RESERVE

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 24
PAGES 1808-2001

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal 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 Joint Resolution directing an agency to adopt, amend or repeal a rule.

The Committee welcomes comments from the public and invites member of the public to appear before it or to sent it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, 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 loose-leaf 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 statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1.	Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.
Department	2.	Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
	3.	Locate volume and title.
Subject Matter and Title	4.	Refer to topical index, end of title, to locate rule number and catchphrase.
Title Number and Department	5.	Refer to table of contents, page 1 of title. Locate page number of chapter.
Title Number and Chapter	6.	Go to table of contents of chapter, locate rule number by reading catchphrase (short phrase describing rule.)
Statute Number and Department	7.	Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule in ARM	8.	Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

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 Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1981. This table includes those rules adopted during the period October 1, 1981 through December 31, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1981, 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.

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the proposed adoption of new rules concerning physician's assistants.) NOTICE OF PROPOSED ADOPTION OF RULES CONCERNING PHYSICIAN'S ASSISTANTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 15, 1981, the Board of Medical Examiners published a notice of intention to propose rules concerning physician's assistants and notice of a public hearing at page 1046, Montana Administrative Register, number 19.

2. On November 5, 1981 at 9:00 a.m., a public hearing was held in the downstairs conference room, 1424 9th Avenue, Helena, Montana, to consider the proposed adoption of rules concerning physician's assistants. After consideration of the testimony received the Board has amended certain proposed rules. Because the Board views these rules as being of significant importance to affected people it now renotices its intent to propose these rules and give those persons another opportunity to comment.

3. On January 30, 1982, the Board of Medical Examiners proposes to adopt rules concerning physician's assistants. The proposed rules do not replace or modify any sections currently found in the Montana Administrative Code.

4. The proposed rules provide as follows:

I. DEFINITIONS As used in this sub-chapter the following definitions apply:

(1) 'Applicant' means a person intending to practice as a physician's assistant.

(2) 'Board' means the Montana state board of medical examiners provided for in 2-15-1841, MCA.

(3) 'Department' means the Montana department of commerce provided for in 2-15-181, MCA.

(4) 'Physician's assistant' means a health care practitioner who performs such tasks, acts, or functions as are approved by the board and assigned by his supervising physician.

(5) 'Protocol' means the rules prescribing the proper relationship between a physician's assistant and other health care practitioners and which describe the manner of their interaction.

(6) 'Supervising physician' means a person licensed under Title 37, Chapter 3, MCA who is authorized by the board to supervise the practice of physician's assistant under the conditions of an approved utilization plan.

(7) 'Supervision' means communication between the physician's assistant and the supervising physician by telephone, radio, or in person as frequently as the board shall determine is necessary considering the location, nature of practice, and experience of the

physician's assistant and the supervising physician.

(8) 'Utilization plan' means the description of the authority of a physician's assistant and his supervising physician which addresses supervision, protocols, limitation of practice as to specialty and location, and the delegation of functions by the supervising physician to the physician's assistant.

(Authority section 37-20-201, MCA; Implements section 37-20-202, MCA.)

II. BOARD POLICY (1) Ensuring the provision of quality health care to the people of Montana shall be the primary consideration of the board when administering these rules. A physician's assistant is to be regarded as an extension of and not a substitute for a physician's care.

(Authority section 37-20-201, MCA; Implements section 37-20-202, MCA.)

III. QUALIFICATIONS OF PHYSICIAN'S ASSISTANT

(1) As evidence of possessing the qualifications required by statute, an applicant shall provide to the board:

(a) 3 statements of good moral character;

(b) a copy of a diploma issued by an A.M.A. approved physician's assistant program;

(c) proof of attaining a passing score on an examination given by the National Commission of Physician's Assistants;

(d) a current certificate issued by the National Commission of Physician's Assistants;

(2) An applicant shall also provide on forms available from the board;

(a) the applicant's educational background;

(b) the applicant's work experience;

(c) a statement that the applicant has not had a certification as a physician's assistant refused, suspended, or revoked by any other state, territory, district, or county for reasons which related to his ability or morals.

(3) For purposes of section 37-20-101 (3), MCA, the board will accept the examination recognized by the National Commission on Physician's Assistants.

(Authority section 37-20-201, MCA; Implements section 37-20-101, MCA.)

IV. APPLICATION (1) Applications for approval of a physician assistant utilization plan shall be submitted on forms available from the department and received in the board office not later than 15 days prior to the next scheduled board meeting.

(2) The form shall be signed by the applicant-physician's

assistant, the supervising physician, and any other physician who may supervise the applicant in the absence of the supervising physician.

(3) The application shall be accompanied by:

(a) a proposed utilization plan;

(b) proof of insurability of the physician's assistant from liability for his errors, ommissions, or actions.

(Authority section 37-20-201, MCA; Implements section 37-20-101, MCA.)

V. FEES (1) The application for approval of a utilization plan is $50.00.

(2) The fee for renewal of a utilization plan is $35.00.

(3) The fee for substituting a supervising physician is $50.00.

(4) All fees provided for in this rule are non-refundable.

(Authority section 37-20-201, MCA; Implements section 37-20-302, MCA.)

VI. UTILIZATION PLAN (1) In addition to the information specifically required by statute, the utilization plan shall address:

(a) the provision of liability insurance;

(b) the nature of the practice of the supervising physician, including;

(i) the practitioner's specialty,

(ii) the location of the supervising physician's office or hospital assignment in relationship to the location where the physician's assistant intends to work,

(c) intended protocols;

(d) plans for supervision when the supervising physician is not available, such as in emergencies;

(e) any other information which will assist the board in determining that the physician's assistant will be adequately supervised.

(2) When a proposed utilization plan intends to provide authority for the physician's assistant to assist the physician in a medical institution, proof shall be submitted indicating the concurrence of the institution.

(3) When a utilization plan proposes day-to-day contact by telephone or radio only, the plan must provide for an in person survey and inspection by the supervising physician of the physician's assistants' facility, patient records, and office procedures no less frequently than once every 15 calendar days.

(a) A utilization plan which proposes such supervision will be approved only in those cases which are deemed compelling by the board, considering, but not limited to the following:

(i) the qualifications of the physician's assistant;

(ii) the proposed location of the practice;
(iii) the availability of other medical services;
(iv) such other considerations of public need and necessity deemed appropriate.

(4) An identification tag which uses the term "Physician Assistant" in 16 point type or larger, must be conspicuously worn by a physician's assistant when working.

(5) The patient has the right to be treated by the supervising physician if he is available.

(Authority section 37-20-201, MCA; Implements section 37-20-301, MCA.)

VII. PROTOCOL (1) A licensed health care practitioner who would normally be obligated to carry out the instructions of a licensed physician shall be professionally obligated to carry out the instruction of a physician's assistant when there is reasonable cause to believe or the practitioner knows that the instructions were given by or in consultation with the supervising physician.

(2) Physician's assistants who are approved by the board shall provide a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis.

(3) The filing of the utilization plan with a hospital or other medical facility where the physician's assistant will regularly perform his/her functions will constitute compliance with this rule.

(Authority section 37-20-202, MCA; Implements section 37-20-202, MCA.)

VIII. TEMPORARY APPROVAL (1) Temporary approval of a utilization plan may be granted by a member of the board when:

(a) an applicant has met the requirements of approval except having never taken the examination of the National Commission on Physician's Assistants and is scheduled for the next examination; or

(b) an applicant has met all of the requirements of approval but is awaiting the next scheduled meeting of the board.

(2) Temporary approval is valid only until the results of the examination are available or until the board meets, as the case may be, depending upon the reason for granting the temporary approval.

(3) Supervision of the physician's assistant practicing under a temporary approval must be in person, continual and direct.

(4) Violation of any provision of these rules during the term of a temporary license shall constitute a basis for denial of approval of the utilization plan.

(Authority section 37-20-201, MCA; Implements section 37-20-301, MCA.)

IX. PRESCRIPTIONS (1) A physician's assistant may not prescribe drugs.

(2) The board may allow a physician's assistant to dispense a unit dose of a drug which is received from and prescribed by the supervising physician.

(3) The use of prescription blanks which have been signed by the supervising physician and provided to the physician's assistant to prescribe drugs constitutes unprofessional conduct and may result in the revocation or suspension of the utilization plan and the license of the supervising physician.

(Authority section 37-20-201, MCA; Implements section 37-20-202, MCA.)

X. INFORMED CONSENT (1) The patient's informed consent for services by a physician's assistant must be obtained in cases of a surgical nature, except for emergency care, and the patient must be informed of the procedures to be performed by the physician's assistant under the supervision of the supervising physician.

(Authority section 37-20-201, MCA; Implements section 37-20-202, MCA.)

XI. ALLOWABLE FUNCTIONS (1) The utilization plan shall specify those tasks, procedures, and functions which may be performed by the physician's assistant. The tasks enumerated in this rule are intended to be indicative of the complexity and types of tasks which may be performed.

(2) An appropriate history; perform an appropriate physical examination and make an assessment therefrom; and record and present pertinent data in a manner meaningful to the primary care physician.

(3) Perform and/or assist in the performance of routine laboratory and screening procedures, such as:

(a) the drawing of venous blood and routine examination of the blood;

(b) catheterization and routine urinalysis;

(c) nasogastic intubation and gastric lavage;

(d) the collection of and the examination of the stool;

(e) the taking of cultures;

(f) the performance and reading of skin tests;

(g) the performance of pulmonary function tests;

(h) the performance of audiometry;

(i) the performance of endoscopic procedures, limited to nasoscopy, otoscopy and anoscopy;

(j) the performance of pelvic examinations, including bimanual examinations and the taking of pap smears;

(k) the taking of EKG tracings.

(4) Perform routine therapeautic procedures, such as:

(a) injections;
(b) immunizations;
(c) debridement, suture and care of superficial wounds;
(d) debridement of minor superficial burns;
(e) removal of foreign bodies from the skin;
(f) removal of sutures;
(g) removal of impacted cerumen;
(h) subcutaneous local anesthesia, excluding any nerve blocks;
(i) anterior nasal packing for epistaxis;
(j) strapping, casting and splinting of sprains;
(k) removal of casts;
(l) application of traction;
(m) incision and drainage of superficial skin infections;
(n) start, superimpose and discontinue intravenous fluids, and transfusing of blood or blood components;
(o) control external hemmorhage;
(p) cardio pulmonary resuscitation.

(5) Recognize and evaluate situations which call for immediate attention of the primary care physician and institute, when necessary, treatment procedures essential for the life of the patient.

(6) Instruct and counsel patients regarding matters pertaining to their physical and mental health, such as diets, social habits, family planning, normal growth and development, aging, and understanding of and long term management of their disease.

(Authority section 37-20-201, MCA; Implements section 37-20-202, MCA.)

XII. PROHIBITIONS (1) A supervising physician shall not permit a physician's assistant to independently practice medicine. Supervision must be maintained at all times.

(2) A physician's assistant shall not:

(a) maintain or manage an office separate and apart from the supervising physician's primary office for treating patients unless the board has granted the supervising physician specific permission to establish such an office;

(b) independently bill patients or third party carriers for services provided;

(c) independently delegate a task assigned to him by his supervising physician to another individual;

(d) list his name independently in any telephone directory for public use, using the title "Physician's Assistant" or "P.A." or any other term that would indicate that he is a physician assistant.

(e) perform acupuncture in any form, or

(f) pronounce a patient dead in any setting.

(Authority section 37-20-201, MCA; Implements section 37-20-202, MCA.)

XIII. SUPERVISION OF MORE THAN ONE PHYSICIAN'S ASSISTANT (1) The board may allow a physician to supervise more than 1 physician's assistant only upon a conclusive showing of the ability to adequately supervise more than 1 physician's assistant.

(2) In making such determination, the board will consider:

(a) specialty of practice;

(b) degree of direct supervision;

(c) public need; and

(d) other relevant evidence.

(Authority section 37-20-202, MCA; Implements section 37-20-202, MCA.)

XIV. REVOCATION OR SUSPENSION OF APPROVAL (1) The approval of a utilization plan may be revoked or suspended, after notice and opportunity for a hearing, if the board finds that the physician's assistant or the supervising physician has violated any provision of [illegible] these rules relating to the use of physician's assistant or the conditions of their utilization plan.

(2) A utilization plan is terminated whenever the license of the supervising physician is suspended or revoked by action of the board.

(Authority section 37-20-201, MCA; Implements section 37-20-104, MCA.)

XV. TRANSFER (1) All approved utilization plans are terminated whenever a physician's assistant discontinues his participation in the utilization plan.

(2) An approved utilization plan is suspended whenever the supervising physician discontinues his participation therein; however, the physician's assistant may apply to the board to substitute another supervising physician.

(Authority section 37-20-201, MCA; Implements section 37-20-301, MCA.)

5. The board is proposing to adopt these rules as it believes they provide an appropriate means of regulating the use of unlicensed persons who assist licensed physicians in limited areas of the practice of medicine as intended by Title 37, Chapter 20, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 28, 1982.

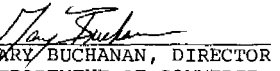
7. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written

comments he has to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 28, 1982.

8. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from 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.

9. The authority and implementing sections are listed after each proposed rule.

BOARD OF MEDICAL EXAMINERS
JOHN LAYNE, M.D., PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 21, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

IN THE MATTER of the Proposed amendments of ARM 8.44.404 concerning examinations and 8.44.405 concerning renewals.

NOTICE OF PROPOSED AMENDMENTS OF ARM 8.44.404 EXAMINATIONS AND 8.44.405 RENEWALS

NO PUBLIC HEARING CONTEMPLATED

TO: All interested Persons:

1. On January 30, 1982, the Board of Plumbers proposes to amend ARM 8.44.404 concerning examinations and 8.44.405 concerning renewals.

2. The proposed amendment of ARM 8.44.404 will read as follows: (deleted matter interlined, new matter underlined)

"8.44.404 EXAMINATIONS (1) All applications must be submitted on forms furnished by the department 60 days prior to the examination and must be accompanied by the ~~$75.00~~ $100.00 examination fee. Those applications received after the deadline will be processed for the following examination. Re-examination fees, which are ~~$75.00~~ $100.00, must also be submitted 60 days prior to the examination.

(a) If an application is withdrawn prior to scheduling for the examination, the fee less $30.00 administrative costs may be refunded at the discretion of the board.

(2) Examinations to determine the fitness of an applicant, either master plumber or journeyman plumber, will be held at the pleasure of the board, at not less than 3 month intervals. The number of the examinees will be limited to a total number of 30 per examination. The examination, will be held in the city of Helena, Montana, unless the board specifically designates a different place for such examination.

(3) Special examinations may be held in event the examination date and place regularly set by the board conflicts with religious beliefs of the applicant, and in that event, the applicant may petition the board by letter requesting such special examination. If the board allows such a special examination, it shall set a time and place thereof in its discretion.

(4) All applicants, master and journeyman, will be required to successfully complete a written and practical examination before the appropriate licenses will be issued.

(5) Examination papers may be reviewed in the board office for a period of 30 days immediately following the examination date only. Note taking will not be allowed during the time of review.

(6) Any applicant for the master's license who shall sit for and fail the master's examination 2 consecutive times will not be allowed to retake the examination for a period of 1 year commencing with the date of the last examination that he failed.

(7) All applicants for licensure as journeyman plumber who shall fail the examination for the second time are reduced to apprenticeship status and shall not be allowed to apply for and take the examination until the expiration of one year from the date of the second examination failure.

(8) When an applicant fails to take the first examination for which he was scheduled, he may have his application fee apply towards the next examination for which he is scheduled. However, if the applicant fails to take the second examination, his fee shall be forfeited and application for any subsequent examination will require another application fee."

3. The board is proposing the amendment to comply with the provisions of Chapter 345, 1981 Sessions Laws (section 37-1-134, MCA), which requires the boards to set fees commensurate with costs incurred in administering the board program. The authority of the board to make the proposed change is based on sections 37-69-202 and 37-1-134, MCA and implements sections 37-1-134, MCA and 37-69-304, 305, 306, and 307, MCA.

4. The proposed amendment to 8.44.405 will read as follows: (deleted matter interlined, new matter underlined)

"8.44.405 RENEWALS (1) Renewal notices may be mailed prior to the expiration of the license by the department, at the discretion of the board, to the address on file. It shall be the responsibility of the licensee to keep his current address on file with the board.

(2) The annual renewal fee for a master plumber shall be ~~$15.00~~ $60.00.

(3) The annual renewal fee for a journeyman plumber shall be ~~$15.00~~ $60.00.

(4) All master and journeyman licenses expire by law one year from date of issuance of last renewal. Any licensee who fails to renew on or prior to the expiration date will be allowed 30 days from the expiration date as a late renewal grace period. If the license is not renewed on or before the expiration of the 30 days, the license will expire and in order to reinstate the license, a new application and successful completion of an examination will be required. Under no circumstances will the licensee be allowed to work as such during that 30 day period."

5. The board is proposing the amendment to comply with the provisions of Chapter 345, 1981 Sessions Laws (section 37-1-134, MCA), which requires the boards to set fees commensurate with costs incurred in administering the board program. The authority of the board to make the proposed amendment is based on sections 37-1-134, MCA and 37-69-202, MCA and implements sections 37-1-134, MCA and 37-69-307, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Plumbers, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 28, 1982.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or 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 the Board of Plumbers, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 28, 1982.

8. If the board 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 amendments; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; 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.

9. The authority and implementing sections are listed after each proposed amendment.

BOARD OF PLUMBERS
FLOYD STEWART, CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 21, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SANITARIANS

IN THE MATTER of the proposed amendments of ARM 8.60.407 concerning applications; 8.60.408 concerning minimum standards for issuance of a probationary certificate; 8.60.410 concerning minimum standards for registration; 8.60.411 concerning annual license renewals; 8.60.412 concerning license revocation or suspension; and proposed repeal of ARM 8.60.402 board vacancies; and 8.60.409 concerning probationary certificates.	NOTICE OF PROPOSED AMENDMENTS OF ARM 8.60.407 APPLICATIONS; 8.60.408 MINIMUM STANDARDS FOR PROBATIONARY CERTIFICATE; 8.60.410 MINIMUM STANDARDS FOR REGISTRATION; 8.60.411 ANNUAL CERTIFICATE (LICENSE) RENEWAL; 8.60.412 SUSPENSION AND REVOCATION; and PROPOSED REPEAL OF 8.60.402 BOARD VACANCIES and 8.60.409 PROBATIONARY CERTIFICATE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 30, 1982, the Board of Sanitarians proposes to amend and repeal the above entitled rules.

2. The proposed amendment of ARM 8.60.407 will read as follows: (deleted matter interlined, new matter underlined)

"8.60.407 APPLICATIONS (1) A person wishing to practice the profession of a sanitarian shall obtain a ~~probationary~~ registration certificate, described in ARM 8.60.~~409~~ 410 prior to beginning work.

(2) Applications received by the board shall be examined by the secretary for conformity with the rules governing applications as established by the board.

(a) Applications in the form prescribed, accompanied by the $75.00 fee for licensure by examination or the $35.00 fee for licensure by reciprocity shall be entered in the records of the board.

(b) Applications not accompanied by the proper fees and not conforming entirely to the rules shall be returned to the applicant, with instructions as to the correction thereof, or held in abeyance until in proper form as prescribed by the board.

(c) If after one year from the date of request for such corrections, no reply has been received, the application will be rejected and a new application will be required.

(d) If the information provided in the application indicates an applicant cannot comply with the provisions of Title 37, Chapter 40, MCA or with the rules of the board, or if the application is withdrawn prior to the taking of the registration examination, the application and any fees paid, less $25 administrative costs, shall be returned along with a notification as to why the application cannot be accepted.

(3) All applications for registration shall be made on printed forms provided by the board and no application made otherwise will be accepted. Application forms shall inform the applicant that completion of an ~~application~~ examination shall be required of the applicant prior to being issued a ~~probationary~~ registration certificate.

(4) The application form may be changed or amended by the board at any meeting of the board."

3. The board is proposing the amendment to delete references to the probationary certificate as it was removed from the statutes by the legislature in the 1981 session. The amendment also provides that the board may keep a portion of the application fees for administration costs incurred in processing the application, based on section 37-1-134, MCA, which allows the boards to set fees commensurate with costs. The authority of the board to make the proposed amendment is based on sections 37-40-203, MCA and 37-1-134, MCA and implements sections 37-1-134, MCA and 37-40-302 and 303, MCA.

4. The proposed amendment of ARM 8.60.408 will read as follows: (deleted matter interlined, new matter underlined)

"8.60.408 MINIMUM STANDARDS FOR ~~PROBATIONARY~~ REGISTRATION CERTIFICATE (1) The applicant for registration must possess the ~~following minimum~~ standards set forth in section 37-40-302 or the following:

(a) graduation from an accredited college or university with a bachelor's degree and including a minimum of 30 quarter hours in the physical and biological sciences, including one or more courses in chemistry, microbiology, and biology;

(i) Other courses of study may be substituted in lieu of those stated above upon review and approval of the board.

(b) ability to work with people, to make clear and pertinent statements, and to exercise good jugdement in appraising situations and making decisions. Must possess the personal attributes necessary for the performance of the assigned work and be suitable for employment as evidenced by an investigation. Must have the physical ability to do the work without hazard to self or others; and

(c) must successfully complete an ~~application~~ examination within 30 days from the date of application with a minimum score of 60%. Additional time may be allowed at the discretion of the board.

~~(i) If an applicant should fail the application examination, he or she must retake the examination within 30 days. Should the applicant fail the examination the second time, he or she will not be allowed to re-apply for a period of one year and may not work as a sanitarian during that~~

~~period.~~

~~(ii) This application examination is considered part of the application and is not to be misconstrued as the examination required for registration under section 37-40-302 (4), MCA.~~ "

5. The board is proposing the amendment to comply with changes made by the 1981 Legislature wherein the probationary certificate was deleted and the degree in environmental health or its equivalent was added. The board will use the current standards of the bachelor's degree for equivalency for the time being. Additional time to take the registration examination at the discretion of the board is also proposed to allow those individuals,who because of distance or other hardship,cannot take the examination within the 30 days allowed. The authority of the board to make the proposed amendment is based on section 37-40-203, MCA and implements section 37-40-302, MCA.

6. The proposed amendment of ARM 8.60.410 shall read as follows: (deleted matter interlined, new matter underlined)

"8.60.410 ~~MINIMUM STANDARDS FOR~~ REGISTRATION EXAMINATION AND CERTIFICATE (1) ~~(3)~~ Examinations will be held at a time and place designated by the board.

(2) The registration examination shall provide an evaluation of the person's knowledge of:

(a) environmental sanitation laws and regulations;

(b) administrative procedures for dealing effectively with the public on environmental health problems;

(c) the principles of sanitation applicable to food, water and air quality, liquid and solid wastes disposal, recreation facilities, housing and institutions;

(d) the fundamentals of biostatistics, of land use planning, of occupational health, of accident prevention, and of vector and pest control; and

(3) ~~(4)~~ If an applicant should fail the registration examination, the applicant will be allowed to retake the examination upon payment of a $50 re-examination fee.

(4) ~~(1)~~ A certificate of registration (license) will be granted by the board if the applicant complied with the minimum standards required for the ~~probationary~~ registration certificate and satisfactorily completes an examination approved by the board."

7. The board is proposing the amendment to change the catchphrase to more accurately reflect the contents of the rule, to delete the reference to probationary certificate and to rearrange the subsections of the rule in a more logical sequence. The authority of the board to make the proposed change is based on section 37-40-203, MCA and implements section 37-40-302, MCA.

8. The proposed amendment of 8.60.411 will read as follows: (deleted matter interlined, new matter underlined)

"8.60.411 ANNUAL CERTIFICATE (LICENSE) RENEWAL (1) A

certificate (license) renewal will be granted to any registered sanitarian who pays the prescribed renewal fee and complies with the requirements of this section.

(a) The annual certificate (license) renewal fee will be ~~$10.00~~ $30.00.

(2) The licensee will be allowed a one month grace period after July 1 or until July 31 to renew the license. Unless a licensee can present a satisfactory explanation to the board justifying failure to renew the license or or before July 31, he or she will be considered in violation of the provisions of Title 37, Chapter 40, MCA and these rules and will make it necessary for the licensee to pay the certificate of registration fee and to retake the examination to be relicensed."

9. The board is proposing the amendment to comply with the provisions of Chapter 345, SB 412, which requires the boards to set fees commensurate with costs incurred in administering the board program. The authority of the board to make the proposed change is based on sections 37-1-134 and 37-40-203, MCA and implements sections 37-1-134, MCA and 37-40-304, MCA.

10. The proposed amendment of ARM 8.60.412 will read as follows: (new matter underlined, deleted matter interlined)

"8.60.412 SUSPENSION AND REVOCATION (1) Under the provisions of Chapter 1 and 40, Title 37, MCA, certificates of registration may be suspended or revoked or letters of reprimand issued by the board for cause and after proper hearings as set forth in sections 37-1-136 and 37-40-311, MCA.

(2) For purposes of defining the terms unprofessional conduct, imcompetency and misconduct as used in subsections (1) and (3) of section 37-40-311, MCA, it is determined by the board to mean acts, knowledge and practices which fail to conform to accepted standards of the sanitarian profession and which may jeopardize the health and welfare of the public and shall include but not be limited to the following:

(a) wilful disobedience of Title 37, Chapter 40, MCA and/or the rules of the board;

(b) aiding or abetting in the practice of a sanitarian a person not licensed to practice as a sanitarian or a person whose license has been suspended or revoked;

(c) failure to uphold Montana laws, rules and regulations pertaining to environmental health;

(d) obtaining other financial compensation for professional services than the compensation provided by the employment contract;

(e) mentally or physically unable to engage in or act in the professional status as a practicing sanitarian;

(f) habitual intemperance or excessive use of narcotic

drugs, alcohol, or any other drug or substance to the extent that use impairs the user physically or mentally; and

(g) any condition which impairs intellect or judgement to the extent that the condition incapacitates the the person from the proper performance of professional duties.

(3) When a certificate or registration has been suspended or revoked the individual shall surrender to the custody of the department his or her registration certificate and pocket registration card."

11. The board is proposing the amendment to allow for action other than suspension or revocation of a license. The authority of the board to make the proposed change is based on sections 37-40-203 and 37-1-136, MCA and implements sections 37-1-136 and 37-40-311, MCA.

12. Rule 8.60.402 is proposed for repeal and reads as follows: (deleted matter interlined)

"~~8.60.402 BOARD VACANCIES (1) If, for any reason, a vacancy shall occur in the board, the chairman shall prepare a notice, along with a current list of registered sanitarians consistent with the requirements of section 2-15-1631, MCA, to the Governor asking for the appointment of a new member to fill the unexpired term.~~"

13. The board is proposing the repeal as the rule is no longer applicable to all board members, as the legislature added a public member. Rather than amend the rule, the board felt it would be better to repeal the rule. The authority of the board to make the proposed repeal is based on section 37-40-203, MCA and implemented the same.

14. Rule 8.60.409 is proposed for repeal and reads as follows: (deleted matter interlined)

"~~8.60.409 PROBATIONARY CERTIFICATE (1) When the department is satisfied that an applicant meets minimum qualifications as prescribed in Title 37, Chapter 40, MCA and the rules of the board, and that the application has been reviewed and approved for conformity with the rules of the board, the department shall issue a probationary certificate, after the applicant successfully completes the application examination. A holder of a probationary certificate shall be considered a sanitarian in training.~~

~~(2) The department shall notify holders of probationary certificates of the expiration date for the certificate 90 days prior to the expiration.~~"

14. The board is proposing the repeal as the 1981 legislature removed the probationary certificate requirement from the statutes. The authority of the board to make the proposed repeal is based on section 37-40-203, MCA and formerly implemented section 37-40-302, MCA.

15. Interested persons may submit their data, views or arguments concerning the proposed amendments and repeals in writing to the Board of Sanitarians, 1424 9th Avenue, Helena, Montana 59620-0407 no later than January 28, 1982.

16. If a person who is directly affected by the proposed amendments and repeals wishes to express his data, views or 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 the Board of Sanitarians, 1424 9th Avenue, Helena, Montana 59620-0407 no later than January 28, 1982.

17. If the board receives requests for a public hearing on the proposed amendments and repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments and repeals; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; 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.

18. The authority and implementing sections are listed after each proposed change.

BOARD OF SANITARIANS
SAMUEL R. KALAFAT, R.S.,
CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 21, 1981.

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

IN THE MATTER of the proposed adoption of continuing education rules) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES PROVIDING FOR CONTINUING EDUCATION

TO: All Interested Persons:

1. On Friday, January 22, 1982 at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Bldg, 303 Roberts St., Helena, Montana, on proposed rules.

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

3. The proposed rules provide as follows:

I. POLICY (1) The board expects all licensees to undertake continuing educational activities which are recognized by our professional organizations as being of value in furthering professional competence.

II. DEFINITIONS (1) Unless the context requires otherwise, in this sub-chapter the following definitions apply:

(a) "academic course work" means formal educational activity in the basic sciences or in contemporary practice of speech/language pathology or audiology offered by a recognized post-secondary training institution.

(b) "approved sponsor program" means any continuing education activity sponsored by an organization, agency, or other entity which has been approved by the Continuing Education Board of the American Speech-Language-Hearing Association.

(c) "board" means the board of speech pathologists and audiologists provided for in 2-15-1849, MCA.

(d) "continuing education unit" means one hour of active learning experience or equivalent as determined by the board.

(i) one continuing education unit received in an approved sponsor program and registered with the American College Testing Program, Iowa City, Iowa shall be considered 10 continuing education units for purposes of this sub-chapter.

(ii) 1 quarter credit hour of academic course work shall be considered 10 continuing education units and 1 semester credit hour of academic course work shall be considered 13 continuing education units.

(e) "licensee" means a person possessing a valid license issued by the board.

(i) For purposes of this definition, a suspended or inactive license shall be considered valid.

(f) "license period" means the time between the issuance of a license or renewal and the date on which the licensee applies for renewal.

III. CONTINUING EDUCATION REQUIRED - WHEN (1) All licensees applying to the board for renewal of their license for the third or subsequent license period shall

provide proof of the following appropriate continuing education units:

(a) 20 continuing education units, at least twelve of which must be obtained through approved sponsor programs or academic course work for all renewals due on July 1, 1983.

(b) 40 continuing education units, at least 25 of which must be obtained through approved sponsor programs or academic course work, for all renewals due on July 1, 1984.

(2) Credit will be granted only for educational activities undertaken during the license period immediately preceding the renewal date, except for the first renewal for which continuing education is required, in which case educational activities undertaken since October 1, 1980 shall be considered.

IV. EDUCATIONAL ACTIVITIES ACCEPTABLE FOR CREDIT (1) The board will accept a maximum of eight continuing education units for renewals on July 1, 1983 and a maximum of 15 continuing education units for renewals thereafter for educational activities that are directly oriented to continuing education and improving the licensee's professional competence and are not obtained through approved sponsor programs or academic course work. In no event will more than one continuing education unit be allowed for each hour of direct learning experience.

(2) Licensees who serve as instructors in approved sponsor programs or academic courses may be allowed appropriate credit for the program's first presentation only. No credit will be allowed for repeat sessions.

V. DISCIPLINARY ACTION Failure of a licensee to provide evidence of acceptable continuing education units will result in suspension or revocation of his license.

4. The rules are proposed to satisfy the mandate of section 37-15-309, MCA to establish procedure to require the demonstration of continuing education by licensees applying for third and subsequent renewals.

5. 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 Speech Pathologists and Audiologists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 28, 1982.

6. The board or its designee will preside over and conduct the hearing.

7. The authority of the board to make the proposed rules is based on section 37-15-202(1)(e), MCA and implements section 37-15-309, MCA.

BOARD OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS
LEE MICKEN, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 21, 1981.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

IN THE MATTER of the proposed amendments of ARM 8.32.405 concerning licensure by endorsement, 8.32.411 concerning renewals, sub-chapter 6, rules 8.32.601 through 8.32.609 concerning the professional nursing administration and proposed repeal of rules 8.32.701 through 8.32.709 sub-chapter 7, concerning the practical nursing administration.	NOTICE OF PROPOSED AMENDMENTS OF ARM 8.32.405 LICENSURE BY ENDORSEMENT, 8.32.411 RENEWALS, SUB-CHAPTER 6, RULES 8.32.601 through 8.32.609, PROFESSIONAL NURSING ADMINISTRATION; and PROPOSED REPEAL OF SUB-CHAPTER 7, RULES 8.32.701 through 8.32.709, PRACTICAL NURSING ADMINISTRATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 30, 1982 the Board of Nursing proposes to amend and repeal the above stated rules.

2. The proposed amendment of 8.32.405 will add a new subsection (3) and will read as follows: (deleted matter interlined, new matter underlined)

"8.32.405 LICENSURE BY ENDORSEMENT (1) The application for licensure shall be made on the appropriate forms supplied by the department and verified by appropriate measures showing:

(a) completion of 4 years of high school or its equivalent;

(b) graduation from an approved school of nursing; (professional for registered nurse licensure and practical for practical nurse licensure) and

(c) holds a valid license issued by another state, territory or country.

(2) Under section 37-8-407 and 417, MCA, where an applicant for licensure without examination seeks permission to be employed by a health care agency pending licensure, a statemant of intention to practice consisting of an affidavit containing information prescribed by the board and an affidavit from the intended employer is required.

(a) The affidavit of the nurse shall contain a statement that the nurse is currently lawfully entitled to practice nursing in a named state and record the number of the license held in said state.

(b) The affidavit of the health care agency in which the nurse is seeking employment shall have a statement to the effect that the official of the health care agency has verified the licensure, current registration and current entitlement of such nurse to practice nursing in the mentioned state of the United States or province of Canada.

(3) The fee for licensure by endorsement is $35.00 payable at the time the application is submitted. Five dollars of this fee is retained by the board if the application is withdrawn."

3. The board is proposing the amendment to carry out the provisions of section 37-1-134, MCA and the 1981 revisions to the Nursing Practice Act. Expressed fee was formerly found in section 37-8-407 (1), MCA. The authority of the board to make the proposed amendment is based on sections 37-1-134, MCA and 37-8-202 (2), MCA and implements sections 37-1-134, MCA and 37-8-407, MCA.

4. The proposed amendment of 8.32.411 adds a new subsection (3) and will read as follows: (deleted matter interlined, new matter underlined)

"8.32.411 RENEWALS (1) In November of each year, the board of nursing shall mail an application for renewal of license to all persons currently licensed. The licensee must fill out the application and return it to the board BEFORE January 1, together with the renewal fee of $10.00. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1, and expiring December 31.

(2) To place a license on active status, the licensee pays the renewal fee of $10.00 for the current year at the time practice is resumed.

(3) Registered professional nurses and licensed practical nurses failing to renew their license by January 1 or requesting reinstatement of a lapsed license will pay a late fee of $5.00 plus the $10.00 renewal fee which will be due upon application."

5. The board is proposing the amendment to conform with and carry out the provisions of the 1981 revisions of the Nursing Practice Act. Late fee is to be established commensurate with records verification costs. The authority of the board to make the proposed change is based on sections 37-1-134, MCA and 37-8-202 (2), MCA and implements sections 37-1-134 and 37-8-431 (5), MCA.

6. The board is proposing the amendment of Sub-chapter 6 relating to the professional nursing administration. The proposed change will replace the current sub-chapter title of Professional Nursing Administration with the title "Board of Nursing Organization". The amendments as proposed will read as follows: (deleted matter interlined, new matter underlined)

"8.32.601 PHILOSOPHY AND OBJECTIVES (1) The Montana board of nursing believes that nursing is a vital service to society and that nursing practice should safeguard life, health and promote the public interest and welfare.

(2) The board members believe their primary responsibility is to promote, preserve and protect the public

health, safety and welfare by and through the effective control and regulation of the practice of nursing and of educational preparation for these practices.

(3) Further, they believe maintaining effective communication and cooperative efforts with local, state and national nursing organizations, health agencies, governmental units, schools of nursing and health care providers is essential to assure the public's access to competent practitioners and quality care.

(4) Members of the board believe each member is committed to demonstrate personal integrity, impartial judgment, wisdom and dedication to a high standard of service in board activities.

(5) ~~(1)~~ The ~~objectives of professional nursing administration shall be to~~ board of nursing shall function in the field of ~~professional~~-nursing as an administrative and supervisory agency within the governmental structure ~~providing expert knowledge and understanding of nursing in safeguarding life and health; to formulate standards for nursing education which are based on the public's need for competent practitioners of nursing and which will safeguard the educational preparation of the student; to formulate procedures for the evaluation of all educational programs in nursing in Montana which are safeguards to the public and which stimulate the schools of nursing to use better educational practices; to formulate procedures for the licensing of professional nurses which protect the public from incompetent practitioners;~~ and shall:

(a) implement the Nursing Practice Act by promulgating and enforcing rules and regulations to protect the public health, safety and welfare;

(b) prescribe standards for the evaluation of programs preparing persons for registration and licensure and approve those nursing education programs which have achieved and are maintaining these minimum standards;

(c) assure safe standards of nursing practice through examination, licensure and renewal of licenses of qualified applicants including endorsement of qualified registered and practical nurses from other jurisdictions;

(d) control the practice of nursing in the interest of society by means of investigation and appropriate legal action;

(e) provide interpretation and consultation services to individuals and groups in matters relating to nursing education and nursing practices; and

(f) collaborate and cooperate with other appropriate agencies or groups in efforts to assure public safety and to promote competent nursing practice."

(authority 37-8-202 (2), MCA; Implement section 37-8-202 (2),MCA)

"8.32.602 MEMBERSHIP (1) The membership of this board shall consist of ~~5-registered-nurses~~ nine members: four registered professional nurses, three licensed practical nurses and two public members duly appointed by the governor of this state as prescribed in ~~Title-37,~~ ~~Chapter~~ Title 2, Chapter 15, MCA.

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

"8.32.603 OFFICERS (1) The officers of this board shall be ~~the-officers-duly-elected-by-the-board-of-nursing,-together-with-the-practical-nursing-administration-at-its-annual-meeting-each-year.~~ a president and a secretary.

(2) Officers shall be elected at the annual meeting of the board.

(3) The terms of office of these officers shall begin at the close of the annual meeting. The term of office for each shall be until the next annual meeting.

(4) A vacancy occurring in the office of the president or secretary shall be filled by election.

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

"8.32.604 MEETINGS (1) ~~Regular-meetings-of-the-board-shall-be-held-in-the-months-of-October,-January-and-April,-in-addition-to-the-annual-meeting-held-in-July-each-year.~~ The board shall meet annually and hold other meetings when necessary to transact it's business.

(2) The annual meeting shall be held in the first quarter of this fiscal year.

~~(2)~~ (3) Special meetings may be called by the president or at the written request of 2 members. The reason for the special meeting shall be stated in the call.

~~(3) Three-members-of-the-board-including-one-officer-shall-constitute-a-quorum-at-any-meeting.~~

(4) Meeting dates for the next calendar year are approved by the board at its annual meeting in the year prior to it's application.

(5) The agenda for board members to review shall be mailed to board members prior to each meeting."

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

"8.32.605 DUTIES OF OFFICERS (1) The president shall:

(a) preside at all meetings. In the event that the president is absent from any meeting, a president pro-tem shall be elected by members present at the meeting to serve for that meeting. ~~The-president-shall~~

(b) appoint ~~all-committees-and-shall-perform-the-usual-functions-of-such-officer.~~ members to serve on committees as may be created and shall serve as ex-officio members of all committees.

(c) serve as the official representative of the board in it's contacts with governmental, civic, business and other organizations;

(d) retain the right to vote on all matters before the board;

(e) perform such other functions as pertain to the office of president.

(2) The secretary shall:

(a) record ~~keep~~ the minutes of all meetings; ~~(separately from meeting of the board, practical nursing administration);~~

(b) assume other functions at the discretion of the president."

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

"8.32.606 DUTIES OF MEMBERS (1) The members acting as the board of nursing shall:

(a) transact the general business of the ~~professional nursing administration;~~ board of nursing;

(b) supervise the affairs of the ~~professional nursing administration;~~ board;

(c) provide ~~for the proper care of all records of the professional nursing administration~~ advice to the department concerning roles and functions of the board;

~~(d) define the duties of the executive secretary in relation to the professional nursing administration;~~

~~(e)~~ (d) develop and ~~devise~~ amend rules and regulations consistent with the law, to fulfill the provisions of the nursing practice act; ~~professional nursing administration;~~

~~(f) together with the practical nursing administration, determine what officers and employees shall be bonded and fix the amount of bond for each;~~

~~(g) together with the practical nursing administration, authorize and approve the expenditure of board funds according to the laws and rules of the state of Montana for the expenditure of funds; and~~

~~(h)~~ (e) ~~together with the practical nursing administration,~~ develop policies for the transaction of board business which are consistent with good administrative practice; ;

(f) recommend the budget according to the laws and regulations of the state of Montana.

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

"8.32.607 ORDER OF BUSINESS (1) The order of business for each meeting shall be:

(a) call to order;

(b) establish a quorum;

(c) adoption of agenda;

~~(b)~~ (d) reading of minutes;

(e) correspondence;

(f) report of executive secretary;
~~(c)~~ (g) reports of officers and committees;
~~(d)~~ (h) unfinished business;
~~(e)~~ (i) new business;
~~(f)~~ (j) miscellaneous; and
~~(g)~~ (k) adjournment."

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

"8.32.608 PARLIMENTARY AUTHORITY (1) The rules contained in Robert's Rules of Order Newly Revised shall govern the meetings of this board in all cases where such rules are applicable and in which they are not inconsistent with these bylaws."

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

"8.32.609 AMENDMENTS (1) These bylaws may be amended by an affirmative vote ~~of at least 3 registered nurse members~~ by the majority of the board at any regular or annual meeting of the board except insofar as such an amendment would be contrary to any provisions of Title 37, Chapter 8, MCA."

(Authority 37-8-202 (2), MCA; Implement section 37-8-202 (2), MCA)

7. The board is proposing the amendments to conform with and carry out the provisions of the 1981 revisions to the Nursing Practice Act and to describe the board organization as provided for in these revisions. The authority of the board to make the proposed amendments is based on section 37-8-202 (2), MCA and implements the same.

8. The board is proposing to repeal all of sub-chapter 7, rules 8.32.701 through 8.32.709, Practical Nursing Administration. The rules to be repealed are located at pages 8-989 through 8-991, Administrative Rules of Montana. The board is proposing the repeal to conform with and carry out the provisions of the 1981 revisions to the Nursing Practice Act. All reference to the Practical Nursing Administration was deleted in the revisions. The authority of the board to make the proposed repeal is based on section 37-8-202 (2), MCA and formerly implemented the same.

9. Interested persons may submit their data, views or arguments concerning the proposed amendments and repeal in writing to the Board of Nursing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 28, 1982.

10. If a person who is directly affected by the proposed amendments and repeal wishes to express his data, views or 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 the Board of Nursing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than January 28, 1982.

11. If the board receives requests for a public hearing on the proposed amendments and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments and repeal; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; 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.

12. The authority and implementing sections are listed after each proposed change.

BOARD OF NURSING
JANIE CROMWELL, R.N., PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 21, 1981.

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

In the matter of the adoption of rules establishing reportable tumors and hospital record-keeping requirements for information to be included in the Montana Tumor Registry	NOTICE OF PROPOSED ADOPTION OF RULES (Tumor Registry) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 1, 1982, the department proposes to adopt rules I through III, below, in order to designate which tumors are reportable by hospitals and which information on tumor patients hospitals must keep for the tumor registry.

2. The proposed rules provide as follows:

RULE I REPORTABLE TUMORS (1) The following tumors are designated as reportable:

(a) Malignant neoplasm, with the exception of a basal or squamous carcinoma of the skin;

(b) Skin cancer of the labia, vulva, penis, or scrotum;

(c) Benign tumor of the brain, including a:

(i) meningioma (cerebral meninges)

(ii) pinealoma (pineal gland)

(iii) adenoma (pituitary gland);

(d) Carcinoid tumor, whether malignant, benign, or not otherwise specified (NOS).

(2) A benign tumor other than one of those listed in subsection (1) of this rule may be reported to the department for inclusion in the tumor registry if prior approval has been obtained from the department [Preventive Health Services Bureau, Tumor Registry, Cogswell Building, 1400 Broadway, Helena, MT., 59620; phone: 449-4740].

(3) A tumor which is otherwise reportable, but has been diagnosed and recorded using the words "questionable", "possible", "suggests", or "equivocal", is not considered a reportable tumor.

(4) Whenever records of a patient with a tumor which would be reportable, if confirmed, contain the words "suspect", "probable", "suspicious", "compatible with" or "consistent with" in reference to that tumor, the tumor is considered reportable.

AUTHORITY: Sec. 50-15-706, MCA
IMPLEMENTING: Sec. 50-15-703, MCA

RULE II REQUIRED RECORDS -- INITIAL ADMISSION AND TREATMENT Whenever a hospital initially provides medical services to any patient relating to a tumor designated as reportable by Rule I, it must collect, record, and make available to the department the following information about that patient:

(1) Name and current address of patient

(2) Patient's address at time of diagnosis
(3) Social security number
(4) Name of spouse, if any
(5) Phone number
(6) Race, sex, marital status, religion (optional)
(7) Age at diagnosis; place of birth; and month, day and year of birth
(8) Name, address, and phone number of friend or relative to act as contact, plus relationship of that contact to patient
(9) Date and place of initial diagnosis
(10) Primary site of tumor (paired organ)
(11) Sequence of primary tumors, if more than one
(12) Other primary tumors
(13) Method of confirming diagnosis
(14) Histology, including dates, place, histologic type, and slide number
(15) Summary staging, including whether in situ; localized; regional; distant; or unstaged, with no information
(16) Description of tumor and its spread, if any, including size in centimeters, number of positive nodes, number of nodes examined, and site of distant metastases
(17) Whether AJC or TNM staging is utilized; and if so, the findings of the staging
(18) Cumulative summary of all therapy directed at the subject tumor, including:
(a) date of therapy;
(b) specific type of surgery or radiation therapy, if any; and details of chemical, hormonal, or other kinds of treatment;
(c) if no therapy given, reason for lack of therapy.
(19) Status at time of latest recorded information, i.e., whether alive or dead; tumor in evidence or recurring; or status unknown
(20) If recurrence of tumor, type and distant site of first recurrence.
(21) Names of physicians primarily and secondarily responsible for follow-up.
(22) Date of each follow-up
(23) If patient has died, date of death, place, cause, and whether autopsy performed.

AUTHORITY: Sec. 50-15-706, MCA
IMPLEMENTING: Sec. 50-15-703, MCA

RULE III REQUIRED RECORDS -- FOLLOW-UP Whenever a patient for whom information has been provided to the tumor registry is admitted to the hospital providing the information on an inpatient or outpatient basis for further treatment related to the tumor for which original registration in the tumor registry was made, the hospital must keep on file the following information:
(1) Patient's name, noting any change from previous records;

(2) Any paired organ involvement, noting sequence;
(3) Subsequent histology, including dates, place, histology type, slide number, and precedure;
(4) Date, type of procedure, and findings of any surgery or other exploratory measure;
(5) Date and type of any administration of radiation;
(6) Date of any administration of hormones, chemotherapy, immunotherapy, or any other kind of treatment;
(7) Date of death and/or last follow-up;
(8) If death has occurred, the place, cause, and whether an autopsy was performed;
(9) If autopsy performed, its findings pertaining to cancer;
(10) Status at time of latest recorded information, i.e., whether alive or dead; tumor in evidence or has recurred; or status is unknown;
(11) If recurrence of tumor, type and distant sites of first recurrence;
(12) Names of those physicians primarily and secondarily responsible for follow-up treatment.
AUTHORITY: Sec. 50-15-706, MCA
IMPLEMENTING: Sec. 50-15-703, MCA

3. The rationale for these rules is to designate the kinds of tumors which are to be reportable to the Montana Tumor Registry and which information on tumor patients must be collected and recorded on patients suffering from such tumors, in accordance with the authority passed by the 1981 legislature.
4. Interested persons may submit their data, views, or arguments concerning the proposed adoption in writing to Robert L. Solomon, Cogswell Building, Helena, MT 59620, no later than January 28, 1982.
5. If a person who is directly affected by the proposed action 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 Robert L. Solomon, at the address above, no later than January 15, 1982.
6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based upon a total of 66 Montana hospitals which would keep records and approximately 1200 doctors who would provide the information to those hospitals.

7. The authority of the department to adopt the rules is based on section 50-15-706, MCA, and they implement section 50-15-703, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State December 21, 1981

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

In the matter of the adoption of rules concerning variances and exemptions for public water supply systems	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (Public Water Supply Systems)

To: All Interested Persons

1. On January 29, 1982, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules establishing terms, conditions and procedures for variances and exemptions for public water supply systems.

2. The proposed rules will replace rules 16.20.230 to 16.20.233 found at pages 16-908 to 16-910 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I VARIANCE "A" (1) The department may grant a variance "A" to any public water supply system from any maximum contaminant level upon a finding that:

(a) because of characteristics of the raw water resources which are reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels despite application of the best technology, treatment techniques, or other means which the department finds are generally available taking costs into consideration; and

(b) the granting of a variance will not result in unreasonable risk to the health of persons served by the public water supply system.

(2) In determining whether or not the public water supply system is unable to comply with a maximum contaminant level because of the nature of the raw water source, the department will consider:

(a) the availability and effectiveness of treatment methods for the contaminant for which the variance is requested; and

(b) cost and other economic considerations such as implementing treatment, improving the quality of the source water or using an alternate source.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE II VARIANCE "B" (1) The department may grant a variance "B" to any public water supply system from any requirement of a specified treatment technique upon a finding that the public water supply system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.

(2) In determining whether or not to grant a variance "B" the department will consider:

(a) quality of the water souce including water quality data and pertinent sources of pollution; and

(b) source protection measures employed by the public water supply system.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE III EXEMPTIONS (1) The department may grant an exemption to any public water supply system from any requirement respecting a maximum contaminant level or treatment technique, or from both, upon finding that:

(a) due to compelling factors, which may include economic factors, the public water supply system is unable to comply with such contaminant level or treatment technique;

(b) the public water supply system was in operation on the effective date of such contaminant level or treatment technique regulation or, for a system that was not in operation by that effective date, only if no reasonable alternative source of drinking water is available to such new system; and

(c) the granting of the exemption will not result in unreasonable risk to health.

(2) In determining whether or not the public water supply system is unable to comply due to compelling factors, the department will consider:

(a) construction, installation, or modification of the treatment equipment or systems;

(b) the time needed to put into operation a new treatment facility to replace an existing system which is not in compliance; and

(c) economic feasibility of compliance.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE IV COMPLIANCE PLAN -- GENERAL (1) A variance or an exemption may not be granted by the department unless the variance or exemption is accompanied by a compliance plan specifying a time schedule for compliance.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE V COMPLIANCE PLAN -- VARIANCES (1) A compliance plan accompanying a variance must contain at a minimum:

(a) a schedule for compliance including increments of progress by the public water supply system with each maximum contaminant level covered by the variance; and

(b) a schedule for implementation by the public water supply system of such control measures as the department may require for each maximum contaminant level covered by the variance.

(2) The schedule for compliance must specify dates by which steps toward compliance are to be taken, including at a minimum, where applicable:

(a) date by which arrangement for an alternative raw water source or improvement of existing raw water source will be completed.

(b) date of initiation of the connection for the alternative raw water source or improvement of the existing raw water source.

(c) date by which final compliance is to be achieved.

(3) The schedule may, if the public water system has no access to an alternative raw water source, and can effect or anticipate no adequate improvement of the existing raw water source, specify an indefinite time period for compliance until a new and effective treatment technology is developed at which time a new compliance schedule must be prescribed by the department.

(4) The schedule for implementation of interim control measures during the period of variance must specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the interim control measures are to be met.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE VI COMPLIANCE PLAN -- EXEMPTIONS (1) A compliance plan accompanying an exemption must contain at a minimum:

(a) a schedule for compliance including increments of progress by the public water supply system with each maximum contaminant level requirement and treatment technique requirement covered by the exemption; and

(b) a schedule for implementation by the public water supply system of such control measures as the department may require for each contaminant covered by the exemption.

(2) A compliance plan accompanying an exemption may not extend beyond January 1, 1984, unless the public water supply system has entered into an enforceable agreement to become part of a regional public water system, in which case the compliance plan may not extend beyond January 1, 1986.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE VII APPLICATION FOR VARIANCE OR EXEMPTION (1) A supplier of water may apply for a variance or exemption by completing an application form provided by the department. The department will not commence review of an application for a variance or exemption until the application form has been completed and all information requested by the department for review of the application has been submitted.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE VIII GRANT OF A VARIANCE OR EXEMPTION (1) If the department proposes to grant a variance or exemption, the department shall notify the applicant of its decision in writing. The notice must identify the variance and the facility covered by the variance, and must specify the period of time for which the variance will be effective.

(a) For a variance "A" or an exemption, the notice must provide also that the variance "A" or exemption will be terminated when the public water supply system comes into compliance with the applicable regulation, and may be terminated upon a finding of the department that the system has failed to comply with any requirements of the accompanying compliance schedule.

(b) For a variance "B" the notice must provide also that the variance may be terminated at any time by the department upon a finding that the nature of the raw water source is such that the specified treatment technique for which the variance was granted is necessary to protect the health of persons or upon a finding that the public water supply system has failed to comply with monitoring and other requirements prescribed by the department as a condition to the granting of the variance.

(2) Before a variance or an exemption proposed to be granted by the department may take effect, the department shall provide public notice of its proposal to grant such variance or exemption and of an opportunity for public hearing on the proposal.

(a) Public notice of a proposed variance or exemption must be posted in the principal post office of each municipality or area served by the public water supply system and published in a newspaper of general circulation in the geographical area served by the public water supply system.

(b) The public notice must contain the following information:

(i) a summary of the proposed variance or exemption and its accompanying compliance plan;

(ii) a statement that opportunity is available to any interested person to request a public hearing within 15 days after the date of publication of the public notice; and

(iii) address and telephone number of the Water Quality Bureau of the department.

(3) A public hearing on a proposed variance or exemption may be requested by any interested person within 15 days after the date of publication of the public notice provided for in subsection (2) of this rule. Frivolous or insubstantial requests for a public hearing may be denied by the department. A request for a public hearing must include the following information:

(a) the name, address and telephone number of the person requesting the hearing;

(b) a brief statement of the interest of the person making the request in the proposed variance or exemption and its accompanying compliance plan;

(c) a statement describing the information that the requesting person intends to submit at such hearing; and

(d) the signature of the individual making the request, or, if the request is made on behalf of a corporation, association, partnership, municipality, other political subdivision of the state, or federal agency, the signature of a responsible official of such entity.

(4) At least 15 days prior to the date scheduled for a public hearing, the department shall give notice in the manner set forth in subsection (2) of this rule of any public hearing to be held pursuant to a request by an interested person which is granted by the department or on the department's own initiation. Notice of the hearing must be sent also to the person requesting the hearing, if any. Notice of a public hearing must contain the following information:

(a) a statement of the purpose of the hearing;

(b) information regarding the time, date and location of the public hearing; and

(c) the address and telephone number of the Water Quality Bureau of the department at which a person may obtain further information concerning the hearing.

(5) At a public hearing held pursuant to this rule a presiding officer shall accept information, comments and data from persons relevant to the terms proposed by the department for a variance or exemption and its accompanying compliance plan. The hearing is not subject to the contested case procedure of the Montana Administrative Procedure Act, and no cross-examination will be allowed. The presiding officer has the discretion to limit repetitive testimony.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE IX DENIAL OF A VARIANCE OR EXEMPTION (1) If the department decides to deny an application for a variance or exemption, the department shall notify the applicant of its decision in writing. The notice must include a statement of reasons for the denial.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE X APPEAL OF A VARIANCE OR EXEMPTION TO THE BOARD (1) When the department decides to grant, deny, modify or revoke a variance or exemption, a person aggrieved by the department's decision may appeal the department's decision to the board if the person aggrieved files a petition under oath with the board within 15 days after the department renders its decision. The petition of appeal must contain the following information:

(a) the name and address of the petitioner;

(b) the reasons why an appeal is sought; and

(c) if the appeal is from the grant or modification of a variance, exemption or compliance plan, the provisions of the variance, exemption or compliance plan which the petitioner wants reviewed by the board.

(2) For the purposes of this rule, "a person aggrieved by the department's decision" means the applicant for a variance or exemption, or a person who is served by the public water supply system which was the subject of the department's decision.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

RULE XI EFFECTIVE DATE OF VARIANCE OR EXEMPTION (1) A variance or exemption becomes effective 15 days after the department renders its decision if no petition of appeal has been filed with the board within those 15 days. The filing of a petition of appeal as required by Rule X postpones the effective date of the variance or exemption until the board has issued a final decision on the appeal.

AUTHORITY: Sec. 75-6-103, MCA
IMPLEMENTING: Sec. 75-6-103, 75-6-107, MCA

4. The Board is proposing these rules to maintain primary enforcement responsibility of the federal safe drinking water program and to conform to requirements of Title 75, Chapter 6, MCA.

5. 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 Sandra R. Muckelston, Room C216, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than January 29, 1982.

6. Sandra R. Muckelston, Helena, Montana, has been designated to preside over and conduct the hearing.

JOHN F. McGREGOR, M.D., Chairman

By _____
JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State December 21, 1981

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

In the matter of the repeal of rules 16.20.230 through 16.20.233 concerning variances	))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES

To: All Interested Persons

1. On January 29, 1982, at 9:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the repeal of rules 16.20.230 through 16.20.233.

2. The rules proposed to be repealed can be found on pages 16-908 to 16-910 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because they are being replaced by rules proposed for adoption in MAR Notice No. 16-2-211, published in this issue of the Register.

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 Sandra R. Muckelston, Room C216, Cogswell Building, Capitol Station, Helena, MT, 59620, no later than January 29, 1982.

5. Sandra R. Muckelston, Helena, Montana, has been designated to preside over and conduct the hearing.

6. The authority of the Board to repeal the rules is based on section 75-6-103, MCA, and the rules implemented sections 75-6-103 and 75-6-107, MCA.

JOHN F. McGREGOR, M.D., Chairman

By JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State December 21, 1981

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

In the matter of the adoption of rules setting health standards for day care centers	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (Day Care Centers)

To: All Interested Persons

1. On February 22, 1982, at 1:30 p.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which are intended to protect children in day care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases.

2. The proposed rules will replace rules 16.24.401 through 16.24.405 found at pages 16-1141 through 16-1147 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I DEFINITIONS (1) "Department" means the Montana state department of health and environmental sciences.

(2) "Individual water supply system" means any domestic water system which is not a public or multiple family system.

(3) "Local health authority" means a local health officer, local department of health, or local board of health.

(4) "Multiple family sewerage system" means a sanitary sewerage system which serves or is intended to serve 2 through 9 families, up to a maximum total number of 24 individuals.

(5) "Multiple family water supply system" means any installation or structure designed to provide domestic or potable water to serve 2 through 9 families, up to a maximum total number of 24 individuals.

(6) "Public sewage system" means a system for collection, transportation, treatment or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE II SOLID WASTE In order to ensure that solid waste is safely stored and disposed of, a day care center must:

(1) store all solid waste between collections in solid containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof;

(2) clean all solid waste containers frequently;

(3) utilize exterior collection stands for the solid containers referred to in (1) above which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them.

(4) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department in a covered vehicle or covered containers.
AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE III LAUNDRY In order to ensure that soiled laundry does not endanger the health of children, a day care center must:

(1) refrain from storing soiled laundry in a dining, food preparation, or food storage room, and ensure that such soiled laundry is not accessible to children.

(2) provide sufficient space for sorting and storing clean and soiled laundry so that clean and soiled laundry do not contact the same surface or each other.

(3) machine wash all laundry at a minimum temperature of 54° C. and a minimum time of 8 minutes, and dry all laundry in a hot air tumble dryer.

(4) in regard to bedding:

(a) launder bedding whenever it is soiled and air it out periodically to prevent mildew; and

(b) assure that bedding assigned to one child is not used by another until it is laundered.
AUTHORITY: Sec. 53-4-506, MCA
IMPLEMNTING: Sec. 53-4-506, MCA

RULE IV GENERAL HOUSEKEEPING As general housekeeping measures, a day care center must ensure that:

(1) its building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin.

(2) its floors, walls, ceilings, furnishing, and other equipment are easily cleanable and are kept clean.

(3) soap and disposable towels or other hand-drying devices are always available at all handwashing sinks. Common-use cloth towels are prohibited.

(4) toilet tissue is provided next to all toilets.

(5) the temperature is maintained at a minimum of 65° F. in the areas used for day care.
AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE V SPECIAL REQUIREMENTS WHEN CARING FOR CHILD UNDER TWO If a day care center cares for children under two years of age, it must:

(1) ensure that cribs, playpens, and toys are made of washable, nontoxic materials and are kept clean.

(2) either provide separate cribs for each such child, or launder bedding in accordance with Rule III(4) above.

(3) handle diapers in the following manner:

(a) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas.

(b) store soiled diapers in easily cleanable or lined receptacles with tight-fitting lids, and empty and clean them at least daily.

(c) ensure that staff wash their hands after every diapering and before feeding each child under 2 years of age.

(4) request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use.

(5) use only disposable diapers unless parents present medical documentation that non-disposable diapers should be used, in which case they must be subjected, after each use, to a germicidal process approved by the department or local health authority, or returned to the parent for laundering at the end of each day.

(6) have facilities to bathe such children when necessary.

AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE VI SWIMMING AREAS (1) The department hereby adopts and incorporates by reference Title 16, Chapter 10, sub-chapter 12 of the Administrative Rules of Montana, setting construction and operation standards for swimming pools. A copy of ARM Title 16, Chapter 10, sub-chapter 12 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana, 59620, phone: 449-2408.

(2) In regard to swimming areas, a day care center must:

(a) allow children to use only a swimming pool which is constructed and operated in accordance with Title 16, Chapter 10, sub-chapter 12 of the Administrative Rules of Montana.

(b) in the event that a portable wading pool is used, drain and clean it at last daily, and refill it with fresh water when needed.

AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE VII FOOD PREPARATION AND HANDLING (1) The department hereby adopts and incorporates by reference Title 16, Chapter 10, sub-chapter 2 of the Administrative Rules of Montana, with exceptions, which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 16, Chapter 10, sub-chapter 2 may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana, 59620, phone: 449-2408.

(2) A day care center must comply with all requirements set for food service establishments in Title 16, Chapter 10, sub-chapter 2 of the Administrative Rules of Montana, with the following exceptions from the rules noted:

(3) ARM 16.10.215(17), (18), and (23) do not apply to a day care center. A domestic style dishwasher may be used if equipped with a heating element.

(4) ARM 16.10.220 and 16.10.221 do not apply to a day care center. Instead, a day care center must provide lavatories, water closets, and urinals in the ratio of the number of each to the number of individuals using them noted below, taking into account children, staff, and volunteers:

Water Closets		Urinals	Lavatories
Male	Female	If over 20 males,	1:60
1:20	1:20	may substitute for 1/2 the number of toilets required.	
May combine male and female unless fixture requirement exceeds two.			

(5) ARM 16.10.232(2) through (6) do not apply to a day care center. The food preparation area may be used as a family kitchen.

(6) ARM 16.10.238 does not apply to a day care center, i.e., licensure as a food service establishment is not required.

(7) ARM 16.10.239 does not apply to a day care center, since each day care center is already subject to the inspection and training requirements of section 53-4-506, MCA.

AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE VIII IMMUNIZATION (1) No child may be enrolled or reside in a day care center unless one of the following has been satisfied:

(a) The child is completely immunized as required by subsection (2) below, or immunized appropriately for his age, if less than 15 months old, as required by subsection (3) below, and immunization is documented as required by subsection (4) below.

(b) The child has received at least one dose of vaccine for measles (with the exception noted in (2)(a) below), rubella (unless a girl 12 years of age or older), poliomyelitis, diphtheria, pertussis (unless 7 years of age or older), and tetanus, or the appropriate doses for his age if less than 15 months old, and that level of immunization is documented as required by subsection (4) below.

(c) The parent or guardian provides the day care center with a signed statement claiming a religious exemption from the immunization requirements or a medical exemption signed by a licensed physician.

(2) A child receiving the following number of doses of vaccine for the diseases noted is completely immunized for the purposes of this rule:

(a) one dose of live, attenuated measles (rubeola) vaccine given after the first birthday, with the exception that a person certified by a physician as having had measles disease is not required to receive measles vaccine;

(b) one dose of live rubella vaccine given after the first birthday, with the exception that a female who has reached age 12 is exempted from the rubella vaccine requirements;

(c) 3 doses or more of vaccine for diphtheria, pertussis, and tetanus, plus an additional dose given after the fourth birthday; and

(d) 3 or more doses of live, oral, trivalent poliomyelitis vaccine, at least one dose of which must be given after the fourth birthday.

(3) A child under 15 months of age is immunized appropriately for his age if he has received a minimum of 2 doses of live, oral, trivalent poliomyelitis vaccine and 2 doses of vaccine for diphtheria, pertussis, and tetanus by the time he reaches 15 months of age, ensuring that 2 months elapse between doses, and that administration of the first dose is no earlier than 2 months of age.

(4) Documentation of immunization status for purposes of this rule consists of either a completed Montana Certificate of Immunization form (HES-101), a physician's signed statement, a local health authority's certified record, or a written parental record signed by a physician or physician's designee showing at least the name of each vaccine provided and the month and year the last dose was administered (or, in the case of measles, the month, day and year the vaccination was administered or the disease diagnosed).

(5) A child enrolled conditionally pursuant to subsection (1)(b) above must not be allowed to continue to attend the day care center unless he is completely immunized, or immunized appropriately for his age, and immunization is documented as required by this rule within 90 days after the date enrollment commences or the effective date of this rule, whichever is later.

(6) If a child in attendance at the day care center, a child of a staff member which resides at the day care center, or a staff member or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all children attending the day care center who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the center until:

(a) no further cases have occurred during a period of 3 weeks after the last case is diagnosed; or

(b) the child is completely immunized against that disease.

(7) The day care center must maintain a written record of immunization status of each enrolled child and each child of a staff member which resides at the day care center, and must make those records available during normal working hours to representatives of the department or the local health authority.

AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE IX HEALTH SUPERVISION AND MAINTENANCE (1) The department hereby adopts and incorporates by reference ARM 16.28.1005, which sets standards for tuberculin testing of those working in day care centers, and treatment and monitoring of positive cases among them. A copy of ARM 16.28.1005 may be obtained from the Preventive Health Services Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana, 59620, phone: 449-4740.

(2) A day care center must exclude from enrollment any child whose parent or guardian has not provided the center, within 30 days after admission and annually thereafter, with a health record form documenting the results of a current health assessment performed by a physician licensed to practice medicine in Montana.

(3) The director of the day care center must designate a staff member to check daily the health status of each child immediately upon that child's entry into the center, and to exclude any child showing symptoms of illness. A child need not be excluded for a discharge from the nose which is not accompanied by fever.

(4) If a child develops symptoms of illness while at the day care center and after the parent or guardian has left, the day care center must do the following:

(a) Isolate the child immediately from other children in a room or area segregated for that purpose.

(b) Contact and inform the parent or guardian as soon as possible about the illness and request him or her to pick up the child.

(c) Report each case of suspected communicable disease the same day by telephone to the local health authority, or as soon as possible thereafter if no contact can be made the same day.

(5) The day care center may readmit a child excluded for illness whenever, in its discretion, the child either shows no symptoms of illness, or the parent or guardian provides the center with a signed certification of health from a licensed physician, except that the following restrictions must be followed:

(a) If a child is excluded for shigellosis, he may not be readmitted until he has no diarrhea or fever, and his

parent or guardian produces documentation that 2 stools, taken at least 24 hours apart, are negative for shigellosis.

(b) If a child is excluded for hepatitis, he may not be readmitted sooner than 3 days after the appearance of jaundice.

(c) If a child is excluded for salmonella, he may not be readmitted until he has no diarrhea or fever, and his parent or guardian produces documentation that 2 stools, taken at least 24 hours apart, are negative for salmonella.

(6) Good health habits, such as washing hands, must be taught during everyday activities.

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

(a) Have an examination for tuberculosis prior to or within 30 days after commencing work at the day care center, in conformity with ARM 16.28.1005.

(b) Be excluded from the day care center if he has a communicable disease, including a sore throat or cold.

(8) Smoking must be prohibited in areas used by children.

AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE X NUTRITION (1) The department hereby adopts and incorporates by reference 46 Federal Register 57980 (November 27, 1981), containing meal requirements for day care facilities participating in the child care food program of the U.S. Department of Agriculture, Food and Nutrition Service. A copy of 46 Federal Register 57980 (November 27, 1981) may be obtained from the Child Nutrition Program, Maternal and Child Health Services Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, MT, 59620, phone: 449-4740.

(2) Each day care center must do the following:

(a) Serve meals and snacks which meet the requirements for meals contained in 46 Federal Register 57980 (November 27, 1981) of the rules of the U.S. Department of Agriculture's Food and Nutrition Service.

(b) Serve meals and snacks on, at a minimum, the following schedule to children in attendance:

(i) snacks at mid-morning and mid-afternoon;

(ii) lunch;

(iii) breakfast or supper if a child is being cared for in the center at the normal time for those meals and has not otherwise received them.

(c) Ensure that each bottle-fed infant from newborn to 1 year of age is held during bottle feedings until he or she is able to hold the bottle, and that bottles are not propped.

(d) For each child with nutritional therapeutic needs, request and carefully follow special dietary instructions, in

writing, from either the child's parent or guardian, or a physician or registered dietitian, if the parent/guardian fails to or cannot provide such instructions. Food brought from home for special dietary purposes must be carefully labelled with the child's name.

(e) Plan menus at least 2 weeks in advance, date and post the menus where parents/guardians can see them, and serve meals and snacks in accordance with the posted menus, with the exception that a menu change may be made so long as it is posted before parents arrive to check in children on the date of service.

(f) Provide supervision to children while they eat and assist the children to eat, if necessary.

(g) Offer drinking water at regular intervals to infants and toddlers and ensure that drinking water is freely available to all children.

(h) Keep on file at the day care center written menu records and special dietary instructions for infants and children for 1 year following the date of the meal service.

(3) If a day care center does not participate in the department's child care food program, that center must do the following in addition to meeting the requirements contained in subsection (2) above:

(i) Obtain guidance materials from the department about child care food program meal requirements and adhere to the recommendations therein; and

(ii) Within 1 year after it begins operation, or within 1 year after [the effective date of this rule], whichever is later, and once annually thereafter, ensure that a registered dietitian evaluates the nutritional adequacy of its meals and their compliance with this rule, and that the dietitian makes a written report, to be retained on file at the day care center, containing the following information, with a copy to the department:

(AA) findings and recommendations pertaining to the nutritional adequacy of food served to the children;

(BB) an assessment of management of meals, and any infant or therapeutic diets.

(CC) date of the evaluation;

(DD) evaluator's signature and dietitian registration number.

AUTHORITY: Sec. 53-4-506, MCA
IMPLEMENTING: Sec. 53-4-506, MCA

RULE XI TRAINING BY LOCAL HEALTH AUTHORITY Any training provided by a local health authority pursuant to section 53-4-506(2), Montana Code Annotated, must, at a minimum, include instruction concerning each provision of Rules II through X above.

4. The Department is proposing these rules in order to completely revise and update the pre-existing day care rules

and, in particular, to add specific nutritional requirements which an amendment by the 1981 legislature authorized.

5. 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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, no later than February 26, 1982.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rules is based on section 53-4-506, MCA, and the rules implement section 53-4-506, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State December 21, 1981

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

In the matter of the repeal of rules 16.24.401, definitions; 16.24.402, physical facilities; 16.24.403, children receiving care, 16.24.404, program, and 16.24.405, health care requirements	)))))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES (Day Care Centers)

To: All Interested Persons

1. On February 22, 1982, at 1:30 p.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal of rules 16.24.401, 16.24.402, 16.24.403, 16.24.404, and 16.24.405.

2. The rules proposed to be repealed can be found on pages 16-1141 through 16-1147 of the Administrative Rules of Montana.

3. The rules are proposed to be repealed because the department has prepared a completely revised and updated replacement set of the day care center rules, in accord with actual experience accrued in their administration and minor revisions in the day care law in 1981. Notice of the replacement rules appears in this issue of the register.

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 Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., no later than February 5, 1982.

5. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

6. The authority of the Department to repeal the rules is based on section 53-4-506, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State December 21, 1981

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rules 20.7.101, 20.7.102, 20.7.103, 20.7.104, 20.7.105, 20.7.106, and 20.7.108 and the proposed repeal of Rules 20.7.107 and 20.7.109 (Supervised Release Program)	)	NOTICE OF PROPOSED AMENDMENT AND REPEAL OF RULES 20.7.101 THROUGH 20.7.109 FORMERLY CALLED THE FURLOUGH PROGRAM, NOW TO BE CALLED THE SUPERVISED RELEASE PROGRAM.
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 1, 1982, the Department of Institutions intends to amend and repeal administrative rules 20.7.101 through 20.7.109.

2. The 1981 session of the Legislature in Chapter 583 generally revised the laws relating to the prisoner furlough program that existed under the foregoing rules as authorized in Section 46-23-401 through 46-23-426 MCA.

3. Pursuant to the authority vested in the Department by Chapter 583 and existing statutory authority, the Department proposes to amend portions of the existing rules as follows:

20.7.101 ~~WORK-EDUCATIONAL-FURLOUGH~~ SUPERVISED RELEASE PROGRAM (1) Purpose. The purpose of the ~~Furlough~~ program is to allow selected prisoners to increase their responsibility to society, while serving their sentences and ~~to-procure-treatment,-education-and/or-employment.~~ by participation in a recognized educational, treatment, or training program or work in conjunction with any of the above programs. ~~Furlough~~ Supervised release is a privilege and should be considered a continuation of incarceration. ~~not-an-early release-discharge-from~~ The program requires a supervising agent that is responsible for the ~~constant~~ supervision of the ~~inmate~~ prisoner. A contract signed by the prisoner and ~~supervising agency~~ sponsor ~~specifying-the-general-provisions and-requirements-for-each-party-involved-in-the-furlough~~ is required before the application is complete. Final releasing authority in all other matters relating to the program rests with the ~~corrections-division-with-the department-of-institutions~~ board of pardons.

(2) Definitions.

(a) "Supervising Agent" is ~~an-officer-of-the-probation and-parole-bureau-of-the-corrections-division,~~ a probation and parole officer of the department. (46-23-401(7))

(b) ~~"Application"-is-the-formal-execution-of-the-forms necessary-supporting-documents,~~ "Applicant " means any

prisoner who is eligible under 46-23-411 and who signs an application to participate in the supervised release program.

(c) "Board" is the board of pardons as provided for in 2-15-2302.

(d) "Department" is the department of institutions as provided for in 2-15-2301.

(e) "Supervised Release ~~Furlough~~"is the participation in ~~either-a-work,-school,-or-treatment-program-in-a-community-setting-prior-to-a-prisoner's-release-on-parole;~~ a recognized educational, treatment, or training program or work in conjunction with any of the above programs (within confines of the State of Montana.

(f) ~~"Prisoner"-is-any-adult-person-committed-to-a-Montana-state-correctional-facility.--This-includes-women,-felons-transferred-to-Swan-River-Youth-Forest-Camp-and-inmates-residing-in-the-prison.~~ "Prisoner" means any person sentenced by a state district court to a term of confinement in the state prison. (46-23-401(4))

(g) "Plan" is the proposed total program that the prisoner intends to engage in the community upon release.

(h) ~~"Supervising-agency-Sponsor"-is-any-appropriate-person,-group-or-agency-approved-by-the-department-of-institutions.--The-supervision-agency-sponsor-shall-be-on-furlough-release.~~ "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservations, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program. (46-23-401(6))

AUTH: 46-23-405 MCA IMP: 46-23-401, 46-23-405 MCA

20.7.102 PRISONER APPLICATION PROCEDURE, GENERAL STATUTE REQUIREMENTS ~~(1)--Inmate-eligibility---prisoner-will-be-rated-by-a-grid-matrix-chart-as-to-suitability-for-the-furlough-programs.~~ Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make an application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than 15 months remain before he is eligible for parole.

(2) Grid - The prisoner will be rated by a scored profile chart of behavioral and social issues. In order to be eligible the applicant must achieve 66% of the total possible score. Applicants who qualify may then appear before the board for a subjective interview.

Criteria are:

(a) ~~Type-of-crime;~~ Institutional adjustment.

(b) ~~Prior-felony-sentences;~~ Work habits when employed.

(c) ~~Number-of-revocations;~~ Positive support systems.

(d) ~~Number-of-escapes;~~ Drug & alcohol history.

(e) ~~Composite time factor.~~ Community risk.
(f) ~~Employment, skills, education.~~ Escapes.
(g) ~~Programs attended at Montana State Prison.~~ Responsibility for self.
(h) ~~Good time per month.~~ Consumer/domestic skills.
(i) Age factor.
~~(i)(h) Institutional adjustment.~~
~~(j)(i) Security Status.~~
~~(k)(j) Length of sentence.~~
~~(l)(k) Time to parole.~~

~~(2) Inmate must establish by correspondence that, which he will be paid at a rate of pay not less than the minimum hourly wage or the prevailing rate of pay for persons employed in similar occupations by the same employer, or~~

~~(b) He has been accepted at a private or state college or university within the state of Montana, or any other institution or program approved by the department, or~~

~~(c) He has arranged for a treatment plan with an established program.~~

~~(d) He has located a sponsor acceptable to the department.~~

~~(e) He has residence with the sponsor. Other arrangements may be considered by the department~~

(3) Item (d) above will not be computed as part of the grid factors when interviewing an applicant for a drug/alcohol treatment program.

(4) The grid scoring system will not be used under the following special conditions.

(a) Treatment programs involving psychiatric treatment and/or serious physical impediment will be considered on an individual basis through supporting documentation of the unit counselors; supervisor of clinical services and/or consulting physician or psychologist.

(b) Treatment programs involving institutions operating within the framework of the department, i.e.,(Galen, W.S.S.H.) may be approved by the warden, M.S.P., as an institutional transfer, with delegated authority from the director, department of institutions.

(c) Treatment programs operating outside of the authority of the department will require the approval of the board before an inmate may be released. The board may also stipulate special conditions as it deems appropriate.

(4)(a)A favorable psychological evaluation will be required as supporting documentation.

(b) In the case of a psychiatric or mental health treatment program a recommendation from the director of clinical services will verify the necessity of the proposed plan.

(5) The prisoner must establish by correspondence that:

(a) He has been accepted to a private or state college or university within the state of Montana, or any other educational institution or program approved by the department; or

(b) He has arranged for a treatment or training program approved by the department;

(c) He has a sponsor approved by the department;

(d) He has residence with the sponsor or other residential arrangements approved by the department.

AUTH: 46-23-405 MCA IMP: 46-23-405, 46-23-411 MCA

20.7.103 ~~FURLOUGH~~ CONTRACT - ESTABLISHMENT OF A PLAN

(1) The prisoner shall jointly sign a contract with his ~~supervising agency~~ sponsor stating the terms of his ~~furlough contract~~ supervised release. The contract shall specifically state:

(a) Location of residence;

(b) ~~Prisoner's place of employment.~~ Place of education; or, training.

(c) ~~Place of education.~~ Place of treatment;

(d) ~~Place of treatment.~~ Place of employment (if applicable);

(e) The name and address of individual(s) within ~~agency~~ specifically assigned ~~to be responsible~~ as sponsor for ~~furloughee~~ prisoner.

(f) That the prisoner ~~on furlough~~ will report to ~~work school or treatment~~ his program as scheduled, and if for any reason is unable to attend as ~~such~~ required, will immediately advise his ~~supervising agent~~ sponsor and supervising agent;

(g) A written statement specifying disbursement of the prisoner's income, ~~while on furlough, release including any court ordered restitution or any incurred debts. Any balance over necessary expenses and allowances shall be deposited to an interest bearing account held jointly by the sponsor and furloughee inmate, and shall be paid in full to furloughee inmate, upon release.~~ Any balance over necessary expenses and/or restitution shall be deposited to an interest bearing account held jointly by the prisoner and sponsor;

(h) If ~~on~~ an educational ~~furlough~~ plan, the ~~furloughee~~ prisoner shall agree to allow the department, supervising agent and his sponsor to have access to grades and consultation with instructors. The prisoner must ~~be~~ remain in good standing with the school.

(i) That the ~~furloughee~~ prisoner shall, under no circumstances, carry or have in possession any weapons, burglary tools; ~~or other inappropriate items~~ nor ~~not~~ possess any narcotic or dangerous drugs except as prescribed by a physician. The ~~Furloughee~~ prisoner shall submit to narcotic or drug testing as required by his ~~probation/parole officer~~ supervising agent;

(j) ~~Any change to the furlough agreement will be submitted in writing, to the parole officer for approval by the department.~~ That prior to any amendment of the contract the proposed change will be submitted in writing to the supervising agent who will submit it, along with his recommendation, to the department.

(k) ~~Educational furloughee prisoner shall agree to allow the department, parole office and supervising agency sponsor to have access to grades and consultation with instructors.~~ That specific arrangements will be made for the prisoner's free time. The sponsor should encourage and assist the prisoner in participating in social development activities. All of the prisoner's free time must be accounted for by the sponsor;

(l) ~~Specific arrangements will be made for furloughee's inmates free time. The supervisor sponsor should encourage and assist the furloughee inmate in participating in social development activities. All of furloughee's the inmates time must be accounted for by the supervisor. sponsor. Supervisor and furloughee. They will meet daily at least for first thirty (30) days to work out furloughee's inmates schedule of activities and discuss progress of furlough. his contract.~~ That the sponsor and the prisoner will meet daily at least for the first thirty days to work out prisoner's schedule of activities and discuss progress of his plan;

(m) That specific arrangements shall be made for the ~~furloughee's~~ prisoner's transportation.

(n) That the ~~furloughee~~ prisoner will not ~~attend~~ frequent establishments whose primary function is ~~to serve~~ the sale of alcoholic beverages; nor attend places ~~involved~~ involving ~~in~~ illegal activity nor associate with convicted felons (except in approved activities).

(o) That a curfew will be set and the ~~furloughee~~ prisoner will agree to abide by the curfew.

(p) That any violation of any terms of the ~~furloughee~~ contract will be immediately reported to the ~~parole office~~ supervising agent and department by the ~~supervising agency~~ sponsor and may be grounds for the revocation of the ~~furlough contract~~ supervised release;

(q) That the ~~Furloughee~~ prisoner shall obtain written permission before going into debt, purchasing property or engaging in business enterprise.

(r) That the ~~Furloughee~~ prisoner shall not change marital status without written permission from ~~both the warden, Montana state prision, and~~ the department.

(s) That the ~~Furloughee~~ prisoner shall be subject to search of his person, ~~and/or premises by parole officer~~ place of residence and/or automobile at any time of the day or night with or without a warrant determined upon reasonable cause.

(t) That the ~~Furloughee~~ prisoner shall be responsible for his own medical and dental care except where authorization has been received through ~~business-manager,-Montana-state prison~~ the department.

(u) That the ~~Furloughee~~ prisoner shall not travel out of state; ~~Travel-in-state-will-require-written-permission-from parole-officer.~~ nor shall the prisoner travel outside the immediate area as designated in the supervised release plan without written permission from the supervising agent.

AUTH: 46-23-405 MCA IMP: 46-23-405 MCA

20.7.104 REVOCATION OR CHANGE OF ~~FURLOUGH~~ CONTRACT

(1) If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. Upon a second or subsequent violation, the department shall issue a warrant for the prisoner's arrest.

(1)(2)Should the ~~supervising-agency~~ sponsor, ~~parole-officer~~, supervising agent, or the department have any doubt as to the success of the ~~furlough~~ plan or to the ~~furloughee's~~ prisoner's ability to conform to the contractural agreement, ~~each~~ any party may request that the ~~furloughee~~ prisoner meet with the ~~agency~~ sponsor, parole officer, or department separately or ~~all~~ jointly. At such a conference, the ~~furloughee~~ prisoner shall be informed of the nature of ~~his~~ the violation or ~~nonconformance.~~ nonperformance. If that conference is not sufficient to resolve the problem, an on-site hearing by ~~the~~ a hearings officer of the ~~probation and parole bureau~~ department shall be requested. If the hearings officer finds there is probable cause to believe that the conditions, limitations and restrictions of the ~~furlough agreement~~ contract have been violated, the ~~furloughee~~ prisoner ~~shall~~ may be returned to prison. At the next meeting of the board of pardons, the prisoner ~~shall~~ will be ~~given~~ accorded a revocation hearing.

~~(2)~~(3)If it is called to the department's attention by the ~~probation-and-parole-bureau~~ supervising agent or the ~~supervising-agency~~ sponsor that the ~~furloughee~~ prisoner is presenting a ~~grave~~ threat to the community, the supervising agency shall have him apprehended and incarcerated pending return to the prison. A revocation hearing ~~shall~~ will be held by the board of pardons ~~no-later-than-30-days~~ within a reasonable time after the prisoner's return to prison.

~~(3)--If-after-30-days-on-furlough-the-participant-feels his-furlough-plans-must-be-changed,-he-and-the-supervising-agency,-with-the-advise-and-consent-of-the-parole-officer, may-alter-the-plans.--Any-changes-shall-be-approved-by-the department-before-they-are-instituted.--If-the-participant wishes-to-have-a-new-supervising-agency,-he-may-request-a hearing-from-the-department,-provided-he-has-reasonable-and-well-documented-grounds-for-such-a-request.~~

~~(4)---If,-after-the-furlough-is-completed,-the-prisoner has-time-remaining-on-his-sentence-to-parole-eligibility,-he shall,-with-the-help-of-the-Department,-apply-for-an extension-of-his-current-furlough-or-shall-design-a-new furlough-plan-or-return-to-Montana-state-prison.~~

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a supervising agent and a new supervised release program shall be worked out.

Escape - A person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

AUTH: 46-23-405 MCA IMP: 46-23-421, 46-23-422 MCA

20.7.105 ~~SUPERVISING-AGENCY~~ SPONSOR - REQUIREMENTS

(1) The ~~supervising-agency~~ sponsor can be any person or group approved by the department. This includes, but is not limited to, any federal, state, local or private agency, Indian tribe or reservation, church group or minister. The ~~supervising-agency~~ sponsor shall be responsible for the ~~direct supervision~~ coordination of the ~~furloughee~~ prisoner's release plans with the supervising agent. If the ~~supervising agency~~ sponsor is a group, one person within the group must be designated to act as the ~~furloughee's~~ prisoner's direct ~~supervisor~~ sponsor. The ~~furloughee~~ prisoner, in conjunction with the ~~sponsoring-agent~~ sponsor, shall be responsible for making a ~~brief~~ monthly report on the approved form to his supervising agent.

(2) To apply to be a ~~supervising-agency~~ sponsor, the agency, individual, or group shall ~~make-a-written-statement indicating-its-motivation-for-wanting-to-supervise-a-prisoner and-its-plan-for-his-supervision-including-his-use-of-free time.--This-letter-shall-be-part-of-the-packet-containing-the application-and-the-contract.--This-packet-shall-be-sent-to the-social-services-department-at-the-prison.--In-its-application,-the-agency-sponsor-shall~~provide the following information:

(a) Sponsoring agency's name and function.

(b) Relationship to the ~~furlough-participant~~, applicant, if any.

~~(c)---Prior-experience-in-the-corrections-field.~~

~~(d)~~(c)Amount of time and manpower available to supervise ~~participant~~ the prisoner. It shall be a condition of the contract that the ~~furlough-participant~~ prisoner have daily contact with ~~the~~ his ~~supervising-agency~~ sponsor for at least the first ~~month-of-his~~ 30 days following release. ~~Special circumstances-will-be-handled-on-an-individual-basis.~~ If ~~during-the-furlough~~ after this period ~~the-participant~~ prisoner

demonstrates ~~increasing~~ increased responsibility and stability, the ~~contract~~ schedule may be ~~decreased to a more appropriate interval.~~ amended by the supervising agent to less frequent contacts. ~~Any changes to the frequency of contact must be approved first by the parole officer. Under no circumstances are changes to be made to the contract without prior written consent of the parole officer. A copy of the change and the parole officer's written consent should be sent to the department for approval.~~

(d) Under no circumstances are major changes to be made to the contract without prior consent of the department. Any proposed change shall be in the form of written recommendation by the supervising agent and a copy of the change shall be sent to the board;

(e) Provision for the ~~furloughee's~~ prisoner's free time.

(f) A statement of willingness to cooperate with the ~~parole officer~~, supervising agent, board of pardons and the department.

AUTH: 46-23-405 MCA IMP: 46-23-450 MCA

20.7.106 ~~PAROLE AND PROBATION BUREAU DUTIES~~ DEPARTMENT DUTIES

(1) After all of the appropriate documents have been collected and received by the ~~corrections division~~ department, a packet containing the application, contract, letter of intent, social history and a ~~current~~ psychological summary will be prepared by the ~~furlough coordinator department~~ and mailed to the ~~field agent~~ supervising agent. ~~through the probation and parole bureau. The parole officer shall conduct an investigation of the proposed supervising agency sponsor and report findings to the furlough coordinator department via the probation/parole bureau. This report should be completed within two weeks after receipt of the request. At the time of investigation the parole officer shall inform the local law enforcement and criminal justice personnel of the proposed furlough release plan.~~

(2) ~~The parole officer shall maintain at least monthly contact with the furloughee inmate, and shall provide counseling to the supervising agency sponsor and furloughee inmate, if necessary. Although the supervising agency sponsor has primary responsibility for the furloughee inmate, the parole officer is an important element to the success of the plan. The corrections staff is free to consult with the furloughee inmate, supervising agency sponsor or work furlough coordinator at any time.~~ The department shall notify the judge, sheriff, chief of police, and county attorney of the county of commitment regarding the supervised release plan.

~~(3) In the event that the furloughee, inmate, after placement on furlough, should be detained, the parole officer~~

~~shall-follow-the-procedures-used-for-detention-of-parolees.~~ The Supervising agent shall conduct an investigation of the proposed plan and applicant and submit finding and a recommendation to the board. This report should be completed within two weeks after receipt of the request. At the time of investigation the supervising agent shall inform the local law enforcement and criminal justice personnel of the supervised release plan.

(4) The prisoner shall have 15 days after receiving the decision of the board to file an appeal with the director of the department.

(5) Upon timely receipt of the appeal, the department shall conduct the review based on standards limited to whether or not the board made any error of "law or fact."

(6) The department shall have 45 days in which to contact the administrative review and either uphold or return the application to the board for re-consideration.

(7) If the application is denied, the prisoner may reapply after six months time.

(8) The supervising agent shall maintain at least monthly contact with the prisoner, and shall provide counseling assistance to the sponsor and prisoner as necessary. The department may consult with the prisoner or sponsor at any time.

(9) In the event that the prisoner, after release from prison should be detained, the supervising agent shall follow the procedures used for detention of parolees.

AUTH: 46-23-405 MCA IMP: 46-23-421, 46-23-411 MCA

20.7.108 BOARD OF PARDONS - DUTIES

(1) ~~At-its-meeting~~ The board shall interview the prisoner and consider the recommendation received from the ~~committee~~ supervising agent. ~~and-shall-view-each-applicant singly.~~ The board ~~is-required-to~~ shall consider the ~~prisoner's furlough~~ prisoner's release plans, criminal history and ~~pertinent-case-material.~~ and any other information deemed relevant. ~~The-board-is-not-bound-by-the-committee-information.~~ The prisoner may bring two witnesses from ~~inside-or~~ outside the prison to testify in his behalf. the board may then meet in executive session, without the prisoner being present, to make its decision.

(2) The board shall ~~immediately~~ verbally notify the prisoner of its decision and also provide the prisoner with a written decision within two (2) working days following adjournment. If the board disapproves the application, a written statement of the reasons shall be included. ~~This statement-shall-be-sent-within-two-working-days-of-the meeting.~~

(3) In cases of prisoners who are incarcerated out of the state, the board may delegate an agent or agency of the receiving state to conduct an interview for the proposed

supervised release (in Montana) on behalf of the Montana board of pardons. Prisoners who are incarcerated out-of-state may not be allowed to appear before the board in person.
AUTH: 46-23-405 MCA IMP: 46-23-412 MCA

4. The Department proposes to repeal the following rules because the statutory authority and administrative need for such rules no longer exists:

20.7.107 PRISON FURLOUGH RELEASE COMMITTEE - DUTIES - MEMBERS, page 20-98 Administrative Rules of Montana.
AUTH: 46-23-405 IMP: 46-23-405

20.7.109 FURLOUGH COORDINATOR - DUTIES, page 20-98 ARM.
AUTH: 46-23-405 IMP: 46-23-405

RATIONALE STATEMENT

WHEREAS, the Legislature realizes that the above-named statutes are no longer workable and cause conflicts of laws and complication of efforts.

WHEREAS, the Legislature supports the basic intent of the prisoner furlough program, hereafter referred to as the supervised release program, to provide education, training, and betterment of selected prisoners and the increase such prisoners' responsibility to society; and

WHEREAS, the Legislature believes that the program can be administered in a more efficient and meaningful manner.

5. Interested parties may submit their data, views, or arguments concerning the proposed new rules and amendments in writing no later than January 22, 1982 by submitting their data, views or arguments to Nick A. Rotering, Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620.

6. If a person directly affected by the proposed rules or amendments wishes to express his data, views or arguments orally or in writing in a public hearing he must make a written request for a public hearing and submit that request along with any written comments he has to the above named person no later than January 15, 1982.

7. If the Department receives requests for a public hearing of the proposed amendments and adoption of rules from either 10% or 25 persons whichever is less, of persons directly affected or from the Legislative Code Committee or from a governmental subdivision or agency the hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has to be determined to be 70 persons. The authority of the Department to make these new rules and amendments is given in Section 46-23-405 MCA. These

rules will implement various sections of the Montana Statutes 46-23-401 through 46-23-426.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State this 21 day of December, 1981.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule 32.3.212 relating to the period in which cattle must be retested for brucellosis when brought into Montana.	NOTICE OF PROPOSED AMENDMENT OF A RULE Concerning special brucellosis test requirements for cattle. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 1, 1982 the Board of Livestock proposes to amend rule 32.3.212 which mandates special requirements for imported cattle as regards the disease brucellosis and includes specific time periods in which imported cows must undergo retests for the disease.

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

32.3.212 SPECIAL REQUIREMENTS FOR CATTLE (1) Cattle may enter Montana provided they are transported or moved into the state in conformity with ARM 32.3.201 through 32.3.211 and:

(2) With regards to brucellosis:

(a) All female cattle over 12 months of age entering Montana must be found negative to a brucellosis test performed within 30 days prior to the date of entry into the state of Montana, (and confirmed in a state or federally approved animal diagnostic laboratory) except the following:

(i) Spayed heifers;

(ii) Official vaccinates as defined in ARM 32.3.401 in which the first pair of permanent incisor teeth have not erupted or which are not in the last trimester of pregnancy, parturient or post-parturient;

(iii) Cattle from certified brucellosis-free herds, provided the certified herd number is shown on the health certificate accompanying such cattle into this state;

(iv) Female cattle, not already excluded from test requirements under paragraphs (i) through (iv) of this subsection, which are consigned directly to a livestock market in this state specifically approved by the U.S. department of agriculture under the provision of part 78, volume 9, Code of Federal Regulations, to receive brucellosis affected cattle. Such cattle except those sold to an immediate destination outside of Montana, must be officially tested for brucellosis at the market prior to release to the purchaser, and must be quarantined and kept separate and apart from all other livestock until determined to be negative to an official test for brucellosis made not less than ~~30~~ 45 nor more than ~~60~~ 120

days after entry and quarantine. The cost of quarantine and testing shall be at the owner's expense. The requirements for quarantine and retest do not apply to female cattle originating in states having no known brucellosis infection in the previous 6 months.

(b) All cattle required to be tested for brucellosis prior to entry into the state of Montana must be quarantined upon entry and kept separate and apart from all other livestock until determined to be negative to an official test for brucellosis made not less that ~~30~~, 45 nor more than ~~60~~ 120 days after entry and quarantine. The cost of quarantine and testing is at the owner's expense. The requirements for quarantine and retest after entry do not apply to female cattle originating in states having no known brucellosis infection in the previous 6 months.

(c) Cattle moving from Montana into an adjacent state, or from an adjacent state into Montana for purposes of summer grazing are exempt from the provisions of this subsection pertaining to test, quarantine and retest provided the following conditions are met:

(i) The cattle enter and return to Montana under permit from the state veterinarian and an official health certificate certifying the animals are free of visible diseases; and

(ii) While outside of Montana, the cattle are kept under fence and are not intermingled with cattle belonging to another person. The state veterinarian may waive this requirement as to intermingling when he is satisfied that the possibility of exposure to brucellosis is minimal.

(iii) The county where the cattle are grazed in the adjacent state has achieved certified brucellosis-free status.

(iv) Cattle otherwise subject to test under this rule which are added to the herd while it is out of state are subject to test, quarantine and retest as provided in this rule.

(3) With regards to tuberculosis, cattle coming from states in which herds are or have been quarantined because of M. bovis in the past 6 months, and cattle 12 months of age and over coming from points of origin having less than "accredited free" or "modified accredited" tuberculosis status, and dairy cattle from any point of origin must be found negative to an approved test for tuberculosis administered not more than 30 days prior to entry into Montana, as evidenced by an official test form showing the results of that test. No other cattle are subject to tuberculosis testing as a condition for entry into Montana.

3. The rationale for the amendment is to be consistent with the U.S.D.A. rules concerning the same subject which requires a 45 to 120 day period.

4. Interested parties may submit their date, views or arguments concerning the proposed amendment in writing to Dr. James W. Glosser, Administrator & State Veterinarian, Department of Livestock, Animal Health Division, Capitol Station, Helena, MT 59620, no later than January 29, 1982.

5. If a person is directly affected by the proposed rules 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 James W. Glosser, D.V.M., Administrator & State Veterinarian, no later than January 29, 1982.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed amendment is based on section 81-2-102 and 81-2-701 MCA and implements the same.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: JAMES W. GLOSSER, D.V.M.
Administrator
Animal Health Division

Certified to the Secretary of State December 21, 1981

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the ADOPTION OF RULES I - X specifying the powers and procedures of the Board of Livestock when quarantining livestock, and the REPEAL OF A RULE specifying certain procedures for the same.	))))))	NOTICE OF PROPOSED ADOPTION OF RULES CONCERNING QUARANTINE LIVESTOCK AND PROPOSED REPEAL OF A RULE CONCERNING QUARANTINE OF LIVESTOCK

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On or after February 1, 1982 the Board of Livestock proposes to adopt rules specifying the powers and procedures of the Board of Livestock when they are quarantining animals which are affected with or exposed to diseases; and, repealing an earlier Rule 32.3.101 which does the same.

2. The proposed rules provide as follows:

RULE I - Definition

"Animals" as used in this subchapter is defined in 32.3.201.

AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101, M.C.A.

RULE II - Subject Animals

Animals are subject to the rules of this subchapter if:

1) They are affected with, directly exposed to, or suspected of being affected with or exposed to a disease or condition found in RULE III or made subject to this subchapter through RULE III.

2) The owner or person in control of the animals refuses to submit to any tests or treatments required or permitted under the laws of Montana or the Administrative Rules of the Department of Livestock. AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101, M.C.A.

RULE III - Subject Diseases or Conditions

(1) Diseases or conditions requiring quarantine under Department rules are:

Brucellosis,
Tuberculosis,
Scabies,
Anthrax,
Rabies,
Pseudorabies,
Pullorum,
New Castle Disease,
Scrapie,
Foot Rot in sheep, Pediculosis in sheep, and other domestic and exotic dangerous diseases and conditions.

(2) Other diseases or conditions may become subject to the rules of this subchapter by the order of the State Veterinarian.
(3) Diseases or conditions listed above requiring procedures which are specifically covered elsewhere in Department rules are subject to the rules of this subchapter upon the order of the State Veterinarian. AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101, M.C.A.

RULE IV - Supplemental Quarantine Provisions

(1) The quarantine rules of this subchapter may be supplemented by generally accepted veterinary practices; the order of the State Veterinarian; and, the issued policies of the Department of Livestock.
(2) Specific quarantine procedures for diseases not in this subchapter but subject to the rules of the Department may be supplemented with these general quarantine rules by order of the State Veterinarian.

AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101, M.C.A.

RULE V - Quarantine - Who May Issue

Any licensed veterinarian or any authorized quarantine agent of the Department of Livestock may issue a quarantine.

AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101, M.C.A.

RULE VI - Responsibility of Owner or Possessor

Any owner or possessor of animals who knows or suspects that the animals are affected with or have been exposed to a quarantinable disease or condition shall immediately confine the animals separate and apart from other animals. AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101, M.C.A.

RULE VII - Quarantine and Release of Quarantine

(1) Animals subject to quarantine shall be, as soon as it is practicable, quarantined separate and apart from other susceptible animals. If possible, they shall be quarantined in an inside enclosure.
(2) Quarantined animals shall be identified by brand, tattoo, dye mark, eartag, or other identification acceptable to the Montana Department of Livestock.
(3) The person who issues the quarantine shall designate on the Department of Livestock approved quarantine blank the number of animals quarantined, their approximate age, breed class, species, sex, a description of the mark or brand identifying the animals, and a clear and distinct identification of the area in which they are to be quarantined.
(4) The person issuing the quarantine shall deliver personally or forward through the United States mail, by registered mail return receipt requested with instructions to deliver to the addressee only, the notice of quarantine to the owner or agent of the animals quarantined.

(5) The person issuing the quarantine shall also immediately deliver notice personally or by mail to the State Veterinarian.
(6) Where quarantined animals are shipped for immediate slaughter under permit from the Montana Department of Livestock, Animal Health Division, the veterinarian issuing the permit will use the approved federal and state form.
(7) Quarantine may be removed by or with the approval of the veterinarian issuing the quarantine or by any authorized quarantine agent of the Department of Livestock when he is satisfied that, according to generally accepted veterinary practice, the animals are not affected with or have not been directly exposed to a quarantinable disease. AUTH: Secs. 81-2-102, 81-20-=101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101 M.C.A.

RULE VIII - Animals in Transit

The State Veterinarian or his agent may examine all animals passing through Montana and, upon detection or suspicion of any quarantinable disease, may take possession of and treat and dispose of animals in transit in the same manner as animals resident in Montana. AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101, M.C.A.

RULE IX - Breaking of Quarantine

(1) No person may remove any animals from a quarantine area or bring any animals into a quarantine area without the permission of the person issuing the quarantine.
(2) Violation of quarantine is punishable by 81-2-113 M.C.A. and other applicable provision of the M.C.A. AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101 M.C.A.

RULE X - Epizootic Area

(1) The State Veterinarian, upon deciding that there is or may be an outbreak of a disease or condition quarantinable under this subchapter, may declare any area of the state as epizootic area.
(2) No person may remove any animals from an epizootic area or bring any animals into an epizootic area without the permission of the State Veterinarian or his authorized agent.
(3) Violation of this rule is punishable by 81-2-112 M.C.A. and other applicable provision of the M.C.A. AUTH: Secs. 81-2-102, 81-20-101 M.C.A.; IMP, Secs. 81-2-102, 81-20-101 M.C.A.

3. The rules are proposed to be adopted to replace an earlier Rule 32.2.101 which has proven to be confusing and inadequate.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Les Graham, Administrator, Brands-Enforcement Division, or James W. Glosser, D.V.M., Administrator & State Veterinarian, Department of Livestock, Capitol Station, Helena, MT 59620, no later than January 29, 1982.

5. If a person is directly affected by the proposed rules 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 Les Graham, Administrator, Brands-Enforcement Division, or James W. Glosser, D.V.M., Administrator & State Veterinarian no later than January 29, 1981.

6. The Department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the Department received requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed rules is based on Sections 81-2-102 and 81-20-101 M.C.A., and the rules implement Sections 81-2-102 and 81-20-101 M.C.A.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: James W. Glosser
JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State, December 21, 1981.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the adoption of a rule relating to granting an exemption to research facilities to import certain animals without a permit.	NOTICE OF PROPOSED ADOPTION OF RULE CONCERNING THE GRANTING OF AN EXEMPTION UNDER THE "ANIMAL IMPORTATION PERMIT AND HEALTH CERTIFICATE ACT OF 1981". NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after February 1, 1982 the Board of Livestock proposes to adopt a rule granting an exemption to research facilities to import certain animals into Montana without a permit.

2. The proposed rule provides as follows:

RULE II RESEARCH FACILITY EXEMPTION

1. Research facilities, as defined in 9CFR 1.1(s), may import without a permit any "animal", as defined in 9CFR 1.1(n), and "bird" not normally considered poultry, and any rats or mice or other laboratory animals, if they are to be used only for research, testing, or experimentation at that research facility and will not be comingled with any animals not owned by that facility.

2. Research facilities may not import any livestock or poultry without a permit.

3. The "Animal Importation Permit and Health Certificate Act of 1981" was intended as a preventative measure to protect the livestock of this state from disease. Research facilities use a great number of animals in their work, but they are rarely comingled with other animals. This rule will allow an exemption, to such facilities, from the request of having a permit for each animals imported.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Dr. James W. Glosser, D.V.M., Administrator and State Veterinarian, Department of Livestock, Animal Health Division, Captiol Station, Helena, MT 59620, no later than January 29, 1982.

5. If a person is directly affected by the proposed rules 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 James W. Glosser, D.V.M., Administrator and State Veterinarian no later than January 29, 1982.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the department to make the proposed rule is based on sections 81-2-703 MCA, and the rule implements section 81-2-703.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

BY: JAMES W. GLOSSER, D.V.M.
Administrator
Animal Health Division

Certified to the Secretary of State December 21, 1981.

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

In the matter of the amendment of Rules 46.12.602 and 46.12.605 pertaining to medical services, dental services	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT TO RULES 46.12.602 AND 46.12.605 PERTAINING TO MEDICAL SERVICES, DENTAL SERVICES

TO: All Interested Persons

1. On January 21, 1982, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.12.602 and 46.12.605 pertaining to medical services, dental services.

2. Rule 46.12.602 proposed to be amended provides as follows:

46.12.602 DENTAL SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Emergency dental care for covered services does not need prior authorization when an emergency exists.

(2) The following diagnostic and preventive dental services are covered by the program:

(a) simple extractions;

(b) annual fluoride treatments;

(c) full mouth x-rays, or panorex, or cephalometric radiograms, the foregoing allowed at three year intervals;

(d) annual bite-wing x-rays;

(e) single periapical radiograms;

(f) intra-oral occulsal maxillary or mandibular;

(g) extra-oral radiograms, maxillary or mandibular lateral films;

(h) examinations at six month intervals;

(i) prophylaxis at six month intervals;

(j) full mouth x-rays on edentulous patients allowed when determined medically necessary by the designated peer review organization;

(k) house calls;

(l) vitality tests;

(m) consultation, written justification for consultation must be provided;

(n) hospital and nursing home calls;

(o) palliative emergency treatment of dental pain, including minor procedures, temporary fillings, incisions and drainage, topical medicaments, irrigation for pericoronitis;

(3) The following dental services for the restoration of carious and fractural teeth are benefits of the medicaid program:

(a) amalgam restorations on deciduous and permanent teeth;

(b) retention pins, up to 2 per tooth;

(c) silicate restorations;

(d) composite and resin restorations;

(e) acrylic jacket for immediate treatment of fractured anterior tooth;

(f) treatment fillings;

(g) recementing of inlays;

(h) pulpotomys.

(4) The following oral surgery services are benefits of the medicaid program; including extensive oral surgery which must be prior authorized by the designated review organization:

(a) general anesthesia in a dental office, which must be prior authorized by the designated peer review organization;

(b) nitrous oxide, when prior authorized by the designated review organization for specific reasons such as disability or age of patient, etc;

(c) oral premedication for sedation of patient for whom dental treatment under normal circumstances is not possible, but who does not require general anesthesia, or parenteral premedication; when prior authorized by the designated review organization,

(d) parenteral premedication for sedation of patient for whom dental treatment under normal circumstances is not possible, but who does not require general anesthesia; when prior authorized by the designated review organization;

(e) hospital dental treatment, when prior authorized by the designated review organization;

(f) I and D of extra-oral abcess;

(g) removal of tooth (includes shaping of ridge bone);

(h) surgical removal of tooth, soft tissue impaction;

(i) surgical removal of tooth, partial bone impaction;

(j) surgical removal of tooth, complete bone impaction;

(k) alveolectomy, not in conjection with extractions;

(l) excision of hyperplastic tissue;

(m) removal of retained or residual roots, foreign bodies in bony tissue;

(n) removal of cyst;

(o) removal of retained or residual roots, foreign bodies in maxillary sinus;

(p) frenectomy;

(q) removal of exostosis, torus, maxillary or mandibular;

(r) biopsy;

(s) maxilla, open reduction;

(t) fracture, simple, maxilla, treatment and care;
(u) mandible, open reduction;
(v) fracture, simple, mandible, treatment and care;
(w) facial surgery.

(5) The following endodontic services are benefits of the medicaid program; and all nonemergency endodontics must be prior authorized by the designated review organization:

(a) root canal treatment on upper or lower six anterior teeth (chemotherapy and mechanical preparation, and filling);

(b) root canal treatment on posterior teeth except third molars (chemotherapy and mechanical preparation, and filling), maximum of three roots per tooth;

(c) emergency root canal, a finished x-ray must be attached to claim;

(d) root canal and apicoectomy combined operation;

(e) apicoectomy not in conjunction with root canal.

(6) All full dentures must be prior authorized by the designated review organization. Requests for full dentures must show the approximate date of the most recent extractions, and/or the age of the present dentures. Dentures less than ten years old must be considered for relining or jumping. Tissue conditioners are considered a part of treatment. The following full denture services are benefits of the medicaid program:

(a) replacement of lost dentures. A caseworker must investigate thoroughly and send a written evaluation to the recipient's dentist. Social worker's evaluation is to accompany dentist's prior authorization request;

(b) cured and resin relines, upper and lower, on immediate dentures three months after placement of denture;

(c) cured and resin relines, upper and lower, at three year intervals;

(d) duplicate (jump) upper and/or lower complete denture when prior authorized by the peer review organization;

(e) complete maxillary denture, acrylic, plus necessary adjustment;

(f) complete mandibular denture, acrylic, plus necessary adjustment;

(g) broken denture repair, no teeth or metal involved;

(h) denture adjustment as a separate service when dentist did not make dentures;

(i) replacing broken teeth on denture;

(j) placing name on a new, full or partial denture.

(7) The following partial denture services are benefits of the medicaid program; and all partial dentures must be prior authorized by the designated review organization:

(a) acrylic upper or lower partial denture with two chrome or gold clasps and rests and adjustments, a minimum of 4 posterior teeth;

(b) maxillary or mandibular cast chrome partial denture replacing any number of posterior teeth but must include one or more anterior teeth and adjustments;

(c) acrylic denture, without clasps, supplying 1 to 4 teeth (flipper);

(d) additional teeth, permanent - on acrylic denture (flipper);

(e) adding teeth to partial to replace extracted natural teeth;

(f) replacing clasp, new clasp;

(g) repairing (welding or soldering) palatal bars, lingual bars, metal connectors, etc. on chrome partials.

(8) The following periodontal services are benefits of the medicaid program; and all periodontia must be prior authorized by the designated review organization:

(a) deep scaling and currettage up to four quadrants;

(b) gingival resection for the treatment of gingival hyperplasia due to medication reactions. Treatment shall cover posterior and anterior teeth on uppers and lowers (sextants).

(9) The following services for crowns and fixed bridges are benefits of the medicaid program; and these services must be prior authorized by the designated review organization:

(a) porcelain or acrylic crowns are limited to upper and lower 6 anterior teeth;

(b) chrome, gold, or semiprecious crowns on posterior teeth not restorable by conventional filling material;

(c) fixed bridges on anterior teeth only;

(d) bridges replacing no more than 2 teeth;

(i) Ceramic bridges replacing no more than 2 teeth;

(ii) Steele's facing type bridges will be allowed when replacing more than 2 teeth;

(e) three-quarter cast crown;

(f) full cast crown;

(g) cured acrylic jacket crown, laboratory processed;

(h) porcelain jacket;

(i) porcelain veneer (microbond, ceramco, etc.);

(j) full cast crown with acrylic facing;

(k) pontic, ceramic only;

(l) steele's facing type;

(m) cured acrylic, laboratory processed, veneer.

(10) The following pedodontic services, including spacers and crowns, are benefits of the medicaid program:

(a) amalgam restorations;

(b) chrome crown, prior authorization by the designated peer review organization required;

(c) immediate treatment of fractured anterior permanent tooth, including pulp testing, pulp capping and use of metal band or crown form with sedative filling;

(d) chrome crown and loop spacer or other types (space maintainers) when prior authorized by the designated review organization;

(e) bilateral space maintainer or lingual arch, prior authorization by the designated peer review organization required, at least one tooth must be missing on each side of the mouth;

(f) chrome wire clasps, adams, T or ball;

(g) stainless steel band.

(11) All orthodontia must be prior authorized by the designated review organization. There shall be written documentation submitted with all prior authorization requests for orthodontia that the recipient and/or his family understands that once the treatment is started, it must be followed to completion and if medicaid eligibility ceases, the recipient and/or his family will be responsible for the payment for the balance of the treatment. The following orthodontic services are benefits of the medicaid program:

(a) orthodontia related to post maxillo-facial intervention when the injuries are caused by trauma; the treatment shall be limited to stabilization and movement to accommodate prosthesis;

(b) orthodontia for movement of teeth to accommodate post cleft palate treatment, the treatment shall be limited to those procedures necessary for the retention of prosthesis for swallowing, breathing, and mastication;

(c) examination;

(d) records and diagnosis;

(e) full treatment - initial service; the prior authorization request will include a statement on the maximum length of treatment;

(f) full treatment monthly service;

(g) full treatment retention service;

(h) serial extractions, supervision;

(i) partial treatment, expansion appliance;

(j) partial treatment - head gear appliance;

(k) special appliance, bilateral space maintainer (when not part of full treatment);

(l) special appliance, unilateral space maintainer;

(m) special appliance, removable space maintainer, upper and lower;

(n) special appliance, expansion appliance;

(o) special appliance, retainer;

(p) special appliance, habit appliance.

(12) X-rays are required with requests for the following dental services:

(a) all crowns, stainless steel, gold, others;

(b) endodontic cases;

(c) any case where pulp chamber is involved;

(d) removal of impacted teeth.

(13) Cosmetic dentistry is not a benefit of the medicaid program.

3. The authority of the department to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.

4. Rule 46.12.605 proposed to be amended provides as follows:

46.12.605 DENTAL SERVICES, REIMBURSEMENT The department will pay the lowest of the following for dental services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule found in this rule.

The department will pay the lowest of the following for dental services which are also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

(1) Preventive and diagnostic services:

(a) examination and execution of forms - 7.80;

(b) complete intra-oral radiograms, minimum 14 films - 26.00;

(c) single periapical radiograms, first film - 5.20;

(d) each additional film, periapical - 2.60;

(e) bite-wing radiograms, 2 films - 7.80;

(f) intra-oral occlusal maxillary or mandibular - 6.50;

(g) cephalometric radiograms or panorex, diagnostic only - 26.00;

(h) extra-oral radiograms, maxillary or mandibular lateral film -19.50;

(i) allowable charges for x-rays in a single visit shall not exceed the allowable charges for a full mouth x-ray;

(j) consultation fee (necessity to be shown) per session -13.00;

(k) hospital calls - 19.50;

(l) simple operations under general anesthesia in hospital - 39.00;

(m) house calls and nursing home calls - 9.10;

(n) vitality tests one tooth or per quadrant - 7.80;

(o) palliative (emergency treatment of dental pain (includes only minor procedures, i.e., temporary fillings, incision and drainage, topical medicaments, irrigation, pericoronitis, etc.) - 7.80;

(p) stannus flouride 8%, one treatment, including prophylaxis - 22.10;
(q) flouride - 7.70;
(r) prophyliaxis, includes routine scaling and polishing/adults and children - 16.90;
(2) Amalgam restorations:
(a) deciduous, one surface - 12.32;
(b) deciduous, two surface - 20.16;
(c) deciduous, three surface - 28.16;
(d) each additional surface, deciduous - 3.30;
(e) one surface, permanent - 12.32;
(f) two surface, permanent - 20.16;
(g) three surface, permanent - 28.16;
(h) each additional surface (includes cusp restoration, veneer, groove extension, etc.) permanent - 4.80;
(i) pins for retention (maximum 2) each pin - 3.90.
(3) Silicates and fiberglass restorations (per surface):
(a) silicate - 13.00;
(b) compost resin (addent, dakor, adaptic, concise, prestige, etc.) - 19.20.
(c) composite fillings for posterior teeth will be paid at the rate of a similar amalgam restoration except for buccal surfaces.
(4) Additional operative procedures:
(a) acrylic jacket, immediate treatment for fractured anterior - 26.00;
(b) treatment filling (emergency) - 6.50;
(c) recement inlay - 6.50;
(d) pulpotomy - need authorization - 19.20;
(e) No extra fee for pulp capping or bases.
(5) Crown and bridge:
(a) three-quarter cast crown - 125.45;
(b) full cast crown - 125.45;
(c) cured acrylic jacket crown, laboratory processed - 104.00;
(d) porcelain jacket - 143.00;
(e) porcelain veneer (microbond, ceramco, etc.) - 184.00;
(f) full cast crown with acrylic facing - 184.00;
(g) gold and semi-precious crowns will be reimbursed at the same rate.
(6) Pedodontics, spacers, crowns, etc. amalgam restorations same as permanent teeth:
(a) chrome crown - 40.00;
(b) immediate treatment of fractured anterior permanent tooth, includes pulp testing, pulp capping and use of metal band or crown form with sedative filling - 20.80;
(c) chrome crown and loop spacer or other types (space maintainer) - 52.00;
(d) bilateral space maintainer or lingual arch - 82.50;

(e) acrylic denture, without clasps, supplying 1 to 4 (flipper) - 65.00;
(f) each additional tooth, permanent on acrylic denture (flipper) - 6.50;
(g) chrome wire clasps, adams, t or ball, each - 6.50;
(h) stainless steel band - 12.00.
(7) Prosthodontics:
(a) complete maxillary denture, acrylic, plus necessary adjustment - 336.00;
(b) complete mandibular denture, acrylic, plus necessary adjustment - 336.00;
(c) acrylic upper or lower partial denture with cast chrome clasps and rests replacing at least 4 posterior teeth plus adjustments - 260.00;
(d) maxillary cast chrome partial denture, acrylic saddles, 2 clasps and rests, replacing missing posterior teeth and one or more anterior teeth, plus adjustments - 325.00.
(8) Relines and repairs, etc.:
(a) cured resin reline, lower - 86.45;
(b) cured resin reline, upper - 86.45;
(c) broken denture repair, no teeth, metal involved -32.00;
(d) denture adjustment - only where dentist did not make dentures - 7.80;
(e) replacing broken tooth on denture, first tooth - 24.00;
(f) each additional tooth after procedure (e) and (g) -6.50;
(g) adding teeth to partial to replace extracted natural teeth, first tooth - 32.50;
(h) replacing clasp, new clasp - 45.50;
(i) repairing (welding or soldering) palatal bars, lingual bars, metal connectors, etc. on chrome partials - 84.50;
(j) duplicate (jump) upper complete denture - 110.50;
(k) lower jump or duplicate - 110.50;
(l) placing name on new, full or partial dentures - 10.00.
(9) Pontics:
(a) steele's facing type, ~~each---97.50;~~
(i) per tooth up to 2 teeth - 97.50;
(ii) each additional tooth - 32.50;
(b) pontic - ceramic only, each tooth - 147.50;
(c) cured acrylic, laboratory processed, veneer, each tooth - 97.50;
(10) Repairs:
(a) recement bridge - 13.00;
(b) recement crown - 6.50;
(c) porcelain facing - 26.00;

(d) replace broken steele's facing, post intact - 22.00;
(e) gold post - 55.00;
(f) steel post or dowel with amalgum buildup - 26.00;
(g) replace broken steele's facing, post broken - 32.50.
(11) Oral surgery:
(a) I and D of abcess intra-oral - 50.00;
(b) removal of tooth (includes shaping of ridge bone) - 14.88;
(c) surgical removal of tooth, soft tissue impaction - 32.50;
(d) surgical removal of tooth, partial bone impaction - 58.50;
(e) surgical removal of tooth, complete bone impaction - 97.50;
(f) alveolectomy, not in conjection with extractions, per quadrant - 32.50;
(g) excision of hyperplastic tissue/each quad - 32.50;
(h) removal of retained, residual roots, foreign bodies in bony tissue - 32.50;
(i) removal of cyst - 50.00;
(j) removal of retained, residual roots, foreign bodies in maxillary sinus - 97.50;
(k) frenectomy - 45.50;
(l) removal of exostosis torus, maxillary or mandibular - 65.00;
(m) biopsy, including pathology lab charges - 26.00;
(n) maxilla, open reduction - 326.30;
(o) fracture, simple, maxilla, treatment and care - 253.50;
(p) mandible, open reduction - 436.80;
(q) fracture, simple, mandible, treatment and care - 253.50;
(r) facial surgery - usual and customary charges which are reasonable.
(12) Endodontics:
(a) root canal chemotherapy and mechanical preparation, scaling and filing) - 112.00;
(b) root canal, each additional root up to two - 30.00;
(c) root canal and apicoectomy combined operation - 97.50;
(d) apicoectomy not in conjunction with root canal - 58.50.
(13) Anesthesia:
(a) general anesthesia administered in office - 39.00;
(b) nitrous oxide - 4.00;
(c) oral premedication - $10.00;
(d) parenteral premedication - $39.00
(14) Periodontal services:
(a) periodontal prophylaxis per quadrant - 16.90;

(b) gingival resection - 32.50;

(15) Dentist examining more than one medicaid recipient in a long-term care facility on the same day shall be allowed payment for one nursing home call over the examination fees. Examination is considered a recorded evaluation.

(16) Reimbursement - orthodontia:

(a) examination - 7.80;

(b) full treatment - records and diagnosis - 45.50;

(c) full treatment, initial fee - includes appliances - 315.00;

(d) full treatment, monthly fee (prior authorization will state maximum number at months) - 31.50;

(e) full treatment, retention service - 3.50;

(f) serial extractions, supervision - 3.50;

(g) partial treatment, expansion appliance - 175.00;

(h) partial treatment - head gear appliance - 175.00;

(i) special appliance, bilateral space maintainer, upper and lower - 82.50;

(j) special appliance, unilateral space maintainer - 52.00;

(k) special appliance, expansion appliance - 175.00;

(l) special appliance, retainer - 87.50;

(m) special appliance, habit appliance - 87.50.

5. The authority of the department to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.

6. This proposed amendment allows for Medicaid coverage for certain types of dental bridges that have been determined to be the only effective remedy for some handicapped individuals. This service will only be covered when found medically necessary on a case-by-case basis and prior authorized.

7. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than January 29, 1982.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 18, 1981.

BEFORE THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the adoption of rules 2.23.303, 2.23.305, 2.23.306, 2.23.317, 2.23.402, 2.23.403, 2.23.501, 2.23.502, 2.23.702, 2.23.703, 2.23.804, 2.23.805, 2.23.902, 2.23.903, 2.23.912, 2.23.913, 2.23.917, 2.23.920, 2.23.1001, 2.23.1002, 2.23.1003, 2.23.1011, 2.23.1013, 2.23.1014, 2.23.1016, 2.23.1018, 2.23.1031, 2.23.1032, 2.23.1033, 2.23.1034, 2.23.1101, 2.23.1102, 2.23.1103, 2.23.1104, 2.23.1106, 2.23.1201, 2.23.1202, 2.23.1203, 2.23.1204, 2.23.1206, 2.23.1207, 2.23.1208, 2.23.1301, 2.23.1303, 2.23.1403, 2.23.1405, 2.23.1502.	NOTICE OF THE ADOPTION OF RULES 2.23.303, 2.23.305, 2.23.306, 2.23.317, 2.23.402, 2.23.403, 2.23.501, 2.23.502, 2.23.702, 2.23.703, 2.23.804, 2.23.805, 2.23.902, 2.23.903, 2.23.912, 2.23.913, 2.23.917, 2.23.920, 2.23.1001, 2.23.1002, 2.23.1003, 2.23.1011, 2.23.1013, 2.23.1014, 2.23.1016, 2.23.1018, 2.23.1031, 2.23.1032, 2.23.1033, 2.23.1034, 2.23.1101, 2.23.1102, 2.23.1103, 2.23.1104, 2.23.1106, 2.23.1201, 2.23.1202, 2.23.1203, 2.23.1204, 2.23.1206, 2.23.1207, 2.23.1208, 2.23.1301, 2.23.1303, 2.23.1403, 2.23.1405, 2.23.1502

TO: All Interested Persons

1. On October 15, 1981, the Merit System Council published notice of proposed amendment of rules located in Chapter 23, Title 2 governing the operation of the Montana Merit System at page 1120, 1981 MAR, Issue 19.

2. The Merit System Council has adopted rules 2.23.303, 2.23.305, 2.23.306, 2.23.317, 2.23.402, 2.23.403, 2.23.501, 2.23.502, 2.23.702, 2.23.804, 2.23.805, 2.23.902, 2.23.903, 2.23.912, 2.23.913, 2.23.917, 2.23.920, 2.23.1001, 2.23.1002, 2.23.1011, 2.23.1013, 2.23.1014, 2.23.1018, 2.23.1103, 2.23.1106, 2.23.1201, 2.23.1202, 2.23.1203, 2.23.1204, 2.23.1206, 2.23.1207, 2.23.1208, 2.23.1301, 2.23.1303, 2.23.1403, 2.23.1405 and 2.23.1502; and rules 2.23.703, 2.23.1003, 2.23.1016, 2.23.1031, 2.23.1032, 2.23.1033, 2.23.1034, 2.23.1101, 2.23.1102 and 2.23.1104 with the following changes:

2.23.703 APPEALS--APPLICANTS AND ELIGIBLES

(1) Applicants and eligibles who allege discrimination as defined in ARM 2.23.601 who have been found ineligible to take examinations, or who have been removed from a register, may also appeal to the Montana state merit system council. Such appeal is without prejudice to the applicant's or eligi-

ble's right to timely file a complaint with the Montana human rights commission after the alleged unlawful discrimination occurred or was discovered.

(2) With the exception of discrimination as defined in ARM 2.23.601, hearings will be informal; the council need not meet as a body. The following procedures will apply:

(a) When rejected for examination, the council will review the applicant's qualifications and make a determination as to whether or not the individual will be admitted to the examination. The individual will not be admitted to any part of the examination pending the council's decision.

(b) In hearing any appeal of a rating the council will determine whether or not an error was made in scoring the candidate. If the job service or agency is ordered to correct the applicant's rating, it will be done immediately. However, the correction will not affect certifications or appointments that have already been made from the register.

(c) When an eligible appeals a removal from a register, the job service or agency will furnish the council all facts relating to the action. After investigation, the council will render a decision. The council's decision will not affect certifications on appointments that have already been made from the register.

2.23.1003 WHEN PUBLIC ANNOUNCEMENT OF POSITION REQUIRED

(1) When an agency wishes to fill a position that has not been recruited for on a continuous basis, the agency will notify the job service. The job service will contact those individuals whose names have been filed in a suspense file for the position. The job service or the agency shall also advertise the position for at least 7 calendar days in such mass media as the job service deems necessary. The agency will provide a sufficient number of days, not less than 3 for the filing of applications. Newly created classes will be advertised for in the same manner and time frame. The job service will ~~pay~~ have the cost of advertising ~~and will bill~~ billed to the involved agency. ~~for reimbursement.~~

2.23.1016 REVIEW OF EXAMINATION PAPERS BY COMPETITORS

(1) Competitors will be allowed to review their examination papers in the presence of a job service or agency staff member who has signed the merit system test security agreement. Only the examination answer sheet may be reviewed. Test booklets and test questions may not be reviewed. Answer sheets or other materials which could reveal the contents of the examination may not leave that office or be copied. If a covered position has only one written examination or structured oral interview, the competitor may not retake the examination until 6 months

after the date of the examination or answer sheet review, except where an examination procedure specifically allows for an examination retake within a shorter period of time.

2.23.1031 DISQUALIFICATION FROM COMPETITION, REMOVAL FROM REGISTER, AND REFUSAL TO CERTIFY--WHEN JUSTIFIED (1) The job service or agency may disqualify an applicant from competition, and remove his name from a register for the following reasons:

(1) lacks the announced requirements for the class;

(2) where physical ability is a bona fide class requirement, is not physically able to perform the duties of the class with reasonable accommodation;

(3) has been convicted of a felony and is currently under court jurisdiction;

(4) has ever been dismissed from public service for delinquency or misconduct;

(5) has used or attempted to use political pressure or bribery to secure an appointment under jurisdiction of the Montana state merit system;

(6) has failed to submit an application correctly filled out within announced time limits;

(7) has made deliberate misstatements in an application in attempting to qualify for a class.

2.23.1032 REMOVAL FROM THE REGISTER--OTHER JUSTIFICATION (1) The job service or agency may remove eligibles from the register or, at the appointing authority's request, refuse to recertify an individual's name on subsequent registers to the appointing authority:

(1) for any of the reasons for disqualifications listed in ARM 2.23.1031;

(2) on evidence that an eligible cannot be reached by mail;

(3) on receipt of a statement from an eligible indicating a preference not to be considered for appointment;

(4) if an eligible declines an offer of employment;

(5) if an eligible fails to keep a scheduled interview.

2.23.1033 NOTIFICATION OF REMOVAL FROM THE REGISTER (1) The job service or agency must notify an eligible of a removal from a register.

2.23.1034 SUSPENSION FROM REGISTER TO BE FINAL--LIMITED EXCEPTIONS (1) Except under extenuating circumstances approved by the job service or agency, an eligible's suspension from the register will be final. Individuals wishing to be reinstated on the register will be treated as a new applicant. If no alternate form of examination exists, the individual must wait a period of 6 months.

(2) An eligible will be reinstated to a register if the eligible sends a written request to the job service or agency, if the register is still in effect, and:

(a) the suspension was based on ARM 2.23.1032(2) or (3);

(b) the eligible has previously received probationary appointment but did not complete it satisfactorily. In this case he will not be certified again to the previous appointing authority and other appointing authorities who consider him will be advised of the results of the previous appointment.

(c) he has resigned in good standing or has been separated without prejudice from a probationary or permanent position;

(d) if an eligible submits acceptable evidence surrounding reasons for suspension listed in ARM 2.23.1032(4) or (5).

2.23.1101 STATE OFFICE CERTIFICATION

(1) Certification of eligibles will be made following receipt of a request stating the number of positions to be filled, the class title, salary, location of the work, and other pertinent information. For a single vacancy, the job service or agency will certify the five highest names plus all ties with the fifth eligible, using the register set up for the class of position to be filled. For multiple vacancies, two names for each additional vacancy will be certified.

(2) If a register is exhausted, closely related registers of the same or higher level may be used. In certifying eligibles for a position, the job service or agency may use the register for that position and higher registers in the same series if the persons certified rank among the number to be certified when eligibles on both registers are considered in order of their ratings on the two registers.

(3) When an eligible is given probationary appointment, the eligible's name will be suspended from all other registers at the same or lower salary level, subject to reinstatement at the eligible's written request.

(4) If an eligible has been certified three times to the same appointing authority from one register and passed over for three appointments, the appointing authority may request the agency in writing to omit the name of the eligible from further certifications from this register. Reasons of justification must be included in the request. Under extenuating conditions, the agency may remove the name of an eligible after one certification from subsequent registers.

(5) Within 3 days of the appointing authority's decision to appoint an eligible, those available eligibles interviewed and not appointed to a position will be notified

in writing that another eligible was appointed to that position.

(6) The appointing authority may consider an eligible to be not available if the eligible fails to respond to a written inquiry within 5 days of the mailing of the inquiry. The agency must maintain proof that a written attempt was made to contact the eligible. Eligibles not responding to inquiries may be removed from the register.

(7) The life of a certification will be 21 calendar days. No appointment may be made from the register thereafter.

(8) Race (sex) conscious certification of qualified applicants is permissible for occupations in which a utilization analysis indicates underutilization of minorities or women. In such cases, the job service or agency will ensure that up to five minorities or women on the register are certified.

2.23.1102 LOCAL OFFICE CERTIFICATION (1) For vacancies in local offices, the procedure will be the same as for the state office except the local office will receive countywide and, upon request, statewide registers. The appointing authority will have the option of selecting an eligible for appointment from either register.

2.23.1104 INFORMATION CONCERNING ELIGIBLES (1) When it is requested, all information on file concerning eligibles who are certified will be made available to appointing authorities who are considering the eligibles for appointments. When information is not specifically requested the only information to be forwarded with the certificate will be a photocopy of the eligible's application. ~~and the most recent availability inquiry.~~

Charles Seifert, Chairman
Merit System Council

Certified to the Secretary of State December 21, 1981.

BEFORE THE BOARD OF HOUSING
OF THE STATE OF MONTANA

In the matter of the adoption of a rule to permit the Board to designate areas of chronic economic distress within the State	))))	NOTICE OF THE ADOPTION OF A RULE

TO: All Interested Persons.

1. On November 12, 1981, the Board of Housing published notice of proposed adoption of a rule to permit the Board to designate areas of chronic economic distress within the State pursuant to Chapter 54, Laws of Montana 1981 (now 90-6-127, MCA 1981), and the Mortgage Subsidy Bond Tax Act of 1980, at page 1313 of the 1981 Montana Administrative Register, issue number 21.

2. The agency has adopted the rule as proposed.

3. Favorable comments and testimony were received. No adverse comment or testimony was received.

4. The authority for the rule is based on sections 90-6-104 and 90-6-106, MCA, and implements section 90-6-127, MCA.

William A. Groff, Chairman
Montana Board of Housing

By: Lyle E. Olson
Lyle E. Olson, Administrator

Certified to the Secretary of State, December 14, 1981.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of Chapter 12, Adult and Community Education, Sub-Chapter 1, rules 10.12.101 and 10.12.102 concerning high school equivalency testing certificates.	NOTICE OF REPEAL OF CHAPTER 12, ADULT AND COMMUNITY EDUCATION, SUB-CHAPTER 1, RULES 10.12.101 AND 10.12.102 CONCERNING HIGH SCHOOL EQUIVALENCY TESTING CERTIFICATES.

TO: All Interested Persons:

1. On November 12, 1981, the Superintendent of Public Instruction published notice of repeal of Chapter 12, Adult and Community Education, Sub-Chapter 1, rules 10.12. 101 and 10.12. 102 concerning high school equivalency testing certificates, at page 1316 of the 1981 Montana Administrative Register, issue number 21.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

ED ARGENBRIGHT, SUPERINTENDENT
OFFICE OF PUBLIC INSTRUCTION

Certified to the Secretary of State December 14, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 10.65.301 and following) pertaining to school attend-)	NOTICE OF ADOPTION OF RULE 10.65.301 AND FOLLOWING COMPULSORY SCHOOL ATTENDANCE

To: All Interested Persons:

1. On September 21, 1981 the Board of Public Education published notice of a proposed adoption of a rule concerning school attendance at page 1082 of the 1981 Montana Administrative Register, issue number 18.

2. The agency has adopted the rule with the following changes:

10.65.301 GENERAL (1) The board of public education shall determine whether a private institution provides instruction in the program the board prescribes.

(2) The board of public education has designated as the basic instructional program the educational curriculum set forth in the Administrative Rules of Montana 10.55.402 and 10.55.403 as amended for application to private institutions.

(3) Students governed by compulsory attendance statutes, who are not enrolled and attending a public school must be enrolled in a private institution providing a basic instructional program as provided by the board of public education or be excused under another aspect of 20-5-103(2).

~~(4) Instruction to children by their parents at home is not to be considered as providing a basic instructional program for the purpose of complying with the law and this policy.~~

AUTH: 20-2-121, MCA IMP: 20-7-111, MCA.

10.65.302 PROCEDURES FOR ATTENDANCE OFFICER (1) The attendance officer is mandated to enforce the compulsory attendance provision of Montana school law and has been vested with the necessary police and investigatory powers to enforce compulsory attendance provisions of Montana law to ensure the children are enrolled and attending a public school or enrolled in a private institution which provides ~~instruction in the programs prescribed by the board of public education~~ the basic instructional program;

~~(2) It is the responsibility of the attendance officer to ensure that all children are enrolled and attending a public school or are enrolled in a private institution which provides a basic instructional program~~ as described in 10.55.402 and 10.55.403 of the Administrative Rules of Montana.

(2) ~~(3)~~ In the capacity of enforcing compulsory school attendance law the attendance officer ~~shall~~ may notify the county superintendent of his county of the existence of the ~~non-public school~~ private instituion after determining that a child is enrolled in a ~~non-public school~~ private institution.

(3) ~~(4)~~ The attendance officer shall, at the discretion of the county superintendent, accompany and/or assist the county superintendent in the county in determining whether the non-public school is providing the basic instructional program as prescribed.

AUTH: 20-2-121, MCA IMP: 2-5-101, MCA; 20-5-102, MCA.

10.65.303 PROCEDURES FOR COUNTY SUPERINTENDENT (1) The county superintendent as an elected local school official must meet certain teaching and administrative qualifications in school matters. The county superintendent has general supervision of the schools of his county and is responsible to perform any duty prepscribed by the board of public education.

~~(5)~~ (2) The office of public instruction will provide technical assistance to all county superintendents, upon their request, so they in turn can perform the mandates of this policy.

(3) The governing authority of a private institution may request the attendance officer to contact the county superintendent for a determination of whether a private institution is providing a basic instructional program.

~~(2)~~ (4) The county superintendent, upon request by the attendance officer, shall contact the governing authority of the private institution ~~will annually determine~~ and determine annually whether the children within his county who are attending a ~~non-public school~~ private institution are receiving a basic instructional program as set forth by the board of public education.

~~(3)~~ (5) If the county superintendent determines that the ~~non-public school~~ private institution is providing a basic instructional program as prescribed, the county superintendent shall notify the attendance officer that the ~~non-public school is~~ a private institution is providing the basic instructional program to the children of that ~~private~~ institution and is therefore in compliance with the compulsory attendance law.

~~(4)~~ (6) Should the county superintendent ~~of schools~~ determine that the children attending a ~~non-public school~~ private institution are not receiving a basic instructional program, he shall specify the deficiency(ies) to the governing authority of the institution and may allow the latter a reasonable probationary period of up to six months in which to correct the deficiency(ies), after which probationary period he shall report the same to the local attendance officer who then, if necessary shall pursue the remedies provided by law to assure that proper compulsory attendance at an institution with at least the basic instructional program is provided.

(7) The governing authority of a private institution which is found by the county superintendent not to provide a basic instructional program may appeal the county superintendent's decision to the board of public education and the board shall apply the Administrative Procedures Act in this appeal.

AUTH: 20-2-121, MCA IMP: 20-3-205(22), MCA

3. At the public hearing which was held November 5, 1981 twenty-eight persons testified on the proposed rule. Their testimony falls into eleven categories each of which the board of public education specifically addresses as follows: (a) There was concern that the rule violates the U.S. and Montana Constitution. The board disagrees, citing a narrative of William B. Ball on Constitutional Protection of Christian Schools submitted to the board by the Lewis and Clark Christian Academy which states in part: "Government may pose reasonable requirements pertaining to health, safety, sanitation and a basic core of learning. ... Those state truancy laws which require a child to have a basic modicum of education in a safe and

healthful environment are, in my view, valid" (emphasis is the author's). Similarly, the Montana Constitution as interpreted by the attorney general of Montana gives the board the authority to make reasonable requirements that a basic core of learning is provided to all children.

(b) There was concern that the rule violated parental choice of education by making public education mandatory. The board disagrees, citing William B. Ball, referred to above: "There would appear to be a compelling state interest that a child learn the language of his county (reading, writing, spelling), its history, geography and form of government, and how to compute. Our society would be chaotic if people lacked these forms of knowledge - especially English communication." The board emphasizes that the proposed rule does not mandate public education; it merely assures the elements of basic instruction.

(c) There was concern that the rule prohibited instruction to children by parents at home. The board has deleted the prohibition. See 10.65.301(4).

(d) There was concern that the rule did not provide an administrative appeals procedure. The board has amended the rule to provide an appeals procedure. See 10.65.303(7).

(e) There was concern that parents were not given an opportunity to correct deficiencies of the private institution in the basic instructional program. The board has amended the rule to provide a reasonable probationary period in order for the private institution to comply with the basic instructional program. See 10.65.303(6).

(f) There was concern that the proposed procedure was not uniform in statewide application. In response to this concern, the board notes Montana's fundamental principle of allowing educational decisions to be made at the local level, and that any potential abuse of local discretion shall be corrected by the board on appeal, thereby assuring uniformity of application of this rule.

(g) There was concern that the proposed rule interfered with the free exercise of religion and the ministry of the church. The board disagrees, citing William B. Ball, referred to under (a) and (b): "There has been widely circulated in fundamentalist circles, over the past two years, the view that, since God has founded the Christian school, government has no rights whatever respecting it. This view is without any foundation whatever in the Constitution of the United States. And here I am referring to a view of our Constitution which regards religious liberty as the most sacred of our liberties." Specifically, nothing in the basic instructional program as prescribed by the board interferes with the free exercise of religion or the ministry of the church.

(h) There was concern that the board of public education is not providing a procedure whereby private elementary schools can request accreditation. The board agrees. However, the request lies outside the scope of the law; the Montana Legislature has specifically limited accreditation to non-public high schools when made by request.

(i) There was concern that the board of public education is treating private institutions and public schools differently. The board disagrees; procedures for private institutions

and public schools are characterized by the same features, to wit: a core program, an annual review, a probationary period and an appeal.

(j) There was concern that the county superintendent would not contact the proper authority of the private institution. The board responds by amending the rule to require specifically that the county superintendent identify the proper governing authority of the private institution. See 10.65.303 (4).

(k) There was concern that the basic instructional program as defined by the board was awkward when applied to private institutions. The board responds by stating that although the letter of the requirements of the basic instructional program may occassionally be awkward as applied to non-public schools the intent of the requirements when read in their entirety should present no problems.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Linda Vaw Dyke

Assistant to the Board

Certified to the Secretary of State December 21, 1981.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.6.901 relating to water safety regulations	))))	CORRECTED NOTICE OF THE AMENDMENT OF RULE 12.6.901 RELATING TO WATER SAFETY REGULATIONS

TO: ALL INTERESTED PERSONS.

1. On December 7, 1981, the Montana Fish & Game Commission certified to the Secretary of State a notice of the amendment of rule 12.6.901 relating to water safety regulations.

2. The December 7 notice incorrectly stated that the notice of proposed amendment of rule 12.6.901 was published at page 792 of the 1981 MAR, Issue #15.

3. Notice of amendment of December 7, 1981, is hereby corrected as follows:

1. On August 17, 1981, the Montana Fish & Game Commission published notice of the proposed amendment of Rule 12.6.901 relating to water safety regulations, at page 882 of the 1981 Montana Administrative Register, Issue #16.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

Certified to Secretary of State December 21, 1981

Reviewed and Approved:

Steven L. Pilcher
Water Quality Bureau
Environmental Sciences Div.
Dept. Health & Environmental Sciences

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

In the matter of the repeal of rule 16.10.610, ventilation, and rule 16.10.619, fire safety requirements	))))	NOTICE OF REPEAL OF RULES ARM 16.10.610, AND ARM 16.10.619

TO: All Interested Persons

1. On November 12, 1981, the department published notice of a proposed repeal of rules 16.10.610 and 16.16.619 concerning ventilation and fire safety requirements at page 1351 of the 1981 Montana Administrative Register, issue number 21.

2. The department has repealed rule 16.10.610 found on page 16-414 and rule 16.10.619 found on pages 16-419 through 16-421 of the Administrative Rules of Montana.

3. No comments or testimony were received.

JOHN J. BRYNAN, M.D., Director

Certified to the Secretary of State December 21, 1981

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

In the matter of the adoption of a rule concerning food service requirements	)))	NOTICE OF ADOPTION OF RULE ARM 16.10.626 (Food Service Requirements)

TO: All Interested Persons

1. On November 12, 1981, the department published notice of a proposed adoption of rule 16.10.626 concerning food service requirements at page 1352 of the 1981 Montana Administrative Register, issue number 21.

2. The department has adopted the rule as proposed.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State December 21, 1981

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of Rules 20.3.101 through 20.3.216 (Approval Procedures and Standards for Alcohol Programs)	)))))	NOTICE OF ADOPTION OF RULES 20.3.101 THROUGH 20.3.216

TO: All Interested Persons.

1. On July 30, 1981, the Montana Department of Institutions published notice of proposed adoption and amendment of rules concerning the approval procedures and standards for alcohol programs. This Notice was found on page 726 through 759 of issue no. 14 of the 1981 Montana Administrative Register.

2. Pursuant to that Notice, the Department conducted a public hearing on August 26, 1981 at the Department's Central Office in Helena, Montana. In addition to the public hearing, letters were received before and after the hearing from programs concerning the rules.

3. Findings of Fact and recommendations of the hearings officer were made to the Director of the Department on September 28, 1981.

4. Due to public input and concerns of the Legislative Code Committee, the agency will adopt the following rules with changes as indicated:

Rule 20.3.101 - Of the State Plan will not be adopted as proposed but it will be removed due to being explained in statute.

Rule 20.3.201 - Will be adopted as proposed.

Rule 20.3.202 DEFINITIONS - will be adopted with the following changes:

(c) Delete.

(k) Add - hospital after inpatient, and add following hospital (at the end of the first sentence) - or suitably equipped medical setting licensed by the Department of Health under Section 50-5-201 MCA.

(l) Following intermediate (in the title) delete "long term".

Delete "or intermediate" following the word inpatient in the second sentence.

(m) Delete "Intermediate Care" and change to Inpatient - Free Standing. At the beginning of the second sentence following 'services include' delete - "a limited medical evaluation" and insert a physical exam signed by a licensed physician. (Move Inpatient-Free standing up to (l) and move Intermediate down to (m)).

Add definition: (s) Program effectiveness means

utilization of measurable indicators to demonstrate effectiveness.

(t) Quality Assurance means a program or efforts designed to enhance quality care to an ongoing objective assessment of important aspects of client care and the correction of identified problems.

Reletter all definitions due to above deletions and additions.

Rule 20.3.203 - Will be adopted with the proposed change part (a) as follows:

(a) Following 'Emergency Care' add Inpatient-Hospital, Inpatient-Free Standing; and delete "Intermediate long term". Following 'provided' at the end of the third sentence, add new sentence: Programs providing detoxification (non-medical) must also provide at least one of the other components listed above.

Add subsection (10) ten: (10) The Department may revoke or suspend any service component listed in 20.3.203(1) if a program ceases to provide those services for which it has been approved.

Rule 20.3.204 - Will not be adopted as proposed but it will be removed due to lack of expressed authority.

Rule 20.3.205 - Will not be adopted as proposed but will remain as was originally written.

Rule 20.3.206 - Is adopted as proposed.

Rule 20.3.207 - Is adopted with the following changes: Delete subsections (b),(d),(e) and reletter.

Rule 20.3.208 - Is adopted with the following changes: Delete "and Governing Body" from title.

(1) Following Section 1(k)ii change subsection (b) "Facilities are clean and will maintained" to subsection (1).

Add the following subsections:

(m) Accounting and fiscal procedures are adopted which ensure financial accountability and meet all federal, state and county requirements.

(n) A sliding fee schedule is adopted based on ability to pay for all individuals receiving treatment services provided by approved alcohol programs: (53-24-108(4) MCA.

(o) Program maintains liability insurance. (minimum $300,000).

(p) That sub contracts and service agreements include a description of services; basis for payment; total amount of contract; duration of contact; and appropriate signatures of program administrator and a representative of the governing body.

(2) Delete entire subsection (2).

Rule 20.3.209 - Is adopted as proposed.

Rule 20.3.210 - Will not be adopted as proposed but it will be removed due to lack of expressed authority.

Rule 20.3.211 - Will not be adopted as proposed but it will be removed due to lack of expressed authority.

Rule 20.3.212 - Is adopted with the following changes:
(6)(b) following supply add or contract for food services.
(7)(f) at the end of the first sentence insert (g) for (h).
(8) Insert Program Effectiveness and following quality insurance add the word efforts.
(8)(a)(ii) at the beginning of the second sentence delete "all involved" and insert, appropriate.
Rule 20.3.213 - Is adopted with the following changes: following Inpatient in the title, add -Hospital.
(1) Following hospital, add: or suitably equipped medical setting.
(5)(a) Following hospital add or suitably equipped medical setting. Then add the following words at the end of the last sentence, Such Programs are usually located in facilities classified as institutional occupancies in Chapter 10 of the 1973 edition of the Life Safety Code (National Fire Protection Association 101).
(7) Insert Program effectiveness and then following the words quality assurance, add efforts; and following review, change client audits to quality assurance program.
(7)(b) delete "care audits are" and insert "quality assurance program is".
(7)(b)(i) delete present paragraph and insert Contain 5 components which include: Problem Identification of important or potential problems; Problem Assessment based on criteria that relate to the essential aspects of client care; Problem Correction efforts designed to eliminate in so far as possible, Identified problems; Problem Correction Monitoring that periodically monitors the results of corrective actions; and Program monitoring that substantiates the effectiveness of the overall program.
Rule 20.3.214 - Is adopted with the following changes: In the title delete Intermediate and insert Inpatient - Free Standing.
(2) Delete "Intermediate" and add Inpatient-Free Standing.
(2)(c)Delete "A limited medical evaluation performed by a registered nurse or LPN which includes a medical history, vital signs, screening for severe physical or emotional problems, contagious disease and vermin infestation, observation of the client's general condition, motor and sensory abilities, mental and emotional behavior and physical discomfort." Insert A physical exam signed by a physician.
(2)(d)Delete "documented availability of", and insert Contract with, following physician for, insert physicals.
(5) Following the words for the, delete "intermediate" and add Inpatient-Free Standing.
(5)(b)Following supply, add or contract for food services .
(5)(d)Delete "Documented availability of" and insert

Contract with, following physician for, insert physicals.

(7) Insert Program effectiveness and and add efforts following quality assurance.

Rule 20.3.215 - Is adopted with the following changes by the agency at: Delete "Long-Term" from the title line.

(1) Following inpatient delete "or intermediate short-term care".

(2) Delete "Long-Term".

(2)(c)Following inpatient delete "or intermediate".

(5) Delete "Long-Term".

(6) Delete "Long-Term" following "to the".

(7) Insert Program Effectiveness and, add efforts following quality assurance.

Rule 20.3.216 - Is adopted with the following changes:

(6) Insert Program effectiveness and, and efforts following quality assurance.

5. Due to concerns on the original histories of the rules the Department provides as follows the corrective version in tabular form of the Proposed Rules, the authority for the rules and the statute implemented by the rules as follows:

Proposed Rule	Authority	Implementing
20.3.101	Remove	
20.3.201	Interp. - 53-24-207	53-24-207
20.3.202	53-24-204, -208, -209	53-24-204 -208, -209
20.3.203	53-24-208(1)	53-24-208(1)
20.3.204	remove	
20.3.205	53-24-209	53-24-208
20.3.206	53-24-209	53-24-209
20.3.207	53-24-305	53-24-305
20.3.208	53-24-207(1), 208(5)	53-24-208(5), 209(4)(5),306
20.3.209	53-24-204(2)(e)	53-24-204(2)(e)
20.3.210	remove	
20.3.211	remove	
20.3.212	53-24-208(1)	53-24-208(1)
20.3.213	53-24-208(1)	53-24-208(1)
20.3.214	53-24-208(1)	53-24-208(1)
20.3.215	53-24-208(1)	53-24-208(1)
20.3.216	53-24-208(1)	53-24-208(1)

Therefore, pursuant to the foregoing, the Rules are hereby adopted as proposed or modified.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State this 21 day of December, 1981.

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23.14.402	)))	NOTICE OF THE AMENDMENT OF RULE 23.14.402

TO: All Interested Persons:

1. On October 9, 1981 the Board of Crime Control published notice of a proposed amendment to rule 23.14.402 concerning minimum requirements for the employment of peace officers on page 1272 of the 1981 Montana Administrative Register, issue number 20.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as it sets forth the minimum age requirement for the employment of peace officers. The agency adopted the minimum age as 18 years to conform with Section 7-32-4112 MCA and Article II Section 14 of the Montana Constitution.

Administrator

Certified to the Secretary of State December 18, 1981

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23.14.412	)))	NOTICE OF THE AMENDMENT OF RULE 23.14.412

TO: All Interested Persons:

1. On October 9, 1981 the Board of Crime Control published notice of a proposed amendment to rule 23.14.412 concerning qualifications for certification of law enforcement academy and training courses on page 1274 of the 1981 Montana Administrative Register issue number 20.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as it defines regional training courses and sets forth the requirements for presenting such courses. This will allow the law enforcement academy to provide specialized training in the regions of the state and permit the academy to refuse to provide in-service training.

Administrator

Certified to the Secretary of State December 18, 1981

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23.14.413	)))	NOTICE OF THE AMENDMENT OF RULE 23.14.413

TO: All Interested Persons:

1. On October 9, 1981 the Board of Crime Control published notice of a proposed amendment to rule 23.14.413 concerning certification requirements for peace officer trainees attendance and performance at certified training courses on page 1276 of the 1981 Montana Administrative Register issue number 20.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as it sets forth the firearms qualification score for the basic course and the firearms qualification scores for all other courses where firearms qualification is required for certification purposes. This is a result of an upgrading of firearms courses so the courses resemble as closely as possible conditions officers may expect to encounter in the field. The courses and the requirements are the same as taught at the FBI National Academy and those of most other states.

Administrator

Certified to the Secretary of State December 18, 1981

BEFORE THE DEPARTMENT OF STATE LANDS AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF NEW RULES governing state leases for uranium and other fissionable material	NOTICE OF ADOPTION OF RULES GOVERNING STATE LEASES FOR URANIUM AND OTHER FISSIONABLE MATERIAL

TO: All Interested Persons:

1. On August 27, 1981 the board of land commissioners and department of state lands published a notice of proposed adoption of rules concerning leases for uranium and other fissionable materials at page 932 of the 1981 Montana Administrative Register issue no. 16.

2. The agency has adopted the rules with the following changes:

Rule I 26.3.501 DEFINITIONS When used herein, unless a different meaning clearly appears from the context:

(1) "Assignee" means the person or persons to whom a lessee has transferred all or part of the unexpired term of his lease and who appears as such on record in the offices of the department;

(2) "Assignment" means any approved transfer of interest between a lessee and a second party whereby the second party is accorded the use of all or part of the lessee's leasehold interest;

(3) "Board" means the board of land commissioners of the state of Montana;

(4) "Commissioner" means commissioner of state lands;

(5) "Department" means department of state lands as provided in section 2-15-3201 MCA;

(6) "Fissionable material" means material capable of undergoing fission.

(7) "In situ leach or solution mining" means any mining technique wherein the uranium or other fissionable material contained in the ore is extracted by means of dissolving the uranium or other fissionable material within a liquid medium.

(8) "Lease" means unless the context indicates otherwise, a uranium or other fissionable material lease issued pursuant to Part 1, Chapter 3, Title 77 MCA and this subchapter;

(9) "Lessee" means the person in whose name a uranium or other fissionable material lease appears on record in the offices of the department, whether such person or persons be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a uranium or other fissionable material lease but with whom a formal uranium or other fissionable material lease agreement has not been completed and finalized;

(10) "Mining" means operations for the purpose of extracting from the earth ore or other material containing uranium or other fissionable material and commences at

such time as commercial quantities of ore or other material is removed for sale, benefication, refining or other processing or disposition. The term includes in situ or solution operations.

(11) "Person" means any individual, firm, association, corporation, governmental agency or other legal entity;

(12) "Qualified applicant" means any person, who may become a qualified lessee as set forth under Rule V hereof;

(13) "Standard lease form" means the lease form for uranium and other fissionable material currently in use and approved by the board;

(14) "State" means the state of Montana;

(15) "State lands" means all lands the leasing of which for uranium or other fissionable material is under the jurisdiction of the board;

(16) "Uranium" means a silvery heavy radioactive polyvalent metallic element that is found especially in pitchblende or uraninite and exists naturally as a mixture of three isotopes of mass number 234, 235, and 238. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: ~~77-3-101~~ 77-3-102 MCA)

Rule ~~II~~ 26.3.502 ADMINISTRATIVE DETAILS AND INFORMATION The offices and records of the department are maintained at 1625 East Eleventh Avenue, Helena, Montana, under the direction and administration of the commissioner. Requests for information, application for leases and other matters should be addressed to the department at its mailing address, capitol station Helena, Montana 59620. Payment of all monies required or permitted under these rules or pursuant to the provisions of any uranium or other fissionable material lease shall be made to the department. All checks, drafts and money orders must be made payable to "department of state lands and mailed to the department, capitol station, Helena, Montana 59620." Sight drafts will not be accepted. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: ~~77-1-301~~ 77-3-101 MCA)

Rule ~~III~~ 26.3.503 LANDS AVAILABLE FOR LEASING (1) Lands available for leasing under these rules include any state lands in which mineral rights are not reserved by the United States or other grantor or predecessor in title. Such state lands include those which have been sold but in which mineral rights have been reserved, in whole or in part, by the state of Montana.

(2) Unsurveyed lands, including those under navigable lakes and streams, are available for leasing, provided that any applicant for a lease on such lands shall supply the department with as accurate an estimate of the number of acres to be included under such lease as can be derived from the latest survey, or aerial photograph, and such other information as is available to the applicant. Further provided, that if and when such lands are leased and uranium or other fissionable material in commercial quantities are produced from the lands, the lessee shall supply the depart-

ment with a legal description of the lands by courses and distances (metes and bounds). The department assumes no liability or responsibility for the correctness, completeness or validity of such description and does not warrant title to such lands.

(3) No lease may embrace more than one governmental section. The land shall be leased in as compact bodies as possible. No lease may embrace noncontiguous subdivisions of lands unless such subdivisions are within an area comprising not more than one square mile.

(4) No lease for mining on lands covered by lease for the mining of coal, oil, or gas may be issued to any person, association or corporation other than the holder of such coal, oil, or gas lease while that lease is in force except with the written consent of the holder of the coal, oil, or gas lease. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: ~~77-1-102~~ 77-1-101, 77-3-102, 77-3-113, 77-3-114 MCA)

Rule ~~IV~~ 26.3.504 WHO MAY LEASE - QUALIFIED LESSEES (1) Any person, association, partnership, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana may lease state lands for uranium or other fissionable material purposes; however all corporations not incorporated in Montana must obtain a certificate of authority to transact business in this state from the secretary of state.

(2) No officer or employee of any agency of the executive department of state government who is required to inspect or examine mines or otherwise to gather field information in regard to prospecting for uranium or other fissionable material or the production thereof, may take or hold such a lease, nor shall such person become interested in any manner in any lease on state lands.

(3) Any person qualified to hold a lease on state lands may acquire, receive and hold more than one lease. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-1-113 MCA)

Rule ~~V~~ 26.3.505 APPLICATION FOR LEASE ~~(1)~~ Any person who desires that any tract of state lands be considered for uranium and other fissionable material leasing shall make application for a lease on the form prescribed by the department and then in current use. Blank forms for such application may be secured from the department at no cost. Such application must be accompanied by an application fee and shall contain, an adequate and sufficient description of the land sought to be leased and shall be deemed and considered for all purposes an offer to lease the lands described therein at the minimum rental and royalty rates as provided in this subchapter.

~~(2) If the board has adopted competitive bidding as a policy, the application shall constitute an undertaking to pay, within ten days after the lease sale, the required first year's rental for the lease. In order to allow pre-~~

cessing, applications must be filed with the department at least 40 days prior to the date fixed for the competitive bid sale. The applicant may withdraw by notifying the department in writing at least ten days prior to said sale, but the application fee will not be refunded. (AUTH: 77-1-103 77-6-104 MCA IMP: 77-3-111 MCA)

Rule VI PROCEDURES FOR ISSUANCE OF LEASE (1) Unless the board has adopted a competitive bid policy under subsection (2) below, if the department has received an application to lease a particular tract, the board may grant the lease to the first qualified applicant at a rental not less than the minimum provided in this subchapter.

(2)(a) The board may offer leases on an open oral competitive bidding system by adopting competitive bidding as a formal policy. The effective date of such a policy shall be set by the board and may be retroactive to include tracts on which an application has been received but a lease has not been issued.

(b) If the board adopts competitive bidding as a formal policy the following procedures shall be followed:

(i) The department shall publish a notice for competitive bidding each tract for which an application is received. Where more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to the receipt of the first qualified application that there is a prior application for that tract and shall return the application fee. If the first qualified applicant for the tract withdraws his application, the tract shall be offered for leasing regardless of withdrawal. In such case, the opening bid must not be less than the minimum rental required by this subchapter.

(ii) Lease sales normally will be held once each quarter on the first Tuesday of February, May, August and November. Notice of each sale shall be given in a publication or publications of general circulation in Montana. Publication of notice shall be within 15 days after the previous lease sale and shall contain only the date and place of sale since its purpose is to allow applicants to submit their applications prior to the 40 day deadline. Other publications of the sale, the first of which shall not be more than 40 days prior to the date of the lease sale shall describe each tract that will be offered for lease separately, shall state the time and place of the sale, and shall state that all sales shall be by competitive bid. These publications shall be published for two successive weeks prior to the sale.

(iii) The department may postpone or cancel any sale if insufficient tracts have been applied for or if other circumstances warrant. In such event a notice of "no sale" shall be published as provided for in this subchapter.

~~(iv) The department shall maintain a mailing list of prospective lessees who request in writing that their names be placed on the list. At least two weeks before each sale, the department shall mail to each person on the list a copy of the notice of sale.~~

~~(v) The board may at its discretion withhold any tracts from leasing.~~

~~AUTH: 77-1-103 MCA IMP: 77-3-101 thru 77-3-132 MCA~~

Rule VII 26.3.506 TERM OF LEASE The lease shall be granted on the standard lease form for a primary term or period of ten years, and as long thereafter as uranium or other fissionable material in paying quantities is produced on the condition that all royalties, rents, and other obligations are fully kept and performed by the lessee. The board shall extend the term of the lease if it determines that a failure to produce in paying quantities is a result of factors beyond the control of the lessee such as but not limited to a national emergency or a temporary decrease in the price at which uranium or other fissionable materials can be sold. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA)

Rule VIII 26.3.507 RENTALS ~~(1)~~ The lessee shall pay an annual rental to the state. The rental for the first year shall be at least $1.00 per acre and may include an additional amount per acre as a bonus determined by the board. ~~or if the board has adopted a competitive bidding policy, a bonus as determined by bidding.~~

~~(2)~~ The rental for the second and third year shall be $1.00 per acre. The rental thereafter, until the lease terminates shall be $3.00 per acre. In no case shall the total rental for one lease be less than $100.00 per year. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA)

Rule IX 26.3.508 ROYALTIES (1) The lessee shall pay a royalty to the state on all uranium or other fissionable material produced, which shall be in cash unless the board at its option requires that the royalty be delivered in kind.

(2) The royalty rates shall be as follows:

(a) For all ores bearing uranium or other fissionable materials (i.e., mineral-bearing materials that are mined primarily for their content of uranium or other fissionable material) which are mined, saved and removed from the leased premises and sold in its crude state, shall be ten percent (10%) of the mine value of such ores in raw, crude form. The mine value of mineral-bearing ores sold by lessee in raw, crude form shall be the actual proceeds received for such ores by lessee after deducting the reasonable cost, if any, of transporting such ore from the mine to the point of sale. Such reasonable cost shall not exceed the cost of

transporting the ore from the mine to the closest available and feasible point of sale.

(b) The royalty, or ores which are sold in their raw form but which are processed in a mill owned or controlled, wholly or partially, by lessee or which are processed in a custom mill for lessee, shall be equal to ten percent (10%) of the mineral-bearing ores or five percent (5%) of the plant returns of the "end product" whichever is greater based on the fair market value at the time said "end product" is recovered.

(c) In the event uranium or other fissionable minerals are recovered from the leased premises by lessee through in-situ, leach or solution mining, lessee shall pay lessor a royalty equal to ten percent (10%) of the sales price of mineral-bearing material disposed of as ore or solution, less fifty percent (50%) of the plant returns of the "end product" whichever is greater based on the Fair Market Value at the time said "end product" is recovered.

(d) Fair Market Value is the "Average Base Price of Market Price Contracts" published at such date by the U.S. Department of Energy (DOE), or, if unavailable, such alternative published by representative market price contracts for concentrates as may be available. End product is defined as the normal usable product or concentrate produced after final processing. In the case of uranium, this product will be U_3O_8 (yellow cake) unless a major change occurs in current technology. The lessor shall have the right to review all books, records and papers of the lessee at any reasonable times in order to determine whether the proper royalty payment has been made. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-116 MCA)

Rule-X 26.3.509 RECORDS AND REPORTS (1) The lessee shall maintain adequate records to determine the amount of royalty owed.

(2) The lessee shall furnish upon request, but not more than once each calendar year, an exploration and development report which describes the work completed by the lessee. The report shall include a plat showing the location of any work completed on the lease property and shall include a complete geologic log and electric log (if done) of any test holes.

(3) Upon commencement of mining, the lessee shall make on or before the last day of each ~~month~~ quarter, a report to the department concerning the operations for the latest 3 months for which records are available, but not more than 3 months preceding the report. The report shall be on the form prescribed by the department and shall provide sufficient information to determine the royalty as well as any other pertinent information requested by the department. The royalty for the month reported shall accompany the report. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-119 MCA)

~~Rule XI~~ 26.3.510 ASSIGNMENTS AND TRANSFERS (1) The lessee may assign any lease, either in whole or as to subdivisions of land embracing not less than 40 acres, to any person qualified as provided under the law and this subchapter. Such assignment is not, however, binding upon the state until filed in duplicate executed copies on the form prescribed by the department, accompanied by a fee, together with proof of qualifications of the assignee as a lessee, and until the assignment is approved by the department. For the purposes of this rule, any lot platted, according to the governmental survey, is deemed to be a legal subdivision of land embracing 40 acres. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interests of the state in the premises assigned will not, in the judgement of the department, be prejudiced thereby. Until such an assignment is approved, the lessee of record continues to be fully liable and responsible for all of the requirements and obligations of the lease.

(2) In the case of a partial assignment, i.e. assignment of a full interest in only a portion of the leased premises, a new lease shall be issued for the assigned acreage, with the same expiration date as the original lease.

(3) The assignment of a lease, either in whole or in part, to more than one assignee is permitted if the proposed assignment is otherwise in compliance with the foregoing requirements. However, no such assignment may be approved until one of the assignees is designated to act as agent for the purpose of receiving any and all notices from the department given in connection with the lease and meeting all requirements and obligations under the lease.

(4) Assignment of undivided fractional interests in any lease, either as to the whole of the leased premises or to any portion thereof, may be arranged by having the lessee assign title to the acreage in question to himself and the assignee. The assignment may show the respective shares of interest but the transaction is approved as a transfer of title only and without recognition of the respective interests.

(5) Assignments involving overriding royalties or containing reservations by the assignee may be approved as transfers of title only without recognition of such overriding royalties or reservations.

(6) Evidence of transfers by operation of law should be in the form of a certified copy of the appropriate court order or decree or similar document. A transfer by operation of law to an unqualified person may be recognized by the department for a period of time sufficient to transfer the interest to a qualified person. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-105 MCA)

~~Rule XII~~ 26.3.511 SURRENDER OF LEASE (1) The lessee may ~~at the termination of any rental year,~~ surrender and relinquish to the state any legal subdivision of the lands

leased and be discharged from any obligations not yet accrued as to the lands so surrendered and relinquished, without prejudice to the continuance of the lease as to the lands not surrendered or relinquished.

(2) Although no particular form of surrender is required, such surrender must be in writing, must sufficiently identify the lease sought to be surrendered, and must specifically describe the lands to be surrendered.

(3) Such written instrument of surrender and relinquishment must be signed by the owner of the lease as shown by the records of the department. If more than one person owns the working interest in a lease, all such owners must join in a joint surrender of the lease or each must submit a separate, written surrender.

(4) The lease bond shall not be released until any land disturbed by the lessee has been restored as provided in this subchapter or a subsequent lessee assumes responsibility for the disturbance. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA; 77-3-132 MCA)

~~Rule-XIII~~ 26.3.512 CANCELLATION OR TERMINATION (1) The lease is subject to cancellation for failure to comply with the terms of the lease or this subchapter. The lessee shall be notified of any failure to comply and allowed a reasonable time to comply. If the lessee fails to comply within a reasonable time the lease shall be canceled.

(2) Upon termination of the lease for any cause, the lessee shall immediately surrender the premises and shall remove all personal property within 60 days after termination of the lease.

(3) The lessee shall remain responsible for restoring the disturbed land until it has been restored as provided in this subchapter or in the lease itself. The former lessee may be relieved of this responsibility if the land is re-leased. (AUTH: ~~77-1-102~~ 77-6-104 MCA IMP: 77-3-115 MCA; 77-3-132 MCA)

~~Rule-XIV--PREVENTION-OF-WASTE-AND-POLLUTION--(1)--The lessee-shall-conduct-all-operations-in-such-a-manner-as-to prevent-waste-and-preserve-property-and-resources.--The lessee-shall-carry-out-at-its-expense-all-reasonable-orders and-requirements-of-the-department-relative-to-the-prevention of-waste-and-preservation-of-property-and-resources.--On the-failure-of-the-lessee-to-carry-out-such-orders,-the department-may,-in-addition-to-other-recourse-enter-on-the property-to-repair-damages-or-prevent-waste-at-the-lessee's expense.~~

~~(2)--In-all-operations-on-lands-leased-pursuant-to-these rules,-the-lessee-shall-use-the-highest-degree-of-care-and all-proper-safeguards-to-prevent-pollution-of-earth,-air-or water.--In-the-event-of-pollution,-directly-or-indirectly caused-by-lessee's-operation-on-state-land-the-lessee-shall~~

~~use all reasonable means to recapture escaped pollutants and is responsible for all damage to public and private properties, including bodies of water of any sort, whether above or below the surface of the earth.~~ ~~(AUTH: 77-1-103 MCA IMP: 77-3-115 MCA)~~

~~Rule XV~~ 26.3.513 ~~MINIMIZATION OF DISTURBANCE~~ (1) The lessee shall prospect and explore for uranium or other fissionable materials with the minimum disturbance to the surface of the land which is required to adequately explore the property. ~~All drill holes shall be securely capped or plugged when not in use. In any drilling operations, lessee shall comply with all of the provisions of law governing ground water.~~ Furthermore, all mining operations shall be conducted in such a manner as to protect property and resources from disturbance which is not reasonably necessary in order to efficiently and economically remove the mineral deposit.

(2) The lessee shall enclose and maintain all shafts, tunnels and other openings in order to protect livestock and humans from dangerous conditions.

~~(3) When any drilling or mining operation is commenced on land leased pursuant to these rules, any topsoil on lands to be disturbed shall be removed and stockpiled on the site. The lessee shall take all reasonable, necessary steps to insure the preservation of the stockpiled topsoil including a temporary vegetation cover to prevent erosion. At the completion of recovery operations, and upon the final abandonment or completion of any drilling or mining, the lessee, shall restore the surface of the location to its original contours as far as reasonably possible, redistribute the topsoil, and reseed the land with native grasses or native plants prescribed by the department.~~

~~(4)~~ (3) The lessee shall not cut any timber on leased land for use in its operation without the written consent of the department. The lessee shall pay the customary charges for such timber if consent is obtained.

(4) The lessee shall comply with all applicable state and federal laws, rules and regulations, including but not limited to those concerning safety, environmental protection and reclamation. The lessee shall conduct and reclaim the operation in accordance with the performance and reclamation standards of applicable reclamation laws does not relieve the lessee from the obligation to conduct and reclaim the operations in accordance with the performance and reclamation standards. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115)

~~Rule XVI~~ 26.3.514 ~~MINERAL~~ LESSEE'S SURFACE RIGHTS (1) The mineral lessee has the right to use the land surface as necessary in order to explore, develop, and mine the leased lands.

(2) Any sale, contract for sale or lease of state land which has been leased for minerals pursuant to this sub-chapter shall be made subject to such mineral lease.

(3) If the surface of land leased for minerals pursuant to this subchapter has been previously sold or contracted for sale or leased, the rights of the prior purchaser, contractee or lessee shall be protected as required by law and the board. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-132 MCA)

~~Rule XVII~~ 26.3.515 BONDING Prior to issuance of the lease the lessee shall file with the department a bond in the penal sum of at least $1,000.00, conditioned upon payment of rentals and royalties, upon compliance with all lease obligations and in order to protect the rights of any prior purchasers or lessees. The department may require an additional bond or bonds at any time during the period of the lease. Lessee may furnish one bond covering all uranium or other fissionable material leases in which any interest is held or acquired by lessee. If a blanket bond is furnished by lessee, separate bonds relating to individual leases are not required. The blanket bond shall be in the amount to be fixed by the department. Payment of a sum under the terms of said bond or bonds does not release lessee from liability for damages in excess of the amount paid under the terms of said bond or bonds. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-119 MCA; 77-3-120 MCA)

~~Rule XVIII~~ 26.3.516 SPECIAL CONDITIONS AND STIPULATIONS The board may attach special conditions and stipulations to any lease prior to issue in order to protect the interests of the state. An applicant or bidder shall be notified of any special condition or stipulation prior to lease sale or issuance and may withdraw his application and elect not to enter into a lease as a result of the special condition or stipulation. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA)

~~Rule XIX~~ 26.3.517 NOTICE OF DISCOVERY OF OTHER MINERALS The mineral lessee shall promptly notify the department of the discovery of any valuable minerals other than those covered by the mining lease. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-114 MCA; 77-3-118 MCA)

~~Rule XX~~ 26.3.518 HEARINGS AND APPEALS It is the desire and intent of the board that any lessee, or prospective lessee, be given full and adequate opportunity to be heard with respect to any matter affecting the interests of the lessee in any particular lease. Any hearing will be conducted informally, without adherence to the strict rules of evidence of a court of law. Any action by the department or board shall be stayed pending the outcome of the hearing. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-1-202 MCA)

3. Comments were received at the public hearing and in written form. A summary of the comments and the department's responses are provided below.

(1) COMMENT: One representative of industry indicated that the royalty may be too high for uranium and other fissionable materials:

RESPONSE: Comment rejected. The royalty rate as proposed was previously adopted by the board of land commissioner as part of the lease form and has been generally accepted by industry.

(2) COMMENT: Several industry representatives and individuals were opposed to the adoption of a competitive bid policy as proposed in Rule VI. It was their opinion that such a policy was unfair to the small miner.

RESPONSE: The decision of whether to adopt a competitive bid policy must be made based on what is in the best interests of the state and will produce the most revenue for the schools of Montana. At this point in time it does not appear that a competitive bid policy will produce more revenue than a first come, first serve policy. The major reason is that the market for most minerals is currently depressed and few persons would be interested in bidding. Also, a competitive bid policy may reduce income because small prospectors and operators would be less willing to apply for leases on state land. Therefore Rule VI has been deleted from these rules. A competitive bid policy may be in the best interests of the state when the market improves.

(3) COMMENT: Several industry representatives commented adversely on Rule XV which concerns reclamation of disturbed lands. The comments suggested that the rule was too stringent and also that it reference the existing reclamation laws.

RESPONSE: Comment accepted. The rule has been rewritten to reference the laws, rules and regulations concerning safety, environmental protection and reclamation. The rule now merely requires compliance with these rules with the exception that if the operation is exempt from the reclamation laws the lessee is still required to reclaim the area pursuant to the standards set forth in the reclamation law. This does not mean that the lessee must obtain a permit that would not otherwise be required but merely that the state land must be reclaimed in a satisfactory manner, as otherwise required by law.

(4) COMMENT: Three industry representatives commented adversely on Rule XIX concerning the reporting of any newly discovered mineral. It was their opinion that the lessee should have the right to obtain a lease on this new mineral and that the information should be kept confidential.

RESPONSE: Comment accepted in part. Since the first come, first serve leasing system is preserved, the lessee

discovering the mineral can make application and obtain a lease for the new mineral. The state has a legitimate right to be informed of this information but can not legally keep it confidential. All information in department files is public information unless protected by statute for a legitimate purpose. Therefore, the proposed rule has not been rewritten.

(5) COMMENT: Two industry representatives commented adversely on Rule IX concerning monthly royalty reports. It was their opinion that monthly reports created too much work and that the reports should only be required quarterly.
RESPONSE: Comment accepted. The rule is rewritten to require quarterly reports.

(6) COMMENT: Three industry representatives commented adversely on Rule X concerning records and reports which must be submitted to the department. In particular they were concerned about submitting drilling logs to the department which would become public information.
RESPONSE: Comment rejected. The state has a legitimate need for such reports when available and they can not legally be kept confidential. Since the lessee already has the lease before any drilling takes place it does not appear that the lessee could be injured by revealing this information.

(7) COMMENT: Several industry representatives commented adversely on Rule XIV concerning prevention of waste and pollution. It was their opinion that the rule was vague and too broad to be enforceable.
RESPONSE: Comment accepted. The rule is deleted. Environmental protection is adequately provided for in Rule XV as rewritten.

(8) COMMENT: One person commented adversely on Rule XVI concerning surface rights. It was his opinion that if the surface lessee or owner did not grant permission to use the surface the rental payments should be refunded.
RESPONSE: Comment rejected. The surface owner or lessee can not deny access to the mineral lessee. The mineral lessee's access right is provided for in section (1) of Rule XVI.

(9) COMMENT: One person commented adversely on Rule XVIII concerning special conditions and stipulations. It was his opinion that the application fee should be refunded if the lease is withdrawn because of special conditions or stipulations.
RESPONSE: Comment rejected. The application fee is only $10.00 at the present time. This amount does not cover the administrative costs in handling the application. This is a small amount for the applicant to pay to have his lease application considered.

(10) COMMENT: Several industry representatives commented adversely on Rule III(4) which restricts leases to holders of coal, oil or gas leases unless permission from the coal, oil or gas lessee is obtained. One person suggested that if the coal, oil or gas lessee denied permission to lease, they should not be allowed to lease themselves.

RESPONSE: Comment rejected. This rule is required by section 77-3-114 MCA. The board does not have authority to change this requirement. Furthermore, the board does not have authority to deny a lease to a coal, oil or gas lessee who denies permission for a lease.

(11) COMMENT: One industry representative requested that a royalty based upon net proceeds after paying back the capital investment be considered instead of a net smelter return royalty.

RESPONSE: Comment rejected. The department carefully considered this suggestion but found it unworkable. Many of the state's lessees are very small operators who do not keep exact records of their operations. Therefore, it would be very difficult to determine when the capital investment had been paid back and what the new proceeds would be for each operation. The department does not have access to tax records and would have difficulty auditing the mining operation to determine whether the figures submitted by the operator were correct.

(12) COMMENT: One industry representative commented adversely on Rule XII concerning surrender of the lease. It was his opinion that the lessee should be able to surrender the lease at any time and not just on the anniversary date.

RESPONSE: Comment accepted. The rule has been rewritten.

(13) COMMENT: One industry representative commented adversely on Rule XIII concerning termination of the lease. It was his opinion that the lessee should be responsible for reclamation only as required by law.

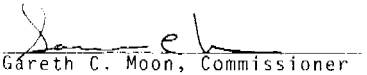
RESPONSE: Comment accepted. The rule concerning reclamation has been rewritten to require reclamation according to law. See response to comment no. 3.

(14) COMMENT: One industry representative commented on Rule VIII concerning rentals. It was his opinion that the bonus should be stated exactly.

RESPONSE: Comment rejected. In order to assure that fair market value for the lease is obtained the Board must have the right to charge a bonus in addition to the first year rental.

(15) COMMENT: One industry representative commented on Rule VII concerning the term of the lease. It was his opinion that 10 years was too short a period of time to bring a large complex mine into production.

RESPONSE: Comment rejected. A term longer than 10 years would be detrimental to the school trust since it would allow companies to hold leases for speculation without developing the minerals.



Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE December 21, 1981.

BEFORE THE DEPARTMENT OF STATE LANDS AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF NEW RULES governing state leases for metalliferous minerals and gems	))))	NOTICE OF ADOPTION OF RULES GOVERNING STATE LEASES FOR METALLIFEROUS MINERALS AND GEMS

TO: All Interested Persons:

1. On August 27, 1981 the board of land commissioners and department of state lands published a notice of proposed adoption of rules concerning leases for metalliferous minerals and gems at page 921 of the 1981 Montana Administrative Register issue no. 16.

2. The agency has adopted the rules with the following changes:

Rule I 26.3.601 DEFINITIONS When used herein, unless a different meaning clearly appears from the context:

(1) "Assignee" means the person or persons to whom a lessee has transferred all or part of the unexpired term of his lease and who appears as such on record in the offices of the department;

(2) "Assignment" means any approved transfer of interest between a lessee and a second party whereby the second party is accorded the use of all or part of the lessee's leasehold interest;

(3) "Board" means the board of land commissioners of the state of Montana;

(4) "Commissioner" means commissioner of state lands;

(5) "Department" means department of state lands as provided in section 2-15-3201 MCA;

(6) "Gems" means sapphires, rubies, and other stones commonly known as "precious or semi-precious stones" but does not mean stones or other earth materials commonly used in building or construction work;

(7) "Lease" means unless the context indicates otherwise, a metalliferous mineral and gem lease issued pursuant to Part 1, Chapter 3, Title 77 MCA and this subchapter;

(8) "Lessee" means the person or persons in whose name a metalliferous mineral and gem mining lease appears on record in the offices of the department, whether such person or persons be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a metalliferous mineral and gem lease but with whom a formal metalliferous and gem lease agreement has not been completed and finalized;

(9) "Metalliferous minerals" means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals, except uranium or other fissionable materials;

(10) "Mining" means operations for the purpose of extracting from the earth ore and other material containing metalliferous minerals or gems, and commences at such time

as commercial quantities of ore or other material are removed for sale, benefication, refining or other processing or disposition.

(11) "Person" means any individual, firm, association, corporation, governmental agency or other legal entity;

(12) "Qualified applicant" means any person, who may become a qualified lessee as set forth under Rule V hereof.

(13) "Standard lease form" means the lease form currently in use and approved by the board;

(14) "State" means the state of Montana;

(15) "State lands" means all lands the leasing of which for metalliferous minerals and gems are under the jurisdiction of the board. (AUTH: ~~77-1-103~~ 77-6-104 MCA; IMP: ~~77-1-101~~ 77-3-101 MCA)

Rule II 26.3.602 ADMINISTRATIVE DETAILS AND INFORMATION The offices and records of the department are maintained at 1625 East Eleventh Avenue, Helena, Montana, under the direction and administration of the commissioner. Requests for information, application for leases and other matters should be addressed to the department, at its mailing address: capitol station, Helena, Montana 59620. Payment of all monies required or permitted under these rules or pursuant to the provisions of any metalliferous mineral and gem lease shall be made to the department. All checks, drafts and money orders must be made payable to "department of state lands," and mailed to the department of state lands, capitol station, Helena, Montana 59620. Sight drafts will not be accepted. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: ~~77-1-103~~ 77-3-101 MCA)

Rule III 26.3.603 LANDS AVAILABLE FOR LEASING (1) Lands available for leasing under these rules include any state lands in which mineral rights are not reserved by the United States or other grantor or predecessor in title. Such state lands include those which have been sold but in which mineral rights have been reserved, in whole or in part, by the state of Montana.

(2) Unsurveyed lands, including those under navigable lakes and streams, are available for leasing, provided that any applicant for a lease on such lands shall supply the department with as accurate an estimate of the number of acres to be included under such lease as can be derived from the latest survey, or an aerial photograph, and such other information as is available to the applicant. Further provided, that if and when such lands are leased and metalliferous metals or gems in commercial quantities are produced from the lands, the lessee shall supply the department with a legal description of the lands by courses and distances (metes and bounds). The department assumes no liability or responsibility for the correctness, completeness or validity of such description and does not warrant title to such lands.

(3) No lease may embrace more than one governmental section. The land shall be leased in as compact bodies as possible. No lease may embrace noncontiguous subdivisions of lands unless such subdivisions are within an area comprising not more than one square mile.

(4) No lease on lands covered by lease for the mining of coal, oil, or gas may be issued to any person, association or corporation other than the holder of such coal, oil, or gas lease while that lease is in force except with the written consent of the holder of the coal, oil, or gas lease. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-102 MCA)

~~Rule-IV~~ 26.3.604 WHO MAY LEASE - QUALIFIED LESSEES (1) Any person, association, partnership, corporation, domestic or foreign, or municipality qualified under the Constitution and the laws of the state of Montana may lease state lands for metalliferous minerals and gem purposes; however all corporations not incorporated in Montana must obtain a certificate of authority to transact business in this state from the secretary of state.

(2) No officer or employee of any agency of the executive department of state government who is required to inspect or examine metalliferous mineral or gem mines or otherwise to gather field information in regard to prospecting for metalliferous minerals or gems or the production thereof, may take or hold such a lease, nor shall such person become interested in any manner in any lease on state lands.

(3) Any person qualified to hold a lease on state lands may acquire, receive and hold more than one lease. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-1-113 MCA)

~~Rule-V~~ 26.3.605 APPLICATION FOR LEASE (1) Any person who desires that any tract of state lands be considered for metalliferous mineral and gem leasing shall make application for a lease on the form prescribed by the department and then in current use. Blank forms for such applications may be secured from the department at no cost. Such application must be accompanied by an application fee and shall contain an adequate and sufficient description of the land sought to be leased and shall be deemed and considered for all purposes an offer to lease the lands described therein at the minimum rental and royalty rates as provided in this subchapter.

~~(2) If the board has adopted competitive bidding as a policy, the application shall constitute an undertaking to pay within ten days after the lease sale, the required first year's rental for the lease. In order to allow processing, applications must be filed with the department at least 40 days prior to the date fixed for the competitive bid sale. Any application may be withdrawn by the applicant if request for such withdrawal is received by the department at least ten days prior to said sale, but the application fee will not be refunded.~~ (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-111 MCA)

~~Rule VI--PROCEDURES FOR ISSUANCE OF LEASE--(1)--Unless the board has adopted a competitive bid policy under subsection (2) below, if the department has received one application to lease a particular tract, the board may grant the lease at a rental rate not less than the minimum provided in this subchapter.~~

~~(2)(a)--The board may offer leases on an open oral competitive bidding system by adopting competitive bidding as a formal policy.--The effective date of such a policy shall be set by the board and may be retroactive to include tracts on which an application has been received but a lease has not been issued.~~

~~(b)--If the board adopts competitive bidding as a formal policy the following procedures shall be followed:~~

~~(i)--The department shall publish a notice for competitive bidding of each tract for which an application is received. Where more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to the receipt of the first qualified application that there is a prior application for that tract and shall return the application fee.--If the first qualified applicant for the tract withdraws his application, the tract shall be offered for leasing regardless of the withdrawal. In such case, the opening bid must not be less than the minimum rental required by this subchapter.~~

~~(ii)--Lease sales normally will be held once each quarter on the first Tuesday of February, May, August and November. Notice of each sale shall be given in a publication or publications of general circulation in Montana.--Publication of notice shall be within 15 days after the previous lease sale and shall contain only the date and place of sale since its purpose is to allow applicants to submit their applications prior to the 40-day deadline.--Other publications of the sale, the first of which shall not be more than 40 days prior to the date of the lease sale shall describe each tract that will be offered for lease separately, shall state the time and place of the sale, and shall state that all sales shall be by competitive bid.--These publications shall be published for two successive weeks prior to the sale.~~

~~(iii)--The department may postpone or cancel any sale if insufficient tracts have been applied for or if other circumstances warrant.--In such event a notice of "no sale" shall be published as provided for in this subchapter.~~

~~(iv)--The department shall maintain a mailing list of prospective lessees who request in writing that their names be placed on the list.--At least two weeks before each sale, the department shall mail to each person on the list a copy of the notice of sale.~~

~~(v)--The board may at its discretion withhold any tracts from leasing.~~

~~AUTH:--77-1-103-MCA--IMP:--77-3-101 thru 77-3-132~~

Rule-VII 26.3.606 TERM OF LEASE (1) The lease shall be granted on the standard lease form for a primary term or period of ten years, and as long thereafter as metalliferous minerals or gems in paying quantities are produced, on condition that all royalties, rents, and other obligations are fully kept and performed by the lessee. The board shall extend the term of the lease if it determines that a failure to produce in paying quantities is a result of factors beyond the control of the lessee such as but not limited to a national emergency or a temporary decrease in the price at which the particular metalliferous mineral or gem can be sold. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA)

Rule-VIII 26.3.607 RENTALS ~~(1)~~ The lessee shall pay an annual rental to the state. The rental for the first year shall be at least $1.00 per acre and may include an additional amount per acre as a bonus determined by the board. ~~or if the board has adopted a competitive bidding policy, a bonus as determined by bidding.~~

(2) The rental for the second and third year shall be $1.00 per acre. The rental for the fourth and fifth year shall be $2.50 per acre and the rental thereafter, until the lease terminates, shall be $3.00 per acre. In no case shall the total rental for one lease be less than $100.00 per year. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA)

Rule-IX 26.3.608 ROYALTIES (1) The lessee shall pay a royalty to the state on all metalliferous minerals or gems produced, which shall be in cash unless the board at its option requires that the royalty be delivered in kind.

(2) The royalty for all ores bearing metalliferous minerals or gems which are mined, saved and removed from the leased premises shall be ~~eight percent (8%)~~ not more than eight percent (8%) or less than five percent (5%) of the returns from the metalliferous minerals or gems, as determined by the board on a case by case basis, but in no case shall be less than five percent (5%) of the fair market value of the metalliferous minerals or gems recovered. The returns are defined as the net amount received by the shipper after deducting reasonable transportation costs to the closest feasible point of sale, smelting charges and deductions and other treatment costs, not including as a deduction any cost of producing or treating at the mine. The fair market value is the value of the minerals or gems in raw crude form as recovered at the mine site. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-116 MCA)

Rule-X 26.3.609 RECORDS AND REPORTS (1) The lessee shall maintain adequate records to determine the amount of royalty owed.

(2) The lessee shall furnish upon request, but not more than once each calendar year, an exploration and development report which describes the work completed by the lessee. The report shall include a plat showing the

location of any work completed on the lease property and shall include a complete geologic log and electric log (if done) of any test holes.

(3) Upon commencement of mining, the lessee shall make on or before the last day of each ~~month~~ quarter, a report to the department concerning the operations for the latest 3 months for which records are available but not more than 3 months preceding the report. The report shall be on the form prescribed by the department and shall provide sufficient information to determine the royalty as well as any other pertinent information requested by the department. The royalty for the ~~month~~ quarter reported shall accompany the report. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-119 MCA)

Rule-XI 26.3.610 ASSIGNMENTS AND TRANSFERS (1) The lessee may assign any lease, either in whole or as to subdivisions of land embracing not less than 40 acres, to any person qualified as provided under the law and this subchapter. Such assignment is not, however, binding upon the state until filed in duplicate executed copies on the form prescribed by the department, accompanied by a fee together with proof of qualifications of the assignee as a lessee, and until the assignment is approved by the department. For the purposes of this rule, any lot, platted according to the governmental survey, is deemed to be a legal subdivision of land embracing 40 acres. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interests of the state in the premises assigned will not, in the judgment of the department, be prejudiced thereby. Until such an assignment is approved the lessee of record continues to be fully liable and responsible for all of the requirements and obligations of the lease.

(2) In the case of a partial assignment, i.e. assignment of a full interest in only a portion of the leased premises, a new lease shall be issued for the assigned acreage, with the same expiration date as the original lease.

(3) The assignment of a lease, either in whole or in part, to more than one assignee will be permitted if the proposed assignment is otherwise in compliance with the foregoing requirements. However, no such assignment may be approved until one of the assignees is designated to act as agent for the purpose of receiving any and all notices from the department given in connection with the lease and meeting all requirements and obligations under the lease.

(4) Assignment of undivided, fractional interests in any lease, either as to the whole of the leased premises, or to any portion may be arranged by having the lessee assign title to the acreage in question to himself and the assignee. The assignment may show the respective shares of interest but the transaction is approved as a transfer of title only and without recognition of the respective interests.

(5) Assignments involving overriding royalties or containing certain reservations by the assignee are approved as transfers of title only and without recognition of such overriding royalties or special terms and conditions.

(6) Evidence of transfers by operation of law should be in the form of a certified copy of the appropriate court order or decree or similar document. A transfer by operation of law to an unqualified person may be recognized by the department for a period of time sufficient to transfer the interest to a qualified person. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-105 MCA)

~~Rule-XII~~ 26.3.611 SURRENDER OF LEASE (1) The lessee may ~~at-the-termination-of-any-rental-year,~~ surrender and relinquish to the state any legal subdivision of the lands leased, and be discharged from any obligations not yet accrued as to the lands so surrendered and relinquished, without prejudice to the continuance of the lease as to the lands not surrendered or relinquished.

(2) Although no particular form of surrender is required, such surrender must be in writing, must sufficiently identify the lease sought to be surrendered, and must specifically describe the lands to be surrendered.

(3) Such written instrument of surrender and relinquishment must be signed by the owner of the lease as shown by the records of the department. If more than one person owns the working interest in a lease, all such owners must join in a joint surrender of the lease or each must submit a separate, written surrender.

(4) The lease bond shall not be released until any land disturbed by the lessee has been restored as provided in this subchapter or a subsequent lessee assumes responsibility for the disturbance. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA; 77-3-132 MCA)

~~Rule-XIII~~ 26.3.612 CANCELLATION OR TERMINATION (1) The lease is subject to cancellation for failure to comply with the terms of the lease or this subchapter. The lessee shall be notified of any failure to comply and allowed a reasonable time to comply. If the lessee fails to comply within a reasonable time the lease shall be canceled.

(2) Upon termination of the lease for any cause the lessee shall immediately surrender the premises and shall remove all personal property within 60 days after termination of the lease.

(3) The lessee shall remain responsible for restoring the disturbed land until it has been restored as provided in this subchapter or in the lease itself. The former lessee may be relieved of this responsibility if the land is re-leased. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA; 77-3-132 MCA)

~~Rule XIV--PREVENTION OF WASTE AND POLLUTION--(1)--The lessee shall conduct all operations in such manner as to prevent waste and preserve property and resources.--The lessee shall carry out at its expense all reasonable orders and requirements of the department relative to the prevention of waste and preservation of property and resources.--On the failure of the lessee to do so, the department may in addition to other recourse enter on the property to repair damages or prevent waste at the lessee's expense.~~

~~(2)--In all operations on lands leased pursuant to these rules and regulations, the lessee shall use the highest degree of care and all proper safeguards to prevent pollution of earth, air or water.--In the event of pollution directly or indirectly caused by lessee's operation on state land the lessee shall use all reasonable means to recapture escaped pollutants and is responsible for all damage to public and private properties, including bodies of water of any sort, whether above or below the surface of the earth.~~

~~AUTH:--77-1-103-MCA--IMP:--77-3-115-MCA~~

Rule XV 26.3.613 MINIMIZATION OF DISTURBANCE (1) The lessee shall prospect and explore for metalliferous minerals or gems with the minimum disturbance to the surface of the land which is required to adequately explore the property. ~~All drill holes shall be securely capped or plugged when not in use.--In any drilling operations, lessee shall comply with all of the provisions of law governing ground water.~~ Furthermore, all mining operations shall be conducted in such a manner as to protect property and resources from disturbance which is not reasonably necessary in order to efficiently and economically remove the mineral deposit.

(2) The lessee shall enclose and maintain all shafts, tunnels and other openings in order to protect livestock and humans from dangerous conditions.

~~(3)--When any drilling or mining operation is commenced on land leased pursuant to these rules, any topsoil on lands to be disturbed shall be removed and stockpiled on the site.--The lessee shall take all reasonable, necessary steps to insure the preservation of the stockpiled topsoil including a temporary vegetation cover to prevent erosion.--At the completion of recovery operations, and upon the final abandonment or completion of any drillings or mining, the lessee shall restore the surface of the location to its original contours as far as reasonably possible, redistribute the topsoil, and reseed the land with native grasses and native plants prescribed by the department.~~

~~(4)~~ (3) The lessee shall not cut any timber on leased land for use in its operations without the written consent of the department. The lessee shall pay the customary charges for such timber if consent is obtained.

(4) The lessee shall comply with all applicable state and federal laws, rules and regualtions, including but not limited to those concerning safety, environmental protection and reclamation. The lessee shall conduct and reclaim the the operation in accordance with the performance and reclamation standards of applicable reclamation laws. Exemption of lessee's operations from applicable reclamation laws does not relieve the lessee from the obligation to conduct and reclaim the operations in accordance with the performance and reclamation standards. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA)

~~Rule-XVI~~ 26.3.614 MINERAL LESSEE'S SURFACE RIGHTS (1) The mineral lessee has the right to use the land surface as necessary in order to explore, develop and mine the leased lands.

(2) Any sale, contract for sale or lease of state land which has been leased for minerals pursuant to this subchapter shall be made subject to such mineral lease and the surface owner, purchaser or lessee shall not be entitled to surface damages.

(3) If the surface of the land leased for minerals pursuant to this subchapter has been previously sold or contracted for sale or leased, the rights of the prior purchaser, contractee or lessee shall be protected as required by law and the board. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-132 MCA)

~~Rule-XVII~~ 26.3.615 BONDING Prior to issuance of the lease, the lessee shall file with the department a bond in the penal sum of at least $1,000.00 conditioned upon payment of rentals and royalties, upon compliance with all lease terms and in order to protect the rights of any prior purchasers or lessees. The board may require an additional bond or bonds, at any time during the period of the lease. Lessee may furnish one bond covering all metalliferous minerals and gem leases in which any interest is held or acquired by lessee. If such a blanket bond is furnished by lessee, separate bonds relating to individual leases shall not be required. Such blanket bond shall be in an amount to be fixed by department. Payment of a sum under the terms of said bond or bonds do not release lessee from liability for damages in excess of the amount paid under the terms of said bond or bonds. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-119 MCA; 77-3-120 MCA)

~~Rule-XVIII~~ 26.3.616 SPECIAL CONDITIONS AND STIPULATIONS The board may attach special conditions and stipulations to any lease prior to issuance in order to protect the interests of the state. An applicant or bidder shall be notified of any special condition or stipulation prior to lease sale or issuance and may withdraw his application and elect not to

enter into a lease as a result of the special condition or stipulation. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-115 MCA)

Rule XIX 26.3.617 NOTICE OF DISCOVERY OF OTHER MINERALS The mineral lessee shall promptly notify the department of the discovery of any valuable minerals other than those covered by the mining lease. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-3-114 MCA; 77-3-118 MCA)

Rule XX 26.3.618 HEARINGS AND APPEALS It is the desire and intent of the board that any lessee, or prospective lessee, be given full and adequate opportunity to be heard with respect to any matter affecting the interests of the lessee in any particular lease. Any hearing will be conducted informally, without adherence to the strict rules of evidence of a court of law. Any action by the department shall be stayed pending the outcome of the hearing. (AUTH: ~~77-1-103~~ 77-6-104 MCA IMP: 77-1-202 MCA)

3. Comments were received at the public hearing and in written form. A summary of the comments and the department's responses are provided below.

(1) COMMENT: Several representatives of the mining industry and individuals commented that the royalty rate for metalliferous minerals and gems was too high to be in the best interests of the state since a profit could not be made at the proposed rate.

RESPONSE: The comment is accepted. In light of the depressed market for metals it may not be wise to raise the royalty rate at this time. However, the board must have the flexibility to set royalty rates depending on each individual situation. Therefore the royalty rate is set at not more than (8%) or less than 5% of net smelter returns but not less than 5% of the fair market value of the ore or minerals in raw crude form.

(2) COMMENT: Several industry representatives and individuals were opposed to the adoption of a competitive bid policy as proposed in Rule VI. It was their opinion that such a policy was unfair to the small miner.

RESPONSE: The decision of whether to adopt a competitive bid policy must be made based on what is in the best interests of the state and will produce the most revenue for the schools of Montana. At this point in time it does not appear that a competitive bid policy will produce more revenue than a first come, first serve policy. The major reason is that the market for most minerals is currently depressed and few persons would be interested in bidding. Also, a competitive bid policy may reduce income because small prospectors and operators would be less willing to apply for leases on state land. Therefore Rule VI has been deleted from these rules. A competitive bid

policy may be in the best interests of the state when the market improves.

(3) COMMENT: Several industry representatives commented adversely on Rule XV which concerns reclamation of disturbed lands. The comments suggested that the rule was too stringent and also that it reference the existing reclamation laws.

RESPONSE: Comment accepted. The rule has been rewritten to reference the laws, rules and regulations concerning safety, environmental protection and reclamation. The rule now merely requires compliance with these laws and rules with the exception that if the operation is exempt from the reclamation laws the lessee is still required to reclaim the area pursuant to the standards set forth in the reclamation law. This does not mean that the lessee must obtain a permit that would not otherwise be required but merely that the state land must be reclaimed in a satisfactory manner, as would otherwise be required by law.

(4) COMMENT: Three industry representatives commented adversely on Rule XIX concerning the reporting of any newly discovered mineral. It was their opinion that the lessee should have the right to obtain a lease on this new mineral and that the information should be kept confidential.

RESPONSE: Comment accepted in part. Since the first come, first serve leasing system is preserved, the lessee discovering the mineral can make application and obtain a lease for the new mineral. The state has a legitimate right to be informed of this information but can not legally keep it confidential. All information in department files is public information unless protected by statute for a legitimate purpose. Therefore, the proposed rule has not been rewritten.

(5) COMMENT: Two industry representatives commented adversely on Rule IX concerning monthly royalty reports. It was their opinion that monthly reports created too much work and that the reports should only be required quarterly.

RESPONSE: Comment accepted. The rule is rewritten to require quarterly reports.

(6) COMMENT: Three industry representatives commented adversely on Rule X concerning records and reports which must be submitted to the department. In particular they were concerned about submitting drilling logs to the department which would become public information.

RESPONSE: Comment rejected. The state has a legitimate need for such reports when available and they can not legally be kept confidential. Since the lessee already has the lease before any drilling takes place it does not appear that the lessee should be injured by revealing this information.

(7) COMMENT: Several industry representatives commented adversely on Rule XIV concerning prevention of waste and

pollution. It was their opinion that the rule was vague and too broad to be enforceable.

RESPONSE: Comment accepted. The rule is deleted. Environmental protection is adequately provided for in Rule XV as rewritten.

(8) COMMENT: One person commented adversely on Rule XVI concerning surface rights. It was his opinion that if the surface lessee or owner did not grant permission to use the surface the rental payments should be refunded.

RESPONSE: Comment rejected. The surface owner or lessee can not deny access to the mineral lessee. The mineral lessee's access right is provided for in section (1) of Rule XVI.

(9) COMMENT: One person commented adversely on Rule XVIII concerning special conditions and stipulations. It was his opinion that the application fee should be refunded if the lease is withdrawn because of special conditions or stipulations.

RESPONSE: Comment rejected. The application fee is only $10.00 at the present time. This amount does not cover the administrative costs in handling the application. This is a small amount for the applicant to pay to have his lease application considered.

(10) COMMENT: Several industry representatives commented adversely on Rule III(4) which restricts leases to holders of coal, oil or gas leases unless permission from the coal, oil or gas lessee is obtained. One person suggested that if the coal, oil or gas lessee denied permission to lease, they should not be allowed to lease themselves.

RESPONSE: Comment rejected. This rule is required by section 77-3-114 MCA. The board does not have authority to change this requirement. Furthermore, the board does not have authority to deny a lease to a coal, oil or gas lessee who denies permission for a lease.

(11) COMMENT: One industry representative requested that a royalty based upon net proceeds after paying back the capital investment be considered instead of a net smelter return royalty.

RESPONSE: Comment rejected. The department carefully considered this suggestion but found it unworkable. Many of the state's lessees are very small operators who do not keep exact records of their operations. Therefore, it would be very difficult to determine when the capital investment had been payed back and what the new proceeds would be for each operation. The department does not have access to all tax records and would have difficulty auditing the mining operation to determine whether the figures submitted by the operator were correct.

(12) COMMENT: One industry representative commented adversely on Rule XII concerning surrender of the lease. It was his opinion that the lessee should be able to surrender the lease at any time and not just on the anniversary date.
RESPONSE: Comment accepted. The rule has been rewritten.

(13) COMMENT: One industry representative commented adversely on Rule XIII concerning termination of the lease. It was his opinion that the lessee should be responsible for reclamation only as required by law.
RESPONSE: Comment accepted. The rule concerning reclamation has been rewritten to require reclamation according to law. See response to comment no. 3.

(14) COMMENT: One industry representative commented on Rule VIII concerning rentals. It was his opinion that the bonus should be stated exactly.
RESPONSE: Comment rejected. In order to assure that fair market value for the lease is obtained the board must have the right to charge a bonus in addition to the first year rental.

(15) COMMENT: One industry representative commented on Rule VII concerning the term of the lease. It was his opinion that 10 years was too short a period of time to bring a large complex mine into production.
RESPONSE: Comment rejected. A term longer then 10 years would be detrimental to the school trust since it would allow companies to hold leased for speculation without developing the minerals.

Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE December 21, 1981.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the Matter of the adoption of Rule I - Rule IV relating to the implementation of the "Montana Beef Research and Marketing Act" and its authorized tax levy.	)))))	NOTICE OF THE ADOPTION OF RULES RELATING TO THE MONTANA BEEF RESEARCH AND MARKETING ACT; ASSESSMENT AND LEVY OF AUTHORIZED TAX

TO: All Interested Persons:

1. On October 29, 1981, the Department of Livestock published notice of a proposed adoption of rules, concerning the implementation of the "Montana Beef Research and Marketing Act" of 1981 at page 1278 of the 1981 Montana Administrative Register, issue number 20.

2. The agency has adopted Rules I (32.15.801), II (32.15.802), III (32.15.803), and IV (32.15.804), with the folowing changes:

RULE I (32.15.801) - same as proposed rule.

RULE II (32.15.802) - same as proposed rule.

RULE III (32.15.803)
(1) (a)-(b) - same as proposed rule.
(c) if he owns real property, the date ~~all personal taxes and~~ the first one-half of the real property taxes are due as found in 15-16-102 M.C.A.
(2) same as proposed rule.

RULE IV (32.15.804)
(1) same as proposed rule.
(2) Refund application forms may be obtained from the ~~County Treasurer~~ Department of Livestock.

3. Several letters were received requesting the above amendments. The change in Rule III is to simply clarify the rule. The change in Rule IV is to reflect the mandates of the "Montana Beef Research and Marketing Act".

4. The authority of the agency to make the proposed rules is based on Section 81-8-803 M.C.A., and the rules implement Section 81-8-804 M.C.A.

ROBERT C. BARTHELMESS
Chairman, Board of Livestock

By: _____
LES GRAHAM, Administrator
Brands Enforcement Division

Certified to the Secretary of State, December 21, 1981.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rule pertaining to the adoption of the attorney general's model rules.	NOTICE OF AMENDMENT OF RULE 44.2.101 Incorporation of Model Rules

TO: All Interested Persons:

1. On November 12, 1981, the Secretary of State published notice of a proposed amendment to rule 44.2.101 Incorporation of Model Rules at page 1386 of the 1981 Montana Administrative Register, issue number 21.

2. The Secretary of State has amended the rule as proposed.

3. No Comments or testimony were received.

JIM WALTERMIRE
Secretary of State

Dated this 23rd of December, 1981.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of rules of advisory opinions from the Secretary of State.	))))	NOTICE OF THE ADOPTION OF RULES RELATING TO ADVISORY OPINIONS

TO: All Interested Persons.

1. On November 12, 1981, the secretary of state published notice of a proposed adoption of rules concerning advisory opinions from the secretary of state at page 1367 of the 1981 Montana Administrative Register, issue number 21.

2. (a) The agency has adopted the following rules as proposed:

44.4.101 ~~RULE-I~~ INTRODUCTION

No comments or testimony were received.

44.4.201 ~~RULE-III~~ ETHICS COMMISSION ESTABLISHED

Comment: The implementation of the Code of Ethics may be most successfully handled through a commission similar to that proposed in these rules. Such a proposal should receive serious legislative attention.

Response: We agree.

Comment: It is our firm belief that you lack the statutory authority to create such a commission.

Response: Attorney General Greely writes in his opinion of September 10, 1981, which is opinion number 32 in volume number 39 of the Attorney General's opinions that: "While the Secretary of State is required to perform the duties under the statute, no explicit direction is provided as to how these duties are to be performed. When powers are conferred upon a public officer, that officer has the implicit power necessary to the efficient exercise of those powers expressed and granted. The method of exercising an implicit power is within the discretion of the public official given the authority."

Comment: The Democratic party believes that under current law, it is the duty of the Secretary of State to issue those advisory opinions. The opinions are advisory in nature and do not have legally binding authority. You have already managed to issue several advisory opinions without the aid of the new commission. We believe you should continue this procedure until such time the legislature or citizen initiative changes the law.

Response: The Attorney General has ruled that the Secretary of State "must" issue advisory opinions at the request of "any" person. It is entirely conceivable that a request for an opinion may be received concerning the conduct of the Secretary of State himself. The Code of Ethics itself would inherently prohibit the Secretary of State from reviewing his own behavior. The commission proposal is a reasonable way, if not the only way, out of this dilemma.

44.4.203 ~~RULE-V~~ TERMS OF MEMBERS
No comments or testimony were received.

44.4.204 ~~RULE-VI~~ VACANCIES
No comments or testimony were received.

44.4.205 ~~RULE--VII~~ QUALIFICATIONS OF MEMBERS
Comment: Why is it necessary that one member shall be a licensed attorney, especially when a qualified hearings officer is provided?
Response: Montana's Code of Ethics is almost universally regarded as confusing and difficult to interpret. That fact alone would justify requiring that at least one member be an attorney.

44.4.206 ~~RULE-VIII~~ REMOVAL OF MEMBERS
No comments or testimony were received.

44.4.301 ~~RULE-IX~~ CHAIRMAN
No comments or testimony were received.

44.4.302 ~~RULE-X~~ OFFICERS
No comments or testimony were received.

44.4.303 ~~RULE-XI~~ STAFF AND FACILITIES
No comments or testimony were received.

44.4.304 ~~RULE-XII~~ COMPENSATION
Comment: The authority to pay the commissioners per diem comes into question because they are not a legally constituted advisory council and the legislature has made no appropriation for such a commission.
Response: There is no requirement in the statutes that membership on a legally constituted advisory council is a prerequisite to receipt of per diem compensation. Rather, Section 2-18-501 et. seq., MCA allows reimbursement for anyone engaged in official state business. That there was no legislative appropriation for such, is of concern. However, the need for the commission arises out of the dilemma created by the attorney general's ruling that advisory opinions must be issued at the request of any person. And that ruling was handed down subsequent to the adjournment of the 1981 legislature.

44.4.305 ~~RULE-XIII~~ REPORTS AND RECORDS

No comments or testimony were received.

44.4.307 ~~RULE-XV~~ QUORUM AND ACTIONS

Comment: A six member commission requires that, for a majority vote, a two-thirds vote is necessary. Is this really democratic?

Response: The number of commissioners was simply a matter of choice. Six is a reasonable number. It is the number of commissioners on the Federal Election Commission as well as the ethics commissions of several other states. It is also frequently used in our judicial system whenever a jury of twelve is determined to be unnecessary. Once the size of the commission was established, it was only common sense that a majority would be required to act. It is democratic to have decision by a majority vote. Some discussion could be had, however, as to whether democracy is the applicable standard on matters of judging people's behavior. Certainly our judicial system does not seem overly concerned with the question when it imposes standards of unanimous or two-thirds verdict by juries as is required in many instances.

44.4.401 ~~RULE-XVI~~ DUTIES OF COMMISSION

Comment: The function of recommending to the legislature further legislation which may be desirable or necessary to promote and maintain high standards of ethical conduct in government should be and is a duty of the Secretary of State.

Response: There is nothing in Section 2-2-101, et. seq., MCA which gives this duty to the Secretary of State exclusively or otherwise. The applicable word in the rule is "may" and thus it is permissive rather than a mandatory duty. In addition, it certainly is not exclusive of the Secretary of State's ability to make an independent recommendation. The ability to recommend legislation is an inherent right of citizenship and having the commission exercise this function seems only common sense.

Comment: Does subsection 8 mean the commission can contact a private employer and suggest that his employee, who may also be a public official, be censured, suspended or removed from employment? Clarification is certainly necessary and I question the constitutionality of this section in such events.

Response: The commission has jurisdiction only over public officials acting in their public capacity or in a way which affects their public capacity. The commission has no authority to contact a private employer of a public official.

44.4.403 ~~RULE-XVIII~~ LIMITATIONS ON ACTIONS

No comments or testimony were received.

44.4.501 ~~RULE-XIX~~ DEFINITIONS

Comment: Why can not one of the members of the commission perform the function of hearing examiner?

Response: Any one commissioner can act as hearing examiner. Such is specifically provided for in Subparagraph (j) of this rule as well as in rule 44.4.816.

Comment: How would public officials currently elected to represent one party but who were formerly members of another party, be branded under the definition contained in Subsection (m) ?

Response: Subparagraph (m) includes people who have voluntarily declared themselves to be a member of a particular political party and that language should cover any party switcher situation.

44.4.502 ~~RULE-XX~~ PRESUMPTIONS

No comments or testimony were received.

44.4.504 ~~RULE-XXII~~ COMPUTATION OF TIME

No comments or testimony were received.

44.4.505 ~~RULE-XXIII~~ BASIC PRINCIPAL; PRIORITY

No comments or testimony were received.

44.4.601 ~~RULE-XXIV~~ WHO MAY REQUEST

Comment: The Democratic party supports the expansion of the scope of the previous rules to allow any citizen to request an advisory opinion on the ethics of public officials. We also support the inclusion of past actions (within one year of the commitment of the action in question) of public officials coming under review of the code of ethics.

44.4.602 ~~RULE-XXV~~ GROUNDS FOR REQUESTS

No comments or testimony were received.

44.4.603 ~~RULE-XXVI~~ CONTENTS OF REQUESTS

No comments or testimony were received.

44.4.604 ~~RULE-XXVII~~ QUALIFICATIONS OF REQUESTS

No comments or testimony were received.

44.4.605 ~~RULE-XXVIII~~ PUBLIC AVAILABILITY OF REQUESTS

No comments or testimony were received.

44.4.606 ~~RULE-XXIX~~ COMMENTS ON REQUESTS

No comments or testimony were received.

44.4.701 ~~RULE-XXX~~ REASONABLE GROUNDS

No comments or testimony were received.

44.4.702 ~~RULE-XXXI~~ HEARINGS ON REQUESTS

No comments or testimony were received.

44.4.703 RULE-XXXII DENIAL OF REQUESTS
No comments or testimony were received.

44.4.704 RULE-XXXIII CONSIDERATION OF REQUESTS
No comments or testimony were received.

44.4.705 RULE-XXXIV DRAFT OPINIONS
Comment: Once the Secretary of State's staff has prepared the draft opinion, it seems that a majority of the commission would vote to adopt the opinion rather than having a majority reject that opinion as in (3). Perhaps the opinion should be drafted by the commission itself.

Response: Since the commission consists of private citizens serving voluntarily, it would be difficult to have the commission draft the opinion. This rule does require a majority of the commission to vote to adopt by means of signing the opinion. Further, rule 44.4.706 specifically provides that no draft opinion shall be considered the opinion of the commission unless it is concurred in by four or more members.

44.4.707 RULE-XXXVI DISMISSING REQUEST WITHOUT OPINION
No comments or testimony were received.

44.4.708 RULE-XXXVII EXPEDITED PROCEDURE
No comments or testimony were received.

44.4.709 RULE-XXXVIII ADVISORY OPINIONS TO INCLUDE
No comments or testimony were received.

44.4.801 RULE-XLI INTRODUCTION
No comments or testimony were received.

44.4.802 RULE-XLII PREHEARING PROCEDURE
No comments or testimony were received.

44.4.803 RULE-XLIII INTERVENTION
No comments or testimony were received.

44.4.806 RULE-XLVI FAILURE TO COOPERATE WITH INVESTIGATION
No comments or testimony were received.

44.4.808 RULE-XLVIII PREHEARING INVESTIGATION REPORT
No comments or testimony were received.

44.4.809 RULE-XLIX CERTIFICATION OF A REQUEST FOR HEARING
No comments or testimony were received.

44.4.813 RULE-LIII WAIVER OF HEARING
No comments or testimony were received.

44.4.814 RULE-LIV FAILURE TO APPEAR AT HEARING
No comments or testimony were received.

(b) The agency has adopted the following rules with the following changes:

44.4.102 ~~RULE II~~ ROLE OF THE SECRETARY OF STATE
(1) same as proposed rule
(2) same as proposed rule
(3) The advisory opinion function was created by the legislature and conveyed on the secretary of state. The duty of and responsibility for issuing such opinions rests ultimately in the secretary of state and nothing in these rules is intended to or shall be interpreted as delegating that ultimate responsibility and duty to any other person or entity.

Comment: Much concern was expressed that the rules as proposed might have accomplished an undesirable and potentially illegal complete and total subdelegation of the advisory opinion function.

Response: Although those comments were not specifically directed at this rule, this proposed rule was modified to clarify the role of the secretary of state.

44.4.202 ~~RULE IV~~ PURPOSE (1) The purpose of the Montana ethics commission is to examine requests for advisory opinions which are received by the secretary of state and determine if further consideration of the request is warranted. If so, the commission will examine the facts known to it or found as a result of any investigation it may conduct or of any hearing it may hold, apply the standards established in the Code of Ethics to those facts, and adopt ~~the~~ advisory opinions ~~to be issued by~~ advising the secretary of state whether, in its judgement, a violation has or would occur.

Comment: The committee requests that the total delegation of the secretary of state's powers be deleted from the proposed rules. The committee is concerned that the proposed rules would allow the commission to apply judicial or quasijudicial discretion and actually make the factual and legal determinations that a violation of the Code of Ethics has occurred. The consensus of the committee is that the commission should more appropriately act only in an advisory capacity to the secretary of state.

Response: The rule was modified as requested. Provisions allowing the commission to exercise its judgment as to whether a violation of the code had occurred in a given instance were retained. This was done first because of the secretary of state's belief that whether a violation has occurred is generally a question of judgment and it was preferable not to have that judgment be made by a single individual. Second, the judgment provisions were retained so that, in the event a request is made concerning behavior of the secretary himself, a judgment as to whether that conduct was ethical would not be made by the secretary.

44.4.306 ~~RULE-XIV~~ MEETINGS (1) The commission shall meet at ~~least-once-in-each-calendar-quarter-and-at other-times-upon~~ either the call of the chairman, or of the secretary of state.

(2) In determining whether to call meetings, ~~in addition-to-the-required-quarterly-meetings,-the-chairman must-consider~~ the following must be considered:

(a)-(d) same as proposed rule.

(3) The commission shall meet at the time and place to be designated ~~by~~ in the ~~chairman~~ call.

(4) ~~If-appropriate,-the-commission-may-conduct-business by-telephone-conference-call.~~ If he receives a written request that a meeting be called which is signed by a majority of the commission members, then the secretary of state shall call a meeting of the commission to be held within ten days after he receives such a request.

(5) Public notice of all meetings shall be given by delivering a copy of the call for meeting to each member of the commission and to interested members of the media.

Comment: None of the proposed rules appear to require public notice of commission meetings. You may want to consider a requirement of notice for inclusion in these rules.

Response: Rule modified as requested.

Comment: It would be better that the commission should meet only at the call of the chair and also that meetings could be called by vote of a majority of the members. It seems unnecessary to schedule quarterly meetings in the rules if it is unknown whether there will be items for consideration.

Response: Rule modified as requested.

44.4.402 ~~RULE-XVII~~ POWERS OF THE COMMISSION (1) The state ethics commission ~~shall~~ may act on behalf of and in the place of the secretary of state and is delegated and may exercise, concurrently with the secretary himself, any and all powers which the secretary of state would have the ability to exercise under Section 2-2-132, MCA, , except the power to make rules and except the power to issue subpoenas, which powers except are expressly reserved to the secretary of state.

Comment: This transference of powers is beyond the statutory authority granted in 2-2-132. Such a transfer of power could set undesirable precedent and serve to reduce the accountability of government officials. The shifting of statutory functions by means of rules would be a significant misuse of administrative code procedure.

Comment: We do not believe they can be legally invested with the powers you seek to give them.

Comment: The committee also requests that the total delegation of the secretary of state's powers be deleted from the proposed rules.

Response: Given that the commission is necessary to eliminate the self investigation dilemma, it must receive its powers from the only available source. The rule has been modified as requested to eliminate the alleged total and complete subdelegation of power and responsibility.

Comment: The committee requests that the authority of the ethics commission to adopt rules as expressed in proposed rule XVII, be deleted.

Response: Rule modified as requested.

44.4.503 ~~RULE-XXI~~ BURDEN OF PROOF (1) Whenever it is alleged that a conflict exists between the public duty and private interest of any person, the burden shall be upon the person alleging such a conflict to prove it by a preponderance of the ~~weight of~~ evidence.

Comment: In this rule, you proposed to resolve the question of whether a conflict exists between a public duty and a private interest by "the weight of the evidence". My concern in this instance is that "the weight of the evidence" is not a burden of proof but simply a method of revolving conflicts in evidence. A true burden of proof sets forth a standard against which evidence is measured, such as "beyond a reasonable doubt", "preponderance of the evidence", or "substantial evidence". If it is your intention to adopt a true burden of proof, I would recommend the adoption of one of the foregoing burdens of proof.

Response: Rule modified as requested.

44.4.706 ~~RULE-XXXV~~ PROCEDURE TO ADOPT OPINIONS

(1) same as proposed rule.

(2) Each advisory opinion adopted by the commission shall be forwarded to the secretary of state for review and issue.

(3) same as proposed rule.

Comment: The committee also requests that the total delegation of the secretary of state's powers be deleted from the proposed rules. The consensus of the committee is that the commission should more appropriately act only in an advisory capacity to the secretary of state.

Comment: That factual conclusions and legal reasoning of the commission may prove to be so compelling that you will never reject their advice may prove to be true, but to bind yourself by these rules to complete acceptance of that advice prior to your review of the individual ethics opinions of the commission effectively delegates to the commission, your authority to apply the law to the facts and reach a discretionary conclusion. It is that facet of the proposed rules with which the committee is concerned and which we request that you amend or delete.

Response: Rule modified as requested.

44.4.710 ~~RULE-XXXIX~~ PROCEDURE TO ISSUE (1) Within ~~5~~ 10 days after an advisory opinion which has been adopted by the commission is forwarded to him, the secretary of state shall either sign and issue to the requesting person the written advisory opinion, or veto it by forwarding to the commission written notice of his refusal to sign the opinion and the reasons therefor. In such event, the process shall

continue as if a majority of commissioners had filed statements of nonconcurrence as provided for in rule 44.4.705.

(2) same as proposed rule.

(3) same as proposed rule.

(4) same as proposed rule.

Comment: I would like to express my belief on behalf of the committee that a major area of committee concern, the "advisory" nature of the ethics commission, has not yet been satisfactorily resolved.

Comment: The committee also requests that the total delegation of the secretary of state's powers be deleted from the proposed rules. The committee is concerned that the rules would require the secretary of state to issue the commission's determination in each and every instance in which it is finally made. The consensus of the committee is that the commission should more appropriately act only in an advisory capacity to the secretary of state.

Response: Given the necessity for the commission which arises out of the self investigation dilemma, some exercise of independent judgment is required. The rule was modified to maintain that judgment while at the same time addressing the concerns for the alleged total and complete delegation of responsibility and authority.

44.4.711 ~~RULE-XL~~ EFFECT OF ADVISORY OPINION (1) An advisory opinion shall be binding as between the state ethics commission and the requesting party, to the extent that it affects the conduct of their affairs concerning the set of facts presented in the request. An advisory opinion shall also be binding as between the secretary of state and the requesting party, to the same extent.

(2) same as proposed rule.

Comment: In this rule you state that every ethics opinion is binding between the state ethics commission and the requesting party. If the secretary of state determines by rule XXXIX to issue every opinion of the commission, should not the secretary of state, who you indicate to be ultimately responsible for the content of the ethics opinions, also be bound by the decisions of the commission?

Response: Rule modified as requested.

44.4.804 ~~RULE-XLIV~~ COMMENCEMENT OF INVESTIGATION (1) Once a request has been received by the commission, the commission staff shall commence investigation of the complaint. ~~In conducting the investigation, the staff should contact the requesting party (or the person on whose behalf the request was filed) to ascertain the basis for the request and to inquire as to such additional facts and allegations as may be necessary to establish reasonable grounds for the request.~~

(2) Prior to commencing the investigation, the staff shall forward notice of such to the requesting party and to the respondent, if any. Such notice shall include reference to the rules specifying the potential outcomes of the process and consequences of any failure to cooperate or failure to appear at hearing if held. Copies of applicable rules shall be furnished with the notice.

Comment: In this rule you provide that once a complaint has been received, the staff must begin investigation of the complaint and "should" contact the requesting party. My concern is that no requirement appears to have been made for the staff also to contact the respondent. I would recommend that the staff be required to notify the respondent of the existence of an investigation and that the respondent be furnished with a copy of these rules, as adopted. Any question of whether the respondent received due process of law would then be greatly reduced or eliminated.

Response: Rule modified as requested.

44.4.805 ~~RULE XLV~~ INVESTIGATION; POWERS OF COMMISSION

(1) The staff of the commission, in investigating a request for an advisory opinion may exercise any and all of the powers of the commission. These include the power to take the testimony of any person under oath, administer oaths, serve interrogatories and ~~require~~ request the production for examination of tangible evidence, such as documents, relating to the case.

(2) same as proposed rule.

Comment: The committee requests that the authority for the commission to issue subpoena be deleted.

Response: Rule modified as requested.

44.4.807 ~~RULE XLVII~~ FAILURE OF RESPONDENT TO COOPERATE WITH INVESTIGATION

(1) same as proposed rule.

(2) In such event, the commission may make whatever assumptions it deems appropriate including the assumption that the allegations contained in the request are true, provided that the respondent has been given notice of such potential consequences as specified in rule 44.4.804(2).

Comment: Since the commission may proceed even if a party fails to cooperate, there was concern that the lack of a requirement that the respondent be informed of the potential consequences could give rise to the violation of the concept of fundamental fairness to the respondent.

Response: Rule modified as requested.

44.4.810 ~~RULE L~~ NOTICE OF CERTIFICATION FOR HEARING

(1) same as proposed rule.

(2) same as proposed rule.

(a)-(e) same as proposed rule.

(f) a copy of the ~~commission's procedural~~ applicable rules; ~~and~~

(g) a provision advising the parties of their right to be represented by counsel at the hearing; and

(h) a statement of the potential outcome of the process and of the potential consequences of failure to appear at hearing.

Comment: My concern is that no requirement is made that the respondent be informed that he may still be found to have violated the rules of ethics even though he doesn't appear. It would seem that at least as a matter of fairness the respondent should be informed of the effect of his failure to appear, much like the current practice required by the rules of civil procedure for issuance of a civil summons.

Response: Rule modified as requested.

44.4.811 ~~RULE II~~ DETERMINING TIME AND PLACE FOR HEARING

(1) same as proposed rule.

(2) same as proposed rule.

(3) The commission may, in its discretion, appoint a hearing examiner to hear the matter on its behalf. Such hearing examiner may be any single commissioner, any member of the commission staff, or the secretary of state. However, in no event may the secretary of state or anyone in his immediate employ act as hearing examiner on any request for which the secretary is the respondent.

(4) When the chairman or the hearing examiner appointed to hear a complaint has determined a time and place for hearing, notice of the time and place shall be served on each party. Service by first class U.S. mail, return receipt requested, ~~or~~ personal service, or service as ~~delivery~~ prescribed by the Montana Rules of Civil Procedure shall be sufficient service under this rule. Whenever a hearing examiner has been appointed, the name and address of the hearing examiner shall be included in the notice.

Comment: It appears that notification to the parties is fulfilled by first class mail and yet later it appears that if a party fails to appear, the commission may proceed with the information before it. It appears you have more confidence in the United States mail service than I feel is due. If notification of attendance is necessary it should be done by service of duly authorized officers and receipt of notification obtained.

Response: Rule modified as requested.

Comment: If the commission may also be the staff of the secretary of state, clearly neither that staff nor the secretary of state himself, should serve as a hearing examiner in a hearing on a request for an opinion involving the secretary of state. I would recommend that language be inserted to clearly prevent that possibility.

Response: Rule modified as requested.

44.4.812 ~~RULE-LII~~ PRESENTATION OF CASE IN SUPPORT OF REQUEST (1) At hearing, the requesting party may present his or her own case, may be represented by counsel or other representative of his or her own choosing, or the case in support of the request may be presented by the commission staff. The secretary of state shall determine, in any given case, whether the commission staff shall be available to present the case in support of the request.

(2) same as proposed rule.

(3) same as proposed rule.

Comment: Because the commission certainly is not a court by any stretch of the imagination, I would recommend that either party could be represented by any one of their choice, including attorneys, but certainly not limited to attorneys.

44.4.815 ~~RULE-LV~~ SUBPOENAS (1) Whenever in the discretion of the commission or hearing examiner it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, papers, documents, or other tangible evidence relating to any matter under investigation or in question before the commission, the commission or hearing examiner may apply to the secretary of state for ~~issue~~ a subpoena or subpoena for production of documentary evidence and thereby compel such attendance of witnesses or production of books, papers, documents, or other tangible things.

(2) If, ~~U~~upon written application by the staff, ~~or~~ by any party once a case is certified for hearing, by the commission or by the hearing examiner ~~may~~, for good cause shown, ~~issue~~ a subpoena or subpoena for production of documentary evidence is issued, by and in the name of the ~~commission and deliver~~ secretary of state, such subpoena shall be delivered to the party requesting it or the party's attorney. The party initially requesting the subpoena shall attend to its service according to the Montana Rules of Civil Procedure relating to service of subpoenas generally.

(3) Any cost of service of a subpoena issued by the secretary of state, or subpoena for production of documents, witness and mileage fees shall be borne by the party initially requesting the subpoena. Fees shall be the same as those allowed in the case of a civil action in the district court.

(4) On failure of any person to obey a subpoena, issued by the secretary of state, the party who requested the subpoena, or the commission, or the hearing examiner, may make application to the district court for an order from the court enforcing the subpoena.

(5) Failure of the requesting party to obey a subpoena or subpoena duces tecum issued by the secretary of state may be grounds for dismissal of the request.

Comment: The committee requests that the authority contained in rule LV for the commission to issue subpoenas be deleted.

Response: Rule modified as requested. Also note revisions to Rule 44.4.402 (Rule XVII).

44.4.816 ~~RULE-LVI~~ HEARING EXAMINERS
(1) same as proposed rule.
(a) same as proposed rule.
(b) make application to the secretary of state for him to issue subpoenas;
(c)-(e) same as proposed rule.
(2)-(4) same as proposed rule.

Comment: If you intend to eliminate the authority for the commission to issue subpoenas, this rule should also be amended.

Response: Rule modified as requested.

44.4.817 ~~RULE-LVII~~ HEARING (1) The hearing shall be conducted either by ~~before-at-least-four-members-of~~ the commission itself, or by a designated hearing examiner, appointed by the commission. If the hearing is conducted by the commission itself, at least four members must be present and the chairman shall exercise all powers of the presiding officer including the powers of a hearing examiner as specified in rule 44.4.816. If the hearing is conducted by a designated hearing examiner appointed by the commission, the hearing examiner acts as presiding officer although commission members may still attend the hearing.
(2) same as proposed rule.
(a)-(c) same as proposed rule.
(3) The presiding officer and the parties or their ~~attorneys~~ representatives shall have the right to question, examine or cross-examine any witnesses.
(4)-(7) same as proposed rule.
(8) The parties may be represented at the hearing by anyone of their choice, including but not limited to attorneys.

Comment: Because this commission certainly is not a court by any stretch of the imagination, I would recommend that either party could be represented by anyone of their choice, including attorneys, but certainly not limited to attorneys.

Response: Rule modified as requested.

Comment: In this rule you provide that the hearing must be conducted "before" at least four members of the commission, "or" a designated hearing examiner. Do you mean "by" a designated hearing examiner? My concern with this Rule and Rules LI and LVI is that it is unclear whether all of the commission members "before" whom a hearing is held without a hearing examiner have the powers specified in Rule LVI and secondly, whether a commission member serving as a hearing examiner is to be counted as one of the four members required by this rule when the other commission members are present.

Response: Rule modified as requested.

Comment: It is also unclear under this Rule and Rule LVI whether it is the duty of a hearing examiner to draft proposed findings and conclusions (or the ethics opinion itself) or whether this may only be done by those members of the commission actually hearing and seeing evidence. If a hearing examiner may hear the case without any commission members being present and prepare a proposed opinion for adoption by the commission, presumably the commission members would review the hearing transcripts and other evidence before acting on the proposed opinion.

Response: No formal report of the hearing contents is contemplated. The hearing is to be used primarily for information purposes and is available as such to all commission members and staff to assist them in making the determinations they need to make.

Comment: By use of the processes such as cross examination of witnesses and the use of such mechanisms as depositions, you have invoked a process similar to that used in the district courts in civil actions, yet there is no indication in the proposed rules whether the statutes or rules of evidence will apply to the hearing process or whether the statutory rules of civil procedure will apply. While these matters could conceivably be handled by stipulation between the parties, some question would remain as to the rules to be applied in the event that the party failed to do so. While the wholesale adoption of the evidentiary and procedural rules and statutes may contain penalties or other provisions inappropriate to hearings on request for advisory opinons, my concern is that without making some more complete provision for the resolution of evidentiary and procedural disputes, you have provided incomplete remedies for persons appearing before the commission.

Response: The secretary of state is deeply concerned that the process not infringe on the rights of those involved. At the same time, he is concerned that the process not be so unwieldy and place too much emphasis on procuedural matters as to render it ineffective. The matter is thus left to the discretion of the hearing examiner or presiding officer.

3. Comments or testimony were received as indicated at the end of each rule listed in paragraph 2 of this notice.

Jim Waltermire
Secretary of State

Certified to the Secretary of State on December 21, 1981.

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

In the matter of the adoption of emergency rules pertaining to the low income energy assistance program	NOTICE OF ADOPTION OF EMERGENCY RULES PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. Statement of reasons for emergency:

On October 22, 1981, the Department of Social and Rehabilitation Services applied for the low income energy assistance funds available to Montana under the Omnibus Budget Reconciliation Act of 1981, and on November 22, 1981, the federal government approved Montana's application for these funds. However, it was not until December 4, 1981, that legislative action through the first Special Session of the 47th Legislature apportioning these funds between the Low Income Energy Assistance Program and social services (Title XX of the Social Security Act) programs was completed. Because of the lateness of these actions and because we are already in the middle of the heating season in a state subject to severe winters, the department finds that there is imminent peril to public health, safety and welfare which requires that the Department adopt the following rules immediately, without prior notice.

2. Rule I (46.13.101) is adopted as follows:

RULE I (46.13.101) SAFEGUARDING/SHARING INFORMATION

(1) Disclosure of information concerning applicants for or recipients of low income energy assistance is restricted to purposes directly connected with the administration of such aid. Such purposes include establishing eligibility, determining amount of assistance, and providing benefits to or on behalf of applicants and recipients.

(a) Proper requests for information from a government authority, a court, or a law enforcement agency will be honored and the information released along with a notification of the confidentiality of the information and the penalty for misuse of such information. Whenever possible, the department will attempt to obtain prior consent from the applicant or recipient, except in emergency situations where notification will be given after the release of information and in cases where the information is released for legal and investigative actions concerning fraud, collection of support and third party medical recovery.

3. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

4. Rule II (46.13.102) is adopted as follows:

RULE II (46.13.102) ROLE OF THE LOCAL CONTRACTOR (1) The department will contract with appropriate community-based organizations in the state to provide outreach and to receive and process applications for the low income energy assistance program.

(a) In providing outreach, the local contractor performs specified activities designed to inform all potentially-eligible households in the contract area of the existence of and the benefits available under the low income energy assistance program.

(b) In receiving and processing applications, the local contractor determines household eligibility and benefit award under the rules contained in this chapter.

5. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

6. Rule III (46.13.104) is adopted as follows:

RULE III (46.13.104) FAIR HEARINGS (1) Any person who is dissatisfied with action taken on an application, benefit status, form or condition of payment, may request a fair hearing as provided in ARM 46.2.202.

(2) It is the responsibility of the department through the local contractor to inform every applicant/recipient in writing at the time of application and at the time any action affects his benefits of the right to request a fair hearing.

7. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

8. Rule IV (46.13.105) is adopted as follows:

RULE IV (46.13.105) REFERRALS TO THE DEPARTMENT OF REVENUE (1) When requested by the department, the department of revenue shall have the power and duty to:

(a) investigate matters relating to low income energy assistance including, but not limited to, the claim for an acceptance of benefits by recipients and the receipt and disbursal of funds by the department or the local contractor; and

(b) institute civil and criminal actions in the appropriate courts to enforce the welfare laws with respect to low income energy assistance and violations thereof.

(2) The program integrity bureau is the liaison between the department and the department of revenue. Referrals of fraud and requests for investigation must be sent to the

Program Integrity Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, before they are referred to the department of revenue. When the department of revenue makes a direct request to the local contractor for case information, the information may be sent directly to the department of revenue.

9. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

10. Rule V (46.13.106) is adopted as follows:

RULE V (46.13.106) FRAUD (1) Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device low income energy assistance to which he is not entitled is guilty of theft as provided in 45-6-301, MCA.

(2) If an individual appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the program integrity bureau. The bureau may in turn refer the matter to the department of revenue or the county attorney of the county in which the recipient resides for further action.

11. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

12. Rule VI (46.13.107) is adopted as follows:

RULE VI (46.13.107) OVERPAYMENTS AND UNDERPAYMENTS (1) When it is discovered that an administrative error resulted in an underpayment of low income energy assistance, it may be corrected by increasing the benefit award to cover the underpayment.

(a) For purposes of determining financial eligibility, such retroactive corrective payments shall not be considered as income.

(2) Current and future payments of low income energy assistance will be reduced the full amount of prior overpayments, unless the administrative cost would exceed the amount of overpayment.

(a) However, cases in which the recipient willfully made false statements causing overpayment are to be referred to the program integrity bureau for determination of fraud as provided in 46.13.106.

13. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

14. Rule VII (46.13.201) is adopted as follows:

RULE VII (46.13.201) INTERVIEWS REQUIRED AND CONTENT OF INTERVIEWS (1) Rights and responsibilities explained. (a) A staff member of the local contractor shall interview all applicants or persons authorized to act responsibly on behalf of applicants who contact the offices of the local contractor to apply for low income energy assistance. During the first interview, the staff member shall explain the person's rights, outline his responsibilities and describe the process in the system which may affect the client.

(2) The staff member shall explain to the person applying all factors of eligibility which must be substantiated and assist the person to understand the regulations governing his eligibility and receipt of benefits. The staff member shall inform the client of the availability of the regulations affecting eligibility as found in the Administrative Rules of Montana, copies of which are available and may be inspected in the offices of the clerk and recorder and the clerk of court in each county.

(3) No person shall be excluded from participation in, be denied benefits, or be subject to discrimination under the low income energy assistance program on the grounds of race, color, religion, sex, culture, age, creed, marital status, physical or mental handicap, political beliefs, or national origin.

15. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

16. Rule VIII (46.13.202) is adopted as follows:

RULE VIII (46.13.202) APPLICATIONS TO BE VOLUNTARY (1) Applications must be voluntary and initiated by the person in need. There shall be no requirement of pre-application proof of eligibility; however, the applicant shall have the burden of proving eligibility at the time of application. The authority to proceed with a determination of eligibility for low income energy assistance is the signed application of the person who applies. When a case has been closed, application must be made for reinstatement of benefits. An application may be made by a third party when the physical or mental condition of the needy person precludes his ability to make application himself.

17. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

18. Rule IX (46.13.203) is adopted as follows:

RULE IX (46.13.203) PLACE OF APPLICATION (1) The place of application shall not be closed for any portion of the working day or working week.

(2) Applications are to be made at the office of the local contractor in the area where the person lives. When conditions preclude a person from visiting the local contractor's office to make application, he shall have an opportunity to make application through the mail, at a mutually agreed place, by telephone with the staff-completed application mailed to the applicant for signature, or through a home visit by a member of the local contractor's staff.

19. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

20. Rule X (46.13.204) is adopted as follows:

RULE X (46.13.204) INVESTIGATION OF ELIGIBILITY (1) Investigations of eligibility will include securing information from the person applying for or receiving benefits and such other investigation as may be determined necessary by the department.

(a) Each application for assistance will be promptly and thoroughly investigated by a staff member of the local contractor. If a case is picked for quality control review, the client must cooperate.

21. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

22. Rule XI (46.13.205) is adopted as follows:

RULE XI (46.13.205) PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) Procedures followed in determining eligibility for low income energy assistance are:

(a) Application is filed by applicant together with all necessary verification for determining financial eligibility and benefit award. The staff member of the local contractor accepts the application and determines financial eligibility and amount of benefit. The client is notified of the reasons for approval or disapproval of his application.

(b) Financial eligibility requirements that must be verified are:

(i) current receipt of benefits under supplemental security income or aid to families with dependent children;

(ii) income;

(iii) medical deductions;

(iv) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education.

(c) Benefit award requirements that must be verified are:

(i) type of dwelling, including number of bedrooms;

(ii) primary heating fuel, including primary fuel vendor;

(iii) credit balance with primary fuel vendor if applicable.

23. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

24. Rule XII (46.13.206) is adopted as follows:

RULE XII (46.13.206) NOTIFICATION OF ELIGIBILITY (1) An individual who makes application for low income energy assistance will receive written notice of eligibility within 45 days of the date of application. If the applicant is determined ineligible, notification shall include the reasons for nonapproval. The notice of decision shall be made by the local contractor immediately following final decision on the application.

25. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

26. Rule XIII (46.13.207) is adopted as follows:

RULE XIII (46.13.207) NOTICE OF ADVERSE ACTION (1) Each person who receives assistance must be notified ten days in advance of any action that terminates or reduces his benefits. Notification must be in writing and contain information about the amount of decrease or the closure, the reason and legal basis for the action, and must advise the client of the date on which the action will take effect. The notice must inform the client of his right to a fair hearing.

27. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

28. Rule XIV (46.13.301) is adopted as follows:

RULE XIV (46.13.301) DEFINITION OF HOUSEHOLD (1) Financial eligibility standards are implemented

throughout the state and are applied to applicants on the basis of households.

(2) A household consists of all individuals who share a single primary heating source and who live in a single shelter or rental unit.

(3) An unborn child may not be counted as a member of the household.

29. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

30. Rule XV (46.13.302) is adopted as follows:

RULE XV (46.13.302) ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS

(1) Except as provided below, households which consist solely of members receiving supplemental security income or aid to families with dependent children are automatically financially eligible for low income energy assistance. "Members receiving SSI or AFDC" includes any financially responsible relative or individual whose income and resources were considered in determining eligibility for these categorical programs.

(2) Households which consist of members receiving SSI or AFDC and other individuals whose income and resources were not considered in determining eligibility for SSI or AFDC are not automatically eligible for low income energy assistance but must meet the financial requirements set forth in this sub-chapter.

(3) Individuals living in licensed group-living situations or subsidized housing, including recipients of SSI or AFDC, are not eligible for low income energy assistance.

(4) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent child for federal income tax purposes by a taxpayer who is not a member of an eligible household are ineligible for low income energy assistance.

(a) An institution of higher education means a college, university, or vocational or technical school at the post-high school level.

31. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

32. Rule XVI (46.13.303) is adopted as follows:

RULE XVI (46.13.303) TABLES OF GROSS RECEIPTS AND INCOME STANDARDS

(1) The gross receipts standards in the table in (2) below are 250% of the 1982 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to households with income from self-employment. Self-employed households with annual gross receipts at or below 250% of the 1982 poverty level are financially eligible for low income energy assistance only if they further meet the adjusted gross income test as set forth in (3) and (4) below.

(2) Gross receipts standards for households with self-employment income:

Number of individuals in household	Annual gross receipts for self-employed households
1	$10,775
2	14,225
3	17,675
4	21,125
5	24,575
6	28,025
Each additional member	3,450

(3) The income standards in the table in (4) below are 125% of the 1982 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to all households, including self-employed households that meet the gross receipts test set forth in (1) and (2) above. Households with adjusted gross income at or below 125% of the 1982 poverty level are financially eligible for low income energy assistance.

(4) Adjusted gross income standards for all households:

Number of individuals in household	Annual adjusted gross income for all households
1	$ 5,388
2	7,113
3	8,838
4	10,563
5	12,288
6	14,013
Each additional member	1,725

33. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

34. Rule XVII (46.13.304) is adopted as follows:

RULE XVII (46.13.304) INCOME (1) Definitions:

(a) Annual gross income applies to households with income from other than self-employment only and means all non-excluded income before deductions, including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, worker's compensation, unemployment compensation, and capital gains received by the members of the household in the twelve months immediately preceding the month of application.

(b) Annual gross receipts apply to households with income from self-employment and mean all income before any deductions, including any non-excluded income not from self-employment, which was received by members of the household in the twelve months immediately preceding the month of application.

(c) Medical deductions mean all medical payments for allowable medical costs, as described in (4), made by members of the household in the twelve months immediately preceding the month of application. Medical deductions may not include medical payments by the household which are reimbursable by a third party.

(d) Self-employment deductions means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment.

(e) For households with self-employment income, annual adjusted gross income means annual gross receipts minus medical deductions and self-employment deductions. For all other households, annual adjusted gross income means annual gross income minus medical deductions.

(2) Excluded from income are the following types of unearned income:

(a) complementary assistance from other agencies and organizations which consists of goods and services not included in or duplicated by the low income energy assistance benefit award;

(b) home produce utilized for household consumption;

(c) undergraduate student loans and grants for educational purposes made or insured under any program administered by the commissioner of education;

(d) extension of OASDI benefits for 18 to 22 year olds who are full time students;

(e) the value of the food stamp coupon allotment;

(f) the value of U.S. department of agriculture donated foods;

(g) any benefits received under Title III of the Nutrition Program for the Elderly of the Older Americans Act of 1965 as amended;

(h) the value of supplemental food assistance received under the Child Nutrition Act of 1966, and the special food services program for children under the National School Lunch Act (P.L. 92-433 and P.L. 93-150);

(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims shall be excluded as authorized by P.L. 93-134, 92-254, 94-540 and 94-114;

(j) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(k) the tax exempt portions of payments made pursuant to P.L. 92-203, the Alaska Native Claims Settlement Act;

(l) all payments under Title I of the Elementary and Secondary Education Act;

(m) all weekly incentive allowances paid under P.L. 93-203, the Comprehensive Employment and Training Act of 1973;

(n) incentive payments or reimbursement of training-related expenses made to Work Incentive Program participants by the manpower agency;

(o) payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as senior health aides, or senior companions, and to persons serving in service corps of the retired executives and active corps of executives, and any other program under Titles II and III of P.L. 93-113; and

(p) payments to individual volunteers under Title I (VISTA) of P.L. 93-113, pursuant to section 404(g) of that law.

(3) Also excluded from income are one-time insurance payments or compensation for injury not to exceed $10,000.

(4) Allowable medical costs are:

(a) medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional;

(b) hospitalization or outpatient treatment, nursing care, and nursing home care provided by a facility recognized by the state, including payments by the household for an individual who was a household member immediately prior to entering such a facility;

(c) prescription drugs when prescribed by a licensed practitioner and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional;

(d) medical supplies and sickroom or other equipment prescribed by a licensed practitioner or other qualified health professional;

(e) health and hospitalization insurance policy premiums, except that the costs of health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or other income maintenance policies, such as those that continue mortgage or loan payments while the beneficiary is disabled, are not deductible;

(f) premiums related to coverage under Title XVIII, Medicare, of the Social Security Act;

(g) cost-sharing or spenddown expenses incurred by medicaid recipients;
(h) dentures, hearing aides, and prosthetic devices;
(i) seeing eye or hearing dogs, including the cost of securing and maintaining such dogs;
(j) eye glasses prescribed by a physician skilled in eye diseases or by an optometrist.

35. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

36. Rule XIII (46.13.305) is adopted as follows:

RULE XIII (46.13.305) RESOURCES (1) Financial eligibility for the low income energy assistance program will be determined without consideration of real or personal, tangible or intangible assets owned by members of the household.

37. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

38. Rule XIX (46.13.401) is adopted as follows:

RULE XIX (46.13.401) BENEFIT AWARD MATRICES
(1) Definitions:
(a) LC means local contractor.
(b) MPC means Montana Power Company.
(c) MDU means Montana-Dakota Utilities.
(d) GFG means Great Falls Gas Company.
(e) Single family unit means a building which contains a single shelter or rental unit for living purposes. For purposes of the program, a double wide trailer or mobile home is considered a single family unit.
(f) Multi-family unit means a building which contains two or more shelter or rental units for living purposes. For purposes of the program, a duplex and a home with a basement apartment are considered multi-family units.
(g) Mobile home means a single wide trailer or mobile home only.
(2) The benefit ward matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru March). The maximum benefit varies by type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. The maximum benefit also varies by local contractor districts to account for weather differences across the state.

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Rosebud, Treasure, Custer, Fallon, Powder River and Carter Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	278	194	340	238
Fuel Oil	746	522	910	637
Propane	561	393	685	480
Electricity M.P.C.	342	239	417	292
Electricity M.D.U.	769	538	947	663
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	386	270	432	302
Fuel Oil	1000	725	1000	811
Propane	779	546	873	611
Electricity M.P.C.	474	332	532	372
Electricity M.D.U.	1000	704	1000	833
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	275	197	350	245
Fuel Oil	730	511	890	623
Propane	622	435	760	532
Electricity	348	244	425	298
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	407	285	463	325
Fuel Oil	1000	709	1000	794
Propane	864	605	967	677
Electricity	483	338	542	379
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

Glacier, Toole, Pondera, Teton,
Chouteau and Cascade Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas G.F.G.	257	180	330	231
Natural Gas M.P.C.	238	166	305	213
Fuel Oil	650	455	793	555
Propane	479	335	586	410
Electricity	310	217	379	265
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas G.F.G.	385	269	440	308
Natural Gas M.P.C.	355	249	406	284
Fuel Oil	902	631	1000	707
Propane	666	466	745	522
Electricity	431	302	483	338
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

Fergus, Judith Basin, Petroleum, Wheatland,
Golden Valley and Musselshell Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	238	166	305	213
Fuel Oil	666	466	814	570
Propane	516	361	631	442
Electricity	310	217	379	265
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	355	249	406	284
Fuel Oil	925	648	1000	725
Propane	718	502	803	562
Electricity	431	302	483	338
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas M.D.U.	231	161	282	197
Natural Gas M.P.C.	254	178	324	227
Fuel Oil	574	402	701	491
Propane	466	326	569	398
Electricity	284	199	347	243
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas M.D.U.	320	224	359	251
Natural Gas M.P.C.	376	263	429	300
Fuel Oil	797	558	893	625
Propane	647	453	724	507
Electricity	394	276	442	309
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	682	477	832	582
Propane	581	407	711	498
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	947	663	1000	735
Propane	808	566	904	633
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	665	466	812	568
Propane	566	396	692	484
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	923	646	1000	716
Propane	786	550	880	616
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	255	179	326	228
Fuel Oil	716	501	874	612
Propane	586	410	716	501
Electricity	464	325	567	397
Coal	180	135	225	180
Wood	195	130	260	195

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	380	266	433	303
Fuel Oil	995	697	1000	779
Propane	814	570	912	638
Electricity	644	451	729	510
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	687	481	840	588
Propane	550	385	673	471
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	955	669	1000	741
Propane	764	535	855	599
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

Powell, Granite, Deer Lodge, Silver Bow,
Beaverhead and Madison Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	178	324	227
Fuel Oil	653	457	798	559
Propane	581	407	667	466
Electricity	325	228	401	281
Coal	180	135	225	180
Wood	195	130	260	195

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	376	263	429	300
Fuel Oil	907	635	1000	704
Propane	808	566	904	633
Electricity	452	316	507	350
Coal	270	225	315	270
Wood	325	260	390	325

39. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

40. Rule XX (46.13.402) is adopted as follows:

RULE XX (46.13.402) DETERMINING BENEFIT AWARD (1) Benefit awards will be made to eligible households in accordance with the following, except that for households that are billed for energy costs directly by the primary fuel vendor and that also received assistance in the previous year only an adjusted award will be made. The adjusted award will be arrived at by subtracting from the household's benefit award any funds from the previous program year remaining in the household's primary fuel vendor account. This will be accomplished by subtracting from the household's benefit award the credit balance in the household's primary fuel vendor account as of September 30, unless the household can establish through documentation the amount of credit balance which is not associated with last year's program funds.

(a) For applications filed in October, November, and December, households found eligible will be awarded the full amount of the benefit award matrix.

(b) For applications filed in January, households found eligible will be awarded 2/3 of the full amount of the benefit award matrix.

(c) For applications filed in February, households found eligible will be awarded 1/2 of the full amount of the benefit award matrix.

(d) For applications filed in March, the last month in which applications may be filed for the current year's program, households found eligible will be awarded 1/3 of the full amount of the benefit award matrix.

41. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

42. Rule XXI (46.13.403) is adopted as follows:

RULE XXI (46.13.403) METHOD OF PAYMENT (1) Definitions:

(a) "Eligible energy costs" means costs of the various types of energy supplied by the household's primary fuel vendor and which, for applications filed after December 31, is delivered to the household no earlier than the month prior to the month of application. For applications filed after September 30, but before January 1, energy delivered by the household's primary fuel vendor prior to October 1, is ineligible for payment under the current year's program.

(i) Notwithstanding the above, eligible energy costs may include energy delivered two months prior to the month of application for applications filed after December 31 and may include energy delivered prior to October 1 for applications filed after September 30, but before January 1, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.

(2) For eligible households that are billed for energy costs directly by the primary fuel vendor:

(a) Reimbursement may, at the option of the local contractor, be made by check payable to the household for any eligible energy costs which have been paid by the household at the time of the benefit or adjusted award. Paid eligible fuel costs claimed by the household must be supported by fuel receipts.

(b) The amount of the benefit or adjusted award remaining after the application of (a) will be paid by check directly to the primary fuel vendor and will be applied by the primary fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. A copy of this vendor application and contract may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(3) For eligible households that have their energy costs included in their rental payments:

(a) Reimbursement at the rate of 1/6 of the full amount of the benefit award matrix per month not to exceed the household's benefit award will be made by check payable to the household for paid eligible energy costs. Reimbursement will be made by check directly payable to the household and in no more than two installments. Paid eligible energy costs claimed by the household must be supported by rent receipts.

43. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

44. Rule XXII (46.13.404) is adopted as follows:

RULE XXII (46.13.404) ADJUSTMENT OF PAYMENTS TO AVAILABLE FUNDS (1) When funds are not available to serve all eligible households, the department will take the following steps in sequential order as needed:

(a) reduce the maximum benefit amounts of the benefit award matrices;

(b) limit eligibility to only financially needy households with a member 65 years of age or older or with a member who is disabled and receiving supplemental security income or social security income based on permanent and total disability;

(c) deny all subsequent applications.

45. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

46. Rule XXIII (46.13.501) is adopted as follows:

RULE XXIII (46.13.501) EMERGENCY ASSISTANCE (1) Emergency assistance under the low income energy assistance program may be provided to an eligible household in the following circumstances only when such circumstances present an imminent threat to the health and safety of the household:

(a) the household's primary supply of energy is interrupted because of weather conditions and another supply or a different type of energy is necessary;

(b) weather or other forces outside the control of the household damages the household's dwelling and causes the dwelling to suffer a severe loss of heat;

(c) hazardous or potentially hazardous conditions exist in the household's home heating system, and safety modifications to the system are required;

(d) any other home heating-related conditions caused by severe weather conditions, fuel shortages and/or acts of God.

(2) Eligibility requirements:

(a) A household eligible for the low income energy assistance program which has an emergency as defined above is eligible for emergency assistance.

(b) A household which would be eligible for the low income energy assistance program had the household applied and which has an emergency as defined above is also eligible for emergency assistance.

(3) Amount of assistance and method of payment:

(a) Emergency assistance payments will be made on behalf of the eligible household for actual costs necessary to alleviate the emergency up to $250 per year. However, no emergency assistance payments will be made for costs which are the liability of a third party, unless the household assigns to the department in writing its rights to such third party payments.

47. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rule implements Sections 90-4-201 and 90-4-202, MCA.

Director, Social and Rehabilitation Services

Certified to the Secretary fo State December 15, 1981.

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

In the matter of the adoption of an amendment to a federal agency rule pertaining to the food stamp program, Rule 46.11.101	))))))	NOTICE OF ADOPTION OF AN AMENDMENT TO A FEDERAL AGENCY RULE INCORPORATED BY REFERENCE IN RULE 46.11.101, FOOD STAMP PROGRAM. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 46 Fed. Reg. 50277, Friday, October 9, 1981. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. The amendments set forth changes regarding the replacement of nondelivered, destroyed or stolen food stamp authorizations and food coupons, and incorporate new provisions allowing the replacement of certain food losses through the issuance of supplemental benefits. These modifications are expected to reduce losses currently resulting from fraudulent or erroneous ATP or coupon replacements. A copy of 7 CFR 272, 273, and 274 published in 46 Fed. Reg. 50277, Friday, October 9, 1981, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is January 1, 1982. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment by January 1, 1982.

3. No hearing will be held unless requested under 2-4-315, MCA, by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a government subdivision or agency, or by an association having not less than 25 members who will be directly affected.

4. The authority of the Department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.

John LaFaver
Director, Social and Rehabilitation Services

Certified to the Secretary of State December 18, 1981.

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

In the matter of the amendments of Rules 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.905, 46.12.915, 46.12.1015, and 46.12.1025 pertaining to medical services, reimbursement.	NOTICE OF THE AMENDMENTS OF RULES 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.905, 46.12.915, 46.12.1015, & 46.12.1025 PERTAINING TO MEDICAL SERVICES, REIMBURSEMENT

TO: All Interested Persons

1. On November 12, 1981, the Department of Social and Rehabilitation Services published notice of proposed amendments of Rules 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.905, 46.12.915, 46.12.1015 and 46.12.1025 pertaining to medical services, reimbursement, at page 1387 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rules as proposed.

3. Testimony received at the public hearing and written comments received are as follows:

COMMENT: In regards to Rule 46.12.527, two physical therapists presented testimony in support of the 10% increase in fees for physical therapy.

RESPONSE: The Department appreciates the support received from these practitioners in implementing this rule change.

COMMENT: Commentor indicates that a 75% medicaid reimbursement level for speech and audiology services is an acceptable level of reimbursement. The proposed 10% rate increase allows an approximate 75% payment level for audiology services. However, the proposed 10% increase for speech pathology service does not bring the rate up to the acceptable 75% payment level.

RESPONSE: The 47th Legislature, through an appropriation bill (HB500), allowed for a 10% increase in medicaid payment rates for FY82 and another 10% increase in FY83. However, with the existing federal medicaid reductions and the uncertainty of future federal financial participation levels, the department will have to analyze overall budget impacts prior to proposing the 10% increase for FY83. If another 10% increase is

possible for FY83 (July 1, 1982 - June 30, 1983), the speech pathology reimbursement rate will be close to the commentors acceptable 75% level, i.e. $26.01.

COMMENT: The commentor requested consideration of three cost-cutting proposals.

RESPONSE: Because the proposals are not relative to the proposed amendments, they will be referred to appropriate program staff for consideration.

COMMENT: In regards to Rule 46.12.605, the Montana Dental Association presented testimony in favor of the 10% fee increase applied to select procedures.

RESPONSE: The Department appreciates the support of the Montana Dental Association in implementing this rule change.

In the matter of the amendment of Rule 46.12.2003 pertaining to medical services, reimbursement.	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.2003 PERTAINING TO MEDICAL SERVICES, REIMBURSEMENT

TO: All Interested Persons

1. On November 12, 1981, the Department of Social and Rehabilitation Services published notice of proposed amendment of Rule 46.12.2003 pertaining to medical services, reimbursement, at page 1460 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendments of Rules 46.12.1001, 46.12.1002 and 46.12.1005 pertaining to medical services, transportation and per diem.	)))))	NOTICE OF THE AMENDMENTS OF RULES 46.12.1001, 46.12.1002 AND 46.12.1005 PERTAINING TO MEDICAL SERVICES, TRANSPORTATION AND PER DIEM

TO: All Interested Persons

1. On November 12, 1981, the Department of Social and Rehabilitation Services published notice of proposed amendments of Rules 46.12.1001, 46.12.1002 and 46.12.1005 pertaining to medical services, transportation and per diem at page 1465 of the Montana Administrative Register, issue number 21.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

In the matter of the amendment of Rule 46.12.801 and the adoption of Rules 46.12.802, 46.12.805 and 46.12.806 pertaining to prosthetic devices, durable medical supplies, definitions, requirements and reimbursement.	NOTICE OF THE AMENDMENT OF RULE 46.12.801 AND THE ADOPTION OF RULES 46.12.802, 46.12.805 AND 46.12.806 PERTAINING TO PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES, DEFINITIONS, REQUIREMENTS AND REIMBURSEMENT

TO: All Interested Persons

1. On November 12, 1981, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.801 and the adoption of Rules 46.12.802, 46.12.805 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies, definitions, requirements and reimbursement at page 1445 of the Montana Administrative Register, issue number 21.

2. The agency has amended Rule 46.12.801 as proposed.

3. The agency has adopted Rule 46.12.802 as proposed with the following changes:

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Prosthetic devices, durable medical equipment and medical supplies must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(2) The following are limitations of the medical assistance program as it relates to prosthesis, appliances, and medical supplies;

(a) Orthopedic shoes are excluded unless they are attached to a brace or other device.

(b) Shoe repair and shoe corrections are excluded.

(c) Wheelchairs, walkers, etc. utilized by nursing home patients may not be provided unless the item is of special design for the particular patient and is used exclusively by him or unless it is a necessary part of a discharged home plan.

(d) Convenience and comfort items ~~such as air cleaners, grab bars, bed tables and tub seats are not a benefit of the program~~ are not a benefit of the program.

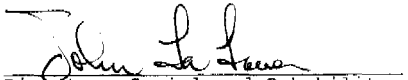
4. The agency has adopted Rule 46.12.805, PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES, REIMBURSEMENT/GENERAL REQUIREMENTS, as proposed.

5. The agency has adopted Rule 46.12.806, PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES, REIMBURSEMENT/FEE SCHEDULE, as proposed.

6. Written comments received are as follows:

COMMENT: The Montana Association of Home Health Agencies are concerned over the definition of convenience and comfort items. According to Rule I, subsection (d), convenience and comfort items are air cleaners, bed tables, grab bars, tub seats and are not part of the program. However, in Rule III, they are listed under purchasable items. It is the position of the Association that these items are essential for safe bathing of ill or frail elderly. If one fall with resulting fracture is prevented, the cost of the program is justified for 2 or 3 years. It is suggested that Rule I, subsection (d) read: "Convenience and comfort items are not a benefit of the program." Safeguards are already in the program as equipment purchase or rental must be preauthorized.

RESPONSE: The Department concurs with the comments presented by the Montana Association of Home Health Agencies. Rule I (46.12.802) will be modified to incorporate this recommendation.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 18, 1981.

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

In the matter of the adoption) of Rule 46.12.3207 pertaining) to the transfer of resources.)	NOTICE OF THE ADOPTION OF RULE 46.12.3207 PERTAINING TO TRANSFER OF RESOURCES

TO: All Interested Persons

1. On November 12, 1981, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule 46.12.3207 pertaining to the transfer of resources at page 1469 of the Montana Administrative Register, issue number 21.

2. The agency has adopted the rule as proposed with the following changes:

46.12.3207 TRANSFER OF RESOURCES (1) Definitions:

(a) Non-excluded resource means any asset which would have counted in whole or in part toward the resource limit at the time of transfer.

(i) In instances where the property transferred is the individual's home, he must have actually been living in the home at the time of the transfer in order for the home to be considered his principal residence and, therefore, an excluded resource. For example, if the individual was living in a nursing home at the time his home was transferred, the home would count as a non-excluded resource for eligibility.

(b) Fair market value means an amount equal to the resource's actual value at the time of transfer.

(c) Compensation means money, real or personal property, food, shelter, or services which are received by an individual in exchange for the resource.

(d) Uncompensated value means the fair market value of a resource at the time of the transfer minus the amount of compensation received by the individual in exchange for the resource.

(e) Transfer of real or personal property means any transfer of an individual's proportionate right or title to property. Transfers to joint tenancy or to tenancy in common are included in this definition.

(2) General rule:

(a) When an individual or his eligible spouse disposes of non-excluded real or personal property for less than its fair market value within 24 months before the month of application or redetermination for medicaid, it is presumed that the transfer was made to establish eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose.

~~(b) The uncompensated value of the non-excluded real or personal property which was transferred shall be counted toward the general resource limitation for medicaid eligi-~~

~~bility according to one of the following, whichever is applicable:~~

~~(i) until the individual secures the return of the transferred property, at which time eligibility will be re-evaluated;~~

~~(ii) until the individual receives adequate compensation, at which time eligibility will be re-evaluated;~~

~~(iii) until the individual pays for medical expenses equal to the sum of the uncompensated value of the property transferred and the value of other nonexcluded resources less the applicable general resource limit; or~~

~~(iv) for a period of time which shall be measured from the month of application or redetermination and at a rate of one month for each $500 of the uncompensated value of the property except that, when the uncompensated value of the property is $12,000 or less, the period of time shall not cause the uncompensated value to be counted as a resource for more than 24 months from the date of the transfer.~~

(b) The uncompensated value of the non-excluded real or personal property which was transferred shall be counted toward the general resource limitation for medicaid eligibility according to one of the following, whichever is applicable:

(i) until the individual secures the return of the transferred property, at which time eligibility will be re-evaluated;

(ii) until the individual receives further compensation, at which time eligibility will be re-evaluated;

(iii) until the individual pays for medical expenses equal to the sum of the uncompensated value of the property transferred and the value of other non-excluded resources less the applicable general resource limit;

(iv) when the uncompensated value of the property is less than $12,000, for a period of time which shall be measured from the month of application or redetermination and at a rate of one month for each $500 of the uncompensated value of the transferred property except that the period of time shall not cause the uncompensated value to be counted as a resource for more than 24 months from the date of transfer; or

(v) when the uncompensated value of the property is $12,000 or more, for a period of time which shall be measured from the month of transfer and at a rate of one month for each $500 of the uncompensated value of the transferred property.

(c) Under (b)(iii) above, medical expenses include only those:

(i) which are not subject to payment by a third party; and

(ii) in the case of applicants, which are incurred not more than three months prior to the month of application; or

(iii) in the case of recipients, which are incurred in the month of redetermination and after.

(d) Under (b)(iv) above, when the uncompensated value of the transferred property is less than $500, it shall be counted as a resource for one month.

(3) Applicability:

(a) The above rule applies to all applications and redeterminations for medicaid filed January 1, 1982 or later, except that:

(i) the above rule does not apply to property transferred prior to April 1, 1981.

(4) Determining compensation for transferred real or personal property:

(a) The value of compensation received is based on the agreement and expectations of the parties at the time of the transfer. Compensation may be in the form of:

(i) cash, in the total amount paid or agreed to be paid in exchange for the resource, excluding interest;

(ii) real or personal property which is valued according to its fair market value and which is exchanged for the real or personal property transferred;

(iii) support and/or maintenance which are provided ~~pursuant, for the~~ in the case of the transfer of real property, pursuant to the consideration section of a deed ~~or, for the~~ and in the case of the transfer of personal property, pursuant to a valid contract entered into prior to the rendering of the support of maintenance. ~~and which~~ The support and/or maintenance provided for the transfer of real or personal property are valued at the fair market value of the support and/or maintenance and the length of time it can reasonably be expected to be provided;

(iv) services which are provided ~~pursuant, for~~ in the case of the transfer of real property, pursuant to the consideration section of a deed ~~or, for~~ and in the case of the transfer of personal property, pursuant to a valid contract entered into prior to the rendering of the service. ~~and which~~ The services provided for the transfer of real or personal property are valued at the fair market value of the service and the frequency and duration of the service over a reasonable period of time.

(5) Notification of individual of the department's determination that property has been transferred to qualify for assistance:

(a) In all cases in which an amount of uncompensated value is established, the individual must be advised of the fact before eligibility is approved or denied.

(i) Notice will be sent to the individual informing him that an uncompensated transfer of non-excluded property has been identified in his case, stating the value of the property so transferred, and explaining the individual's right to rebut

the presumption that the transfer was made to qualify for assistance.

(ii) If the individual does not respond to the letter within 15 days, the department will assume that he does not want to rebut the presumption that the transfer was made to qualify for assistance.

(6) Rebuttal of the presumption that real or personal property was transferred to establish medicaid eligibility:

(a) If the individual wishes to rebut the presumption that real or personal property was transferred for the purpose of establishing eligibility for medicaid, it is the individual's responsibility to present convincing evidence that the real or personal property was transferred exclusively for some other reason.

(i) The individual's statement of rebuttal shall include:

(A) the individual's reason for transferring the real or personal property;

(B) the individual's attempts to transfer the real or personal property at fair market value.

(C) the individual's representation and documentation that he did receive fair market value if that is his belief and contention or the individual's reasons for accepting less than fair market value for the real or personal property;

(D) the individual's means of or plans for supporting himself after the transfer;

(E) the individual's relationship, if any, to the persons to whom the real or personal property was transferred; and

(F) any pertinent documentary evidence (such as legal documents, realtor agreements, and relevant correspondence regarding the transfer of property).

(ii) The presence of one or more of the following factors, while not conclusive, may indicate that real or personal property was transferred exclusively for some purpose other than establishing eligibility. This list is not all-inclusive.

(A) The occurrence after transfer of the real or personal property of the unexpected traumatic onset of disability.

(B) The occurrence after transfer of the real or personal property of the unexpected loss of:

(I) other resources which would have precluded medicaid eligibility; or

(II) income which would have precluded medicaid eligibility.

(C) The individual's total countable resources would have been below the general resource limit during each of the preceding 24 months if the real or personal property had been retained.

(D) The property transfer was approved by or ordered by a court of law.

(E) The individual was the victim of fraud, misrepresentation or coercion and the transfer was based upon such fraud, misrepresentation or coercion, provided that the individual has taken any and all possible steps to recover such property or the equivalent thereof in damages.

(7) Determination if transfer of real or personal property was for reasons other than to qualify:

(a) If the individual had some other purpose for transferring the real or personal property but establishing eligibility for medicaid has also been a factor in his decision to transfer, the presumption is not successfully rebutted.

3. The authority of the agency to adopt the rule is based on Sections 53-2-201 and 53-2-601, MCA and the rule implements Sections 53-2-601 and 53-6-113, MCA.

4. In addition to the changes resulting from the comments below, the department has clarified the language in the final rule by making minor editorial corrections.

COMMENT: The proposed penalty period methodology does not treat all uncompensated transfers uniformly but arbitrarily causes a penalty period as much as 23 months longer for transfers with uncompensated values of over $12,000.00.

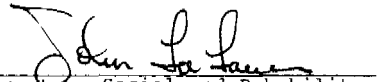
RESPONSE: Rule I, (2)(iv) and a new (v) reflect changes that make the penalty period more equitable.

COMMENT: The County Welfare Board should be given the authority to determine if adequate compensation has been received using the guidelines in the rule.

RESPONSE: The County Welfare Board currently is the final decision maker at the county level.

COMMENT: The rule should not require a prior written contract before support and maintenance can be considered as a valid adequate compensation for a property transfer.

RESPONSE: It would be impossible to administer a transfer of assets rule if applicants aren't required to furnish adequate proofs of timely entered into and enforceable contracts. The written contract is the only type of agreement that meets the necessary proofs.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 18, 1981.

VOLUME NO. 39 OPINION NO. 40

COUNTY OFFICERS AND EMPLOYEES - Treasurer;
STATUTES - Statutory construction;
TAXATION - Lack of county treasurer's authority to deviate from statutory procedure;
MONTANA CODE ANNOTATED - Sections 15-17-101 and 15-17-201.

HELD: If, because of a defective first notice, the county treasurer cannot publish proper notice of a tax sale on or before the last Monday of June, in accordance with section 15-17-101, MCA, he does not have authority to publish a corrected notice after that date and conduct a legal tax sale.

7 December 1981

Harold F. Hanser, Esq.
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You requested an opinion concerning the following question:

> If, because of a defective first notice, the county treasurer cannot publish a proper notice of the tax sale on or before the last Monday of June, may the treasurer publish a corrected notice after that date and still legally conduct the tax sale?

The treasurer's "Notice of Sale of Delinquent Taxes for the year 1980" set the time of sale more than 28 days after first publication and is therefore defective under subsection (4) of section 15-17-101, MCA.

Section 15-17-101, MCA states:

> Publication of notice of tax sales. (1) On or before the last Monday of June of each year, the county treasurer must publish in the manner and

for the time prescribed in this section a notice specifying:

(a) that at a given time and place (to be designated in the notice), all property in the county upon which delinquent taxes are a lien will be sold at public auction unless prior to said time said delinqent taxes, together with all interest, penalties, and costs due thereon, are paid;

(b) a complete delinquent list of all persons and property in the county now owing taxes, including all city and town property as to which taxes or taxes and assessments are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination.

(2) The publication must be made once a week for 3 successive weeks in such newspaper published in the county as the board of county commissioners directs; if there is no newspaper published in the county, then by posting a copy of the list in three public places.

(3) The publication must designate the time and place of sale.

(4) The time of sale must not be less than 21 or more than 28 days from the first publication, and the place must be in front of the county treasurer's office.

[Emphasis added.]

The procedure in this statute for the county treasurer to follow is clear and unequivocal. A statute that is plain, unambiguous, direct and certain leaves nothing to construe Hammill v. Young, 168 Mont. 81, 540 P.2d 971 (1975). There is no statutory provision that authorizes the county treasurer to deviate from the procedure in section 15-17-101, except as to the actual day of the sale: Section 15-17-201 provides that on the day fixed for the sale the county treasurer may postpone the sale from day to day, up to three weeks from the day first fixed. The rules of statutory construction prohibit the omission or insertion of language or substance. Cashmore v. Anderson, 160 Mont. 175, 500 P.2d 921, cert. denied, 410 U.S. 931 (1972).

Tax statutes must be strictly construed. Salvation Army v. State, 144 Mont. 415, 396 P.2d 463 (1964). The Montana Supreme Court has stated the law as to construction of

statutes prescribing tax sales procedures:

> Proceedings on tax sales are in invitum. Every essential or material step prescribed by the state must be strictly followed. If the requirements of the statute are not strictly followed the sale may be avoided. In the county treasurer's proceedings to sell the land there is no distinction recognized between the mandatory and directory requirements of the statute. The county treasurer must act as the statute directs. Otherwise he acts without authority and the purported sale which he assumes to make is invalid. This holds true even though the requirement with which the county treasurer failed to comply was not enacted for the protection of the owner of land.

The legislature has expressly prescribed the procedure for the county treasurer to follow with respect to tax sales. The creation of a legitimate deviation from the present statutory procedure must be done by the legislature. See Dept. of Revenue v. Burlington Northern, Inc., 169 Mont. 202, 545 P.2d 1083 (1976).

THEREFORE, IT IS MY OPINION:

> If, because of a defective first notice, the county treasurer cannot publish proper notice of a tax sale on or before the last Monday of June, in accordance with section 15-17-101, MCA, he does not have authority to publish a corrected notice after that date and conduct a legal tax sale.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 41

BOARD OF AERONAUTICS - Regulation of certain air carriers preempted by federal law;
CONSTITUTIONAL LAW - Commerce Clause -- United States Constitution;
CONSTITUTIONAL LAW - Tenth Amendment -- United States Constitution;
FEDERAL PREEMPTION - Regulation of air carriers authorized for interstate transportation under federal law;
UNITED STATES CODE - Sections 1305, 1371 to 87;
MONTANA CODE ANNOTATED - Section 67-3-421.

HELD: Federal law preempts the Board of Aeronautics' authority to regulate the intrastate rates, routes or services of air carriers that are either specifically exempted or certified by the Civil Aeronautics Board.

8 December 1981

Mr. James Gillett
Acting Legislative Auditor
State Capitol Station
Helena, Montana 59620

Dear Mr. Gillett:

You requested an opinion concerning whether federal law preempts the Board of Aeronautics' authority to regulate the intrastate rates, routes or services of air carriers that are either specifically exempted or certified by the Civil Aeronautics Board. The applicable federal preemption statute is Title 49 U.S.C. § 1305, which states in pertinent part:

> (a)(1) Except as provided in paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under subchapter IV of this chapter to provide interstate air transportation.

> (2) Except with respect to air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board under section 1371 of this title, the provisions of paragraph (1) of this subsection shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

Subchapter IV to which the above statute refers, is Title 49 U.S.C. §§ 1371 to 87. Section 1371 of that title requires all air carriers to be certified by the Civil Aeronautics Board. Section 1386 authorizes exemptions of certain carriers from certification.

Section 1305 has been construed by the federal courts, most recently in the ninth circuit. In Hughes Air Corp. v. Public Utilities Commission, 644 F.2d 1334 (9th Cir. 1981), the court held that the preemption provision in 49 U.S.C. § 1305 precludes states from regulating intrastate activities of any air carrier having authority under subchapter IV to provide interstate transportation. The court also held that carriers exempted from Civil Aeronautics Board certification under subchapter IV are still within the scope of the preemption provision and are thus precluded from state regulation. The court went on to consider the constitutionality of this broad application of federal preemption and concluded that such preemption is a valid exercise of Congress' power under the Commerce Clause and does not violate the Tenth Amendment of the United States Constitution. See also San Diego Unified Port District v. Gianturco, 651 F.2d 1306, 1310, 1313 (9th Cir. 1981).

It is significant to note that the Montana statute that prescribes the regulatory powers of the Board of Aeronautics, section 67-3-421, MCA, was enacted in 1967 and last amended in 1974; the federal preemption statute, 49 U.S.C. § 1305 was enacted in 1978. Thus the Montana statute as it presently stands does not reflect contemplation by the Montana legislature of this broad federal preemption.

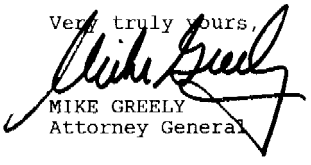
The holding of the court in Hughes Air Corp. clearly applies to the question at hand.

THEREFORE, IT IS MY OPINION:

> Federal law preempts the Board of Aeronautics' authority to regulate the intrastate rates, routes or

services of air carriers that are either specifically exempted or certified by the Civil Aeronautics Board.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 42

ENVIRONMENT - Authority to issue conditional permit to build retaining wall on lakeshore;
LOCAL GOVERNMENT - City council;
LOCAL GOVERNMENT - Authority to issue conditional permit to build retaining wall on lakeshore;
STATUTES - Construction;
MONTANA CODE ANNOTATED - Sections 75-1-201, 75-7-202(2), 75-7-204, 75-7-208, 75-7-212, Title 75, chapter 7, part 2.

HELD: The city council has authority under section 75-7-204, MCA, to regulate, control and issue conditional permits for the construction and installation of a homeowner's retaining wall, constructed for the purpose of preventing erosion to his land by the action of high water, and which is located within 20 horizontal feet of the mean annual high water elevation.

9 December 1981

Leo Fisher, Esq.
City Attorney
Baker and Second Street
Whitefish, Montana 59937

Dear Mr. Fisher:

You have requested my opinion on whether the city council has statutory authority to regulate, control and issue conditional permits for the construction and installation of a homeowner's retaining wall, built to prevent erosion to his land by action of high water, and which is located within 20 horizontal feet of the mean annual high water elevation.

Chapter 7, part 2 of Title 75, MCA, which pertains to lakes and lakeshores, has not been construed by the Montana Supreme Court. The legislative purpose, which is stated in section 75-7-201, MCA, is to confer statutory authority on local governing bodies to establish policies designed to conserve and protect lakes and lakeshores, in the interest of maintaining public health welfare and safety. The title of the act states:

> An act to protect lakeshores by requiring a permit for any work which would alter or diminish a lake; requiring local governing bodies to adopt regulations governing the issuance of such permits; providing for variances, judicial review and funding; and providing an effective date. (Emphasis added.)

"Lakeshore" is defined as "the perimeter of a lake when the lake is a mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation." § 75-7-202(2) MCA.

Section 75-7-204, MCA, provides:

> Work for which permit required. (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.
>
> (2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks. (Emphasis added.)

In construing statutes, legislative intent is to be determined from the plain meaning of the words used, if possible. State v. Weese, 37 St. Rptr. 1620, 616 P.2d 371 (1980). Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left to construe. Olson v. Manion's, Inc., 162 Mont. 197, 510 P.2d 6 (1973).

Applying these rules of statutory construction, it is clear that the Legislature intended to confer broad powers upon local governing bodies to promulgate regulations to conserve and protect the lakes and lakeshores. Among the powers provided by the Legislature are minimum requirements which the governing bodies must consider in granting or denying

permits. Those requirements are set forth in section 75-7-208, MCA.

The governing body is authorized to deny the application, grant a permit or a conditional permit, pursuant to section 75-7-212, MCA. The Legislature did not specifically define how conditional a permit can be, but it is obvious that the Legislature intended to authorize the governing bodies to require those conditions which would fulfill the act's purpose and objectives heretofore discussed.

The construction and installation of a retaining wall that affects a lakeshore as described in section 75-7-204, MCA, is governed by this act. The governing body is authorized to issue a conditional permit in accordance with section 75-7-212, MCA. The authority conferred on the local governing bodies by the Legislature under this act includes the power to issue a conditional permit to fulfill the purposes and objectives of the act.

THEREFORE, IT IS MY OPINION:

The city council has authority under section 75-7-204, MCA, to regulate, control and issue conditional permits for the construction and installation of a homeowner's retaining wall, constructed for the purpose of preventing erosion to his land by the action of high water, and which is located within 20 horizontal feet of the mean annual high water elevation.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 43

ARMED FORCES - Income tax exemption;
TAXATION - Income tax: special military exemption;
UNITED STATES CODE - Title 10: Sections 101(4), 101(22), 101(33), 261(a); Title 32: Sections 101(2), 101(12);
MONTANA CODE ANNOTATED - Section 15-30-116(2)
OPINIONS OF THE ATTORNEY GENERAL -- 36 Op. Att'y Gen. No. 64.

HELD: The salary earned by members of the National Guard operating under the CFTM program does not qualify for a tax exemption pursuant to section 15-30-116(2), MCA.

11 December 1981

Ellen Feaver, Director
Department of Revenue
Room 455, Mitchell Building
Helena, Montana 59620

Dear Ms. Feaver:

You have requested my opinion on the following question:

> Whether the salary earned by members of the National Guard operating under the CFTM (Conversion Full Time Military) program is entitled to a tax exemption pursuant to section 15-30-116(2), MCA.

Section 15-30-116(2), MCA, provides: "The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax." Persons in the CFTM program formerly served in such positions as technicians and engineers and now have been converted to full-time military service in the National Guard. The answer to your question therefore depends upon whether such service falls within the ambit of the phrase "on active duty in the regular armed forces" as used in the statute.

The Montana legislature did not provide a definition of this pivotal phrase when it enacted section 15-30-116(2) in 1975. Because the statute involves military matters, however, its meaning may logically be determined by reference to pertinent sections of the United States Code.

"Active duty" is defined in various sections of the federal code as meaning full-time duty in the active military service, including such federal duties as duty on the active list, full-time training duty, and annual training duty. 10 U.S.C. § 101(22); 32 U.S.C. § 101(12); see Vashon v. United States, 369 F. Supp. 202, 205 (N.D. Ga. 1973). Plainly, a member of the Montana National Guard who is in the CFTM program and has thus been converted to a full-time military position would be considered to be on "active duty" under the general definitions of that term.

Section 15-30-116(2) contains the further condition that the active duty be performed "in the regular armed forces." According to the United States Code, the phrase "armed forces" encompasses the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. § 101(4); 32 U.S.C. § 101(2). "Regular" is defined as pertaining to "a regular component of an armed force." 10 U.S.C. § 101(33). The regular components of the armed forces are distinguished from the recognized reserve components, which are statutorily enumerated to include the Army and Air Force National Guards and the Reserves of the various service branches. 10 U.S.C. § 261(a).

When all these commonly-accepted definitions relating to military affairs are read together, it becomes clear that, as a general rule, duty "in the regular armed forces" does not include service in reserve components--that is, in the Reserves or the National Guard. Therefore, National Guard personnel in the CFTM program, although on active duty, are not entitled to the tax exemption allowed by section 15-30-116(2), MCA.

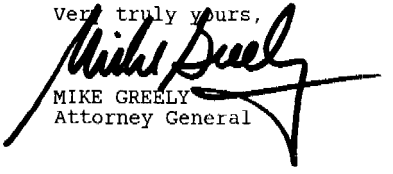
An earlier Attorney General's opinion on a similar issue held that members of the Air National Guard called to active duty in the Air Defense Alert program are entitled to Montana's statutory tax exemption for the salary received while serving in that program. 36 Op. Att'y Gen. No. 64 at 443 (1976). The Air Force regulations pertinent to that opinion specifically provided that members of the program were operationally considered and employed as regular Air

Force active air defense units under the command and control of the Air Force. Thus, duty in the Air Defense Alert program must be distinguished from duty in the CFTM program discussed here, because CFTM personnel are considered to be members of the National Guard rather than members of the regular Army or regular Air Force.

THEREFORE IT IS MY OPINION:

The salary earned by members of the National Guard operating under the CFTM program does not qualify for a tax exemption pursuant to section 15-30-116(2), MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 44

DEPARTMENT OF ADMINISTRATION - Statutory authority to acquire and dispose of state property;
PROPERTY, PERSONAL - State property;
PURCHASING - Exclusive authority of Department of Administration for state property;
STATE AGENCIES - Lack of authority to trade in state property without Department of Administration approval;
STATUTES - Construction;
MONTANA CODE ANNOTATED - Sections 1-2-101, 2-17-202, 18-4-101, 18-6-101 and 18-6-102.

HELD: State agencies do not have authority to trade in state property without approval by the Department of Administration.

15 December 1981

Morgan Langan, Chief
Surplus Property Bureau
Department of Administration
Mitchell Building
Helena, Montana 59620

Dear Mr. Langan:

You requested an opinion concerning the authority of state agencies to trade in state property under section 18-6-101, MCA.

Section 18-6-101, MCA, reads:

> Power to sell state property -- proceeds credited to general fund.
> (1) The department [of administration] has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or

other personal property of every kind owned by the state but not needed or used by any state institution or by any department of state government.
(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.
(3) Whenever the personal property was accounted for in a revolving fund or designated subfund account, the proceeds of the sale shall be credited to the appropriate revolving fund or designated subfund account.

Section 18-6-102, MCA, permits interagency transfer of property with the Governor's approval.

Under section 18-4-101, the Department of Administration must "make or supervise the making of all purchases, leases, or rentals of goods and services for * * * each state agency, institution, and official." (Emphasis added.) There is no statute that specifically authorizes a state agency to engage in the kind of transaction commonly referred to as a "trade-in," that is to say, trading in old articles at a commercial establishment for new ones.

Section 2-17-202 requires state agencies to keep inventories of all personal property. This section in no way authorizes any individual or agency to sell or otherwise dispose of or acquire property. State ex rel. Olson v. Sundling, 128 Mont. 596, 281 P.2d 499 (1955).

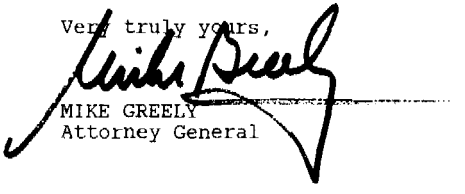
The intent of the legislature is to be determined from the text of the statutes if the language therein is clear, plain and unambiguous. Montana Department of Social and Rehabilitation Services v. Angel, 176 Mont. 293, 577 P.2d 1223 (1978). The rules of statutory construction prohibit the insertion of matter that the legislature has omitted. § 1-2-101, MCA. On this basis it is clear that the legislature intended the methods set forth in the statutes to be the exclusive ones for acquisition and disposal of state property. See Holtz v. Babcock, 143 Mont. 341, 389 P.2d 869, 883 (1963). The language in the statutes does not, however, preclude an agency from trading in property with the approval of the Department of Administration. The legislature conferred broad powers on the Department, to

"sell or otherwise dispose of or to authorize the sale or other disposition," and to "make or supervise the making of all purchases." §§ 18-6-101, 18-4-101, MCA.

THEREFORE, IT IS MY OPINION:

State agencies do not have authority to trade in state property without approval by the Department of Administration.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 45

MOTOR VEHICLES - Vehicle license fees, Indians;
INDIANS - Motor vehicle license fees
MONTANA CODE ANNOTATED - Sections 61-3-231, 61-3-502

HELD: An Indian person residing on his or her tribe's reservation is not required to pay the vehicle license fee imposed by Chapter 614 of the 1981 Montana Laws, section 3.

18 December 1981

James A. McCann, Esq.
Roosevelt County Attorney
Roosevelt County Courthouse
Wolf Point, Montana 59201

Dear Mr. McCann:

You have requested my opinion on the following questions:

> Will owners of automobiles and light trucks be obliged to pay light vehicle license fees provided for in chapter 614, Session Laws of 1981 (SB 355), if such owners are Indian persons residing within the exterior boundaries of a reservation?

On January 1, 1982, Montana's current property tax upon motor vehicles based upon vehicle value will be replaced with a license fee based upon vehicle age and weight. 1981 Mont. Laws, ch. 614, § 3. This new fee is "in lieu of a property tax and is in addition to the tax on new motor vehicles (61-3-502, MCA)." 1981 Mont. Laws, ch. 614, § 2. Similarly, the existing "registration or license" fee, 61-3-321, MCA, is unaffected and will be collected in addition to the new fee. The money generated by the new fee will be distributed by the county in the same manner as the current personal property tax on vehicles. 1981 Mont. Laws, ch. 614, § 34.

It is well established that the State may not impose its current motor vehicle property tax upon vehicles owned by an

Indian person residing on a reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 480 (1976). The Court noted that the State could nonetheless require a non-discriminatory fee for registration and issuance of State license plates. Moe, 425 U.S. at 469. This is the fee required by section 61-3-321, MCA. In Washington v. Confederated Tribes of the Colville Reservation, 100 S. Ct. 2069 (1980) the Court invalidated the state's excise tax on motor vehicles, assessed annually at a percentage of fair market value. The State there argued unsuccessfully that Moe did not toll the tax because it was an excise tax imposed upon the privilege of using the vehicle within the state. The Court found no essential difference between the tax in Moe and Washington's excise tax. The Court did observe that the state "may well be free" to levy a tax based upon the actual amount of off-reservation use. Washington, 100 S. Ct. at 2086. Id.

The result of these cases is that Montana may not impose the vehicle license fee in chapter 614 upon vehicles owned by Indian persons who reside upon their tribe's reservation. The fee is not the license plate and registration fee approved by the dicta of Moe, since that separate fee is still in existence. § 61-3-231, MCA. Furthermore, the fee is not based upon an actual amount of off-reservation use, but rather is applied equally to all vehicles upon the basis of vehicle age and weight. It is more akin to a property tax than a registration fee. Indian persons who reside outside a reservation, or who are not members of the tribe occupying the reservation upon which they reside, are subject to the license fee. Washington, 100 S. Ct. at 2085.

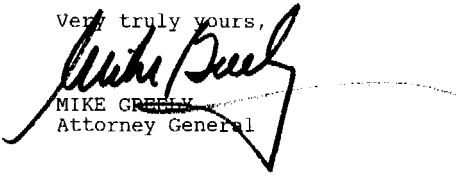
The current procedures and documents used for establishing an Indian person's exemption from personal property tax can be used for the license fee in chapter 614. If an Indian person exempt from the fee wishes to register by mail, the appropriate documents evidencing tribal membership can be sent to the county by mail. 1981 Mont. Laws, ch. 614, § 5.

THEREFORE, IT IS MY OPINION:

An Indian person residing on his or her tribe's reservation is not required to pay the vehicle license fee

imposed by Chapter 614 of the 1981 Montana Laws, section 3.

Very truly yours,



MIKE GREELY
Attorney General