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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of rule 6.6.8301,	)	AMENDMENT OF RULE
concerning updating references to	)	6.6.8301
the NCCI Basic Manual for Workers)	
Compensation and Employers	)	NO PUBLIC HEARING
Liability Insurance, 1996 ed.	)	CONTEMPLATED

TO: All Interested Persons.

1. On May 14, 1998, the Montana Classification Review Committee proposes to amend rule 6.6.8301 updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability, 1996 edition.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., as supplemented through ~~January 1, 1998~~ July 1, 1998, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, MCA. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, MT 59604-4009. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235. Persons obtaining a copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

AUTH: 33-16-1012, MCA
IMP: 33-16-1012, 2-4-103, MCA

3. The proposed amendments are necessary in order to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications for those employers listed below:

CHARITABLE OR WELFARE ORGANIZATIONS:

CODE 8861-Professional Employees & Clerical, Outside Sales

CODE 9110-All Other Employees & Drivers

Purpose: The filing clarifies professional duties from non professional duties and incorporates outside sales persons within Code 8861.

Item Filing B-1348 - Automobile Gasoline Stations and Convenience Stores (effective July 1, 1998)

Purpose: To enhance classification phraseologies, footnotes, and cross-references for Codes 8380 - Gasoline Station-Retail & Drivers NOC, 8381 - Gasoline Station-Retail-Self-Service, and Code 8006 - Grocery-Retail to facilitate the proper classification assignments to these codes. Further, the purpose of this item is to eliminate Code 8061 - Grocery-Convenience-Retail and combine these store operations with Code 8006.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Christy Weikart, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, no later than April 12, 1998.

5. If a person who is directly affected by the proposed amendment 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 Christy Weikart, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, no later than April 12, 1998.

6. If the classification review committee of the state of Montana receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature; from a governmental agency or subdivision; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the businesses directly affected has been determined to be 20 based on 100 businesses in the state affected by the proposed charitable or welfare classification. Ten percent of the businesses directly affected by the proposed automobile gasoline stations and convenience stores filing, has been determined to be 100 based on 1000 businesses.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

CLASSIFICATION REVIEW COMMITTEE

By:

Christy Weikart
Christy Weikart
Chairperson

By:

Russell B. Hill
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State on the 2nd of March, 1998.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of rules pertaining	)	THE PROPOSED ADOPTION OF
to chemical dependency	)	RULES PERTAINING TO CHEMICAL
counselor certification	)	DEPENDENCY COUNSELOR
	)	CERTIFICATION

TO: All Interested Persons:

1. On April 13, 1998, at 1:00 p.m., a public hearing will be held in the Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed adoption of rules pertaining to chemical dependency counselor certification.

2. The proposed new rules will read as follows:

"I. PROCEDURAL RULES (1) The chemical dependency counselor certification program hereby adopts and incorporates the procedural rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 2-4-201, MCA

"II. PUBLIC PARTICIPATION RULES (1) The chemical dependency counselor certification program hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 2-3-103, MCA

"III. DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Client" means a recipient of counseling services, provided by an eligible or certified counselor, and includes the primary client, family or household members and other significant relationships of the client.

(2) "Eligible counselor" means an individual who has completed the academic requirements and the application process for certification."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-102, MCA

"IV. NON-RESIDENT CHEMICAL DEPENDENCY COUNSELOR SERVICES

(1) Non-resident consulting chemical dependency counselor services defined in 37-35-201, MCA, may be rendered to individuals, groups, corporations or the public for compensation or fee.

(2) To provide such services and engage in such activities in the state of Montana, a chemical dependency counselor duly licensed in the state of the counselor's residence shall file with the program a completed and notarized form provided by the program, stating the nature, location and duration of such services that exceed 10 days within any calendar year.

(3) A letter verifying termination of said services shall be filed with the program at the time of termination."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-201, MCA

"V EDUCATION REQUIREMENT (1) Applicants for counselor certification must meet one of the following three education requirements, and must provide information regarding the chemical dependency treatment setting in which the 1000 hours supervised chemical dependency counseling experience will be completed, as well as the name of the certified counselor approved to supervise chemical dependency counseling experience. Applicants must provide certified transcripts or certificates of completion as proof of successful completion of one of the following education programs:

(a) a baccalaureate degree in alcohol and drug studies, psychology, social work, counseling or a related field from an accredited college or university; or

(b) an associate of arts or applied science degree in alcohol and drug studies, chemical dependency or substance abuse from an accredited college or university; or

(c) graduation from a formal chemical dependency counselor training program which is at least one year in duration and has been approved by the department or recognized under the laws of another state. The formal training program must include 400 hours of classroom preparation and 1600 hours of documented clinical training. Applicants must submit a certificate of graduation with application, as well as a description of the curriculum and training provided.

(2) All education requirements must include 270 contact hours of specific chemical dependency or counseling courses. These are contact hours that may be obtained through academic course work, approved workshop training or approved home study courses. The 270 hours must include minimum hours in each of the following areas:

(a) chemical dependency assessment and 30 hours patient placement (must include chemical dependency assessment, biopsychosocial testing, diagnosis, referrals and patient placement);

(b) counseling 45 hours;

(c) pharmacology (must include drug classification, effects, detoxification and withdrawal); 12 hours

(d) ethics (ethics for addiction counselors); 6 hours

(e) chemical dependency and addiction theory; and 30 hours

(f) treatment planning and documentation 15 hours."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"VI. REQUIRED SUPERVISED EXPERIENCE (1) Six months (1000 hours) of supervised chemical dependency counseling experience in an approved chemical dependency treatment setting is required for certification. The supervised experience may be gained through paid work experience, academic internship hours or unpaid volunteer work if the applicant is supervised by a Montana certified chemical dependency counselor in an approved treatment setting. The counseling experience must be completed in not more than two different treatment settings. (Internship hours earned through an academic chemical dependency field placement program are not included in the limit of two treatment settings.)

(2) Qualified chemical dependency treatment settings include those in which counselors may obtain clinical training and experience and are based on nationally recognized patient placement criteria. The criteria defining chemical dependency treatment settings include those which provide the basis for a continuum of care for patients with alcohol and/or drug addiction and include one or more of the following levels of care:

- (a) outpatient treatment;
 - (b) intensive outpatient/day treatment;
 - (c) medically monitored inpatient treatment (residential);
- and

(d) medically managed inpatient treatment (hospital).
(3) Approved settings for chemical dependency counseling experience include:

- (a) state approved chemical dependency treatment programs;
 - (b) joint commission on accreditation of health care organizations (JCAHO) or commission on accreditation of rehabilitation facilities (CARF) approved settings for addictions treatment;
 - (c) Indian health service approved settings for chemical dependency treatment;
 - (d) organized addictions treatment programs within branches of the armed forces of veterans administration hospitals;
 - (e) organized group practice settings (three or more certified counselors in a defined, conjoint practice) providing addiction treatment services. The work setting must have the capacity to provide multi-disciplinary supervision.
- (4) All approved outpatient treatment settings must have a direct referral affiliation for the provision of detoxification services, medical and laboratory services and psychiatric and psychological consultation.

(5) All approved treatment settings must demonstrate that the individualized treatment plans include problem formulations, goals, measurable treatment objectives and progress notes and that it conducts regular reviews of plans at specified times by a designated treatment team."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"VII. DOCUMENTATION REQUIRED FOR VERIFICATION OF 1000 HOURS SUPERVISED COUNSELING EXPERIENCE" (1) The name of the certified counselor who has agreed to supervise the counseling experience must be indicated on the application for certification and submitted to the chemical dependency counselor certification program within 30 days after beginning the supervised work experience hours.

(2) In order for the supervised hours to be counted toward the 1000 hours required for supervised experience, the eligible counselor must maintain weekly time sheets documenting experience in the eight skill areas (form C, available through the program office). The weekly time sheets must be signed by the approved supervisor and submitted to the chemical dependency program at the completion of the required 1000 hours. One summary sheet (form D, available through the program office) summarizing the total weekly time sheets must be attached, to verify the required minimum hours have been earned in each of the core areas.

(3) Eligible counselors working full time earning the required 1000 hours work experience will have 18 months after completion of the work to become certified (complete written and oral case presentation examinations).

(4) Eligible counselors working part time will have up to 18 months to complete the supervised work experience and will be permitted 18 months after completing the supervised work experience to become certified (complete written and oral case presentation examinations).

(5) If the 1000 hours are not accumulated at the end of 18 months after making application, individuals must reapply for certification and begin accumulating the required 1000 hours again.

(6) Counselors must have a minimum number of hours in each of the counselor skill groups. The skill groups specified in the "weekly time sheets" maintained by eligible counselors shall include 500 of the 1000 hours experience in the following areas:

- | | |
|--|-----------|
| (a) clinical evaluations: | |
| (i) screening | 30 hours |
| (ii) assessment/patient placement | 100 hours |
| (b) treatment planning | 50 hours |
| (c) referrals | 20 hours |
| (d) case management | 50 hours |
| (e) counseling: | |
| (i) individual | 60 hours |
| (ii) groups | 100 hours |
| (f) client education | 40 hours |
| (g) documentation | 40 hours |
| (h) professional and ethical responsibilities. | 10 hours |

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"VIII DIRECT SUPERVISION - MINIMUM HOURS REQUIRED

(1) Supervisors must provide 80 hours direct supervision (observation) of eligible counselors for the 1000 hours required for certification. It is recommended the supervisor observe the work of eligible counselors in every skill group.

(2) All applicants must furnish the name of the program and counselor responsible for supervision of the work experience at the time of application for certification.

(3) Applicants must submit completed documentation of supervised work experience signed by the individual responsible for the supervision prior to the date the first examination is attempted.

(4) Examinations ordered for individuals will be canceled before the examination date if the required documentation of work experience is not received by the chemical dependency counselor certification program.

(5) Certified counselors may apply for approval to supervise eligible counselors if the counselor holds a current Montana chemical dependency counselor certificate, and has at least three years chemical dependency counseling experience post certification in an approved chemical dependency treatment setting."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"IX APPLICATION PROCEDURES (1) Individuals applying for chemical dependency counselor certification in Montana must meet the education requirement before making application for certification or beginning the 1000 hours of supervised work experience. Applicants must make application for certification within 30 days of beginning the supervised work experience. Individuals who have submitted an application that is accepted by the department are then determined to be "eligible" for certification. Applicants who meet the education requirement must submit:

(a) a completed application for chemical dependency counselor certification three page form (form A 1-3, available through the program office). Application must include original signature of applicant and will not be accepted without:

(i) required documentation of education (official transcripts or document verifying graduation from a certified training program) including required 270 contact hours of chemical dependency specific training; and

(ii) specific information regarding the chemical dependency treatment setting in which the supervised work experience will be completed. Applicants must provide the name of the certified counselor responsible for the work supervision.

(iii) individuals applying for certification who have completed the work experience in another state or in Montana prior to July 1, 1996, will need to submit information and documentation with the application for approval by the department; and

(b) required fee payment.

(2) Applicants will be notified within 30 days if the application has been accepted. Eligible applicants will receive information regarding the written examination and the applicants guide for the oral case presentation examination. Applicants will also receive an examination schedule.

(3) The application will be closed if certification is not completed within 18 months after completion of the required 1000 hours work experience. Individuals eliminated from the certification process will be required to reapply and submit a new application with the required fee payment. Applicants reapplying for certification must complete all examinations."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, 37-35-203, MCA

"X CERTIFICATION PROCESS (1) Eligible applicants working full time will be permitted 18 months after completion of the work experience to complete the examination process. Applicants not certified within 18 months will be eliminated from the certification process and must wait two years before reapplying for certification.

(2) Applicants working part time earning the required 1000 hours work experience will be permitted 18 months in which to complete the counseling experience. Eligible applicants will then be permitted 18 months to complete the examination process. If the work experience is not completed 18 months after the date of application, applicants will be required to reapply for certification and begin a new work experience for the 1000 hours.

(3) Applicants will be permitted three opportunities to complete each examination. Failing an examination for the third time will require the applicant be removed from the certification system and wait two years before making application for certification."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"XI WRITTEN EXAMINATION (1) Eligible counselors must complete the 1000 hours supervised work experience before attempting any examination. The written and oral examinations may be attempted in any order. The written examination must be ordered two months prior to the examination date and applicants may apply to take the written examination after three months supervised experience is completed. (The 1000 hours supervised work must be completed by the date of the examination.)

(2) The Montana certification program has authorized use of the national association of alcoholism and drug abuse counselors (NAADAC) written examination. This examination is composed of a maximum of 250 multiple-choice, objective questions with a total testing time of four hours. In order to achieve a passing score, applicants must have 170 correct answers. Written examinations are administered in Helena on dates as determined by the chemical dependency program or its contracted examination service.

(a) The content outline of the national certification examination for addiction counselors (NCAC) is as follows:

- (i) pharmacology of psychoactive substances;
- (ii) counseling practice;
- (iii) theoretical base of counseling;
- (iv) ethical and professional issues;
- (b) Applicants must document eligibility (date the work experience will be completed) with the certification program 60 days in advance of the examination;
- (c) Test results are sent to the applicant and to the certification program. Applicants receive an "overall" score for the examination as well as a separate score for each of the four content areas;
- (d) The written examination may be waived for individuals who have successfully completed the NAADAC examination while in another state or who have completed the NCAC test for national certification (NAADAC) within five years of the Montana application. Applicants must furnish the official notice of test results with the application for chemical dependency counselor certification;
- (e) Applicants may attempt the written examination three times and may apply to retake a failed examination. Individuals failing an examination will be required to pay the non-refundable examination fee and submit the application to retake the written examination form (provided to applicants failing the examination);
- (f) Applicants failing an examination for the third time must wait out two years before reapplying for certification. Applicants reapplying for certification must meet the certification requirements effective at the time of reapplication and complete all required examinations."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"XII ORAL EXAMINATIONS (1) Eligible counselors must complete the supervised work experience before the date of the oral case interview. The written case history, which is required to be submitted to the certification program 30 days prior to the examination date, may be sent before completing the work experience as long as it will be completed before the date of the examination.

(2) Applicants must successfully pass an oral examination in addition to the written examination. The procedure for oral examinations shall include:

- (a) applicants will receive a copy of the applicant's guide to the oral case presentation with notification the application for certification has been accepted;
- (b) a written case history is prepared according to the prescribed format and submitted to the certification program along with the non-refundable examination fee;
- (c) the case history will be reviewed by the program manager to ensure the case conforms to the prescribed format and provides the necessary information;
- (d) after the case history is accepted, an oral examination will be scheduled with the applicant. The date, time and location of the examination will be provided in

writing. Three examiners will conduct the examination, which will require a maximum of two hours;

(e) in order to pass the oral case presentation examination, the applicant must get a passing score on every counselor skill group from a majority (at least two) of the examiners;

(f) applicants will be notified of the results of the examination in writing within 30 days;

(g) applicants will be permitted three opportunities to pass the oral case presentation. A new cover sheet must be completed and submitted with all copies of the written case history."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"XIII COUNSELORS CERTIFIED IN OTHER STATES (1)

Counselors certified in other states may apply for a Montana endorsement certification. Certificates issued will specify "endorsement certificate" and indicate the state issuing the original certificate. The examinations may be waived if the applicant:

(a) meets the current Montana education requirements;

(b) documents 2000 hours (one year) supervised chemical dependency counseling experience in a chemical dependency treatment setting in another state;

(c) holds a current, unexpired state certificate, in good standing, from another state; and

(d) shows successful completion of an examination process comparable to the Montana examinations (must have successfully completed a written examination and an oral examination).

(2) Individuals certified by branches of the military government may submit an application for Montana endorsement by providing documentation specified above and the current military certification. Applicants must also furnish the certification and examination requirements for the specific branch of the military.

(3) To apply for endorsement in Montana, the applicant must:

(a) complete the three page application for certification;

(b) attach documentation of education and required 2000 hours experience in a chemical dependency treatment setting in another state;

(c) provide a copy of the current certificate and standards required for certification by the certifying state, including a description of the examinations completed; and

(d) submit a completed registration form and pay the Montana registration fee."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-202, MCA

"XIV RENEWALS (1)

At least one month before the renewal date, a renewal notice will be sent by the department to each certificate holder to the last address in the program's files. Failure to receive such notice shall not relieve the certificate holder of the holder's obligation to pay renewal

fees in such a manner that they are received by the department on or before the renewal date.

(2) A renewed certificate shall be valid for two years following the expiration date of the previously held certificate.

(3) A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the department.

(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a certified chemical dependency counselor in this state.

(5) A non-renewed certificate is lapsed. A lapsed certificate that is not renewed within one year of the most recent renewal date automatically terminates. The terminated certificate may not be reinstated, and a new original certificate must be obtained by passing a qualifying examination and paying the appropriate fees."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-203, MCA

"XV CONTINUING EDUCATION REQUIREMENTS (1) All certified counselors are required to earn 40 hours of approved continuing education per two-year renewal cycle to renew the certificate. Training received prior to the date of certification is not counted for renewal.

(2) Counselors earning more than 40 hours over the two year renewal period will be permitted to carry forward up to 20 hours to the next renewal cycle.

(3) The purpose of continuing education is the ongoing professional development of chemical dependency professionals after full certification is awarded. It is the responsibility of the individual chemical dependency counselor to plan, pursue and document the counselor's continuing education.

(4) If a certificate holder is unable to acquire sufficient continuing education credits to meet the requirements due to medical hardship, the certificate holder may request an exemption from the department. All requests for exemptions will be considered and evaluated on a case-by-case basis by the department."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-203, MCA

"XVI COURSE CRITERIA (1) Content of all continuing education courses must be relevant to chemical dependency counseling. Training must be related to the scientific knowledge or technical skills required for chemical dependency counseling. Training must be related to direct and/or indirect client care of chemically dependent individuals. Approved courses are not limited to specific alcohol/drug topics, but may include training in other counseling areas, such as child abuse, compulsive gambling, grief, dually diagnosed clients, stress management and sexuality.

(2) Courses in chemical dependency program administration or management, research or other functional areas of chemical dependency treatment programs related to client care will be accepted.

(3) Courses leading to basic counselor training are not acceptable for continuing education for certified chemical dependency counselors.

(4) Courses which deal with the participants' self-improvement, personal growth, changes in attitude, self-therapy and self-awareness are not approved for continuing education credit. Examples of courses that are not approved for continuing education credit include:

(a) therapy workshops dealing with the participants' personal issues or problems;

(b) chemical dependency education course designed for lay people (public education);

(c) parenting classes or other programs designed for non-professional participants;

(d) liberal arts courses in music, education, art and other courses unrelated to chemical dependency counseling; and

(e) orientation programs, meaning a specific series of activities designed to familiarize employees with the policies and procedures of an institution or agency.

(5) Courses or workshops containing a minimum of six hours training are "structured" workshop training.

(6) Continuing education credit is not granted for partial attendance of an approved workshop, i.e., attending one day of a two- or three-day workshop."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-203, MCA

"XVII CONTINUING EDUCATION PROCEDURES AND DOCUMENTATION

(1) Documentation of continuing education must be submitted every two years at end of the renewal period.

(2) The continuing education submission form must be completed and submitted with the renewal form as documentation of continuing education. The continuing education submission form and instructions will be provided to all counselors with the biennial renewal form.

(3) Documentation verifying attendance must be attached for all workshops listed on the continuing education submission form. Certificate of attendance must be signed by the sponsoring agency or workshop presenter, and must include the name of the workshop, name of counselor and the date and number of hours attended.

(4) Certificates of completion for training will not be returned. Copies of certificates of attendance are accepted for verification. Documentation will be recorded in counselors computer file and the copy of certificate discarded.

(5) Documentation as required below shall be accepted for each of the following continuing education formats:

(a) counselors attending workshops that have been pre-approved by the department will submit a copy of the certificate of completion. Counselors who attend training that has not been pre-approved must submit, in addition to the certificate of completion, an agenda with the specific breakdown to training hours (specific time of registration, breaks, lunch, etc.), a description of the training and names of the trainers.

(b) A maximum of 20 contact hours may be earned over the two year certification period by workshop presenters and/or preparation by the author or authors of a recognized professional publication.

(i) workshop presenters may earn up to one-half of the actual contact hours presented for preparation time;

(ii) credit for preparing presentations may be earned only one time for a training event;

(iii) 10 hours may be earned by the author for publication of each professional article or book, up to the maximum of 20 hours per renewal cycle.

(c) Training that is less than six continuous hours is considered in-service training. In-service hours do not require prior approval but individual in-service records must be maintained by the counselors. Each in-service training record must include the date of the in-service, the subject or title, the name of the trainer, the length of the in-service (i.e., 1 hours, 1.5 hours), and must be signed by the trainer or the counselor's supervisor.

(d) Training films may be used for in-service training provided the films are observed as part of a structured workshop or in-service training that include a discussion period. Films observed outside a work setting in-service may be counted if the film includes a test instrument to verify training.

(e) Counselors may earn all or part of the required continuing education from academic courses. Course work must be completed after the date of certification or certificate renewal. Courses must be taken for credit. Audited courses will not receive continuing education credit. Ten hours will be given for each academic quarter hour, or 15 hours for each semester credit hour, in the fields of chemical dependency, psychology, social work, counseling and sociology.

(f) Home study courses that have been approved by the department will require a certificate of completion that includes the course name, number of hours earned, date of completion and signature of the provider."

Auth: Sec. 37-35-103, MCA; IMP, Sec. 37-35-203, MCA

"XVIII COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the department charging an applicant or certificate holder with a violation of department and program statutes or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the department.

(3) Upon receipt of the written complaint form, the program office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the applicant or certificate holder complained about for a written response. Upon receipt of the written response, both complaint and response shall be considered by the review panel for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule.

The program office shall notify both complainant and certificate holder of the determination made by the review panel.

(4) If a reasonable cause violation determination is made by the review panel, the recommendation to the department shall be to undertake disciplinary proceedings under the Montana Administrative Procedure Act."

Auth: Sec. 37-1-402, 37-35-103, MCA; IMP, Sec. 37-1-402, 37-1-403, 37-1-404, 37-35-301, MCA

REASON: These rules are being proposed to implement House Bill 399 mandated by the 1997 Legislature. The legislation transferred the chemical dependency certification program from the Department of Public Health and Human Services to the Department of Commerce. Therefore, the previous Department of Public Health and Human Services rules implementing chemical dependency certification were repealed, and the Department of Commerce is now required to promulgate a full set of rules implementing the chemical dependency certification program.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., April 6, 1998, to advise us of the nature of the accommodation that you need. Please contact Phyllis MacMillan, Chemical Dependency Counselor Certification Program, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4923; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Phyllis MacMillan.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Chemical Dependency Counselor Certification Program, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than the close of hearing on April 13, 1998.

5. Persons who wish to be informed of all Chemical Dependency Counselor Certification Program administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Chemical Dependency Counselor Certification Program at the hearing or in writing to the Program at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4923.

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

CHEMICAL DEPENDENCY COUNSELOR
CERTIFICATION PROGRAM
DEPARTMENT OF COMMERCE

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 2, 1998.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to parimutuel wagering, annual license fees, timers, jockeys, trainers, general requirements, weight - penalties and allowances, exacta betting, requirements of licensee and the repeal of a rule pertaining to bonus for owners of Montana breds)	NOTICE OF PROPOSED AMENDMENT AND REPEAL OF RULES PERTAINING TO THE HORSE RACING INDUSTRY
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 11, 1998, the Board of Horse Racing proposes to amend and repeal rules pertaining to the horse racing industry.

2. The proposed amendment of ARM 8.22.502, 8.22.503, 8.22.611, 8.22.706, 8.22.710, 8.22.801, 8.22.802, 8.22.1619, and 8.22.1802 will read as follows: (new matter underlined, deleted matter interlined)

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (14) will remain the same.

(15) Any request by a licensee to relinquish or cancel dates allotted to said licensee shall be filed in writing with the board within 30 days after the final awarding of dates for the ensuing racing season. The board will then consider whether or not to grant the request to relinquish, and shall notify the licensee in writing of its decision. If a date relinquishment is granted by the board, any other applicant may request the vacant dates. A date relinquishment may be denied by the board, and failure of a licensee to conduct racing on all dates allotted to the licensee by the board thereafter shall subject the licensee to a fine not to exceed the sum of \$500 per day for each racing day allocated and not used, unless such non-use or cancellation of racing was due to fire, riot, strike, inclement weather, act of God or other causes deemed excusable by the board of horse racing.

(16) through (17)(g) will remain the same.

(h) a jockey room attendant, and such other officials and employees as required by the board or deemed necessary according to the requirements of the particular racing operation;

(17)(i) through (50) will remain the same."

Auth: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA;
IMP, Sec. 23-4-104, 23-4-201, 23-4-202, MCA

REASON: The proposed amendment to (15) will allow consideration by the Board of all requests to relinquish dates. Previously, the track Licensee had only to notify the Board office, and the dates would be considered relinquished. With the general decline in racing dates in Montana, however, it has now become imperative that each date which has been granted is actually run in the state to preserve an adequate racing season to attract horses to the state. The Board will now have the ability to deny a relinquishment request, if it would be in the best interests of horse racing in this state to require the track licensee to run on those dates.

The proposed amendment to (17) is for punctuation purposes only. No substantive change is being proposed.

"8.22.503 ANNUAL LICENSE FEES The following fees shall be charged annually:

- (1) through (11)(b) will remain the same.
- (c) Totalisator company 60 500
- (d) through (16)(h) will remain the same.
- (i) Photo company 60 350
- (j) through (t) will remain the same.
- (u) Program company 60 350
- (v) through (17) will remain the same."

Auth: Sec. 23-4-104, 23-4-201, 37-1-134, MCA; IMP, Sec. 23-4-104, 23-4-201, 37-1-134, MCA

REASON: The proposed fee increases will more accurately reflect the costs associated with licensing the photo company, totalisator company, and program company. The Board must hire an auditor and stewards at each track to ensure the accuracy of these companies and their activities. These employees create considerable cost to the Board at every race meet, and the Board's budget is no longer able to absorb these costs at the minimal fee being paid for licensure by these companies.

"8.22.611 TIMERS ~~(1) The timers are not to exceed three in number. They shall occupy the timer's stand or other appropriate place during the running of a race and they shall record for posting the time of each race.~~

- ~~(2) will remain the same, but will be renumbered (1).~~

~~(3) (2) In all horse races in Montana where an electric timer is used to determine qualifiers for the finals, the race track shall be required to supply three persons using stop watches. If the electric timer fails, then all the hand timers will be consulted to determine the time for the first place horse in that heat. Before the trial races start, the three hand held times will be determined as follows:~~

~~(a) The three times will be averaged together and that average used for the winner.~~

~~(4) The film strip can then be used to determine the times of the second and other finishers in that heat. In the event the film strip is also not available, then the finalists will be selected by order of finish on a basis determined by the stewards to be the most equitable under the circumstances. The decision of the stewards shall be final in all matters."~~

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-201, MCA

REASON: The proposed amendment will delete the requirement that the tracks supply hand timers in the form of three people with stopwatches as a back-up in case the electric timer fails. Hand timers have proven unreliable in the past, as untrained persons are usually used, and stopwatch failure is common, making the times recorded for placement of finalists rather suspect. The proposed amendment will allow the stewards to determine finalists based on order of finish in the event the electric timer fails.

"8.22.706 JOCKEYS - APPRENTICE (1) through (3) will remain the same.

(a) An apprentice jockey shall ride with a five pound weight allowance beginning after his/her first mount and for one full year from the date of his/her fifth winning mount except no weight allowance shall be given in quarter horse races.

(i) through (9) (b) will remain the same."

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment to (3) (a) will clarify that an apprentice jockey weight allowance should not be given in quarter horse races. This amendment will bring the Montana rule in line with national standards, in which apprentice jockey weight allowances are not given for quarter horse races.

"8.22.710 TRAINERS (1) will remain the same.

(2) Effective January 1, 1982, an If an applicant has not previously held a trainer's license in Montana or another horse racing jurisdiction, the applicant may not be issued a trainer license if he the applicant fails to attain a passing score of at least 75% on an examination prepared by the board and administered by the state steward board or its representative. Persons licensed by the board as trainers at any time during the period January 1, 1976 through December 31, 1981 shall be licensed for the 1982 racing season without examination upon application and payment of the license fee. All applicants for a trainer license after the 1982 racing season who were licensed as a trainer by the board in the immediately preceding year shall be licensed without examination upon application and payment of the license fee. Trainers licensed in other racing jurisdictions which are members of the national associations of state racing commissioners and which require examination for licensure may be licensed without examination upon application

~~and payment of the license fee. Trainers who have let their license lapse for a period of two consecutive license years will be required to take an examination.~~

(3) through (30) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment to (2) will delete outdated language regarding licensure in 1982 and prior years. The proposed amendment will also delete the requirement that trainers must re-test if they have not been licensed for two or more consecutive years, as the information and knowledge required to pass the test originally does not change over the course of time. The rule will allow anyone to be licensed as a trainer who has ever passed a trainer's test at any time and in any jurisdiction.

"8.22.801 GENERAL REQUIREMENTS (1) through (7) will remain the same.

(8) A sum equal to 10% of the first money of every purse won by a Montana bred horse shall be paid to the breeder of such horse. Such amount shall be paid within ~~30 days after the conclusion of the race meeting each year~~ 14 days from the date the race is won. Such amount shall not be deducted from the advertising purse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(9) will remain the same.

(10) All Montana bred horses shall be allowed a weight allowance of five pounds in all races except handicaps, ~~and stakes, Montana bred races and quarter horse races.~~

(11) through (69)(a) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The proposed amendment to (8) will change the time limit for tracks to pay out the Montana-bred bonuses from 30 days after the end of the meet to 14 days after the race is won. Many breeders were unhappy with the previous time limit, as several months could and did elapse between the date the race was won, and the date the track breeder bonus was received. The proposed amendment will shorten the deadline to allow breeders to see the benefit of a Montana-bred horse within a shorter time frame.

The proposed amendment to (10) will add Montana-bred races and quarter horse races to the list of races in which a five pound weight allowance is not given to a Montana-bred horse. A Montana-bred race consists of all Montana-bred horses, so it is unnecessary and redundant to allow each of them a five pound weight allowance. Quarter horse races were also not intended to be included in this weight allowance, because quarter horses race over so much shorter distances.

"8.22.802 WEIGHT - PENALTIES AND ALLOWANCES (1) The following weights are carried when they are not otherwise stated in the conditions of the race:

SCALE OF WEIGHT FOR AGE

Distance	AGE	JUNE	JULY	AUG.	SEPT.
Half-mile	2 yrs.	....	....	105	108
	3 yrs.	123	125	126	127
	4 yrs.	130	130	130	130
	5 & up	130	130	130	130
6 furlongs	2 yrs.	....	....	102	105
	3 yrs.	121	123	125	125
	4 yrs.	130	130	130	130
	5 & up	130	130	130	130
1-mile	2 yrs.	....	....	....	96
	3 yrs.	115	117	119	121
	4 yrs.	126	126	126	126
	5 & up	126	126	126	126
1-mile & 1/4	2 yrs.	....	....	....	....
	3 yrs.	113	116	118	120
	4 yrs.	126	126	126	126
	5 & up	126	126	126	126
1-mile & 1/2	2 yrs.	....	....	....	....
	3 yrs.	111	114	117	119
	4 yrs.	126	126	126	126
	5 & up	126	126	126	126
2-miles	2 yrs.	....	....	....	....
	3 yrs.	109	112	114	117
	4 yrs.	126	126	125	125
	5 & up	126	126	125	125

(2) In races of intermediate lengths, the weights for the shorter distance are carried.

(3) (1) In all races except handicaps, quarter horse races, and races where the conditions expressly state to the contrary, fillies two years old are allowed 3 lbs. and fillies and mares three years old and upward are allowed 5 lbs. before the 1st of September and 3 lbs. thereafter.

(4) In all overnight races for two year olds, for three-year olds or for four year olds and upward, the minimum weights shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicaps or to races written for three-year olds and upward.

(5) No horse shall carry extra weight, nor be barred from any race for having run second or in any lower place in a race.

~~(6) Penalties and allowances for weight are not cumulative, unless so declared by the conditions of the race.~~

~~(7) No horse shall receive allowance of weight or be relieved from extra weight for having been beaten in one or more races, provided that this rule shall not prohibit maiden allowances or allowances to horses that have not won within a specified time, or that have not won races of a specified value."~~

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment will delete weight requirements which have not been used in Montana. The racing secretary at each licensed track has instead been allowed to assign weights at his/her discretion based on the race conditions, the horses at the track, etc. The proposed amendment will bring the rule in line with actual practice at the tracks. The amendment will retain the filly and mare weight allowance, as this is needed and used at Montana tracks.

"8.22.1619 EXACTA BETTING (1) through (2) will remain the same.

(3) Entry horses will be allowed in an exacta race in which there are at least five sufficient other separate betting interests, as determined by the licensee and stewards.

(4) through (11) will remain the same."

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment will delete the requirement of six horses entered in a race in order to allow exacta wagering. Instead, the Board recognizes that the decline of the number of horses racing in Montana has caused a significant number of races to be run without full fields, and thus prohibited exacta wagering on a large number of races. The proposed amendment will allow the track licensee some discretion to determine whether sufficient horses are entered to allow exacta wagering.

"8.22.1802 REQUIREMENTS OF LICENSEE (1) will remain the same.

(2) Entry horses will be allowed in a trifecta race in which there are at least five sufficient other betting interests, as determined by the licensee and stewards.

~~(a) No licensee shall offer trifecta wagering on any race in which there is a double entry (example: 1, 1A, 1B) or a triple entry (example: 1, 1A, 2, 2B).~~

~~(3) No licensee shall offer trifecta wagering on any race when there are less than six horses scheduled to start, at draw time. In no event will trifecta wagering be permitted on a race in which less than six horses start.~~

~~(4) Urine samples may be taken from all or any horses which started in a race on which there was trifecta wagering and all urine samples shall be tested by the official racing chemist with the costs therefore borne by the licensee."~~

Auth: Sec. 23-4-104, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment will delete the requirement of six horses entered in a race in order to allow trifecta wagering. Instead, the Board recognizes that the decline of number of horses racing in Montana has caused a significant number of races to be run without full fields, and thus prohibited trifecta wagering on a large number of races. The proposed amendment will allow the track licensee some discretion to determine whether sufficient horses are entered to allow trifecta wagering.

3. The Board is proposing to repeal ARM 8.22.1623, located at pages 8-751 and 8-752 of the Administrative Rules of Montana. The authority sections are 23-4-104, 23-4-202, MCA and the implementing sections are 23-4-104, 23-4-202, 23-4-304, MCA. The proposed repeal is necessary as the 1997 Legislature repealed the statutes which had formerly created an owner's and breeder's bonus. Instead, the percentages being withheld from exotic wagering is being distributed for purses or other purposes determined by the Board, as per statutory language.

4. Interested persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Horse Racing, 1424 9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4305, to be received no later than 5:00 p.m., April 9, 1998.

5. If a person who is directly affected by the proposed actions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Horse Racing, 1424 9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4305, to be received no later than 5:00 p.m., April 9, 1998.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 70 based on the 700 licensees in Montana.

7. Persons who wish to be informed of all Board of Horse Racing administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing, at 1424

9th Avenue, P.O. Box 200512, Helena, Montana 59620-0512 or by phone at (406) 444-4287.

BOARD OF HORSE RACING
JOE ERICKSON, CHAIRMAN

Annie M. Bartos
ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, March 2, 1998.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of a rule pertaining) THE PROPOSED AMENDMENT OF
to Intravenous Therapy) 8.32.1408 STANDARDS RELATING
) TO THE LICENSED PRACTICAL
) NURSE'S ROLE IN INTRAVENOUS
) (IV) THERAPY

TO: All Interested Persons:

1. On April 9th, 1998, at 9:00 a.m., a public hearing will be held in the upstairs conference room, Department of Commerce building, 1424 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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

"8.32.1408. STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY (1) through (3) will remain the same.

(4) Any of the following IV therapy tasks related to peripheral vessel IVs may be performed by a practical nurse:

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

(d) ~~change dressing of peripheral site;~~

(e) through (i) will remain the same.

(j) administer metered dose of medication by way of a PC patient controlled analgesia pump;

(k) will remain the same.

~~(l) change standard solutions on continuous flow, pre-established central line system;~~

(m) will remain the same, but will be renumbered (1).

~~(n) under the direct supervision of a dialysis RN, an LPN may perform hemodialysis procedures that include:~~

~~(i) arterio venous fistula/graft needle insertion;~~

~~(ii) administration of prescribed local anesthesia as needed prior to dialysis needle insertion;~~

~~(iii) accessing, blood draws, flushes and dressing changes of hemodialysis central venous catheters; and~~

~~(iv) administration of prescribed doses of routine dialysis heparin.~~

~~(o) (m) administration of prescribed injectable local anesthetics prior to venipuncture;~~

(5) Any of the following tasks related to central venous lines may be performed by a practical nurse:

(a) change standard solutions on continuous flow, pre-established central line system;

(b) perform sticks, accessing, blood draws, flushes and dressing changes.

(6) Under the direct supervision of a dialysis RN, an LPN may perform hemodialysis procedures that include:

- ~~(i)~~ (a) arterio-venous fistula/graft needle insertion;
 - ~~(ii)~~ (b) administration of prescribed local anesthesia as needed prior to dialysis needle insertion;
 - ~~(iii)~~ (c) accessing, blood draws, flushes and dressing changes of hemodialysis central-venous catheters; and
 - ~~(iv)~~ (d) administration of prescribed doses of routine dialysis heparin.
- ~~(e) dressing changes on central and arterial lines after the initial dressing change by the RN."~~

Auth: Sec. 37-8-415, MCA; IMP, Sec. 37-8-415, MCA

REASON: This rule is being amended to make it clear regarding the difference in practice for peripheral IVs, central lines and hemodialysis. They are separated out and clarified. Also, the Board of Nursing decided it is in the scope of practice to draw blood from central lines and do flushes. The amendments clarify patient-controlled (PC) pumps and the giving of narcotics per patient pump as opposed to push. A PC pump is metered and you can't give more than the metered dose.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., March 30, 1998, to advise us of the nature of the accommodation that you need. Please contact Dianne Wickham, Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4279; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Dianne Wickham.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., April 9, 1998.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Nursing administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing, or in writing to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4279.

BOARD OF NURSING
RITA HARDING, RN, MN, CS

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 2, 1998.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of Rules I, II, and III)	)	ADOPTION OF RULES
concerning angler education)	
events.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Interested Persons.

1. On April 15, 1998, the Department of Fish, Wildlife & Parks proposes to adopt Rules I, II, and III, concerning angler education events.

2. The proposed rules will read as follows:

"I CRITERIA AND PROCEDURE FOR APPROVAL OF ANGLER EDUCATION EVENTS AND ACTIVITIES (1) A participant in an angler educational event or activity that is approved by the department in accordance with this rule may fish without the otherwise required fishing license while participating in the event on the specified body of water.

(2) To be approved by the department as an angler education event or activity for which fishing licenses are not required, the event or activity must meet the following criteria:

(a) the event must be educational in nature and should instruct participants on fish identification, fishing regulations, fishing ethics, fishing techniques, and water safety;

(b) the event must be held at times and places that do not substantially conflict with other users of the water body;

(c) the event must be taught by or under the guidance of an employee of the department or by an instructor certified by the department as competent to instruct in the matters described in (a) above;

(d) the event must not be a part of a profit-making event or activity;

(e) the event must take place on the body of water and only for the dates and times specified in the application; and

(f) the event must be approved in accordance with the procedures set forth in (Rule II)."

AUTH: 87-2-808, MCA IMP: 87-2-808, MCA

"II PROCEDURE FOR ANGLER APPLICATIONS AND EVENTS (1) The department will review an application for an angler education event or activity as follows:

(a) an application for approval of an angler education event must be submitted to the department's state angler education coordinator in Helena at least 30 days prior to the date of the event. The application must be in writing, and must

include the date, time, and location of the proposed event and must demonstrate that the event meets the criteria of (Rule I);

(b) the angler education coordinator will review the application and determine whether the event satisfies the criteria of (Rule I);

(c) if the coordinator determines the application satisfies the criteria of (Rule I), written approval of the event will be provided to the applicant; and

(d) if the angler education coordinator determines the event does not meet the criteria of (Rule I), the coordinator will notify the applicant in writing of that determination.

(2) A person conducting an approved angler education event must have the written approval of the department available at the location of the event. The applicant must keep a written record of attendees and participation in the event and submit a copy of the record to the department's angler education coordinator within 15 days of the conclusion of the event."

AUTH: 87-2-808, MCA IMP: 87-2-808, MCA

"III TRAINING AND CERTIFICATION OF VOLUNTEERS (1) The angler education events and activities approved by the department should be conducted as much as possible by volunteer instructors certified by the department.

(2) Any individual who satisfies the following requirements may be certified to conduct angler education events and activities:

(a) the individual must be eighteen years of age or older;

(b) the individual must complete an instructor training course offered and conducted by the department; and

(c) the individual must not have been convicted of a felony under any criminal law, nor have been convicted of a fish or game violation under any law, nor forfeited bond or bail on a fish or game citation of any kind."

AUTH: 87-2-808, MCA IMP: 87-2-808, MCA

3. In Senate Bill 63 (1997 Montana Laws, chapter 275), codified as 87-2-808, the Montana legislature created an exemption to the regular fishing license requirements for certain approved angler education events. The statute authorizes the department to adopt rules concerning such events, and proposed Rules I, II, and III would implement the license exemption as authorized by the new law.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to Dave Hagengruber, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701. Any comments must be received no later than April 15, 1998.

5. If a person who is directly affected by the proposed adoption wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make

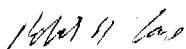
written request for a hearing and submit this request along with any written comments he or she has to Dave Hagengruber, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than April 15, 1998.

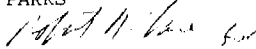
6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 36,580 persons based on the number of fishing licenses sold in the 1997 license year.

7. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701.

RULE REVIEWER

DEPARTMENT OF FISH, WILDLIFE
AND PARKS


Robert N. Lane


Patrick J. Graham, Director

Certified to the Secretary of State on March 2, 1998.

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

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment to ARM 12.3.202,) TO ARM 12.3.202
establishing a new class of)
license agent who may receive)
compensation from clients for) NO PUBLIC HEARING CONTEMPLATED
preparation of hunting license)
and permit applications.)

TO: All Interested Persons.

1. On April 13, 1998, the Department of Fish, Wildlife and Parks (department) proposes to amend rule 12.3.202 establishing a fourth class of license agent who may prepare hunting licenses and permit applications for members of the general public and receive compensation from clients using these services.

2. The department proposes to amend the rule as follows:

12.3.202 CLASSES OF LICENSE AGENTS (1) There are ~~three~~ four classes of license agents.

(a) through (c) remain the same

(d) Class IV license agents may prepare hunting license and permit applications for clients and receive compensation from clients for services rendered under the following conditions:

(i) all applications for permits must be signed by the applicants;

(ii) class IV agents shall attach a copy of the client contract listing the client's home address with each application submitted;

(iii) class IV agents shall notify the department of any contract default, permit which does not reach its intended destination, suspected violation of residency law, unlawful use of permit, or any other problem that could result in the accountability for a permit or potential unlawful use of a permit processed through their service;

(iv) class IV agents shall provide as the address on the application the term "doing business as" (DBA) together with the agent's name and address;

(v) class IV agents shall turn back by September 15 of each year to the department any permit unclaimed because of contract default by or non-deliverable to the permittee for any reason; and

(vi) class IV agents shall allow the department to inspect at any time during regular business hours all records relating to their business of providing hunting license and application service.

AUTH: 87-1-201, MCA

IMP: 87-2-901, MCA

3. Rationale: The department was approached by an individual who wished to start a business of preparing hunting license and permit applications for a fee for private

individuals. As presented, the proposal did not conform to license and permit application rules. Research found that another business providing similar service, but not in compliance, had been in operation for a number of years. The department allowed both businesses to operate temporarily under an agreement which brought them into compliance. Clearly, the department needed to explore the issue further and make a decision whether to refuse to allow this type of business or propose rulemaking which would provide guidelines for prospective businesses so that they would know how to operate their businesses and be in compliance with the law.

Representatives of many units in the department reviewed the issue and concluded that no significant, unfavorable impact would result from allowing this type of operation to conduct business if it complies with the present laws, rules, and this proposed rule.

4. Interested parties may submit their data, views or arguments, either orally or in writing, to Mark Earnhardt, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, P.O. Box 200701, Montana 59620, no later than April 10, 1998.

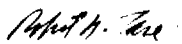
5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments to Mark Earnhardt, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701, no later than April 10, 1998.


6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature, from a governmental agency or subdivision or from 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. Ten percent of those directly affected has been determined to be in excess of 41 persons based on the number of license agents currently operating in the state of Montana.

7. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701.

RULE REVIEWER

FISH, WILDLIFE AND PARKS


Robert N. Lane


Patrick J. Graham, Director

Certified to the Secretary of State March 2, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of	)	SUPPLEMENTAL
new rule I regarding temporary	)	NOTICE OF
water standards for Daisy Creek,	)	PUBLIC HEARING
Stillwater River, Fisher Creek,	)	ON PROPOSED
and the Clark's Fork of the	)	ADOPTION
Yellowstone River.)	

(Water Quality)

To: All Interested Persons

1. On August 24, 1995, on page 1652 of the 1995 Montana Administrative Register, Issue No. 16, and October 26, 1995, on page 2211 of the 1995 Montana Administrative Register, Issue No. 20, the Board gave notice of a proposed rule to establish temporary water quality standards for four streams or stream segments near Cooke City. At the December 7, 1995, hearing, commenting parties disagreed whether the rule should be adopted. The Board requested several of the parties to engage in discussions to reach a mutually acceptable resolution of the issues. The parties negotiated with the goal of agreeing on a consent decree to be entered in an enforcement action filed by the Department of Environmental Quality. On April 25, 1996, on page 1049 of the 1996 Montana Administrative Register, Issue No. 8, and in anticipation that the parties would reach agreement on a consent decree, the Board published a notice of supplemental comment period. In that notice, the Board asked the public to comment on whether the Board should adopt temporary standards or allow the matter to be resolved by entry of the consent decree. However, the parties did not reach agreement on a consent decree before the close of the supplemental comment period on June 24, 1996.

On August 12, 1996, Crown Butte Mines, Inc., the United States Department of Justice, and a number of public interest groups entered an agreement whereby the parties agreed to pursue an exchange of Crown Butte's mining property, which is located in the drainages to which this rulemaking pertains, for federal land at another location or locations. In the agreement the parties also committed to negotiate in good faith the terms of a consent decree, to be entered in a federal court action, that would require environmental response and/or restoration actions on these drainages. The parties anticipated that temporary standards could be beneficial to allow the remediation or restoration to occur.

On October 3, 1996, at page 2502 of the 1996 Montana Administrative Register, Issue No. 19, the Board, in anticipation that a consent decree would be negotiated in early

1997, reopened the comment period to allow the public the opportunity to comment on whether the consent decree eliminates the need for temporary standards. That comment period closed on March 20, 1997. A consent decree had not been negotiated by that date.

On March 24, 1997, on page 534 of the 1997 Montana Administrative Register, Issue No. 6, and on September 22, 1997, on page 1636 of the 1997 Montana Administrative Register, Issue No. 18, the Board issued supplemental notices advising that the proceeding was suspended pending negotiation of a consent decree.

Although a consent decree has not been negotiated, it appears as if one may be negotiated by late spring and that remedial work will occur over the next several years. The Board has determined that it is appropriate to schedule another public hearing to obtain public input on the consent decree, plans and schedules for remediation, and the advisability of adoption of temporary standards during the remediation.

Therefore, on August 27, 1998, at 10:00 A.M., a public hearing will be held in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the adoption of new Rule I.

2. The proposed new rule provides as follows:

RULE I TEMPORARY STANDARDS (1) The standards for the parameters listed in this rule temporarily modify the specific standards for those parameters as provided in ARM 17.30.621 through 17.30.629 for each of the water bodies listed below, until the temporary standards expire or are terminated by the board. The standards for parameters not listed in this rule are the specific standards listed in the appropriate sections of ARM 17.30.621 through 17.30.629. The existing uses of the water bodies listed below must be maintained during the period that these temporary standards are in effect. No increase from existing conditions (except for pH) is allowed at any point in the affected water body for any of the parameters that have been temporarily modified. The requirements of ARM 17.30.635 through 17.30.641 apply to the waters listed in this rule except where those requirements conflict with the temporary standards listed below.

(2) The temporary standards listed in (a) through (d) below are based on the record, including a support document and implementation plan, of the hearing held by the board of environmental review on October 6, 1995. The temporary standards for these stream segments are effective [on the date this rule goes into effect].

(a) Temporary water quality standards for Daisy Creek, a tributary of the Stillwater River in the Yellowstone River Drainage, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms

of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	12.2
Antimony	No increase from present conditions at any given point within the water body
Beryllium	No increase from present conditions at any given point within the water body
Cadmium	0.005
Chromium	0.002
Copper	4.48
Iron	8.56
Lead	0.002
Manganese	3.00
Nickel	No increase from present conditions at any given point within the water body
Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.74

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	5.0
* Effective at the downstream boundary of the reach; values may exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.	

(b) Temporary water quality standards for the Stillwater River, a tributary of the Yellowstone River, from Daisy Creek to the Absaroka wilderness boundary, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	0.084
Antimony	No increase from present conditions at any given point within the water body
Cadmium	0.0005
Chromium	No increase from present conditions at any given point within the water body
Copper	0.285
Iron	1.71
Lead	No increase from present conditions at any given point within the water body
Manganese	0.11
Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.067

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	5.3

* Effective at the downstream boundary of the reach; values may exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.

(c) Temporary water quality standards for Fisher Creek, a tributary of the Clark's Fork of the Yellowstone River, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	0.64
Beryllium	No increase from present conditions at any given point within the water body
Cadmium	0.008
Chromium	No increase from present conditions at any given point within the water body
Copper	0.14
Iron	1.05
Lead	No increase from present conditions at any given point within the water body
Manganese	0.11
Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.06

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	5.7

* Effective at the downstream boundary of the reach; values may exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.

(d) Temporary water quality standards for the Clark's Fork of the Yellowstone River, from Fisher Creek to the confluence with the Broadwater River, are as follows and are in effect until [20 years from the effective date of this rule]. Metals standards are in terms of milligrams per liter total recoverable concentrations.

<u>Parameter</u>	<u>*Maximum Concentration</u>
Aluminum	No increase from present conditions at any given point within the water body
Antimony	No increase from present conditions at any given point within the water body
Cadmium	No increase from present conditions at any given point within the water body
Chromium	No increase from present conditions at any given point within the water body

Copper	0.055
Iron	0.31
Lead	No increase from present conditions at any given point within the water body
Manganese	0.031
Mercury	No increase from present conditions at any given point within the water body
Silver	No increase from present conditions at any given point within the water body
Zinc	0.035

<u>Parameter</u>	<u>*Minimum Value</u>
pH (units)	6.4

* Effective at the downstream boundary of the reach; values may exceed this concentration at upstream points in the reach, but there must be no increase from existing values at any point in the reach.

AUTH: 75-5-312, MCA; IMP: 75-5-312, MCA

3. The board is proposing this rule in response to a petition submitted by Crown Butte Mines, Inc., (CBMI) for the adoption of temporary standards for certain portions of Daisy Creek, Fisher Creek, Stillwater River, and the Clark's Fork of the Yellowstone River, according to the provisions of Senate Bill 346 (adopted by the 1995 legislature). The rule is necessary to temporarily modify the surface water quality standards for these water bodies so that improvements to water quality may be achieved by implementation of the plan submitted by CBMI for these stream segments. The temporary standards in this rule notice are the standards requested by CBMI in support of its petition, pursuant to the requirements of Senate Bill 346.

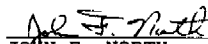
4. Interested persons may submit their views or arguments concerning the proposed rule, either orally or in writing, at the hearing.

5. Will Hutchinson has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW


CINDY E. YOUNKIN, Chairperson

Reviewed by:


JOHN F. NORTH
Rule Reviewer

Certified to the Secretary of State March 2, 1998.

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

In the matter of the	)	NOTICE OF PUBLIC
amendment of Rule 36.22.1308,	)	HEARING ON PROPOSED
pertaining to plugging and	)	AMENDMENT
restoration bond)	

TO: All Interested Persons.

1. On April 2, 1998, at 8:00 a.m., a public hearing will be held in the Petroleum Club of the Sheraton Hotel in Billings, Montana, to consider the amendment of rule 36.22.1308 pertaining to plugging and restoration bond.

2. The rule proposed to be amended provides as follows:
36.22.1308 PLUGGING AND RESTORATION BOND (1) Except as otherwise provided in these rules, the following penal bonds are required for wells within the board's jurisdiction:

(a) The owner or operator of a single well to be drilled, or of a single existing oil, gas, or Class II injection well to be acquired, must provide a one well penal bond:

(i) in the sum of \$1,500, where the permitted total depth of a drilling well, or the actual, or plugged-back, total depth of an existing well, is 2,000 feet or less; or

(ii) in the sum of \$5,000, where the permitted total depth of a drilling well, or the actual, or plugged-back, total depth of an existing well, is greater than 2,000 feet and less than 3,501 feet; or

(iii) in the sum of \$10,000, where the permitted total depth of a drilling well, or the actual, or plugged-back, total depth of an existing well, is 3,501 feet or more.

(b) The owner or operator of multiple wells to be drilled, of existing wells to be acquired, or any combination thereof, must provide a multiple well penal bond in the sum of ~~\$25,000~~ \$50,000. A one-time consolidation of companies will not be considered an acquisition requiring a \$50,000 bond if the consolidation does not change the party or parties responsible for the ultimate plugging of the wells and the resulting consolidated company provides a bond not less than the aggregate amount of the existing bonds covering wells prior to consolidation.

(c) The owner or operator of existing wells covered by a multiple well bond in an amount less than \$25,000 must provide a new bond or a supplemental bond or rider to an existing bond to increase coverage to \$25,000.

Subsection (2) remains the same.

(3) The board may require an increase by appropriate rider of any bond from \$1,500 to \$3,000, \$5,000 to \$10,000 or from \$10,000 to \$20,000 for a single well bond, and from ~~\$25,000 to \$50,000~~ \$50,000 to \$100,000 for a multiple well bond, when in

the opinion of the board the factual situation warrants such an increase in order for any owner or operator to be in compliance with this rule. In addition to, or in lieu of, an increase in the bond amount as provided above, the board may limit the number of wells that may be covered by any multiple well bond.

Subsection (4) remains the same.

(5) The bond referred to in this rule must be in one of the following forms:

(a) a good and sufficient surety bond secured from a bonding company licensed to do business in the state of Montana; or

(b) a federally insured certificate of deposit issued and held by a Montana bank or any national bank in the United States that is federally insured and has total assets greater than \$200 million; or

(c) a letter of credit issued by an FDIC-insured, Montana commercial bank or an out-of-state FDIC-insured, commercial bank having assets in excess of \$200 million.

Subsections (6) through (10) remain the same.

AUTH: 82-11-111, MCA

IMP: 82-11-123, MCA

3. Rule 36.22.1308 is being amended to require bond amounts which more accurately reflect the plugging liability associated with the depths and number of wells under bond.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Thomas P. Richmond, Administrator, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana, 59107, and must be received no later than April 9, 1998.

5. Dave Ballard, Chairman of the Board, has been designated to preside over and conduct the hearing.

6. The Board of Oil and Gas Conservation will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the division no later than one week before the date of the hearing you plan to attend to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Thomas P. Richmond, Administrator, Oil and Gas Conservation Division, 2535 St. John's Avenue, Billings, Montana, 59107, telephone (406) 656-0040, no later than March 27, 1998.

7. The Department of Natural Resources and Conservation maintains a list of interested persons who wish to receive

notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list have a right to be placed on the department's list. A person must make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices of administrative rules regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to the Department of Natural Resources and Conservation, 1625 11th Avenue, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the Department of Natural Resources and Conservation.

BOARD OF OIL AND GAS CONSERVATION



TERRI PERRIGO
EXECUTIVE SECRETARY



DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State March 2, 1998

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules 46.14.301	)	OF PROPOSED AMENDMENT
and 46.14.401 pertaining to)	
the low income weatherization)	
assistance program (LIWAP))	

TO: All Interested Persons

1. On April 2, 1998, at 1:30 p.m., a public hearing will be held in auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 46.14.301 and 46.14.401 pertaining to the low income weatherization assistance program (LIWAP).

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on March 23, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.14.301 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM.
DEFINITIONS (1) "Energy ~~use~~ burden" means the ~~actual or~~
~~estimated annual heating cost for a dwelling~~ percentage of a
household's income which is allocated to heating costs for the
household's dwelling. The energy burden is calculated by
dividing the household's actual or estimated annual heating
costs by the household's annual income.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, 90-4-201 and 90-4-202, MCA

46.14.401 ELIGIBILITY FOR SERVICE. PRIORITIES

(1) Dwellings which have been weatherized after September 30, 1985, with U.S. department of energy funds or with low income energy assistance program (LIEAP) weatherization or Montana Power Company free weatherization funds after January 1, 1995 are not eligible for weatherization services. LIEAP
weatherization funds and/or Montana Power Company free
weatherization funds may be used at any time to

address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(2) remains the same.

(3) In determining which eligible households will receive weatherization services and in what order, households in each of the governor's substate planning districts shall be ranked according to energy use burden. Households with the highest energy use burden shall be given the highest priority and households with the lowest energy use burden shall be given the lowest priority.

(a) The energy use burden, as defined in ARM 46.14.301, of households containing a member who is either 60 years of age or older or handicapped as determined by the federal social security administration under Title II or Title XVI of the Social Security Act will be multiplied by 1.25 for purposes of prioritization.

(4) If there exists a weatherization related imminent threat to the health or safety of an eligible household, their home may be given a higher priority than that dictated by energy use burden. It is the obligation of the household to provide proof of an imminent threat to the health or safety of the household to the local contractor. The local contractor must request that the department give the household's dwelling a higher priority.

(5) through (7) remain the same.

AUTH: Sec. 53-2-201 and 90-4-201, MCA

IMP: Sec. 53-2-201, 90-4-201 and 90-4-202, MCA

3. The Low Income Weatherization Assistance Program (LIWAP) funds energy conservation measures for dwellings of low income families such as the installation of insulation and the sealing of ducts. The rules in ARM Title 46, Chapter 14, set forth requirements and procedures for determining eligibility for LIWAP and specify the kinds and amounts of assistance available to eligible households.

ARM 46.14.401 states eligibility requirements and criteria for determining in what order eligible low income families will be served. Currently ARM 46.14.401(1) provides that dwellings weatherized after September 30, 1985 with U.S. Department of Energy funds or after January 1, 1995 with low income energy assistance program (LIEAP) weatherization or Montana Power Company free weatherization funds are not eligible for weatherization services.

The Department proposes to amend ARM 46.14.401(1) to provide that the restrictions on providing weatherization services to dwellings which have been weatherized within certain time frames are waived in some cases. A provision is proposed to allow

LIEAP weatherization funds and/or Montana Power Company free weatherization funds to be used at any time to provide weatherization services to an eligible household facing an imminent threat to its health or safety due to the absence of weatherization services and to replace or make cost-effective modifications to a household's heating system to utilize a less expensive energy source.

This change is being made because the Department found that sometimes a dwelling which has received weatherization services in the recent past needs additional services for safety reasons or to replace an expensive heating system with one which is more cost effective. For example, a dwelling may have received weatherization services but still have an old furnace which has now become unsafe due to carbon monoxide leaks. There are also cases where the inhabitant of the dwelling at the time weatherization services were provided did not want to switch to a more efficient heating source but the current inhabitant now wishes to do so.

The Department is proposing this change in order to have discretion to provide services to dwellings to protect the health or safety of their occupants or simply to help them heat their homes more cheaply, even if the dwelling has already received weatherization services recently. However, this change in policy is being made only in regard to weatherization services funded by LIEAP or the Montana Power Company, because federal law mandates that weatherization services may not be provided to dwellings which have been weatherized with U.S. Department of Energy (DOE) funds since September 30, 1985.

Subsection (3) of ARM 46.14.401 currently states that the order in which weatherization services are furnished to eligible households is based on the households' energy use, which is defined in ARM 46.14.301 as the annual cost of heating a dwelling. The Department now proposes to prioritize eligible households for services on the basis of "energy burden" rather than "energy use". It is further proposed that ARM 46.14.301 be amended to delete the definition of "energy use" as this term will no longer be used in the LIWAP rules, and substitute a definition for "energy burden".

The Department is making these changes to ARM 46.14.301 and 46.14.401 because it has determined that prioritizing households on the basis of a family's energy burden, that is, the percentage of a family's income which is used for heating costs, is more appropriate than prioritizing on the basis of the family's heating costs without comparing those costs to family income. The department believes that establishing priority for services based on energy burden rather than energy use will ensure that families with the greatest need will receive services first, since the energy burden reflects the percentage

of the household's income which is expended for heating rather than just the total heating cost.

Another method of determining which eligible households will receive service first is the "first come, first served" method. Many states do not prioritize based on need or on any other considerations but simply provide services to eligible households in the order in which they apply for services. The Department has rejected this option because the result of using the "first come, first served" method is that many families with great need may not receive services because all available funds may be spent before they apply. Instead the Department has chosen the option which results in services being provided to the neediest households first.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than April 9, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Michael G Bellings
Director, Public Health and
Human Services

Certified to the Secretary of State March 2, 1998.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal) NOTICE OF REPEAL OF RULES
of rules pertaining to) PERTAINING TO PASSENGER
passenger tramways) TRAMWAYS

TO: All Interested Persons:

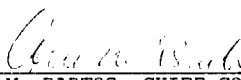
1. On November 3, 1997, the Department of Commerce published a notice of proposed repeal of rules pertaining to passenger tramways at page 1960, 1997 Montana Administrative Register, issue number 21.

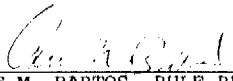
2. The Board has repealed ARM 8.63.101, 8.63.201, 8.63.202, 8.63.203, 8.63.301 through 8.63.303, 8.63.501 through 8.63.506, 8.63.508, 8.63.509 and 8.63.516 through 8.63.520 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 2, 1998.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULES
of rules pertaining to the)	PERTAINING TO THE REVERSE
Reverse Annuity Mortgage (RAM))	ANNUITY MORTGAGE (RAM)
Loan)	LOAN

TO: All Interested Persons:

1. On January 15, 1998, the Board of Housing of the Department of Commerce published a notice of public hearing on the proposed amendment of rules pertaining to the Reverse Annuity Mortgage (RAM) Loan, at page 92, 1998 Montana Administrative Register, issue number 1.

2. The Department has amended ARM 8.111.402, 8.111.404, and 8.111.409 exactly as proposed. The comments and the Board's responses thereto, are as follows:

COMMENT NO. 1: A comment was received from Representative Royal C. Johnson. He wanted to know why would a customer need both municipal bond interest (tax free) and a reverse mortgage?

RESPONSE: There are a lot of seniors that may have money invested in bonds that are tax free. Most of the time these amounts are very small and add only a small amount of income. The reason we refer to this in the rules is that many people assume that if this income is tax free it should also not be used in our income calculations. We calculate income based on gross income which would include income such as tax exempt interest, social security, etc. If an applicant had large amounts invested in tax exempt bonds the income they would earn will usually put them over the limit and they would not be eligible for a RAM loan.

COMMENT NO. 2: A comment was received from Representative Royal C. Johnson. He wanted to be sure the Board was not changing the legislative intent with what we were saying here. Maybe we should change the cap (age)?

RESPONSE: The statute currently states "68 years of age or older, except as provided on a case-by-case basis in accordance with the program guidelines established by the board of housing." We had proposed leaving the age limit open and allowing the board to set it. When we proposed this, the legislative committee changed the language to what is above. The reason we do not want to put the exceptions in program guidelines, but rather have each one decided on by the board, is that until we have some history with granting exceptions we are unsure which ones will be more common.

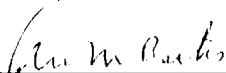
COMMENT NO. 3: A comment was received from Representative Royal C. Johnson. He stated: this sentence seems confusing to me "The Board will set the maximum dollar amount of a loan which amount may be changed by the Board."

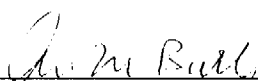
RESPONSE: We had actually not proposed any changes to

this section. It sounds like legal language, but in effect it says the Board will set the maximum loan amount and can change this amount if it chooses.

BOARD OF HOUSING

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 2, 1998.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF
ARM 17.36.801, 802, 804, and 805,) AMENDMENT OF RULES
increasing the fees and)
reimbursements to local governing)
bodies.)

(Subdivisions)

To: All Interested Persons

1. On January 29, 1998, the department published notice of proposed amendment of the above-captioned rules, at page 282 of the 1998 Montana Administrative Register, Issue No. 2.

2. The rules were amended as proposed with the following changes in response to comments (new material is underlined; material to be deleted is interlined):

17.36.801 PURPOSE Same as proposed.

17.36.802 FEE SCHEDULES (1) An applicant for approval of a division of land into 1 or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces and tourist campgrounds shall pay the following fees:

	UNIT	UNIT COST
<u>TYPE NUMBER OF LOTS</u>		
Subdivision lot	lot/parcel	\$50
Condominium/trailer court/ recreational camping vehicle campground	unit/space	\$25
<u>TYPE OF WATER SYSTEM</u>		
Individual <u>water supply system</u> (existing and proposed) well	unit well	\$40
Multi-family system <u>water source well</u> pumping and storage facilities distribution system (new) extension of existing distribution system	unit well facility lot/unit lot/unit	\$200 \$200 \$10 \$25

	UNIT	UNIT COST
Public water system new system per WQB-1	component	per ARM 17.38.106 fee schedule
connection to existing system	lot/ <u>structure</u>	\$10
extension of existing system	lot/ <u>structure</u>	\$25
<u>TYPE OF SEWAGE DISPOSAL</u>		
<u>Existing Systems</u>	<u>unit</u>	<u>\$40</u>
<u>New</u> Conventional subsurface, shallow-capped, sand-lined	<u>drainfield lot</u>	\$40
<u>New</u> Pressure-dosed conventional, cut/fill, deep systems, artificially drained	design drain field	\$150 \$25
<u>New</u> Elevated sand mound, ET systems, intermittent sand filter	design drain field	\$300 (plus \$50/hour for review in excess of six hours) \$500 \$25
<u>New</u> Aerobic package plant systems, Recirculating sand filters, nutrient removal	hour	\$50
<u>New</u> Multi-family sewage system - connection - extension	lot/unit lot/unit	\$10 \$25
<u>New</u> Public sewage system per WQB-2	component	per ARM 17.38.106 fee schedule
<u>New</u> Connection to existing public sewage system	lot/ <u>structure</u>	\$10
<u>New</u> Extension of existing public sewage system	lot/ <u>structure</u>	\$25
<u>OTHER</u>		
Deviation/waiver request	request	\$75

	UNIT	UNIT COST
Reissuance of original plat approval statement	request	\$50
Master plan exemption checklist	application	\$75
Nonsignificance determinations/ categorical exemption reviews	drain field	\$30
Preparation of environmental assessments/environmental impact statements	----	actual cost

17.36.804 DISPOSITION OF FEES Same as proposed.

17.36.805 CHANGES IN SUBDIVISION (1) When the applicant proposes to change the water supply, sewage treatment, solid waste disposal or storm drainage aspects of a subdivision or when the applicant proposes changes to the conditions of the certificate of subdivision plat approval (or where such changes are necessitated by a department determination that proposed plans are inadequate), either during or after the review process, the applicant shall submit such changes to the department for review and approval and shall pay additional review fees not to exceed the amounts listed in ARM 17.36.802. The exact amount of the additional fee must be determined by the department and must be based on the scope of the change(s) and how much additional review time the change(s) will require. Review time must be charged at the rate of \$50 per hour with a minimum charge of \$50. When the applicant proposes changes to the approved plat, the fee is \$75 per lot reviewed. Whenever, during the review process, an applicant proposes to change the water supply or sewage treatment system of a subdivision or where such changes are necessitated by a department determination that proposed plans are inadequate, such changes must be submitted to the department for review and are subject to an additional review fee for the newly proposed water supply or sewage treatment system as listed in ARM 17.36.802.

(2) Whenever an applicant proposes changes to the conditions of the certificate of subdivision plat approval, the changes must be submitted to the department for review and approval and are subject to additional review fees. If the applicant proposes to change components of the approved plans, the newly proposed components are subject to the fees listed in ARM 17.36.802. Other changes for plan components not listed in ARM 17.36.802 are also subject to additional review fees. The department shall determine the exact amount of the additional fee based on how much review time the change(s) require. Review time must be charged at the rate of \$50 per hour with a minimum charge of \$50.

3. The department received the following comments; department responses follow:

Comment 1: One commentor suggested that the lot-fee table be modified to use the term "structure" in place of or in conjunction with "lot" for connections or extensions to existing public water or sewer systems. This commentor also suggested that, because more than one drainfield may be placed on a lot, the term "unit" be used rather than "lot".

Response: The first suggested change has been made. The second is addressed by using "drainfield" instead of "lot".

Comment 2: Several commentors suggested that elevated sand mounds, ET systems and intermittent sand filters should not require substantially more review than pressure-dosed systems and that the review fee should be \$150 rather than \$500 as proposed. Another commentor suggested \$200 to \$300. One commentor thought that the proposed fee of \$150 for a pressure-dosed drainfield is excessive. Another commentor suggested that reviews of all alternative systems be billed on an hourly basis because some designers are less thorough in responding to the requirements of the design circular, which consequently requires more staff time to prepare deficiency letters. This commentor thought that an hourly charge would be fairer. These commentors suggested that the department should be encouraging the use of these advanced treatment systems and that the proposed fees would discourage their use.

Response: The purpose of the fee rule is to reflect actual costs to the department as required by 76-4-105, MCA. The department's basis for the proposed \$500 fee was staff estimates of the time necessary to review plans and specifications for these types of systems. However, in response to public comments, the department will modify the rule to include a fee of \$300 for review of elevated sand mounds, ET systems and intermittent sand filters with an hourly charge of \$50 per hour for reviews that exceed six hours. This will provide for reimbursement of the department's expenses in a manner that tailors the fee for an individual application to the department's expenses in reviewing that application.

Comment 3: One commentor suggested that aerobic package plant systems, recirculating sand filters, and nutrient removal systems should require a comparable amount of review as other alternative systems and that the fee should be \$150. Another commentor stated that to charge an hourly rate is not consistent because some systems are reviewed by department staff and some are reviewed by contractors. Other commentors suggested that charging by the hour will become problematic since there will be criticism of taking longer in order to charge more. They also questioned how additional fees will be collected when owners are billed on an hourly basis and the

application is denied.

Response: The department proposed an hourly charge for these types of systems because the department does not have sufficient experience in reviewing these systems to allow a reasonable estimate of review costs. These systems also vary greatly in the complexity of the design and consequently review time may vary from several hours to several tens of hours. The goal of establishing an equitable fee schedule would not be met if applicants proposing straightforward designs were required to pay the costs of a very complex or incomplete design. The department's public water supply section routinely sends invoices to applicants for reviews after the review is conducted both on a per unit basis and a per hour basis. It has not experienced significant problems with the process.

Comment 4: One commentor suggested that 17.36.802 be clarified to state that fees must be received before review will begin and that if additional review fees based on time spent are required that these fees should be in addition to fees required for initial review.

Response: The department has made changes in ARM 17.36.805 to clarify the rule. ARM 17.36.102 requires that the appropriate fees in subchapter 8 be paid before an application is considered complete.

Comment 5: Several commentors thought that the fee schedule under Section 802 is complicated and requires some explanation in the text of the rule. One commentor suggested that the fee table could be clearer if spaces were added between categories and items were indented below each category.

Response: The department recognizes that the fee schedule as presented in the rule notice is not always self-explanatory. It is difficult to place this matrix within a rule format. The department has prepared a more understandable version of the fee schedule and will distribute that document and other training materials to local boards of health and consultants.

Comment 6: One commentor questioned whether the fee would be \$200 if an individual well required pumping and storage facilities.

Response: No. The pumping and storage facility fee applies to multi-family systems.

Comment 7: One commentor noted that the fee schedule states "Number of lots" where it should read "type of lots."

Response: The suggested change has been made.

Comment 8: One commentor suggested that the term "site

evaluation" should be defined in 17.36.804(2)(a) and that the reimbursement to local governments should be based on what the site evaluation encompasses.

Response: The department appreciates this comment and recognizes the value of defining "site evaluation". Generally speaking, a site evaluation is the summary of an onsite inspection to confirm, where possible, information submitted by the applicant and to identify land-use and landscape features which might affect the proposed sewage treatment system. To allow for public comment, the department intends to propose a definition of this term when proposing other changes to the subdivision rules.

Comment 9: One commentor suggested that the fees for a second site on an approved lot should be the same as they were for an original site which would make fee collections simpler and would be more equitable.

Response: The fees for a new subdivision application submitted after the effective date of this rule would be as listed in this rule. The department could not charge fees using fee rules in effect at the time the first site was approved.

Comment 10: One commentor suggested that 17.30.805(1) should only refer to changes made during the review process. This commentor also noted that it appears that an approval for a change in a plat approval, such as adding a building site, may cost more than an original submittal.

Response: The department has clarified the language of ARM 17.36.805 to address this comment.

Comment 11: One commentor questioned why the fee is the same for cut systems and fill systems when there are very few technical requirements for cut systems as opposed to fill systems.

Response: The department's basis for the proposed fee is staff estimates of the time necessary to review plans and specifications for these types of systems. The review time is the same for each.

Comment 12: Two commentors questioned why there is one charge for design and one charge for drainfield and if the design review is done, why the \$25 fee.

Response: The charges for design review and drainfield review are separated to account for situations where an applicant may use the same system design on more than one lot. Because the design for the second and subsequent lots would not need to be reviewed, there would be no additional charge. However, each additional drainfield site would require review, which is the reason for the \$25 fee. If only one lot is reviewed, both the

design and drainfield review fees would apply.

Comment 13: One commentor suggested that a \$10 fee is not cost effective because of processing costs.

Response: The \$10 fee refers to a connection to an existing public water supply or sewage disposal system. The actual fee for such a lot would be \$70: a \$50 per lot fee, a \$10 fee for review of connection to public water and a \$10 fee for review of the connection to public sewer.

Comment 14: One commentor suggested including the fee for nonsignificance determination/categorical exemption reviews as part of the per lot fee and questioned if the purpose of listing these reviews separately was to account for existing systems.

Response: The purpose was to account for existing systems as well as those lots served by a municipal sewage system for which a nondegradation review is not required.

Comment 15: One commentor asked when a waiver/deviation is requested and who requests it. Another commentor suggested that the department consider alternatives to the deviation process to allow the reviewer more authority to approve deviations, which would reduce the time necessary for reviews.

Response: A waiver/deviation request is usually made during the review process by the applicant or its consultant. Department staff prepare the formal deviation/waiver request which is then reviewed by a three-member technical review committee within the department. The department will consider this recommendation and others to reduce the time required for deviations from the rules and circulars. No rule change is necessary to do this.

Comment 16: Two commentors noted that the fee schedule should include fees for review of existing and proposed cisterns, surface water, and spring-source water supplies.

Response: The fee schedule has been revised to reflect these comments.

Comment 17: Two commentors noted that the rule does not include a fee for the re-review of previously approved water and sewer systems and/or well and drainfield sites. One commentor suggested that the fee should be lower than for newly approved sites or unapproved systems.

Response: The fee schedule has been revised to reflect these comments.

Comment 18: One commentor suggested that an additional charge of \$75 seems excessive for a sand-lined drainfield because it

does not require extra review time.

Response: The fee for a sand-lined drainfield is \$40, which is the same fee as for a conventional drainfield.

Comment 19: One commentor noted that the proposed rule does not distinguish between proposed and existing facilities and questions whether the new fee for an existing elevated sand mound or pressure-dosed system would be charged when these systems have been installed prior to subdivision review. Another commentor noted that there is no distinction between proposed, existing and previously approved plans in the proposed rule.

Response: Under ARM 17.36.304(17), an existing sewage system in a proposed subdivision is reviewed in terms of its adequacy to the prior user and its capability to operate without risk to public health and without pollution of state waters. Therefore, the department would not conduct a detailed review of an alternative system, but would review the system under ARM 17.16.304(17). The fee schedule has been modified to clarify that there would be a \$40 fee for review of an existing system.

Comment 20: One commentor noted that under the proposed fee schedule it is difficult, if not impossible, to correctly define the fees up front because the fees may be changed after submittal of the application because the type of sewage system has changed. This commentor stated support for having fees reflect the actual costs of the services provided but was concerned that applicants understand what the fees would be before they proceeded with an application.

Response: The department believes that in most cases applicants will be able to correctly determine the appropriate fee at the time the application is submitted. If the subdivision does require a more complicated design for a sewage system, a fee for the newly proposed system is appropriate.

Comment 21: One commentor expressed concern that a \$40 increase in review fees (for a lot with a well and conventional septic system) would make it more difficult for Montanans to achieve the dream of home ownership.

Response: The purpose of the fee rule is to recover the department's actual costs in reviewing plats and subdivisions. The legislature has directed that such costs are to be borne by the applicants. Section 76-4-105, MCA. The department notes that the impacts of the proposed fee increases are small in relation to the other costs of housing development.

Comment 22: One commentor also submitted testimony that compared review fees for subdivisions with different types of

water supply and sewage disposal which showed an increase from \$30 per lot to \$70 per lot for a subdivision served by existing public water supply and sewage systems.

Response: Under the existing fee schedule the review fee would be \$80 per lot for extension of existing water and sewer. Under the proposed fee schedule the fee would be \$100 per lot.

Comment 23: One commentor expressed concern that the proposed rule is unfair because of the recent Supreme Court ruling in the Skinner case that only the local board of health has the authority to review septic systems in subdivisions and that local boards of health will come up with their own fees to review septic decisions.

Response: The Supreme Court did not rule that only the local board of health had authority to review septic systems in subdivisions. The department, local boards of health and county commissioners have concurrent review authority for sewage systems within subdivisions.

Comment 24: One commentor did not believe that the department could continue to increase fees and opposed use of consultants to review subdivisions.

Response: The last increase in subdivision review fees was in 1992. Since that time, subdivision reviews have increased in complexity. More engineering systems are proposed for more environmentally sensitive sites and the state's nondegradation policy has required more thorough analyses of potential impacts on state waters. During the last legislative session the department requested additional FTEs in order to minimize reliance on consultants. However, although the legislature approved one FTE, it chose to provide additional funding for consultants rather than additional staff for the subdivision section.

Comment 25: One commentor stated that the proposed reimbursement to counties of \$15 per parcel for site evaluations of major subdivisions was inadequate and that the cost of observing soil pits and other investigations was about \$100 per lot.

Response: The department recognizes the value of onsite reviews by local governments including assessments of soil conditions. However, increasing reimbursements to \$100 per lot would require an \$85 increase in review fees for each lot and the increased reimbursements would far exceed the department's spending authority. Moreover, it is the applicant's responsibility to adequately characterize the site.

Comment 26: One commentor noted that a one-lot subdivision with individual water supply and an intermittent sand filter would pay a fee of \$615 while a five-lot subdivision with a

multi-family water system and individual sand filters of similar design would pay a total fee of \$1,325 or \$265 per lot. The commentor recommended that the department consider revisions to address this situation.

Response: Under the fee rule as revised in response to public comments, the fee for the one-lot subdivision as described above would be \$455. The fee for the five-lot subdivision would be \$1,325. While the department recognizes the difference in the total per lot charge, the purpose of the fee rule is to reflect actual costs to the department as required by 76-4-105, MCA.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by *Mark A. Simonich*
MARK A. SIMONICH, Director

Reviewed by

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State March 2, 1998.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

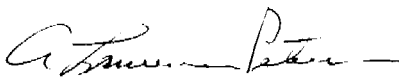
In the matter of the amendment	)	NOTICE OF
of rule 32.3.212 as it relates to	)	AMENDMENT OF RULE
brucellosis vaccination(s)	)	32.3.212

TO: All Interested Persons:

1. On September 22, 1997, the Board of Livestock acting through the Department of Livestock published a notice of proposed adoption of the above stated amendment to Rule 32.3.212 at page 1641 and 1642, 1997 Montana Administrative Register, issue number 18.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF LIVESTOCK
John Paugh, Chairman


Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel


A. Laurence Petersen
Executive Officer
Board of Livestock
Department of Livestock

Certified to the Secretary of State February 27, 1998.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.5.101 through)
11.5.109, 11.5.502 through)
11.5.515, 11.5.601 through)
11.5.609, and 11.22.201)
through 11.22.211, with the)
exception of repealed rules,)
pertaining to protective)
services)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the protective services program is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.5.101 through 11.5.109, 11.5.502 through 11.5.515, 11.5.601 through 11.5.609, and 11.22.201 through 11.22.211, inclusive, with the exception of any repealed rules, pertaining to protective services are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 47.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.5.101	<u>37.47.101</u>	Adult Protective Services: Purpose
11.5.102	<u>37.47.102</u>	Adult Protective Services: Definitions
11.5.104	<u>37.47.106</u>	Adult Protective Services: Available Services
11.5.106	<u>37.47.107</u>	Adult Protective Services: Eligibility
11.5.109	<u>37.47.111</u>	Adult Protective Services: Obtaining Services
11.5.502	<u>37.47.301</u>	Child Protective Services: Definitions
11.5.504	<u>37.47.304</u>	Child Protective Services: Investigations Regarding Persons Present in Licensed or Registered Facilities or in Assistance of Law Enforcement
11.5.515	<u>37.47.315</u>	Child Protective Services: Information System Operation
11.5.601	<u>37.47.601</u>	Protective Services: Purpose
11.5.602	<u>37.47.602</u>	Protective Services: Definitions
11.5.607	<u>37.47.607</u>	Protective Services: Disclosure

11.5.608	<u>37.47.608</u>	Protective Services: Disclosure Procedures
11.5.609	<u>37.47.609</u>	Protective Services: Request for Review and Amendment of the Record
11.22.201	<u>37.47.1001</u>	Definitions
11.22.202	<u>37.47.1005</u>	Department Administrative Policies and Responsibilities
11.22.204	<u>37.47.1008</u>	Awarding Grants, Criteria
11.22.205	<u>37.47.1015</u>	Grant Application, Eligibility Requirements
11.22.210	<u>37.47.1020</u>	Grant Application, General Requirements
11.22.211	<u>37.47.1021</u>	Grant Applications, Content Requirements

3. The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the protective services program functions exercised by that agency were assumed by the Department of Public Health and Human Services.

Dawn Elva
Rule Reviewer

Michael B. Billups, Jr.
Director, Public Health and Human Services

Certified to the Secretary of State March 2, 1998.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.6.101 through)
11.6.125 and 11.6.201 through)
11.6.215, with the exception of)
any repealed rules, pertaining)
to adoptive services)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the adoptive services program is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.6.101 through 11.6.125 and 11.6.201 through 11.6.215, inclusive, with the exception of any repealed rules, pertaining to adoptive services are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 52.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.6.101	<u>37.52.101</u>	Procedures for Obtaining Services
11.6.104	<u>37.52.104</u>	Home Approval, Eligibility Requirements
11.6.110	<u>37.52.110</u>	Adoptive Home Approval
11.6.115	<u>37.52.115</u>	Adoptive Placement Eligibility Requirements
11.6.120	<u>37.52.120</u>	Adoptive Placement Services Provided
11.6.125	<u>37.52.125</u>	Child Placement, Procedures for Obtaining Services
11.6.201	<u>37.52.201</u>	Purpose
11.6.203	<u>37.52.204</u>	Eligibility Requirements
11.6.204	<u>37.52.205</u>	Application of Prospective Adoptive Family
11.6.205	<u>37.52.206</u>	Amount and Determination of Subsidy
11.6.208	<u>37.52.210</u>	Review of Subsidy Payment
11.6.211	<u>37.52.214</u>	Post Placement
11.6.215	<u>37.52.220</u>	Other Agencies

3. The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the adoptive services program functions

exercised by that agency were assumed by the Department of Public Health and Human Services.

Dana Olson
Rule Reviewer

Michael B. Bellings Jr.
Director, Public Health and
Human Services

Certified to the Secretary of State March 2, 1998.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.11.101 through)
11.11.147, with the exception)
of 11.11.113 and any repealed)
rules, pertaining to licensure)
of child placing agencies)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the licensure of child placing agencies program is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.11.101 through 11.11.147, inclusive, with the exception of any repealed rules, pertaining to licensure of child placing agencies are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 93.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.11.101	<u>37.93.101</u>	Child Placing Agency, Definitions
11.11.124	<u>37.93.105</u>	Child Placing Agency, Governing Body
11.11.127	<u>37.93.110</u>	Child Placing Agency, Personnel
11.11.104	<u>37.93.201</u>	Child Placing Agency, License Required
11.11.106	<u>37.93.203</u>	Child Placing Agency, Licenses
11.11.108	<u>37.93.204</u>	Child Placing Agency, License Revocation and Denial
11.11.121	<u>37.93.501</u>	Child Placing Agency, Confidentiality of Records
11.11.141	<u>37.93.505</u>	Child Placing Agency, Adoptive Child's Record
11.11.143	<u>37.93.510</u>	Child Placing Agency, Birth Family Records
11.11.147	<u>37.93.511</u>	Child Placing Agency, Adoptive Study Records
11.11.134	<u>37.93.515</u>	Child Placing Agency, Youth Foster Home Records
11.11.132	<u>37.93.701</u>	Child Placing Agency, Services to Foster Parents
11.11.136	<u>37.93.705</u>	Child Placing Agency, The Placement Process
11.11.138	<u>37.93.708</u>	Child Placing Agency, Adoptive Services

11.11.116	<u>37.93.715</u>	Child Placing Agency, Reports
11.11.130	<u>37.93.716</u>	Child Placing Agency, Conducting Licensing Studies of Agency Foster Home

3. The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the licensure of child placing agencies program functions exercised by that agency were assumed by the Department of Public Health and Human Services.

Dawn Olson
Rule Reviewer

Michael B. Bellinger for
Director, Public Health and
Human Services

Certified to the Secretary of State March 2, 1998.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.12.101 through)
11.12.115, 11.12.201 through)
11.12.260, 11.12.401 through)
11.12.416, 11.12.501 through)
11.12.543, 11.12.601 through)
11.12.614, with the exception)
of 11.12.110 and any repealed)
rules, pertaining to youth care)
facilities)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the youth care facilities program is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.12.101 through 11.12.115, 11.12.201 through 11.12.260, 11.12.401 through 11.12.416, 11.12.501 through 11.12.543, 11.12.601 through 11.12.614, inclusive, with the exception of any repealed rules, pertaining to youth care facilities, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 97.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.12.101	<u>37.97.102</u>	Youth Care Facility, Definitions
11.12.102	<u>37.97.101</u>	Youth Care Facility, Purpose
11.12.103	<u>37.97.105</u>	Youth Care Facility, License Required
11.12.104	<u>37.97.106</u>	Youth Care Facility, Licenses
11.12.106	<u>37.97.110</u>	Youth Care Facility, Licensing Procedures
11.12.108	<u>37.97.115</u>	Youth Care Facility, License Revocation and Denial
11.12.111	<u>37.97.125</u>	Youth Care Facility, Persons Affected by Department Records
11.12.113	<u>37.97.128</u>	Youth Care Facility, Confidentiality of Records and Information
11.12.114	<u>37.97.130</u>	Youth Care Facility, Reports
11.12.115	<u>37.97.132</u>	Youth Care Facility, General Requirements for Foster Parents and Child Care Staff Working in Youth Group Homes and Child Care Agencies

11.12.201	<u>37.97.201</u>	Child Care Agency, Admissions and Discharges
11.12.202	<u>37.97.202</u>	Child Care Agency, Case Plans
11.12.204	<u>37.97.206</u>	Child Care Agency, Personnel
11.12.205	<u>37.97.207</u>	Child Care Agency, Child/Staff Ratio
11.12.208	<u>37.97.213</u>	Child Care Agency, Finances
11.12.212	<u>37.97.216</u>	Child Care Agency, Records
11.12.215	<u>37.97.220</u>	Child Care Agency, Supervision of Medication
11.12.219	<u>37.97.225</u>	Child Care Agency, Time-Out
11.12.220	<u>37.97.226</u>	Child Care Agency, Passive Physical Restraint
11.12.222	<u>37.97.230</u>	Child Care Agency, Treatment Program
11.12.224	<u>37.97.233</u>	Child Care Agency, Management
11.12.227	<u>37.97.238</u>	Child Care Agency, Education
11.12.228	<u>37.97.239</u>	Child Care Agency, Recreation
11.12.236	<u>37.97.250</u>	Child Care Agency, Residential Treatment Center, Staffing
11.12.238	<u>37.97.253</u>	Child Care Agency, Residential Treatment Center, Education
11.12.239	<u>37.97.254</u>	Child Care Agency, Residential Treatment Center, Recreation
11.12.246	<u>37.97.257</u>	Child Care Agency, Residential Treatment Center, Seclusion
11.12.247	<u>37.97.258</u>	Child Care Agency, Residential Treatment Center, Mechanical Restraint
11.12.248	<u>37.97.259</u>	Child Care Agency, Residential Treatment Center, Chemical Restraint
11.12.260	<u>37.97.270</u>	Child Care Agency, Additional Requirements
11.12.401	<u>37.97.501</u>	Youth Group Home, Administration
11.12.402	<u>37.97.502</u>	Youth Group Home, Program Requirements
11.12.404	<u>37.97.506</u>	Youth Group Home, Physical Care
11.12.405	<u>37.97.508</u>	Youth Group Home, Environmental Requirements
11.12.407	<u>37.97.519</u>	Youth Group Home, Fire Safety
11.12.409	<u>37.97.521</u>	Youth Group Home, Transportation
11.12.410	<u>37.97.522</u>	Youth Group Home, Guns and Ammunition
11.12.413	<u>37.97.524</u>	Youth Group Home, Staff
11.12.415	<u>37.97.526</u>	Youth Group Home, Placement Agreements
11.12.416	<u>37.97.528</u>	Youth Group Home, Children's Case Records
11.12.501	<u>37.97.801</u>	Youth Shelter Care: Relationship to Youth Care Facility Licensure

11.12.505	<u>37.97.805</u>	Youth Shelter Care:
11.12.509	<u>37.97.809</u>	Administration
11.12.510	<u>37.97.810</u>	Youth Shelter Care: Program
11.12.511	<u>37.97.811</u>	Requirements, Care and Guidance
11.12.515	<u>37.97.815</u>	Youth Shelter Care: Program
11.12.516	<u>37.97.816</u>	Requirements, Nutrition
11.12.517	<u>37.97.817</u>	Youth Shelter Care: Program
11.12.520	<u>37.97.820</u>	Requirements, Education
11.12.521	<u>37.97.821</u>	Youth Shelter Care: Program
11.12.522	<u>37.97.822</u>	Requirements, Religion and Culture
11.12.525	<u>37.97.825</u>	Youth Shelter Care: Program
11.12.530	<u>37.97.830</u>	Requirements, Personal Needs
11.12.531	<u>37.97.831</u>	Youth Shelter Care: Program
11.12.532	<u>37.97.832</u>	Requirements, Privacy and Individualism
11.12.533	<u>37.97.833</u>	Youth Shelter Care: Program
11.12.536	<u>37.97.836</u>	Requirements, Searches
11.12.537	<u>37.97.837</u>	Youth Shelter Care: Program
11.12.538	<u>37.97.838</u>	Requirements, Money
11.12.542	<u>37.97.842</u>	Youth Shelter Care: Program
11.12.543	<u>37.97.843</u>	Requirements, Training and Employment
11.12.601	<u>37.97.1001</u>	Youth Shelter Care: Program
11.12.602	<u>37.97.1002</u>	Requirements, Discipline
11.12.606	<u>37.97.1006</u>	Youth Shelter Care: Program
11.12.607	<u>37.97.1011</u>	Requirements, Youth Orientation
11.12.609	<u>37.97.1013</u>	Youth Shelter Care: Physical Care
11.12.610	<u>37.97.1014</u>	Youth Shelter Care: Environment
11.12.611	<u>37.97.1016</u>	Youth Shelter Care: Fire Safety
		Youth Shelter Care: Transportation
		Youth Shelter Care: Guns and Ammunition
		Youth Shelter Care: Staff
		Youth Shelter Care: Placement Agreements
		Youth Shelter Care: Case Records
		Youth Foster Home, Foster Parents
		Youth Foster Home, Program Requirements
		Youth Foster Home, Physical Care
		Youth Foster Home, Discipline
		Youth Foster Home, Environmental Requirements
		Youth Foster Home, Fire Safety Rule
		Youth Foster Home, Other Safety Requirements

11.12.613	<u>37.97.1018</u>	Youth Foster Home, Transportation
11.12.614	<u>37.97.1019</u>	Youth Foster Home, Training Required

3. The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the youth care facilities program functions exercised by that agency were assumed by the Department of Public Health and Human Services.

Dawn Silvia
Rule Reviewer

Michael J. Bellini, Jr.
Director, Public Health and
Human Services

Certified to the Secretary of State March 2, 1998.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.16.101 through)
11.16.170, 11.18.101 through)
11.18.144, 11.19.101 through)
11.19.127 with the exception)
of 11.18.121, 11.19.109, and)
any repealed rules, pertaining)
to licensure of adult foster)
care homes, community homes)
for persons with developmental)
disabilities, and community)
homes for persons with)
physical disabilities)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the licensure of adult foster care homes, community homes for persons with developmental disabilities, and community homes for persons with physical disabilities is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.16.101 through 11.16.170, 11.18.101 through 11.18.144, and 11.19.101 through 11.19.127, inclusive with the exception of 11.18.121, 11.19.109, and any repealed rules, pertaining to licensure of adult foster care homes, community homes for persons with developmental disabilities, and community homes for persons with physical disabilities, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 100.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.16.101	<u>37.100.110</u>	General
11.16.102	<u>37.100.105</u>	Procedures for Obtaining Services
11.16.120	<u>37.100.101</u>	Adult Foster Homes, Purpose
11.16.123	<u>37.100.102</u>	Adult Foster Homes, Definitions
11.16.126	<u>37.100.120</u>	Adult Foster Homes, License Required
11.16.128	<u>37.100.121</u>	Adult Foster Homes, Licenses
11.16.130	<u>37.100.125</u>	Adult Foster Homes, Licensing Procedures
11.16.133	<u>37.100.130</u>	Adult Foster Homes, License Revocation, Denial or Suspension
11.16.139	<u>37.100.135</u>	Adult Foster Homes, Fair Hearing
11.16.141	<u>37.100.153</u>	Adult Foster Homes, Records
11.16.143	<u>37.100.140</u>	Adult Foster Homes,

11.16.145	<u>37.100.141</u>	Environmental Requirements
11.16.147	<u>37.100.145</u>	Adult Foster Homes, Fire Safety
11.16.149	<u>37.100.146</u>	Adult Foster Homes, Other Safety Requirements
11.16.151	<u>37.100.152</u>	Adult Foster Homes, Emergency Preparedness
11.16.153	<u>37.100.150</u>	Adult Foster Home, Illnesses, Accidents, Absences or Death
11.16.154	<u>37.100.151</u>	Adult Foster Homes, Program
11.16.155	<u>37.100.157</u>	Adult Foster Homes, Medication
11.16.157	<u>37.100.161</u>	Adult Foster Homes, Third Party Providers
11.16.160	<u>37.100.162</u>	Adult Foster Homes, Resident's Funds
11.16.163	<u>37.100.165</u>	Adult Foster Homes, Placement
11.16.167	<u>37.100.170</u>	Adult Foster Homes, Foster Parents
11.16.170	<u>37.100.175</u>	Adult Foster Homes, Complaints
11.18.101	<u>37.100.301</u>	Adult Foster Homes, Prohibited Practices
11.18.102	<u>37.100.302</u>	Community Homes for Persons with Developmental Disabilities: Purpose
11.18.107	<u>37.100.307</u>	Community Homes for Persons with Developmental Disabilities: Definitions
11.18.108	<u>37.100.313</u>	Community Homes for Persons with Developmental Disabilities: License Required
11.18.113	<u>37.100.308</u>	Community Homes for Persons with Developmental Disabilities: Persons Affected by Department Records
11.18.117	<u>37.100.312</u>	Community Homes for Persons with Developmental Disabilities: Licensing Procedures
11.18.125	<u>37.100.320</u>	Community Homes for Persons with Developmental Disabilities: License Revocation, Denial or Suspension
11.18.129	<u>37.100.321</u>	Community Homes for Persons with Developmental Disabilities: Fire, Health and Safety Certification
11.18.131	<u>37.100.325</u>	Community Homes for Persons with Developmental Disabilities: Physical Site Requirements
11.18.134	<u>37.100.322</u>	Community Homes for Persons with Developmental Disabilities: Resident Supplies and Equipment

		Staffing, Staff Responsibilities and Qualifications
11.18.137	<u>37.100.330</u>	Community Homes for Persons with Developmental Disabilities: Rights
11.18.140	<u>37.100.331</u>	Community Homes for Persons with Developmental Disabilities: Health Care
11.18.142	<u>37.100.335</u>	Community Homes for Persons with Developmental Disabilities: Resident's Money and Personal Property
11.18.144	<u>37.100.340</u>	Community Homes for Persons with Developmental Disabilities: Record Keeping
11.19.101	<u>37.100.401</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , Purpose
11.19.102	<u>37.100.402</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , Definitions
11.19.103	<u>37.100.407</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , License Required
11.19.104	<u>37.100.413</u>	Community Homes for the-Physically Disabled Persons with Physical Disabilities, Persons Affected by Department Records
11.19.107	<u>37.100.408</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , Licensing Procedures
11.19.108	<u>37.100.412</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , License Revocation, Denial or Suspension
11.19.114	<u>37.100.420</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , Fire Safety Certification
11.19.115	<u>37.100.421</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , Health and Safety Certification
11.19.116	<u>37.100.423</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes , Physical Site Requirements
11.19.119	<u>37.100.427</u>	Community Homes for Persons with Physical Disabilities Physically

11.19.120	<u>37.100.422</u>	Disabled Group Homes, Resident Supplies and Equipment Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Staffing, Staff Responsibilities and Qualifications
11.19.122	<u>37.100.430</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Rights Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Health Care
11.19.125	<u>37.100.431</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Health Care Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Record Keeping
11.19.126	<u>37.100.435</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Resident's Money and Personal Property Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Record Keeping
11.19.127	<u>37.100.440</u>	Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Record Keeping Community Homes for Persons with Physical Disabilities Physically Disabled Group Homes, Record Keeping

3. The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the adult foster care homes, community homes for persons with developmental disabilities, and community homes for persons with physical disabilities functions exercised by that agency were assumed by the Department of Public Health and Human Services.

Dana Olson
Rule Reviewer

Michael J. Billings, Jr.
Director, Public Health and Human Services

Certified to the Secretary of State March 2, 1998.

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

In the matter of the the) NOTICE OF AMENDMENT
amendment of 16.38.307)
pertaining to laboratory fees)
for clinical analysis)

TO: All Interested Persons

1. On January 15, 1998, the Department of Public Health and Human Services published notice of the proposed amendment of 16.38.307 pertaining to laboratory fees for clinical analysis at page 105 of the 1998 Montana Administrative Register, issue number 1.

2. The Department has amended the rule 16.38.307 as proposed.

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

COMMENT # 1: The testing menu for clinical laboratory services is too extensive and offers testing that is not in the scope of a public health laboratory. The objective of running a public health lab is for reference work where public health problems are concerned; there is no public health need to offer most of the tests on the public health menu. The extensive menu competes with private sector laboratories, such as hospitals and physician office laboratories.

RESPONSE: The department has reviewed the listing of laboratory services offered and the relationship of each testing procedure to public health concerns. The mission of the public health laboratory is to perform laboratory testing procedures for diagnosis and treatment of disease with public health significance. The department's responsibility to provide an adequate surveillance system for communicable disease is largely dependent upon the testing performed and reported by the public health laboratory. The extent of the testing menu offered by the public health laboratory is a function of that responsibility.

COMMENT #2: The current and proposed laboratory fees are significantly higher than other laboratories offering the same services. In some cases, the fees have doubled or tripled in amount. In particular, the fee increases for newborn screening tests were challenged, with several commentors noting that they have received quotations from commercial laboratories to perform the tests at significantly less costs. One commentor noted that the proposed percentage increase for newborn screening represented an increase of 192%, which was exorbitant and

unrealistic. A common concern expressed by the commentators was the reimbursement rate under the Diagnostic Related Group (DRG). They were concerned that tests billed to Medicaid would not be reimbursed sufficiently to cover the increased fees charged by the department's laboratory. One commentator expressed concern that a state agency, funded by tax dollars, could propose large fee increases without increasing reimbursement to facilities providing direct care services and requested that the department lower the proposed increases to a reasonable amount (10 to 15%).

RESPONSE: In clarification, the department notes that the proposed percentage increase for newborn screening represents a 92% increase (and not a 192% increase as represented by one commentator). There is currently no general fund support of the public health laboratory. The laboratory is required by 50-1-202(17), MCA, to adopt fees for the tests and services performed which reflect the actual costs of the tests or services provided. The same provision requires that the fees do not exceed the cost of performing the tests or services. The current fee structure does not satisfy the statutory requirements of 50-1-202(17). The laboratory expenses have exceeded revenue in three of the last four years and are projected to do so in this fiscal year (1998). As a result, the department was required to obtain a loan from the State general fund which must be repaid from fee generated revenue. Federal financial support from the Maternal Child Health Block Grant was utilized in the past to support, in part, the cost of performing newborn screening tests. This support, which allowed the department to charge fees less than the cost of performing the tests is no longer available to the laboratory.

The proposed fee increase for newborn screening tests is based on both direct and indirect expenses related to the cost of producing the tests. Due to the methodology required to perform these tests, the required supplies are not able to be competitively bid. The testing is labor intensive and requires 2.5 persons routinely.

Newborn screening includes quantitative tests for phenylalanine, galactose, and thyroxine. Abnormal test results are repeated in duplicate prior to reporting the results. Low and borderline low thyroxine levels are further tested for thyroid stimulating hormones prior to reporting the results. The proposed fee for this combination of tests is \$35.50 and is less than the Medicaid reimbursement rate of \$46.50 when a DRG is not in effect. A test for cystic fibrosis is also offered as an elective test for newborns but is not included in the proposed fee of \$35.50.

Many state public health laboratories operating with general fund support are able to provide these services without charging a fee for the service or at a cost not representative of the

laboratories' actual costs and expenses. As a comparison with other fee for service state public health laboratories, the state of Washington, with a birth rate seven times larger than Montana, charges a fee of \$33.80 for newborn screening tests. Because of economy of scale, Washington may be able to perform these tests for a lower fee than the department's proposed fees. The department was unable to identify private laboratories performing the required combination of tests utilizing dried blood spot technology nor were any private laboratories identified by the commentators for comparison purposes. Of note, screening tests for inborn errors of metabolism in newborn children is normally a function of state public health laboratories.

Based upon the comments received, the department has reviewed its proposed fees, including the fees for newborn screening tests. The department finds that such fees represent the actual costs of the tests or services provided but do not exceed the costs of performing the tests or services and therefore satisfy the statutory requirements of 50-1-202(17), MCA.

COMMENT #3: The department should provide the names of alternative approved laboratories for the tests for metabolic errors in newborn infants. Section 50-19-203, MCA, requires that these tests be performed and provides that they must be performed by an approved laboratory. An approved laboratory is the department's laboratory or any laboratory approved by the department. The statute contemplates that other laboratories will be approved, but the department's rules (in Title 16, chapter 24, subchapter 2) only allow submission of the tests to the department. The department has therefore given itself a monopoly, despite the apparent legislative intent that other laboratories might be available. If other laboratories are shown to be competent and timely, they should be available. The hospital is being provided with information from which it appears the tests can be performed by competent laboratories at significantly less costs. The fee increase for tests for metabolic errors in newborn infants is so large that the hospital must consider use of alternative laboratories. Information is requested from the department as to why it has not approved any other laboratories for tests of metabolic errors in newborn infants.

RESPONSE: Because Title 16, chapter 24, subchapter 2, was not included in nor covered by the proposed rulemaking which related solely to setting laboratory fees, the department will consider the issue of approved laboratories separately from this rule notice. The department will review the rules applicable to infant screening tests and eye treatment in Title 16, chapter 24, subchapter 2, in conjunction with the statutory directive of 50-19-203, MCA. If the department determines that the rules require amendment, particularly in the area of defining an

approved laboratory for the purposes of performing tests of metabolic errors in newborns, the department will propose such amendment in a separate rulemaking proposal. Whatever the results of the department's review, be it to amend or not amend the referenced rules, the hospitals or individuals requesting clarification in this area will be notified in writing of the department's findings.

COMMENT #4: There is a need for the laboratory to increase its fees for various tests; however, the fees should be gradually phased in. This could be done as a percentage increase at each stage of a defined period. The fees for the newborn screening tests have more than doubled in twelve months. The add-on of the cystic fibrosis test is too high at \$19.80 which is an increase of \$14.30. The cystic fibrosis screen is a voluntary test and the proposed increase could curtail further use by physicians and hospitals and perhaps kill it altogether. The commentor noted that the department uses a certain type of test kit to screen for cystic fibrosis and that the equipment on which the test kits are run is provided to the department without a rental fee. The equipment is somewhat tied to the cystic fibrosis screening and if the numbers (of persons requesting the test) decrease, a rental for the equipment might be charged. An add-on of \$10.50 for a total cost of \$46.00 would be less damaging and hopefully would not decrease the screening for cystic fibrosis.

RESPONSE: In the department's response to comment number 2, the department noted that 50-1-202(17), MCA, requires the state laboratory to adopt fees for the tests and services performed which reflect the actual costs of the tests or services provided. If the department were to phase in the increases, as suggested by the commentor, the fees charged by the laboratory during any phase-in period would not reflect the actual costs of the tests or services being performed. This would most likely require the laboratory to obtain, again, a loan from the general fund and clearly defeat the legislature's directive that the laboratory be self-supporting. Please refer to the department's response to comment number 2 for additional information and clarification. The department has reviewed the proposed fee for the cystic fibrosis test and finds that the fee reflects the actual costs, indirect and direct, for the state laboratory to perform the test. The department acknowledges that a rental amount is not charged for the equipment on which the cystic fibrosis tests are run and that such was taken into account when calculating the cost of the cystic fibrosis test. If a rental is charged in the future for the use of the equipment, the costs of the cystic fibrosis test could potentially increase to account for the costs associated with rental of the equipment.

4. The department has determined this amendment shall be effective March 15, 1998.

Dawn Shera
Rule Reviewer

Michael G. Bellings Jr
Director, Public Health and
Human Services

Certified to the Secretary of State March 2, 1998.

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

In the matter of the	)	NOTICE OF AMENDMENT
amendment of 46.12.303,)	
46.12.502A, 46.12.522,)	
46.12.525A, 46.12.526A,)	
46.12.527A, 46.12.528,)	
46.12.538, 46.12.573,)	
46.12.577, 46.12.585,)	
46.12.905, 46.12.912,)	
46.12.915, 46.12.1449,)	
46.12.2003, and 46.12.2013)	
pertaining to medicaid)	
billing and reimbursement for)	
podiatry, therapy,)	
audiology, clinic, family)	
planning, organ transplant,)	
optometric, eyeglasses, home)	
and community speech)	
pathology and audiology,)	
physician, and mid-level)	
practitioner services)	

TO: All Interested Persons

1. On January 15, 1998, the Department of Public Health and Human Services published notice of the proposed amendment of 46.12.303, 46.12.502A, 46.12.522, 46.12.525A, 46.12.526A, 46.12.527A, 46.12.528, 46.12.538, 46.12.573, 46.12.577, 46.12.585, 46.12.905, 46.12.912, 46.12.915, 46.12.1449, 46.12.2003, and 46.12.2013 pertaining to medicaid billing and reimbursement for podiatry, therapy, audiology, clinic, family planning, organ transplant, optometric, eyeglasses, home and community speech pathology and audiology, physician, and mid-level practitioner services at page 129 of the 1998 Montana Administrative Register, issue number 1.

2. The Department has amended rules 46.12.502A, 46.12.522, 46.12.525A, 46.12.526A, 46.12.528, 46.12.538, 46.12.573, 46.12.577, 46.12.585, 46.12.905, 46.12.912, 46.12.915, 46.12.1449, 46.12.2003, and 46.12.2013 as proposed.

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

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (15)(b) remain as proposed.

(16) A person enrolled as an individual provider may not submit a claim for services that the provider did not personally provide, inclusive of services provided by another person under

the provider's supervision, unless authorization to bill for and receive reimbursement for services the provider did not personally provide is stated in administrative rule or a Montana medicaid program manual and is in compliance with any supervision requirements in state law or rule governing the provider's professional practice and the practice of assistants and aides. Other providers, including but not limited to hospitals, nursing facilities and home health agencies, may bill for and receive reimbursement for services provided by supervised persons in accordance with the medicaid rules and manual and any supervision requirements in state law or rule governing professional practice.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131 and 53-6-141, MCA

46.12.527A THERAPY SERVICES, SERVICE REQUIREMENTS AND RESTRICTIONS (1) through (3) remain as proposed.

(a) The provider is not entitled to medicaid reimbursement if services are provided prior to actual receipt of the written or verbal order or referral. Referrals and orders are valid for medicaid purposes for no more than 90 180 days.

(3)(b) through (7)(c) remain as proposed.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

46.12.912 EYEGLASSES, SERVICES, REQUIREMENTS AND RESTRICTIONS (1) remains as proposed.

(2) The dispensing service may be provided by an ophthalmologist, an optometrist, an optician, or their employees within the scope of their professional practice allowed by law.

(3) Ophthalmologists, optometrists, opticians or their employees dispensing eyeglasses ~~or~~ and ophthalmologists or optometrists or their employees dispensing contact lenses must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(4) through (6)(b) remain as proposed.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101 and 53-6-141, MCA

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

COMMENT #1: The Montana Optometric Association recommends rewording of 46.12.912 to state:

"(3) Ophthalmologists, optometrists or opticians or their employees dispensing eyeglasses and ophthalmologists or optometrists or their employees dispensing contact lenses must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, PO Box 202951, Helena, MT 59620-2951."

The reason for the suggested change is that opticians are prohibited by law from dispensing contact lenses. This section as proposed for amendment would be in conflict with the Montana optometric practice act found in Title 37-10-101 through 37-10-105, MCA.

RESPONSE: The Department concurs that the proposed language incorrectly includes opticians as professionals who dispense contact lenses. The language has been modified to correctly state the appropriate professionals in relation to the dispensing of contacts. In addition, the Department has determined that clarification is needed in the new proposed subsection (2) of the rule and has added language to that provision predicating the dispensing activity upon the scope of professional practice under law.

COMMENT #2: The Department has received written comments from speech-language pathologists and physicians objecting to the requirement that orders for speech therapy services must be renewed by the physician or mid-level practitioner every 90 days. The authors suggest the Department change the requirement for orders to every 180 days which is an appropriate and less burdensome period for authorization.

RESPONSE: The Department concurs with the suggestion to provide that orders for physical, occupational, and speech therapy services must be renewed every 180 days instead of the current 90 days and is implementing the change. The use of 180 days is appropriate and will be less burdensome to the providers of service.

COMMENT #3: The Montana Chapter of the American Physical Therapy Association encourages the Department to pursue legislative action to change the medicaid reimbursement for therapists from 90% to 100% of the RBRVS fee.

RESPONSE: The Department implemented RBRVS with direction from the legislature to reimburse certain providers at 90% of the

RBRVS fee. The Department would not change the rule to provide for physical therapy reimbursement at 100% of the RBRVS fee unless the Legislature has considered the matter and directed the Department to do so. The matter would have to be resolved through legislative action.

COMMENT #4: The Montana Chapter of the American Physical Therapy Association requested the Department include language in ARM 46.12.303(16) and 46.12.525A providing for compliance with the provider's practice act. The proposed language should be modified to clarify that submittal of a claim for services provided by an assistant is allowable only to the extent that the delivery of the services in that manner is permissible under the governing practice act.

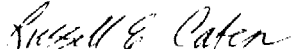
RESPONSE: The Department agrees with the comment in relation to ARM 46.12.303(16) and has modified the proposed language in subsection (16) to more clearly state the limitation. The Department does not agree that the language in the definition of "assistant/aide" at ARM 46.12.525A is deficient in respect to practice limitations and has therefore not modified the language as proposed.

COMMENT #5: The proposed amendments to ARM 46.12.527A include the deletion of subsection (9) which provides reimbursement for group speech therapy services. The rationale discussion pertaining to this deletion indicates that group therapy is no longer reimbursable. Is that the case?

RESPONSE: The statement in the rationale concerning the deletion of subsection (9) is incorrect. Reimbursement continues to be available for group therapy. The deletion is necessary because group therapy is now reimbursed through the RBRVS reimbursement system under CPT code 92508. Subsection (9) is being deleted because it does not reflect the RBRVS reimbursement system.

COMMENT #6: Are the limitations in the proposed rule amendments applicable to services provided to children?

RESPONSE: The specific limitations expressed for particular medicaid services are generally not applicable to services provided to persons under 21 years of age through the medicaid program of early and periodic screening, diagnostic, and treatment services for children (EPSDT). The rules governing EPSDT related services are at ARM 46.12.514 et seq.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State March 2, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF ADOPTION
of NEW RULES I (42.15.801),)
II (42.15.802), III (42.15.)
803), and IV (42.15.804))
relating to the Family)
Education Savings Act)

TO: All Interested Persons:

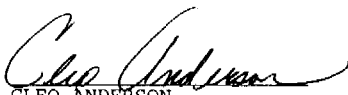
1. On December 1, 1997, the Department published notice of the proposed adoption of New Rules I (42.15.801), II (42.15.802), III (42.15.803), and IV (42.15.804) relating to the Family Education Savings Act at page 2175 of the 1997 Montana Administrative Register, issue no. 23.

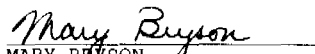
2. Written comments received subsequent to the publication are summarized as follows along with the response of the Department:

COMMENT: Jack Dugan, CPA with the firm of Holmes & Turner in Bozeman, Montana, stated the Department should wait until an institution has been found that will accept educational family savings accounts before adopting the rules. Once the institution guidelines are known, it will be easier to draft compliance rules.

RESPONSE: The College Savings Bank of Princeton, NJ, has been selected to act as the program manager and the account depository for Montana's Family Education Family Savings program and should be ready to accept deposits by May, 1998. Additionally, the proposed rules for the tax compliance of the Family Education Savings act are separate from the depository requirements and clarify Montana's present tax law on the program.

3. As a result of the comments received the Department adopts the rules as proposed.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State March 2, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.31.131 relating to)
Cigarette Tax Refunds/)
Distributions)

TO: All Interested Persons:

1. On January 15, 1998, the Department published notice of the proposed amendment of ARM 42.31.131 relating to Cigarette Tax Refunds/Distributions at page 148 of the 1998 Montana Administrative Register, issue no. 1.

2. No comments were received regarding this rule.

3. The Department has amended this rule as proposed.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State March 2, 1998

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | | |
|------------|----|--|
| Known | 1. | Consult ARM topical index. |
| Subject | | Update the rule by checking the accumulative |
| Matter | | table and the table of contents in the last |
| | | Montana Administrative Register issued. |
| Statute | 2. | Go to cross reference table at end of each |
| Number and | | title which lists MCA section numbers and |
| Department | | corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1997. This table includes those rules adopted during the period January 1, 1998 through March 31, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 1997, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1996, 1997 and 1998 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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