~1,153~~ 1,184	~~660~~ 679
7	~~1,345~~ 1,382	~~770~~ 792
8	~~1,534~~ 1,576	~~877~~ 901
9	~~1,624~~ 1,671	~~966~~ 993
10	~~1,711~~ 1,759	~~1,053~~ 1,082
11	~~1,796~~ 1,846	~~1,140~~ 1,171
12	~~1,878~~ 1,930	~~1,217~~ 1,251
13	~~1,959~~ 2,015	~~1,301~~ 1,338
14	~~2,035~~ 2,092	~~1,376~~ 1,415
15	~~2,111~~ 2,170	~~1,452~~ 1,493
16	~~2,181~~ 2,242	~~1,523~~ 1,565

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~292~~ 299	$ ~~106~~ 109
2	~~395~~ 405	~~171~~ 176
3	~~497~~ 511	~~234~~ 241
4	~~599~~ 616	~~297~~ 305
5	~~701~~ 722	~~355~~ 365
6	~~803~~ 828	~~410~~ 421
7	~~906~~ 933	~~465~~ 478
8	~~1,008~~ 1,039	~~516~~ 530
9	~~1,056~~ 1,089	~~564~~ 580
10	~~1,103~~ 1,137	~~611~~ 628
11	~~1,145~~ 1,179	~~652~~ 670
12	~~1,187~~ 1,222	~~694~~ 713
13	~~1,223~~ 1,259	~~730~~ 750

14	~~1,258~~	1,295	~~765~~	786
15	~~1,291~~	1,330	~~799~~	821
16	~~1,320~~	1,360	~~828~~	851

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~106~~ 109	$ ~~40~~ 41
2	~~208~~ 214	~~106~~ 109
3	~~312~~ 321	~~171~~ 176
4	~~415~~ 427	~~234~~ 241
5	~~518~~ 533	~~296~~ 304
6	~~623~~ 640	~~357~~ 367
7	~~727~~ 747	~~416~~ 428
8	~~829~~ 852	~~474~~ 487
9	~~878~~ 903	~~522~~ 537
10	~~925~~ 951	~~569~~ 585
11	~~971~~ 998	~~616~~ 633
12	~~1,015~~ 1,043	~~658~~ 676
13	~~1,059~~ 1,089	~~703~~ 723
14	~~1,100~~ 1,131	~~744~~ 765
15	~~1,141~~ 1,173	~~785~~ 807
16	~~1,179~~ 1,212	~~823~~ 846

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

(a) Maximum payment amounts to be used when adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	$ ~~229~~ 235	$ ~~7.63~~ 7.83	$ ~~83~~ 86	$ ~~2.77~~ 2.87
2	~~310~~ 318	~~10.33~~ 10.60	~~134~~ 138	~~4.47~~ 4.60
3	~~390~~ 401	~~13.00~~ 13.37	~~184~~ 189	~~6.13~~ 6.30
4	~~470~~ 484	~~15.67~~ 16.13	~~233~~ 239	~~7.77~~ 7.97
5	~~550~~ 567	~~18.33~~ 18.90	~~279~~ 287	~~9.30~~ 9.57
6	~~630~~ 650	~~21.00~~ 21.67	~~322~~ 330	~~10.73~~ 11.00
7	~~711~~ 732	~~23.70~~ 24.40	~~365~~ 375	~~12.17~~ 12.50
8	~~791~~ 816	~~26.37~~ 27.20	~~405~~ 416	~~13.50~~ 13.87
9	~~829~~ 855	~~27.63~~ 28.50	~~443~~ 455	~~14.77~~ 15.17
10	~~866~~ 893	~~28.87~~ 29.77	~~480~~ 493	~~16.00~~ 16.43

11	~~899~~	926	~~29.97~~	30.87	~~512~~	526	~~17.07~~	17.53
12	~~932~~	959	~~31.07~~	31.97	~~545~~	560	~~18.17~~	18.67
13	~~960~~	988	~~32.00~~	32.93	~~573~~	589	~~19.10~~	19.63
14	~~988~~	1,017	~~32.93~~	33.90	~~601~~	617	~~20.03~~	20.57
15	~~1,013~~	1,044	~~33.77~~	34.80	~~627~~	644	~~20.90~~	21.47
16	~~1,036~~	1,068	~~34.53~~	35.60	~~650~~	668	~~21.67~~	22.27

(b) Maximum payment amounts to be used when no adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard as defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	$ ~~83~~ 86	$ ~~2.77~~ 2.87	$ ~~31~~ 32	$ ~~1.03~~ 1.07
2	~~162~~ 168	~~5.43~~ 5.60	~~83~~ 86	~~2.77~~ 2.87
3	~~245~~ 252	~~8.17~~ 8.40	~~134~~ 138	~~4.47~~ 4.60
4	~~326~~ 335	~~10.87~~ 11.17	~~184~~ 189	~~6.13~~ 6.30
5	~~407~~ 418	~~13.57~~ 13.93	~~232~~ 239	~~7.73~~ 7.97
6	~~489~~ 502	~~16.30~~ 16.73	~~280~~ 288	~~9.33~~ 9.60
7	~~571~~ 586	~~19.03~~ 19.53	~~327~~ 336	~~10.90~~ 11.20
8	~~651~~ 669	~~21.70~~ 22.30	~~372~~ 382	~~12.40~~ 12.73
9	~~689~~ 709	~~22.97~~ 22.63	~~410~~ 422	~~13.67~~ 14.07
10	~~726~~ 747	~~24.20~~ 24.90	~~447~~ 459	~~14.90~~ 15.30
11	~~762~~ 783	~~25.40~~ 26.10	~~484~~ 497	~~16.13~~ 16.57
12	~~797~~ 819	~~26.57~~ 27.30	~~517~~ 531	~~17.23~~ 17.70
13	~~831~~ 855	~~27.70~~ 28.50	~~552~~ 568	~~18.40~~ 18.93
14	~~864~~ 888	~~28.80~~ 29.60	~~584~~ 601	~~19.47~~ 20.03
15	~~896~~ 921	~~29.87~~ 30.70	~~616~~ 633	~~20.53~~ 21.10
16	~~926~~ 951	~~30.87~~ 31.70	~~646~~ 664	~~21.53~~ 22.13

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

3. This rule change is necessary to comply with 53-4-241, MCA, which requires the department to establish rules and standards of assistance for the Aid to Families with Dependent Children (AFDC) program, and to comply with the mandate of the 53rd Montana Legislature contained in House Bill 2 which requires that AFDC benefit levels be set at 40.5% of the federal poverty index effective July 1, 1993. This increase in benefit levels necessitates increases also in the needs standards (NMI) and the gross monthly income standards (GMI), as they are based on the benefit levels.

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 June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

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

In the matter of the amendment of rules 46.12.3002, 46.12.3801, 46.12.3803 and 46.12.3804 pertaining to medically needy	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.3002, 46.12.3801, 46.12.3803 AND 46.12.3804 PERTAINING TO MEDICALLY NEEDY

TO: All Interested Persons

1. On June 3, 1993, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.3002, 46.12.3801, 46.12.3803 and 46.12.3804 pertaining to medically needy.

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

46.12.3002 DETERMINATION OF ELIGIBILITY Subsections (1) through (4)(c) remain the same.

(d) For coverage of medically needy persons, eligibility begins ~~when incurred remedial and medical expenses equal the required incurment for the period.~~:

(i) on the first of the month when the medically needy person pays the cost-share amount as defined in ARM 46.12.3804; or

(ii) when incurred remedial and medical expenses equal the required incurment as defined in ARM 46.12.3804 for the period.

Subsection (4)(e) remains the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131, 53-6-132 and 53-6-133 MCA

46.12.3801 INDIVIDUALS COVERED, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) through (2) remain the same.

(3) This group does not include coverage for the caretaker relative, as defined in ARM 46.10.403.

Subsections (3) through (3)(b) remain the same in text but are renumbered (4) through (4)(b).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS Subsections (1) through (3)(a) remain the same.

(b) Institutionalized recipients must also meet the income criteria of ARM 46.12.4008.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

Family Size	One Month Net Income Level	
1	$ ~~416~~	425
2	~~416~~	425
3	~~443~~	455
4	~~470~~	484
5	~~550~~	567
6	~~630~~	650
7	~~711~~	732
8	~~791~~	816
9	~~829~~	855
10	~~866~~	893
11	~~899~~	926
12	~~932~~	959
13	~~960~~	988
14	~~988~~	1,017
15	~~1,013~~	1,044
16	~~1,036~~	1,068

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131, and 53-6-141 MCA

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) through (2) remain the same.

(3) When an otherwise eligible individual or family covered under ARM 46.12.3801 has countable income which exceeds the medically needy income level, ~~a medical expense inourment will be required. The inourment is equal to the difference between the countable income and the medically needy income limit for the family size. Eligibility will begin after the inourment requirement has been satisfied and will extend to the end of the budget period. The only medical expenses which may be used to meet the inourment requirement are~~ the individual or family will become eligible:

(a) on the first day of the month if the individual or family pays the cost-share amount for the month in cash to the department. eligibility begins on the first day of the month. The cost-share amount is equal to the difference between the individual's or family's countable income and the medically needy income level for that household size;

(i) Medical expenses may be used to reduce the cost-share amount. The only medical expenses which may be used are:

(A) expenses incurred by:

(I) eligible or ineligible individuals who are considered members of the household for AFDC related medicaid; or

(II) eligible individuals or the eligible individual's spouse if there was income deemed from the spouse to the eligible individual for SSI related medicaid.

(B) expenses which are not the liability of a third party other than another public program of the state of Montana;

(C) expenses which have not been used to meet a prior incurment or used to reduce the cost-share amount in a prior period;

(D) expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under state law but is not a Montana medicaid covered service; or

(b) after a medical expense incurment is satisfied. The incurment is equal to the difference between the countable income and the medically needy income limit for the family size. Eligibility will extend to the end of the budget period. The only medical expenses which may be used to meet the incurment requirement are:

(~~a~~i) expenses incurred by:

(A) eligible or ineligible individuals ~~who must be~~ are considered ~~in determining family size as defined in ARM 46.12.102(24);~~ members of the household for AFDC related medicaid; or

(B) eligible individuals or the eligible individual's spouse if there was income deemed from the spouse to the eligible individual for SSI related medicaid.

Subsections (3)(b) through (3)(f)(iii) remain the same in text but are renumbered (3)(b)(ii) through (3)(b)(vi)(C).

Subsections (4) and (5) remain the same.

(6) A medically needy individual or family who paid the cost-share obligation but did not incur medical expenses equal to that cost-share obligation may request a refund of funds which exceed the provider billed charges.

AUTH: Sec. 53-2-201, 53-4-212, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-4-231, 53-6-101, 53-6-131, and 53-6-402 MCA

3. Currently a person or household whose income exceeds the medically needy income level can become eligible for medical assistance only by satisfying a medical expense incurment which is equal to the difference between their countable income and the medically needy income level. House Bill 309 of the 53rd Montana Legislature amended 53-6-131(1)(f)(ii)(A), MCA, to provide that households with income greater than the medically needy income level also have the option of qualifying for assistance by paying the department in cash the amount by which their income exceeds the medically needy income level. When a household pays the incurment amount in cash rather than using medical expenses to satisfy the incurment, the household will be eligible from the first day of the month rather than from the date the incurment is satisfied. The amendment of ARM 46.12.3002 and ARM 46.12.3804 is necessary to implement the changes provided in House Bill 309.

Clarification has been received from the Department of Health and Human Services specifying whose medical expenses may be used to decrease the cost-share amount or to meet the incurment amount, requiring the amendment of ARM 46.12.3804.

ARM 46.12.3801 is being amended to state specifically that Aid to Families with Dependent Children (AFDC) caretaker relatives are not covered by medicaid under the medically needy program. A caretaker relative is a person such as a parent or other relative within a certain degree of relationship to the child who lives with the child and who exercises responsibility for the care and control of the child. This is not a change in policy as caretaker relatives have not been covered since 1991. Rather, the rule is being amended to make the department's current policy less susceptible to a different interpretation.

Prior to 1991, caretaker relatives were listed in ARM 46.12.3801 (1) as one of the groups covered by medicaid. In 1991, due to reductions in the appropriation for medical assistance by the 52nd Montana Legislature, the department chose to eliminate medicaid coverage for AFDC caretaker relatives under the medically needy program. At that time ARM 46.12.3801(1) was amended by deleting reference to this coverage group.

However, since caretaker relatives were covered in the past, the department has concluded that the department's policy of non-coverage would be more readily apparent if the rule specifically stated that caretaker relatives are not covered.

The amendment of ARM 46.12.3803 is necessary to implement changes in the medically needy income standards required by the 53rd Montana Legislature. The medically needy income standards are based on benefit amounts in the most closely related cash assistance program, which is AFDC. House Bill 2 of the 53rd Montana Legislature increased AFDC benefits effective July 1, 1993. Thus, it is necessary to amend ARM 46.12.3803 to increase medically needy income standards as well.

4. The proposed rule amendments will be effective July 1, 1993.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

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

In the matter of the amendment of rules 46.10.505 and 46.10.508 pertaining to specially treated income for AFDC	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.505 AND 46.10.508 PERTAINING TO SPECIALLY TREATED INCOME FOR AFDC

TO: All Interested Persons

1. On June 4, 1993, 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 rules 46.10.505 and 46.10.508 pertaining to specially treated income for AFDC.

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

46.10.505 DEFINITIONS Subsections (1) remain the same.

(2) "Unearned income" means all income that is not earned income as defined in ARM 46.10.505(3). Unearned income includes, but is not limited to social security income benefits, veteran's benefits or payments, workers' compensation payments, unemployment compensation payments, ~~and~~ dividends paid on capital investments and up to $50 of the assistance unit's share of governmental rental or housing subsidy.

Subsections (2)(a) through (7) remain the same.

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211, 53-4-231, 53-4-241 and 53-4-242 MCA

46.10.508 SPECIALLY TREATED INCOME Subsection (1) remains the same.

(a) ~~T~~income tax refunds shall be considered toward the property resources limitation and not treated as income~~.~~; and

(b) the assistance unit's share (up to $50) of governmental or rental or housing subsidies is counted as unearned income.

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-231, 53-4-241, and 53-4-242 MCA

3. The Department of Social and Rehabilitation Services is proposing to amend ARM 46.10.505 and 46.10.508 in order to comply with budgetary restrictions resulting from the passage of House Bill 2 by the 53rd Montana Legislature. The Department is proposing to reduce its Aid to Families with Dependent Children (AFDC) monthly payments for recipients receiving governmental rental or housing subsidies. Up to $50 of the value of the

rental or housing subsidy will be counted as unearned income to the AFDC assistance unit.

The current federal regulation at 45 CFR 233.20(a)(3)(xii) allows states the option to count the value of the governmental rental or housing subsidies as income to the assistance unit. The amount of such rental or housing subsidies may not exceed the amount for shelter established in its payment standard for assistance unit of the same size and composition. Because the amount for shelter designated in all Montana's payment standards for all household sizes and compositions exceed $50 (the minimum designated is $54 for a Child Only benefit), all recipients of AFDC who received governmental rental or housing subsidies will have their monthly benefit payment reduced by this amount.

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 June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

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

In the matter of the amendment of rule 46.12.1928 pertaining to targeted case management for adults	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.1928 PERTAINING TO TARGETED CASE MANAGEMENT FOR ADULTS

TO: All Interested Persons

1. On June 4, 1993, at 11:00 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 46.12.1928 pertaining to targeted case management for adults.

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

46.12.1928 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS, GEOGRAPHICAL COVERAGE

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

(b) region 2: Blaine, Cascade, Glacier, ~~and~~ Hill, Pondera, Teton and Toole counties;

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

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The purpose of targeted case management for adults with severe and disabling mental illness is to coordinate and assist in the delivery of Medicaid and other services. The well-being of this population can be significantly improved through the functions of this service.

The regional mental health center, Golden Triangle Community Health Center, has requested that medicaid coverage of targeted case management services be expanded to include consumers in Blaine, Toole, Pondera, Teton and Glacier counties. The delivery of health care and other services to chronically mentally ill adults in the listed counties will be improved by the provision of targeted case management services.

This proposed rule is necessary to expand the targeted case management program to the counties listed above.

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 June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

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

In the matter of the amendment of rules 46.12.555 through 46.12.557 and 46.12.1428 pertaining to medicaid personal care services	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.555 THROUGH 46.12.557 AND 46.12.1428 PERTAINING TO MEDICAID PERSONAL CARE SERVICES

TO: All Interested Persons

1. On June 8, 1993, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.555 through 46.12.557 and 46.12.1428 pertaining to medicaid personal care services.

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

46.12.555 PERSONAL CARE SERVICES, DEFINITION

(1) Personal care services are medically necessary in-home services provided to medicaid recipients whose ~~chronic~~ health ~~problems~~ conditions cause them to be functionally limited in performing activities of daily living. Personal care services are intended to prevent or delay institutionalization by providing ~~the~~ medically necessary, long-term maintenance or supportive care in the home.

(2) Personal care services include, but are not limited to, assistance with activities of daily living such as bathing, grooming, transferring, walking, eating, dressing, toileting, self-administered medications, meal preparation, escort and ~~home management~~ household tasks.

(a) ~~Home management services are limited to housekeeping activities that are essential to maintaining a recipient's health and safety in the home.~~ Household tasks are housekeeping activities, provided in accordance with the personal care plan and furnished in conjunction with direct patient care, that are directly related to the recipient's medical needs.

(i) Household tasks include:

(A) cleaning the area used by the recipient;

(B) changing the recipient's bed linens;

(C) doing the recipient's laundry; and

(D) shopping for groceries and household items essential to the health care, nutritional needs, and maintenance of the recipient.

(b) Escort services are ~~limited to~~ trips ~~to obtain~~ for the purpose of enabling the recipient to receive medical ~~diagnosis~~ examination or treatment or ~~to~~ for shopping to meet ~~for items specifically required for~~ the recipient's essential health care

~~and~~ or nutritional needs. Escort services are provided by a personal care attendant who accompanies the recipient.

~~(c) Home management and escort services must be provided only in conjunction with direct personal care and must be directly related to a recipient's medical needs.~~

~~(3) Personal care services are delivered by attendants supervised by registered nurses.~~

(43) Personal care services do not include ~~the following~~ any skilled services that require professional medical training~~:~~.

~~(a) insertion and sterile irrigation of catheters;~~

~~(b) irrigation of any body cavities;~~

~~(c) application of sterile dressings involving prescription medications and aseptic techniques;~~

~~(d) injections of fluids intravenously, in muscles or skin;~~

~~(e) administration of medication; and~~

~~(f) any other skilled nursing service.~~

Subsections (5) through (5)(e) remain the same in text but will be renumbered (4) through (4)(e).

(5) Personal care provided by a member of the recipient's immediate family is not personal care services for the purposes of the medicaid program and is not subject to the requirements of these rules.

(a) Immediate family includes the following:

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

AUTH: Sec. 53-6-201 and 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.556 PERSONAL CARE SERVICES, REQUIREMENTS

Subsection (1) remains the same.

(2) Personal care services, except for escort services and household tasks, may be provided only in the recipient's home. ~~An attendant may accompany a recipient to receive medical care or shop for items essential to the recipient's health care or nutritional needs.~~

Subsection (3) remains the same.

(4) Personal care services are not ~~reimbursed by medicaid~~ available for persons who reside in a hospital or long-term care facility as defined in 50-5-101, MCA, and licensed under 50-5-201, MCA.

~~(5) Personal care services can be provided only if the recipient's health and safety in the home can be adequately assured by the provision of such services.~~

~~(a) The recipient's medical condition must be stable, which is defined as follows:~~

~~(i) the condition requires routine supportive assistance in the home to prevent a health or safety crisis from developing;~~

~~(ii) the condition is not expected to exhibit sudden deterioration;~~

~~(iii) the condition does not require frequent medical or nursing judgement to determine changes in the recipient's plan of care; and~~

~~(iv) the condition does not require constant skilled professional care.~~

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

~~(c) Recipients who have unstable medical conditions characterized by episodic events, rapid deterioration, frequent professional intervention or modification in the plan of care, or need for skilled treatment or rehabilitation activities may not be appropriate for personal care and should be referred for home health, nursing, rehabilitation or other long-term care services.~~

(6) Personal care services ~~provided to recipients are~~ must be specified in a plan of care which governs delivery of services. The plan of care for a recipient is ordered by a physician and developed by a registered nurse ~~chosen~~ employed by or contracted with the contract provider.

(7) The delivery of personal care services must be supervised by a registered nurse.

(8) The recipient must agree to accept the provision of personal care services as specified in the plan of care.

(9) The recipient may not subject the personal care attendant to physical or verbal abuse or threats of physical harm.

(10) Household tasks may account for no more than one-third of the total time allocated per week for personal care services. In no case may a personal care plan consist only of household tasks.

(~~7~~11) Personal care services must be prescribed in writing at least annually by a physician and must be ~~supervised~~ reviewed at least every ~~ninety (90)~~ 120 days by a registered nurse.

~~(8) To qualify as a contract provider of personal care services, the provider must meet all the following requirements:~~

~~(a) be enrolled as a medicaid provider and agree to abide by all pertinent state medicaid regulations;~~

~~(b) meet applicable state licensure laws;~~

~~(c) provide reasonable access to any medicaid recipient eligible for personal care services;~~

~~(d) comply with state utilization requirements;~~

~~(e) operate efficiently and provide quality services on an economical basis;~~

~~(f) agree in writing to a specified amount of reimbursement;~~

~~(g) have a quality assurance program of standards and procedures based on acceptable professional standards;~~

~~(h) have procedures for accepting, processing and responding to recipient grievances;~~

~~(i) maintain financial and internal control systems in accordance with generally accepted accounting principles and policies applied on a consistent basis; and~~

~~(j) employ attendants who are literate, able to communicate with recipients and willing to accept specialized training and supervision from a registered nurse.~~

(12) A recipient who is also a recipient of medicaid home and community services (HCS) may receive home and community personal care services in addition to the personal care services provided through these rules. The number of hours of personal care available through the home and community program is determined in accordance with ARM 46.12.1411.

(13) The department, except in circumstances meeting the requirements for sole source procurement, contracts with providers chosen through a request for proposals competitive process.

(14) The department may contract with out-of-state agencies to provide personal care services for Montana medicaid recipients living out of state.

(15) Personal care services may only be delivered by a personal care attendant employed by a contractor that has specifically contracted with the department for the delivery of personal care services.

~~(9) Reimbursement for personal care services shall not be made to a member of the recipient's immediate family. Immediate family includes the following:~~

~~(a) husband or wife;~~

~~(b) natural parent;~~

~~(c) natural child;~~

~~(d) natural sibling;~~

~~(e) adopted child;~~

~~(f) adoptive parent;~~

~~(g) stepparent;~~

~~(h) stepchild;~~

~~(i) step-brother or step-sister;~~

~~(j) father-in-law or mother-in-law;~~

~~(k) son-in-law or daughter-in-law;~~

~~(l) brother-in-law or sister-in-law;~~

~~(m) grandparent;~~

~~(n) grandchild;~~

~~(o) foster parents; or~~

~~(p) foster child.~~

Subsections (10) through (11)(b) remain the same in text but will be renumbered (16) through (17)(b).

~~(e) the recipient's health and safety needs in the home cannot be adequately met by the provision of personal care services;~~

Subsections (11)(d) through (11)(f) remain the same in text but are renumbered (17)(c) through (17)(e).

(~~g~~f) the recipient is admitted to a ~~skilled or intermediate~~ nursing facility, intermediate care facility for the mentally retarded, hospital, licensed personal care facility or placement other than a full-time residence;

(~~h~~g) the recipient requests termination of services or refuses to accept help; ~~or~~

(~~i~~h) the recipient refuses the services of a personal care attendant based solely or partly on the attendant's race, creed, religion, sex, marital status, color, age, handicap or national origin~~.~~;

(i) the environment of the recipient is unsafe for the provision of personal care services;

(j) the recipient or other persons in the household subjects the personal care attendant to physical or verbal abuse or to threats of physical harm; or

(k) the recipient does not accept services in accord with the plan of care.

Subsection (12) remains the same in text but is renumbered (18).

(~~13~~19) The department will provide at least 10 days advance notice to a recipient when personal care services are terminated for any of the reasons listed in subsections (~~11~~14)(a) through (~~g~~c), (h), (i) and (k).

(~~14~~20) The department will provide written notice to an applicants when personal care services are denied to the applicant.

Subsection (15) remains the same in text but is renumbered (21).

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.557 PERSONAL CARE SERVICES, REIMBURSEMENT

(1) Personal care services are limited to 40 ~~units~~ hours of attendant service per week per recipient. ~~However, t~~The department may, within its discretion, authorize additional hours in excess of this limit. Any services exceeding this limit must be prior authorized by the department. Prior authorization for excess hours ~~will~~ may be authorized ~~based on a consideration of the following~~: if

~~(a) A~~additional assistance is required;

(a) for a ~~short term~~ period of time not to exceed three months and as the result of an acute medical episode~~.~~;

(b) ~~Additional assistance is required~~ for a ~~short term~~ period of time not to exceed three months and to prevent institutionalization during the absence of the normal caregiver~~.~~; or

(c) ~~Additional assistance is required~~ for a ~~short term~~ period of time not to exceed three months and during a post-hospitalization period.

~~(d) The available alternatives are not appropriate for meeting the recipient's additional personal care needs. Other alternatives to be considered include provision of personal care services in combination with other formal services or in combination with contributions of informal caregivers.~~

~~(2) Personal care services shall be delivered by providers contracting with the department.~~

~~(a) Under exigent circumstances, the department may negotiate directly with an attendant or nurse to deliver personal care services. Exigent circumstances may include, but are not limited to, services to persons living out of state who continue to be eligible for Montana medicaid.~~

Subsections (3) through (3)(b) remain the same in text but are renumbered (2) through (2)(b).

~~(c) Reimbursement is available for time spent in travel by an attendant as part of his principal activity, such as travel time between recipient home visits. Travel time does not include time from the attendant's home to the first recipient or from the last recipient home visit back to the attendant's home.~~

~~(4) Reimbursement is not available to attendants for mileage to and from recipient homes.~~

(~~5~~3) ~~The department will contract, except as provided for under ARM 46.12.557(2)(a), with only a provider or providers chosen after request for proposals and competitive consideration of those submitting proposals.~~ A person retained personally by a recipient to deliver personal care services ~~will~~ is not ~~be considered~~ a provider of personal care services for the purposes of this rule and therefore ~~will~~ may not be reimbursed for personal care services by the department.

(4) Reimbursement is not available for personal care provided by immediate family members.

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

46.12.1428 PERSONAL CARE SERVICES, DEFINITIONS

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

(c) Personal care services ~~will~~ do not include ~~the specialized services outlined in ARM subsections 46.12.555(4)(a) through (f)~~ any skilled services that require professional medical training.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-402 MCA

3. The personal care services program provides services that are assistive and supportive in nature to medicaid recipients who reside at home. These services provide supportive care to persons who due to medical conditions and personal circumstances may otherwise need to reside in an institution providing long-term nursing care.

The proposed amendments generally are intended to implement changes in the program that are needed to improve the provision of services. Certain amendments specifically implement a cost savings measure mandated by the 1993 Legislature.

The removal of certain language is necessary to eliminate redundancies among the rules or to place certain provisions in a more appropriate rule. The revisions in language are necessary to clarify the meaning of provisions and bring terminology into conformity with current nomenclature.

Amendments to ARM 46.12.555, "Definition".

The proposed amendments to ARM 46.12.555, "Definition", replace the term "home management" as a personal care service with "household tasks", provide a definition of "household tasks", remove specific criteria defining skilled services that require professional medical training, remove for placement in another rule a provision concerning supervision of personal care attendants by registered nurses, exclude the provision of personal care under the program by immediate family members, and revise or remove certain language.

The criteria defining skilled services are unnecessary since skilled nursing services are defined with specificity by the Montana Board of Nursing. The provision concerning supervision of attendants by registered nurses is more appropriately placed in the rule on requirements. The provision, excluding personal care provided by immediate family members, is being moved to this rule from the requirement rule where it was inappropriately placed.

Amendments to ARM 46.12.556, "Requirements".

The amendments to ARM 46.12.556, "Requirements", remove language concerning escort services, remove provisions providing criteria limiting the provision of personal care services by excluding persons with certain medical and physical risks, provide that the delivery of personal care services be supervised by a registered nurse, provide that a recipient must agree to accept services as specified in the plan of care, provide that a recipient can not abuse or threaten an attendant, impose a percentage of time limit on time spent on household tasks, provide that the prescription by the physician for services be in writing, change the time period for review of service delivery under a plan of care from 90 days to 120 days, remove certain provider requirements, provide that a recipient of personal care services may also receive the personal care services available through the home and community services program, provide that providers generally be selected by a competitive process, provide for out of state providers for recipients residing out of state, require that services be delivered by a personal care attendant employed by a contractor,

provide additional criteria as bases for termination of services, and revise or remove certain language.

The language, describing the nature of escort services in the provision that limits personal care services to the home, is unnecessary since it is redundant of the language in the definition rule. Language noting the exceptions to the requirement of services in the home has been added.

The removal of the provisions, excluding participation based on medical and physical risks, is necessary to recognize the desire of many recipients to maintain the dignity and stimulation of independent home life even with the possibility of risks to health.

The addition of a provision, providing that personal care services be supervised by a registered nurse, is necessary in that this requirement is not expressly stated in the current rule. The supervision by a registered nurse is necessary for proper oversight to assure the life and health safety of the recipient and is a federal requirement.

The provision, requiring the recipient to agree to accept the services in accord with the plan of care, is necessary to assure that service delivery is within the service limitations, is appropriate for and available to the recipient, and is the indicator that the recipient understands the scope of services to be provided.

The provision, prohibiting abuse and threats of an attendant and providing for termination of services in abusive or threatening circumstances or unsafe conditions, is necessary to prevent serious harm from occurring to attendants.

The provision, imposing a percentage of time limit on time spent on household tasks, is necessary to limit household tasks to those that are essential to the well-being of the client and to assure that those persons receiving services are primarily receiving services because of personal needs rather than household needs. This limitation is necessary to the implementation of cost savings in the program mandated by the 1993 Legislature. Currently, many household tasks performed by the personal care attendants are not necessary and therefore could be foregone without imposing any risks for the recipients.

The addition of the requirement for a written prescription to the provision concerning annual prescription of services by a physician is necessary to assure that the need for the services is clearly established on record and therefore avoid any confusion over the recipient's status and needs. The change from 90 days to 120 days for review of services by a nurse is necessary to more efficiently use the nursing supervision and will not adversely effect the service delivery or the health of the recipients.

The several provisions, providing criteria for providers of personal care services to the program, being deleted are unnecessary as rules since the provisions are provided for in the contract entered into by the program with the providers.

The provision, providing for receipt of home and community services program personal care services in addition to personal care services under this program, is necessary to improve opportunities for persons to remain in their own home. The additional services will better meet the needs of persons who would likely need institutionalization otherwise.

The provision, providing for the selection of providers generally based on a competitive process, is being moved to the requirements rule from the reimbursement rule where it was inappropriately placed. The provision will expressly allow for sole source procurement where necessary due to particular circumstances.

The provision, providing for the delivery of personal care services to eligible persons located out of state, is being moved to this rule from the reimbursement rule where it was inappropriately placed.

The provision, requiring the provision of services by an attendant who is employed by a contractor that has contracted with the department for the delivery of personal care services, is being moved to this rule from the definition rule where it was inappropriately placed. The provision is necessary to provide for a legally responsible entity for the supervision of personal care attendants.

The provision, excluding personal care provided by immediate family members, is being moved from this rule where it was inappropriately placed to the definitional and reimbursement rules which are more appropriate placements.

The additional criteria as bases for the termination of services to persons, including termination if the environment is unsafe, if the attendant is abused or threatened, or if the plan of care can not be maintained, are necessary to provide the program with the discretion to assure the safety of the recipients and personal care attendants and to assure the appropriateness and integrity of the services delivered.

Amendments to ARM 46.12.557, "Reimbursement".

The amendments to ARM 46.12.557, "Reimbursement", change the term "units" to "hours", revise the language and criteria for prior authorization of personal care hours over the limit of 40 hours, remove for placement in another rule the provision requiring that the contractor for service delivery must be an independent contractor, remove the provision allowing for contracting directly with an attendant or nurse to provide for

the delivery of services, remove provisions concerning reimbursement to attendants for travel time, remove for placement in another rule the provision that providers be selected by competitive process, and revise or remove certain language.

The change of the term for reimbursement from "units" to "hours" will provide a term that signifies the actual time element that reimbursement is based on. The use of this term will provide recipients and providers with specific notice of the hours of services that may be provided.

The revision of the language and criteria for prior authorization for hours over the limit of 40 hours is necessary to make the discretion of the program in granting exceptions more explicit and to place time limits on the period during which exceptions are allowed. This provides necessary limits on the provision of excess hours and consequently provides better control on the costs of the program. The removal of the criteria, providing for excess hours if there are no available alternatives, is necessary because the provision was confusing in application and unnecessary.

The provision, providing for the delivery of personal care services to eligible persons located out of state, is being moved from this rule where it was inappropriately placed to the requirements rule which is a more appropriate placement.

The provisions, providing for the delivery of personal care services through a provider contracting with the program and for the selection of providers based on a competitive process, are being moved from this rule where they were inappropriately placed to the requirements rule.

The removal of the provision, providing for direct contracting by the program with a personal care attendant in exigent circumstances, is necessary to remove liability problems arising in relation to independent contractor status.

The provision, precluding reimbursement for personal care provided by immediate family members, is being moved to this rule from the requirement rule where it was inappropriately placed.

Amendment to ARM 46.12.1428, "Definitions", for Home and Community Services Personal Care Services.

The amendment removes the reference to the limitation on skilled nursing services in the definition of personal care services for purposes of the other personal care program and states the limitation in the rule itself. The statement of the limitation in the rule is necessary to make the limitation apparent in the rule and eliminates the need for the reader to reference the other set of rules.

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 June 10, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 3, 1993.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of emergency rules on the retirement incentive window for certain PERS members.	))))	NOTICE OF EMERGENCY ADOPTION OF RULES

TO: All Interested Persons.

1. The Public Employees' Retirement Board has adopted emergency rules, pursuant to section 2-4-303(1), MCA, on the retirement incentive window established by HB 517, which became effective April 28, 1993. The act generally provides an incentive for PERS members to voluntarily terminate employment with the state or university system on or after June 25, 1993 but before January 1, 1994. To be covered by this law, local governments must make an election by June 1, 1993. Additional PERS service will be purchased by employers on behalf of their eligible employees who voluntarily leave public service or who are involuntarily RIF'd during the window period and for those employees who are involuntarily RIF'd on or after March 1, 1993 but before June 25 and who are eligible and retire on or after June 25, 1993. Employers can pay for the service in a lump sum or over a period of up to 10 years, including interest. PERS members who have taken the incentive and return to work within the same jurisdiction for more than 600 hours in any calendar year will forfeit the incentive. A report on the effects of the incentives is to be made to the next legislature.

The immediate effective date of HB 517, in combination with its impending deadline within which local governments must act to participate (June 1, 1993) and the inside eligibility date for the window (June 25, 1993), requires present action by the board to adopt emergency rules in these areas to implement the statute as nearly as possible to its effective date. Considering the 1993 filing and publication schedule for the Montana Administrative Register and the Board's regular meeting schedule, the soonest that temporary rules could be adopted under 2-4-303(2), MCA, is June 12, 1993, and the earliest date by which rules could be adopted under standard rulemaking procedures is July 15, 1993. Any delay in adoption of rules implementing HB 517 imminently imperils public welfare by potentially foreclosing the ability of local governments to act in response to HB 517, and compressing the time within which eligible individuals can evaluate their options in advance of the window and affected employers can make preparations to accommodate changes in the work force prompted by incentive-induced terminations. Therefore, the Board intends to adopt the following emergency rules. The rules as adopted will be mailed to all local government employers which have contracts for PERS coverage and all other potentially affected state employers and published as an emergency rule in the next issue of the Register (May 13, 1993).

2. The emergency rules are effective from May 3, 1993, until passage of rules under standard rulemaking procedures, but in no case later than August 31, 1993.

3. The emergency rules provide as follows:

RULE I ELECTION BY LOCAL GOVERNMENTS TO BE SUBJECT TO THE RETIREMENT INCENTIVE PROGRAM (1) A local government employer which has a contract for PERS coverage may file an irrevocable election to be covered by the retirement incentive program with the board. Filing of such an election will cause the local government to be subject to the same statutes and rules as state and university system employers for purposes of the retirement incentive program.

(2) A duly signed and certified written notice of election by a contracting local government employer, on forms provided for this purpose by the retirement division, must be received at or postmarked and sent to the retirement division on or before June 1, 1993.

(3) Such notice of election must contain all the following:

(a) the name of the official governing body of the local governmental entity and the name of its authorized agent(s);

(b) the date on which the governing body authorized the agent(s) to file the notice of election and a copy of the official action which authorized this election;

(c) the signature(s) of the agents(s) authorized to bind the local government employer to such an election; and

(d) the official seal of the local government or, if none, certification of agent(s) signature(s) by a notary public.

AUTH: HB 517, Sec. 1
IMP: HB 517, Sec. 1(4)

RULE II NOTICE TO POTENTIALLY ELIGIBLE EMPLOYEES (1) The retirement division will provide all PERS employers with a listing of their potentially eligible and potentially ineligible employees on or before May 14, 1993. Included with this mailing will be instructions for taking part in the retirement incentive program.

(2) State and university employing agencies, and local government employers who file written election to take part in the retirement incentive program, must provide each of their employees who were employed on February 1, 1993 with notice of their potential eligibility or potential ineligibility and a copy of the instructions by no later than June 1, 1993. Participating employers who terminated employees on or after March 1, 1993 due to a reduction in force (RIF) must also provide notice to those former employees of their eligibility status under this program.

(3) Notice and instructions will include:

(a) information about the existence and terms of the retirement incentive program;

(b) each employee's potential eligibility status; and

(c) the employee's rights to obtain more information from

the retirement division; to clarify or challenge their eligibility status; to obtain statements for the cost of purchasing service; and to obtain estimates of retirement benefits and applications for retirement.

AUTH: HB 517, Sec. 1
IMP: HB 517, Sec. 1 & 5

RULE III PURCHASE OF ADDITIONAL SERVICE BY EMPLOYERS AS A RETIREMENT INCENTIVE (1) Additional service purchased on behalf of members eligible for the retirement incentive program is limited to three years or restrictions otherwise in place in 19-3-513, MCA and ARM 2.43.432 for purchase of such service. The number of months of active duty military service or service from other public retirement systems purchased by a member after January 1, 1990 will reduce the amount of additional service for which the member is eligible to a combined total of no more than 60 months.

(2) Potentially eligible members must apply for additional service under the retirement incentive program on forms provided by the retirement division prior to their voluntary termination from covered employment during the window period.

(3) Potentially eligible members who are involuntarily terminated must apply for additional service under the retirement incentive program on forms provided by the retirement division on or after May 14, 1993 but prior to January 1, 1994.

(4) Applications initially will be reviewed by the retirement division to determine the number of years of additional service a member is eligible to have purchased on their behalf, the number of years of previously purchased additional service which may need to be refunded, or the number of years of additional service which a member is eligible to purchase on their own behalf. The retirement division may request any additional information it deems necessary from the employer or the member to complete this initial review.

(5) Each application for additional service will then be forwarded by the retirement division to the member's employer for certification of termination date; whether the member's termination is voluntary, due to a reduction in force, or for another reason; and whether the member has taken advantage of other termination benefits provided by state law as an alternative benefit to this program.

(6) After certification is received from the member's employer that the potentially eligible member terminated employment during the window period, the application for additional service will be formally reviewed and approved by the board.

(7) The cost of the additional service will be based on the eligible member's final 12 months of credited service, ending with the last full month of service as certified by the member's employer on a regular monthly payroll report. When calculating the cost for purchasing service for a member who is currently working less than full time but whose final average salary will be based on full time service, the final 12-month salary will be proportionally adjusted to reflect the purchase

of full-time additional service. The cost for purchasing the service will be billed to the member's former employer after formal approval of the application and the additional service will be utilized when computing the member's retirement benefit.

(8) A statement of the cost of purchasing the additional service will be prepared and sent to the member's former employer after the member has been certified to have terminated. The employer may elect to pay the amount in full within one month of billing, or may select an installment payment plan for a period of up to 10 years which will include interest at an effective annual rate of 8%, compounded monthly. The retirement division will provide early payoff or pay down figures, including recalculation of remaining installment payments, at the request of employers utilizing a monthly or annual installment payment option. Prepayments will not relieve the employer of the obligation to make the next installment payment unless the amount owing is paid in full.

(9) A refund of the costs, including interest, of previously purchased additional service as provided in statute will be made to the eligible member after certification of the member's termination within the window period. A member is not entitled to a refund for any portion of previously purchased military service or service from other public retirement systems, even though such purchases after January 1, 1990 may restrict eligibility for additional service under the provisions of 19-3-513(3), MCA.

AUTH: HB 517, Sec. 1 and 19-3-304, MCA
IMP: HB 517, Sec. 1 & 5 and 19-3-503, MCA

RULE IV RETURN TO EMPLOYMENT WITHIN SAME JURISDICTION

(1) Members who receive the retirement incentive may be reemployed within the same jurisdiction for up to 600 hours during any calendar year. A retired member must both terminate covered employment and receive at least one monthly retirement benefit prior to return to active service. An inactive member choosing to delay retirement may return to active service within the same jurisdiction after a break in service in excess of 5 working days.

(2) Members who receive the retirement incentive, and return to any type of employment within the same jurisdiction, must notify the retirement division within one week of employment. A personal services contract entered into between the member and the same jurisdiction is considered a return to employment and is subject to the same 600 hour limitation and reporting requirements as a rehire.

(3) The employer of a member who received retirement incentive must report all hours paid to the member after return to work within the same jurisdiction. It is the employer's responsibility to accurately report each PERS member's active duty service or service after retirement to the retirement division.

(4) As described in HB 517, all agencies of the state and all units of the university system are considered one and the

same jurisdiction for purposes of the restrictions on return to covered employment for any members who received retirement incentive. Each individual local government unit with a separate contract for PERS coverage is considered a separate jurisdiction. (For example, a member terminating employment with the Department of Agriculture may not return to employment for more than 600 hours during any calendar year with any state agency or unit of the university system, but may return to work with the City of Helena, without forfeiting the additional service credit purchased on their behalf by their former employer.)

(5) When a member forfeits additional service under this rule, the retirement division will refund the amount the employer paid for the service, minus the total retirement benefits paid to the member to that point in time. If the employer has not yet completed payments for the additional service, the maximum amount due will be the total benefits paid until the point of forfeiture, plus interest at an effective annual rate of 8%, compounded monthly from the member's original retirement date.

AUTH: HB 517, Sec. 1 and 19-3-304, MCA
IMP: HB 517, Sec. 1(6) and 19-3-1106, MCA

RULE V INFORMATION TO BE RETAINED BY EMPLOYERS (1) To respond to future requests by the board and the department of administration, state and university employers must document and retain the following information on each employee terminating under the retirement incentive program:

(a) the number and classification of the position vacated;
(b) the FTE;
(c) the salary budgeted for FY 94;
(d) the benefits budgeted for FY 94;
(e) the lump sum payout of sick and annual leave paid;
(f) the cost of additional service purchased;
(g) whether the employee was rehired and, if so, the salary and benefits paid and the number of hours employed, by month, during FY 94 and FY 95.
(h) whether a personal services contract was entered into with the former employee and, if so, the amount and duration of the contract, including the number of hours worked, by month, during FY 94 and FY 95.
(i) whether the terminating employee's position is refilled by another employee and, if so, the salary and benefits paid and the number of hours employed, by month, during FY 94 and FY 95.

AUTH: HB 517, Sec. 1 and 19-3-304, MCA
IMP: HB 517, Sec. 4

4. The rationale for the emergency rules is as set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of these emergency rules.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses, in writing, to:

Mark Cress, Administrator
Public Employees' Retirement Division
1712 Ninth Avenue
Helena MT 59620-0131

By: _____
Terry Teichrow, President
Public Employees' Retirement Board

_____
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on May 3, 1993.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 4.4.316 and repeal of ARM 4.4.307 and ARM 4.4.314	NOTICE OF ADOPTION OF ARM 4.4.316 LIABILITY ON ALL CROPS, AND REPEAL OF ARM 4.4.307 PERTAINING TO TIME POLICY BECOMES EFFECTIVE AND, REPEAL OF ARM 4.4.314 CUT OFF DATE

TO: All Interested Persons:

1. On March 25, 1993, the Department of Agriculture published a notice of proposed adoption and repeal of the above-stated rules at page 361 of the 1993 Montana Administrative Register, issue no. 6.

2. The department has adopted the rules as proposed.

3. No comments were received.

Timothy J. Meloy, Attorney
Rule Reviewer
Department of Agriculture

LEO A. GIACOMETTO, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, May 3, 1993

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)))	NOTICE OF AMENDMENT OF ARM 10.57.404 CLASS 4 VOCATIONAL CERTIFICATION

To: All Interested Persons

1. On March 25, 1993, the Board of Public Education published notice of proposed amendment concerning ARM 10.57.404, Class 4 Vocational Certification at page 387 of the 1993 Montana Administrative Register, Issue number 6.

2. The Board has amended the rule as proposed with the following changes:

10.57.404 CLASS 4 VOCATIONAL CERTIFICATION (1) through (2)(c)(iii) will remain the same.

(iv) ~~Issuance of~~ the class 4C (temporary) certificate is issued for five years, and ~~is not renewable, except that it~~ may be reinstated one time upon application to the office of public instruction, without additional requirement, for a period of five years.

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-106, 20-4-108

3. The board proposed this amendment to this rule so that those who apply and recieve class 4 C certification, possibly due to a requirement for application for a vocational teaching position, may not complete the orginial plan of professional intent.

Wayne T Buchanan

WAYNE BUCHANAN
EXECUTIVE SECRETARY
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State May 3, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.14.102 and 11.14.340 pertaining to family and group day care homes providing care only to infants, and Rules 11.14.105, 11.14.607, and 11.14.609 pertaining to day care facility registration for certain in-home providers for the purpose of receiving state payment.	NOTICE OF AMENDMENT OF RULES 11.14.102 AND 11.14.340 PERTAINING TO FAMILY AND GROUP DAY CARE HOMES PROVIDING CARE ONLY TO INFANTS, AND RULES 11.14.105, 11.14.607, AND 11.14.609 PERTAINING TO DAY CARE FACILITY REGISTRATION FOR CERTAIN IN-HOME PROVIDERS FOR THE PURPOSE OF RECEIVING STATE PAYMENT.

TO: All Interested Persons

1. On January 28, 1993 the Department of Family Services published notice of public hearing on the proposed amendment of Rules 11.14.102 and 11.14.340 pertaining to family and group day care homes providing care only to infants, and Rules 11.14.105, 11.14.607, and 11.14.609 pertaining to day care facility registration for certain in-home providers for the purpose of receiving state payment, at page 97 of the 1993 Montana Administrative Register, issue number 2.

2. On February 17, 1993, a public hearing was held in the second-floor conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana to consider the proposed amendment of the above referenced rules. Public comment was received at the hearing, and the department has also received written comment on the amendments.

3. The department has amended rules 11.14.102 and 11.14.340 as proposed. The department has amended rule 11.14.609 as proposed. The department has amended rules 11.14.105, and 11.14.607 as proposed, with the following additions and deletions (deleted material interlined, additional material underlined).

11.14.105 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES Subsection (1) remains the same (as previously proposed).

~~(2) Supplemental parental care provided to children of a single family within the home of the children is generally excluded from day care facility registration requirements. However, as set out in ARM 11.14.607(4), to obtain day care benefits from programs administered by the department, registration as a group or family day care home is required if care in the home of the children is provided to more than two children, not counting the children of the provider over the age~~

~~of two.~~

Subsections (2) through (11) remain the same and are not re-numbered (3) through (12) as previously proposed.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713; 52-2-731, MCA.

11.14.607 REQUIREMENTS FOR DAY CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION Subsections (1) through (3) remain the same (as previously proposed.)

(4) A provider of supplemental parental care to children of a single family in the home of the children must obtain a ~~group or~~ family day care home registration certificate if care is provided to more than two children, not counting the children of the provider over the age of two, prior to certification for payment of benefits under this subchapter.

~~(5) ARM 11.14.102(2) and ARM 11.14.102(5), determine the number of children counted as children in care for the purpose of determining whether a provider under subsection (4) of this rule must be registered as a group day care home, or a family day care home. The requirements for counting children in care in ARM 11.14.102(2) and ARM 11.14.102(5) should not be confused with the two child limit set out in this rule and in ARM 11.14.609(7).~~

(5) The maximum number of children for a family day care home registered under subsection (4) of this rule shall be determined in accordance with ARM 11.14.102(3). There shall be no group day care home registration under subsection (4) of this rule. The two child limit which is referred to in this rule and in ARM 11.14.609(6)(c) is not applicable to the requirements for counting children in care in ARM 11.14.102(3)-(5).

Subsection (6) remains the same.

(7) ~~Group and f~~Family day care homes required to register to provide care in the home of the children under subsection (4) of this rule must comply with all ~~applicable~~ registration requirements of Title 11, chapter 14~~, subchapters 1, 5, and 6~~ of the Administrative Rules of Montana applicable to family day care homes except the following:

(a) proof of current fire and liability insurance coverage required by ARM 11.14.103(4)~~(d)~~(c) and ARM 11.14.105(4)(d); ~~and~~

(b) the health requirement of ARM 11.14.414(3) requiring that an ill child be taken home;

(c) the health requirement of ARM 11.14.414(9)(c) prohibiting the use of home canned foods (if the foods were canned by the parent(s) and the use of canned foods is approved by the parent(s));

(d) the health requirement of ARM 11.14.414(5) in regard to contact with adults with reportable communicable diseases and contagious illnesses if such adult is a member of the household; and

~~(b)~~(e) requirements of ARM 11.14.501, regarding facilities caring for infants, documentation of the absence of unusual health risks.

~~(8) Group day care homes required to register to provide~~

~~care in the home of the children under subsection (4) of this rule must comply with all the requirements of Title 11, chapter 14, subchapter 3, except the following:~~

~~(a) the building requirements of ARM 11.14.305(2) through (10)(d);~~

~~(b) the equipment requirements of ARM 11.14.311;~~

~~(c) the health care requirements of ARM 11.14.316(2) through (8), (10) through (14), (15)(e) through (d), and (16);~~

~~(d) the requirements regarding swimming pools of ARM 11.14.318; and~~

~~(e) the master list of parents under ARM 11.14.340(5).~~

~~(9) Family day care homes, registered to provide care in the home of the children under subsection (4) of this rule must comply with all the requirements of Title 11, chapter 14, subchapter 4 of the Administrative Rules of Montana, except the following:~~

~~(a) the building requirements of ARM 11.14.403(4) through (9)(d);~~

~~(b) the health requirements of ARM 11.14.414(2) through (4), (7), (8), and (9)(a) through (d).~~

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713; 52-2-731, MCA.

4. The department has thoroughly considered all comments received:

I. INFANT ONLY CARE

COMMENT: (Debra Unruh, Family Resource Specialist, Department of Family Services) Please clarify whether the provider's children are included in evaluating the numbers and ages of children allowed in the proposed amendments on infant-only group and family day care homes.

RESPONSE: The department intends that the provider's children under the age of six be taken into account in determining whether the infant-only ratio is available for a provider. For example, if a provider's child is over the age of two, and under the age of six, the provider cannot be registered for infants only. On the other hand, if the provider's child is under the age of two, the child is considered an infant, and the provider may be registered for infants only. The provider's infant is counted in arriving at the limit imposed by the infant-only, infant-staff ratio of 4 to 1. If the provider's child is over the age of six, the child is not counted in determining the number and categories of children in care, whether for infant-only registration or for non-infant-only registration.

Where the provider has more than one child, the same principles apply. For example, if one of the provider's children is under the age of two, and one is over two but under the age of six, infant-only registration is unavailable. If both are under two, infant-only is available but is limited. i.e., only two other infants may be in care in the absence of an additional staff

member and registration as a group day care home.

COMMENT: (Missoula Regional-Child Care Study Task Group) The group recently voted seven for, one opposed, in favor of allowing for as many as 12 infants in a group home as long as there is one staff person for every 3 infants. The vote opposing the proposal supported the concept of a maximum of eight infants in any one home.

RESPONSE: The department has not proposed expanding infant-only care in this rule-making beyond eight infants in an infant-only facility. Whether or not group day care homes are allowed to care for as many as 12 infants is a decision which should be preceded by a period of notice and comment prior to amendment.

COMMENT: (Colleen McGuire, Governor's Advisory Council on Child Care) Will existing infant-only programs in group homes serving 12 infants be allowed to continue in operation even though this proposal limits group homes to 8 infants?

RESPONSE: No group home is currently legally registered to provide care to 12 infants: "(2) There shall be no more than six infants in a group day care home at any time." ARM 11.14.340. Under the amendments, ARM 11.14.340 is changed to state that there shall be no more than eight infants if the facility provides care to infants only.

COMMENT: (Mitzi Schwab, Chief of Food and Consumer Safety Bureau, Montana Department of Health and Environmental Sciences; Jinny Knight, Family Resources Inc., Helena, Montana) Experts agree that regulations providing for one care-giver per four infants are insufficient to guarantee adequate care. As a minimum, and as required by existing rules, three infants per one care-giver should be required. A better goal is two infants per one care-giver.

RESPONSE: The department has reviewed the opinions of experts on this issue. The opinions appear to assume that family day care homes will care for up to six children, and that the children will be a mix of non-infants and infants. For example, in homes where one provider may care for six children, the American Public Health Association recommends that the home be limited to three infants.

Not all experts agree that a four to one ratio is inadequate, even in facilities caring for both infants and older children. The National Association for Education of Young Children advocates a minimum ratio of one provider per four infants in six children facilities. Recent surveys grouping states with the "best" programs include states with four to one ratios for infants in six children facilities.

The amendments made in this rule-making provide for the higher ratio only if no other children are present, (not counting the

children of the provider over the age of six). The smaller number of children provides for a level of safety comparable to a family day care home caring for a maximum of three infants, where three older children are also in attendance.

COMMENT: (Marcy Maki, Project Director, 12 Month Study of Child Day Care Licensing, Administration, and Payment System) I agree that the availability of infant care should be expanded, however, one care-giver caring for four infants lacks time to: answer the telephone, give tours to parents, clean, prepare food, review immunization records, update files, bill for care, et cetera. Day care centers have other available staff for these activities, and therefore, allowing the four to one ratio in centers and not family day care homes is justified.

RESPONSE: Family day care homes are generally staffed by an individual adult. Regulations do not require the presence of other care-givers. Thus, nearly every family day care home provider must forgo performing tasks which cannot be accomplished while providing adequate supervision to the children in care.

There are advantages and disadvantages to supervision of children in a day care center. The availability of other staff in the event of a care-giver's brief absence is an advantage. However, the large number of children, the larger area, and staffing ratios for older children of up to ten to one, are factors mitigating this advantage. For example, a care-giver in a day care center cannot safely delegate the supervision responsibilities for four infants to a staff member already in charge of supervising ten older children. Therefore, the department disagrees that center staff necessarily have greater opportunities to perform other activities while safeguarding children in care.

II. FACILITIES IN THE HOME OF THE CHILDREN

COMMENT: (The following staff of the Montana Department of Health and Environmental Sciences (DHES) commented against in-home registration exemptions: Dick Paulsen, Immunization Program, Peggy Baraby, Child Nutrition Program, Mitzi Schwab and Aimie McKenzie, Food and Consumer Safety.) With few exceptions, rules representing minimum protections for children in care should apply to in-home group and family day care homes. DHES understands and supports the concept of making benefits for in-home care available, however, safeguards for children should not be sacrificed to implement this program.

In-home facilities cannot be registered until the Montana Child Care Act (hereinafter referred to as the Act) is amended to include in-home facilities in the definition of day care facilities.

RESPONSE: There appears to be little demand for in-home group day care homes. Therefore, the proposed amendments for group day care homes objected to by DHES staff have been deleted.

Arguably, in-home facilities registered as family day care homes should be exempt from many of the requirements imposed on family and group day care homes operating outside the home of the children in care. However, the department wishes to defer to the expertise of DHES in this area. Therefore, nearly all the health and safety requirements applying to registration of out-of-home family day care homes apply to family day care homes registered in the home of the children under this rule-making.

The department may condition payment of benefits for child care upon meeting health and safety requirements, regardless of whether the care provided comes under the definitional section of day care facility under the Act.

COMMENT: (Peggy Baraby, DHES) Payment of Federal Block Grant funds is dependent on the recipient state's implementation of health and safety requirements. Implementation of the proposed exemptions may violate federal regulations.

RESPONSE: The department agrees that federal regulations advocate imposition of health and safety requirements for payment of benefits for in-home care. However, the federal government has also cautioned that in developing health and safety standards, "excessive and ill designed requirements or procedures could prejudice parental choice." Response to Comment, Federal Register, page 34370. The key, according to the drafters of the federal agency in charge of the rule-making, is to balance the competing principles. Id. The exemptions in this rule-making represent the department's attempt to perform the balancing required by the federal regulations.

COMMENT: (Mitzi Schwab and Amie McKenzie, DHES) Under Section 52-2-724, MCA, the requirement for fire and liability insurance cannot be waived for a provider to obtain a provisional registration certificate. Therefore, the proposal exempting in-home facilities from insurance requirements is contrary to the Act, and the department has no authority to adopt the amendment providing the insurance exemption. Moreover, insurance should be in place to protect children in care. If a home cannot obtain fire and liability insurance, the home should not be registered to provide care to children.

RESPONSE: A. Interpretation of Section 52-2-724, MCA. The department disagrees with this interpretation of Section 52-2-724, MCA. The statute prohibits waiver of existing requirements on insurance. The actual requirements are established by other provisions. In particular:

> The department shall include in the minimum standards for day care centers . . .

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, his staff, and the facility.

Section 52-2-723, MCA. There is no similar mandate in regard to group and family day care homes in the Act.

The current requirement for insurance for group and family day care homes exists as a result of department rule. ARM 11.14.103(4)(c). Whether or not ARM 11.14.103(4)(c) applies to in-home family day care homes is a proper issue for rule-making under the Act.

B. Requiring insurance for in-home family day care homes. Too many low income families would be excluded from in-home registration if insurance is required. A provider caring for children from separate families is able to spread some of the expense of insurance among the families. In-home family day care home insurance must be purchased by the provider and/or one set of parents. In terms of implementing in-home care for low income families, the insurance expense is prohibitive.

In addition, even where the Act specifically requires insurance for providers, the insurance is for the protection of the "operator, his staff, and the facility." Section 52-2-723(1)(h), MCA. The characteristics of in-home care minimize these concerns, i.e., generally, the provider's liability is limited to risks involving only one family, there are no staff members, and the structure belongs to the parents of the children in care. Therefore, the department has decided to exempt in-home care from insurance requirements.

COMMENT: (Mitzi Schwab and Amie McKenzie, DHES) Use of home canned foods, prohibited in out-of-home facilities, should also be prohibited in in-home facilities. There exists a high potential for food-borne disease in home canned foods. The diseases can be fatal, especially to young children. Use by parents of home canned foods to feed children is different from allowing child care providers to use home canned food.

RESPONSE: Parents are in the best position to decide whether to allow the use of home canned foods in an in-home facility. The department in this notice has allowed for the exemption from the prohibition if the parent(s) consent to the use of the foods, and if such foods are canned by the parent(s). Neither the department nor the provider should be responsible for this decision.

COMMENT: (Mitzi Schwab and Amie McKenzie, DHES) In-home providers should be subject to the requirement that when a child is sick, the parents must be notified.

RESPONSE: Only the portion of ARM 11.14.414(3) requiring that an ill child be taken home is exempted. The remaining

provisions of this subsection of the rule requiring notification of parents when a child becomes ill or is suspected of having a communicable disease while in care are applicable.

COMMENT: (Mitzi Schwab and Amie McKenzie, DHES) Only adults who are members of the household should be exempted from the requirement that no adult with a reportable communicable disease or contagious illness may be in contact with the children in care.

RESPONSE: The department agrees and has provided only a limited exemption from the prohibition to cover the parents and other adults already living with the children.

COMMENT: (Colleen McGuire, Governor's Advisory Council on Child Care) High quality out-of-home day care placements help reverse the effects of poverty. Application of out-of-home requirements to in-home facilities would similarly improve conditions in the homes of children from low-income families. Rules requiring adequate play, learning, and rest equipment should be imposed. Family privacy issues may weigh against imposition of rules, however, child care, whether provided in or out of the home of the children, should be regulated to protect children and to promote their well-being.

RESPONSE: The department agrees that quality care may help to alleviate adverse effects of poverty on children. However, in-home care should be available notwithstanding the economic position of the family. Rules imposing requirements should not be so stringent that the choice of in-home care is effectively eliminated for low-income families.

The department agrees that an opportunity exists to improve conditions in families registering under this rule-making. Under the changes made in this notice, nearly all of the registration requirements applicable to family day care homes outside of the home of the children are imposed on in-home family day care homes.

The department also hopes that allowing for payment for a wider range of in-home care under this rule-making will expand availability of benefits for care of children of parents working nights, and benefits for care of chronically ill children. At least in regard to these two types of care, in-home care is often advantageous.

COMMENT: (Peggy Baraby, DHES) Creating a category of day care facility registration for in-home care ignores that the registration scheme contemplates registering the home of the provider. Registering the home of the children creates problems because the provider is not responsible for the home. The idea also fails to mesh well with requirements of other programs. For example, the Child Nutrition Program allows participation of registered homes. But the program also disallows participation

of residential children.

RESPONSE: Problems created by a system of in-home registration are not so insurmountable that the program should be scrapped. Similarly, issues relating to other programs can be resolved without restricting facility registration to out-of-home settings. The department intends to work with agencies having problems fitting this new category of care into existing programs. A provision has been added in this rule-making to delay the effective date of the amendments to July 1, 1993.

COMMENT: (Colleen McGuire, Governor's Advisory Council on Child Care) If in home facilities are allowed to participate in the Child Nutrition Program, it is possible that a provider would be getting reimbursed for food not purchased under the program if the parent is providing the meals.

RESPONSE: Currently, there has been no decision as to whether in-home facilities will be allowed to participate in the food program. However, in the event that agencies in charge of the program allow for in-home participation, the department will work with governing agencies to prevent abuses by in-home providers.

COMMENT: (Peggy Baraby, DHES) Does the language used in the amendments conclusively prevent registration of in-home where the registration is not required for benefits?

RESPONSE: Generally, homes not required to register as day care facilities do not request registration unless benefits are contingent on registration. The department intends that in-home registration be available only for homes where supplemental parental care is provided to the children of a single family where such family is eligible for payment for the care provided.

In-home care is currently paid for in circumstances where the home and provider are not required to be certified as a day care facility. These providers are referred to as "legally unregistered" providers. For example, where a provider cares for only two children of the family in the home of such children, care for the two children of the family may be paid for by the department because the provider may be certified under block grant rules as "legally unregistered". In-home providers caring for more than two children may not be certified as "legally unregistered" providers. However, under this rule-making, in-home providers caring for more than two children may participate in benefits' programs as certified family day care homes.

There may be some confusion regarding counting the children of the provider. The provisions on counting the provider's children under the age of two in ARM 11.14.609(6)(c) and ARM 11.14.607(4) apply to determining whether an in-home provider may be a legally unregistered provider. The provisions on

counting the provider's children under the age of six in ARM 11.14.102(3)-(5) remain in effect, and control facility registration in general.

5. The effective date of the amendments adopted pursuant to this rule-making is July 1, 1993.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, May 3, 1993.

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

In the matter of the amendment to Rule 12.3.402 relating to license refunds.	)))))	NOTICE OF AMENDMENT OF RULE 12.3.402

To: All Interested Persons

1. On January 28, 1993, the Fish, Wildlife and Parks Commission published notice to amend rule 12.3.402 related to license refunds at page 105 of the 1993 Montana Administrative Register, issue number 2.

2. The commission has adopted the amendments as follows to Rule 12.3.402:

12.3.402 LICENSE REFUNDS (1) No refund will be issued for any hunting, fishing, or trapping license sold by the department except as provided in subsections (a) through (e) of this rule.

(a) ~~Death.~~ A surviving heir may receive a refund in the event of the death of the license holder. A claim for such refund must be accompanied by verification of death of the license holder and will be made payable to the personal representative of the estate of the deceased. No refund will be awarded for any license if death occurs after the opening of the season for which the license is valid. If the request for a refund includes an archery license, the opening of the season is the beginning of the general archery hunting season for that species;

(b) ~~Medical disability.~~ A request for a refund due to medical disability, must be verified by a statement signed by a licensed physician. The physician must describe the nature of the disability and state that it precludes hunting. No refund will be awarded for any license if medical disability occurs after the opening of the season for which the license is valid. If the request for a refund includes an archery license, the opening of the season is the beginning of the general archery hunting season for that species;

(c) ~~Exchange of single licenses for a combination license.~~ A resident who has purchased a conservation, bear, deer, elk, bird, or fishing license may request a refund by returning the license to the Helena or regional office at the time of application for a sportsman's license. A nonresident who has purchased a conservation, bird, ~~bear~~, season fishing or deer combination license may request a refund by returning such license to the Helena office at the time of application for a nonresident big game combination license. A nonresident who has purchased a conservation, bird or season fishing license may request a refund by returning the license to the

Helena office at the time of application for a nonresident deer combination license;

(d) If an applicant is issued an incorrect license (e.g., a sportsman over 62 years old is issued a regular conservation license and elk license for full price instead of the half price elk license) through the fault of the department or a license agent, the license fees will be refunded;

(e) ~~Requests for refunds for nonresident combination licenses must be received before October 1 and need not specify a reason. After October 1, refunds will be issued only for reasons outlined in (a) through (c) above. After December 31, r~~Refunds for nonresident combination LICENSES RECEIVED THROUGH SEPTEMBER 1. AFTER SEPTEMBER 1, REFUNDS WILL BE ISSUED ONLY FOR THE REASONS OUTLINED IN (A) THROUGH (C) ABOVE. AFTER OCTOBER 1, REFUNDS FOR NONRESIDENT COMBINATION or resident and nonresident general licenses will not be issued.~~for any reason.~~

(f) ~~Time of sale.~~ For the purpose of considering refunds, any license ordered by mail shall be considered sold when the department receives a valid application.

(g) ~~Appeals to the director/commission.~~ The director may authorize exceptions to the refund policy due to extenuating circumstances including but not limited to the following: declaration of war or police action; catastrophic or major natural disaster or man-made event that necessitates the assistance from state or federal emergency management agency. ~~Any license holder who disagrees with the director's decision on a refund request may appeal that decision to the fish and game commission.~~

3. The commission has thoroughly considered the comment received with the response as follows:

COMMENT: Allow the existing refund policy to continue.

RESPONSE: The time frames were modified to incorporate part of the comment. There will be refunds for any reason to September 1 instead of October 1 rather than being deleted as proposed.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Secretary

Certified to the Secretary of State on May 3, 1993.

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

In the matter of the adoption of the amendment of ARM 12.5.301 pertaining to yellow perch as nongame species in need of management	)))))	NOTICE OF AMENDMENT OF ARM 12.5.301

TO: All interested persons

1. On March 25, 1993, the Montana Department of Fish, Wildlife & Parks published a notice of proposed amendment to ARM 12.5.301 at page 389 of the 1993 Montana Administrative Register, issue number 6.

2. The Department of Fish, Wildlife and Parks has adopted the amendment as proposed.

AUTH: Sec. 87-5-105 MCA IMP: Sec. 87-5-105 MCA

3. No comments or testimony were received.

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State May 3, 1993.

VOLUME NO. 45 OPINION NO. 5

COUNTY ATTORNEYS - Role in rejection of sample initiative petition;
INITIATIVE AND REFERENDUM - Application to amendment of service charges of solid waste management district;
INITIATIVE AND REFERENDUM - Rejection of sample petition;
SOLID WASTE - Amendment of management district service charges by initiative;
MONTANA CODE ANNOTATED - Sections 7-5-131, 7-5-132, 7-5-134, 7-5-135, 7-13-232, 7-13-233;
MONTANA CONSTITUTION - Article XI, section 8;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 73 (1982).

HELD: 1. The initiative process may not be used to amend the resolution creating a county solid waste management district where the district encompasses an area smaller than the entire county and the initiative petition seeks to alter the method of establishing and collecting service charges.

2. The county election administrator, upon the advice of the county attorney, may reject a sample initiative petition where it does not involve a matter subject to the initiative or referendum process.

May 3, 1993

Mr. Robert Slomski
Sanders County Attorney
P.O. Box 519
Thompson Falls, MT 59873-0519

Dear Mr. Slomski:

You have requested my opinion on two questions I have phrased as follows:

1. May the initiative process be used to amend the resolution creating the Sanders County Solid Waste Refuse Disposal District to alter the method of establishing and collecting service charges?

2. If not, may the county election administrator, upon the advice of the county attorney, reject the sample petition, or is a suit in district court to determine the validity and constitutionality of a petition the county's sole remedy to prevent submission of the initiative to the electors?

Sanders County is a local government unit with general government powers. You have informed me that there are currently three solid waste management districts in Sanders County: the Hot Springs Refuse Disposal District, the Dixon Refuse Disposal District, and the Sanders County Solid Waste Refuse Disposal District (hereinafter the Sanders County district). The Sanders County district encompasses the western two-thirds of the county.

The only method authorized by law for assessing service charges at the time the Sanders County district was created was a fee "based upon a family residential unit." MCA § 7-13-232(1) (1989). The sole procedure for collection of the fees was placing them on tax notices and collecting them with property taxes. MCA § 7-13-233 (1989). In 1991, the statutes were amended to allow alternative methods for assessment and collection of the charges. MCA § 7-13-232(3) now authorizes service charges based on a family residential unit or "based on the size of a vehicle used to dispose of the waste; the volume or weight of the waste; or the cost, incentives, or penalties applicable to waste management practices." MCA § 7-13-232(3) (1991). The procedure for collection of the service charges has been expanded to include establishment of a system other than by tax notices to property owners. MCA § 7-13-232(4) (1991).

The Sanders County district did not alter its fee structure after MCA § 7-13-232 was amended. Consequently, an individual who is a resident and taxpayer in Sanders County and who owns property within the Sanders County district has submitted a sample initiative petition to the Sanders County election administrator. The petition is intended to alter the establishment and collection of refuse disposal fees from a fee based upon a family residential unit, collected with property taxes, to a fee to be assessed only against people actually using the service, at the time of use.

The powers of initiative and referendum are reserved to the people in the Montana Constitution: art. III, §§ 4 and 5; art. V, § 1; and art. XI, § 8. Pursuant to these constitutional provisions, the Legislature enacted MCA §§ 7-5-131 to -137. Those sections set forth the procedures by which the electors of each local government may exercise the powers of initiative and referendum. Section 7-5-131 states, in part: "Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government ... may be proposed or amended ... in the manner provided in 7-5-132 through 7-5-137." Section 7-5-132 allows the filing of a petition for an initiative signed by 15 percent of the registered electors of the local government. MCA § 7-5-132(3). Before the petition is circulated for signatures, however, a sample petition must be submitted to the county election administrator for approval as to form. MCA § 7-5-134(2). The election administrator then refers the sample petition to the local government attorney, who must review the sample petition for form and compliance with

MCA §§ 7-5-131 and -132 and prepare a ballot statement and a statement of the implication of a vote for or against the ballot issue. MCA § 7-5-134(3), (4).

It is my conclusion that the general power of initiative provided in the Montana Constitution and enacted in sections 7-5-131 to -137 does not apply to an attempt to amend the resolution creating the Sanders County district to alter the method of establishing and collecting service charges.

The Sanders County district encompasses only two-thirds of Sanders County. Thus, there are qualified voters in the county who could vote on the initiative but are not physically or financially affected by the district's fees. In City of Shelby v. Sandholm, 208 Mont. 77, 80-81, 676 P.2d 178, 180 (1984), the Montana Supreme Court held that a referendum was not a proper means of challenging the creation of a special improvement district affecting less than all of the area in the city, and less than all of the property owners in the city. The Court reasoned that the initiative and referendum procedures do not apply to resolutions or ordinances establishing street improvements because such ordinances or resolutions affect only the people within the improvement district rather than the people of the municipality as a whole. 208 Mont. at 81, 676 P.2d at 180. The same rationale applies in this matter. The initiative procedure is not a proper method to amend a resolution establishing the service charges for a solid waste management district that encompasses less than the entire county.

I further conclude that the proposed action is not a legislative act subject to initiative or referendum. The Montana Supreme Court has consistently held that initiative and referendum procedures are applicable to those acts that are legislative in character and are not applicable to procedures that are administrative in character. City of Shelby, 208 Mont. at 81, 676 P.2d at 180; Dieruf v. City of Bozeman, 173 Mont. 447, 449, 568 P.2d 127, 129 (1977); Chouteau County v. Grossman, 172 Mont. 373, 377, 563 P.2d 1125, 1127 (1977); City of Billings v. Nore, 148 Mont. 96, 104, 417 P.2d 458, 463 (1966). The Court in City of Billings v. Nore distinguished legislative from administrative action, stating:

> [O]ne reasonable test to be used in making such differentiation is whether the act was one creating a new law (legislative) or executing an already existing law (administrative).

148 Mont. at 104, 417 P.2d at 463. In Nore the question before the Court was whether an ordinance establishing sewer rates for the city of Billings, pursuant to Rev. Codes Mont. (1947) § 11-2219, was an administrative act of the city council. The Court found that it was an administrative act and therefore not subject to the initiative or referendum process. Similarly, in

Dieruf, the Court held that passage of a city ordinance adopting a formula for assessing property for the purpose of creating an off-street parking facility was an administrative function and not a legislative function. Therefore, the ordinance was not subject to the referendum or initiative process. See also 39 Op. Att'y Gen. No. 73 (1982).

Here, the initiative involves the assessment and collection of service charges. It does not involve the more fundamental decision of whether a waste management district should be created. See Chouteau County v. Grossman, 172 Mont. at 378, 563 P.2d at 1128. The Sanders County commissioners passed a resolution establishing the Sanders County district. In the resolution, pursuant to MCA §§ 7-13-232 and -233, the county commissioners set forth the procedures for establishing and collecting the service charges. Like the actions in Nore and Dieruf, the commissioners' actions were administrative actions executing the existing law. They are not subject to the initiative or referendum process.

Your second question concerns whether the county election administrator, upon the advice of the county attorney, may reject the sample petition because of the flaws discussed above, or whether a suit in district court is the county's sole remedy to prevent submission of the initiative to the electors.

The county election administrator must approve or reject the petition as to form and send written notice to the person who submitted the sample petition within 21 days after its submission. MCA § 7-5-134(5), (6). During the review period, the election administrator must refer the sample petition to the attorney for the local government unit--here, the county attorney--for review. MCA § 7-5-134(3). If the petition is approved as to form, the governing body may direct that a suit be brought in district court within 14 days of the date of its approval to determine whether the proposed action would be valid and constitutional. MCA § 7-5-135.

MCA § 7-5-135 thus provides a method for the governing body to challenge the validity and constitutionality of a proposed petition. However, it is not the sole means for review of the petition. MCA § 7-5-134(3) expressly provides that the county attorney shall review the sample petition for form and "*compliance with 7-5-131 and 7-5-132*" (emphasis added). MCA § 7-5-131 authorizes the proposal of resolutions and ordinances "within the legislative jurisdiction and power of the governing body of the local government." I must presume that the Legislature would not pass meaningless legislation and I must harmonize the statutes relating to the same subject, giving effect to each. Crist v. Segna, 191 Mont. 210, 622 P.2d 1028 (1981). It is my opinion that, while he or she may not advise rejection of a sample petition because the proposed action will not be valid or constitutional, the county attorney may advise rejection of

a petition where the resolution or ordinance is outside the powers of initiative or referendum. As discussed above, the initiative petition in this case involves a proposal that is not within the legislative jurisdiction of the governing body. The inquiry of the county attorney being directed to compliance with MCA §§ 7-5-131 and -132, a sample petition may be rejected if it does not involve a matter subject to the initiative or referendum process.

THEREFORE, IT IS MY OPINION:

1. The initiative process may not be used to amend the resolution creating a county solid waste management district where the district encompasses an area smaller than the entire county and the initiative petition seeks to alter the method of establishing and collecting service charges.

2. The county election administrator, upon the advice of the county attorney, may reject a sample initiative petition where it does not involve a matter subject to the initiative or referendum process.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/brf

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1993. This table includes those rules adopted during the period April 1, 1993 through June 30, 1993 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1993, this table and the table of contents of this issue of the MAR.

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