RESERVE

MONTANA ADMINISTRATIVE REGISTER

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PAGES 1287-1522

N O T I C E

Information Relating to
New Subscriptions to the

A D M I N I S T R A T I V E R U L E S O F M O N T A N A

The Administrative Rules of Montana are being recodified and will be available in September, 1980. A set is comprised of the rules of the executive agencies of Montana which have been designated by the Montana Administrative Procedure Act for inclusion in the code. There are 17 loose leaf binders to a set housing approximately 7000 pages. Cost, per set, is $175.00. An additional charge of $15.00 will be made for the September and December 1980 replacement pages to the recodified set. If you are interested in purchasing a set please use the order blank below and submit prior to June 1, 1980.

Price of replacement pages for 1981 will be set and billed approximately December 15, 1980.

This information is for new subscribers only. Current subscribers will receive information on replacement pages by mail.

To: FRANK MURRAY
Secretary of State
Capitol Bldg, Rm 202
Helena, MT 59601

Please place my order for Administrative Rules of Montana as indicated below. I understand a statement for this order will be sent July 15, 1980, and must be paid before my order will be shipped in September, 1980.

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9-5/15/80

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 a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend, or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

NOTICE: The July 1977 through June 1979 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Motnana, 59601.

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RULE SECTION

By: M. Wm. McEnaney
M. Wm. McEnaney, Executive Secretary
Board of Examiners

Certified to the Secretary of State May 1, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rules ARM 2-3.22(1)-02200 and ARM 2-3.22(2)-P2210, specifying the organization and procedure of the now defunct State Depository Board	))))))	NOTICE OF PROPOSED REPEAL OF RULES ARM 2-3.22(1)-02200 and ARM 2-3.22(2)-P2210, specifying the organization and procedure of the now defunct State Depository Board - NO PUBLIC HEARING COMTEMPLATED

TO: All Interested Persons:

1. On June 16, 1980, the Department of Administration proposes to repeal rules ARM 2-3.22(1)-02200 and ARM 2-3.22(2)-P2210, specifying the organization and procedures of the now defunct State Depository Board.

2. The rules proposed to be repealed are on page 2-35 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules as part of the recodification efforts of the Department of Administration under sections 2-4-321 through 2-4-323, Montana Code Annotated, and because the State Depository Board was abolished by the Montana Legislature by Ch. 61, L. 1977, sec. 11.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeals in writing to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than June 13, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than June 13, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental 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 69,441 persons based on the population of the State of Montana (1970 census).

7. The authority of the Department to make the proposed rules is based on section 2-4-322, MCA, and Ch. 61, L. 1977, sec. 11, and the rule implements sections 2-4-321 through 2-4-323, MCA.

By: David M Lewis
David M. Lewis, Director
Department of Administration

Certified to the Secretary of State May 1, 1980.

BEFORE THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the repeal of rule ARM 2-3.34(74)-S34590, concerning retirement	)	NOTICE OF PROPOSED REPEAL OF RULE ARM 2-3.34(74)-S34590 concerning retirement - NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 16, 1980, the Merit System Council proposes to repeal rule ARM 2-3.34(74)-S34590, concerning retirement.

2. The rule proposed to be repealed is on pages 2-60.Jj and 20-60.K of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because of changes in the laws affecting retirement making it obsolete.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than June 13, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to John Bobinski, Staff Attorney, Department of Administration, Insurance and Legal Division, Capitol Station, Helena, Montana 59601, no later than June 13, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental 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 230 persons based on the number of merit-system employees.

7. The authority of the council to make the proposed rule is based on section 2-18-105, MCA, and the rule implements section 2-18-105, MCA.

By Joseph D. Harrington
Reverend Joseph D. Harrington
Chairman, Merit System Council

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of Rules 4.2.070, 4.2.080, 4.2.090, 4.2.100, 4.2.110, 4.2.120, 4.2.140, 4.2.150 pertaining to the implementation of the Montana Environmental Policy Act; and the adoption of new rules I through X implementing MEPA	NOTICE OF PUBLIC HEARING FOR THE REPEAL OF THE PRESENT RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT; AND ADOPTION OF REVISED RULES IMPLEMENTING MEPA

TO: All Interested Persons

1. On June 16, 1980, at 9:30 a.m. a public hearing will be held in Room 225, Agriculture-Livestock Building, Helena, Montana, to consider repeal of the present rules (with the exception of 4.2.130, the fee bill rule) implementing the Montana Environmental Policy Act, Chapter 1, Title 75, MCA, hereinafter referred to as "MEPA", and adoption of new rules pertaining to MEPA.

2. Although the new rules are similar in many respects to the present rules, the format and many changes dictate that they be published as new rules. The new rules, as proposed for adoption, may be found in the notice section of 1979 MAR shown in MAR Notice No. 26-2-26, p. 768-779. The words Department and Board as used in Department of State Lands proposed rules shall mean Department of Agriculture as cited in MAR Notice No. 26-2-26, p. 768-779.

3. The new rules are being proposed to streamline the MEPA process, standardize the MEPA process among executive agencies, provide for more public participation in the EIS process, and to make other numerous changes in the implementation of MEPA. The proposed new rules are being proposed by adoption by several other executive agencies, and the hearing will be a joint hearing by all agencies proposing adoption.

4. Any person may submit data, views, or comments concerning the proposed new rules either orally or in writing at the hearing. Written data, views, or arguments may be submitted to Raymond W. Brault, Department Attorney, Department of Agriculture, Room 229, Agriculture-Livestock Building, Capitol Station, Helena, Montana 59601 any time before June 16, 1980. To be considered, mailed comments must be postmarked on or before June 16, 1980.

5. Raymond W. Brault, Department Attorney, Department of Agriculture, has been designated to preside over and conduct the hearing.

6. The authority of the board and department to repeal and adopt is section 2-4-201 MCA (82-4203 RCM 1947). The code

provisions implemented are Part 1, Chapter 1, Title 75 and section 75-1-201 MCA (69-6504).

W. Gordon McOmber, Director
Department of Agriculture

Certified to the Secretary of State April 23, 1980.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 4.10.800 pertaining to Environmental Protection Agency policy statements on Institution of Pesticide Enforcement	NOTICE OF PROPOSED REPEAL OF A RULE PERTAINING TO ENVIRONMENTAL PROTECTION AGENCY POLICY STATEMENTS ON INSTITUTION OF PESTICIDE ENFORCEMENT. NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On June 16, 1980, the Department of Agriculture proposes to repeal Rule 4.10.800, pertaining to Environmental Protection Agency Policy Statements on Institution of Pesticide Enforcement.

2. The rule purposed for repeal is found on pages 4-123 thru 4-125 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because Environmental Protection Agency policy eliminated the policy statements on Institution of Pesticide Enforcement.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Raymond W. Brault, Department Attorney, Department of Agriculture, Room 229, Agriculture-Livestock Building, Capitol Station, Helena, Montana 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of rule 4.10.800 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comment he has to Raymond W. Brault, Department Attorney, Department of Agriculture, Room 229, Agriculture-Livestock Building, Capitol Station, Helena, Montana 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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.

7. The authority of the agency to make the proposed repeal is based on Section 2-4-201 MCA (82-4203 RCM 1947). The code provisions implemented are Part 1, Chapter 1, Title 75 and section 75-1-201 MCA (69-6504).

W. Gordon McOmber, Director
Department of Agriculture

Certified to the Secretary of State May 2, 1980.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 8-3.14(14)-S1440(6), (b) AS IT RELATES TO AMENDMENT OF THE DISTRIBUTORS FORMULA: (Statewide Hearing June 23 & 24, 1980))	))))	NOTICE OF PUBLIC HEARING ON THE AMENDMENT OF RULE 8-3.14 (14)-S1440 (Pricing Rules.)

TO: All Interested Persons:

1. On June 23rd and, if necessary, June 24th, 1980, at 9:30 a.m., MDT, or as soon thereafter as interested persons can be heard, a public hearing will be held at the department of highway's auditorium in the new highway complex, highway 12 east, Helena, Montana, 59601, to consider the amendment of rule 8-3.14(14)-S1440.

2. The proposed amendment would change the distributors formula for calculation of minimum prices of milk.

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

(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale, institutional and retail prices of Class I milk in all market areas of the state utilizes a November, 1969 base equalling 100, an interval of 5.3 and consists of ~~five (5)~~ seven (7) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

	FACTOR		WEIGHT	CONVERSION FACTOR
(1)	Weekly Wages - Manufacturing (MT) (Revised)		25%	.1828020
(2)	Weekly Wages - Mining (MT) (Revised)		7%	.0473934
(3)	Weekly Wages - Transportation & Utilties (MT) (Revised)		18%	.1178628
~~(1)~~	~~Weekly Wages - Total Private (Revised)~~		~~50%~~	~~.4351231~~
~~(2)~~	(4)	Wholesale Price Index (U.S.)	28%	.2607076
~~(3)~~	(5)	Pulp, Paper and Allied Products (U.S.)	12%	.1142857
~~(4)~~	(6)	Industrial Machinery (U.S.)	6%	.0556586
~~(5)~~	(7)	Motor Vehicle and Equipment (US)	4%	.0376294
			100%	

*Amended on July 24, 1976 to use revised data rather than current data.

The following Table will be used in computing distributor prices:

TABLE II

Handler Incremental Deviation from last official reading of present Formula. (December, 1973 = 122.10; Formula Base = November, 1969; Interval = 5.3.)

FORMULA INDEX	HANDLER INCREMENTAL DEVIATION
~~101.30 - 105.54~~	~~$-0.02~~
106.20 - 110.44	-5
~~106.60 - 110.84~~	~~-0.01~~
111.50 - 115.74	-4
~~111.90 - 116.14~~	~~0.00~~
116.80 - 121.04	-3
~~117.20 - 121.44~~	~~0.01~~
122.10 - 126.34	-2
~~122.50 - 126.74~~	~~0.02~~
127.40 - 131.64	-1
~~127.80 - 132.04~~	~~0.03~~
132.70 - 136.94	0
~~133.10 - 137.34~~	~~0.04~~
138.00 - 142.24	1
~~138.40 - 142.64~~	~~0.05~~
143.30 - 147.54	2
~~143.70 - 147.94~~	~~0.06~~
148.60 - 152.84	3
~~149.00 - 153.24~~	~~0.07~~
153.90 - 158.14	4
~~154.30 - 158.54~~	~~0.08~~
159.20 - 163.44	5
~~159.60 - 163.84~~	~~0.09~~
164.50 - 168.74	6
~~164.90 - 169.14~~	~~0.10~~
169.80 - 174.04	7
~~170.20 - 174.44~~	~~0.11~~
175.10 - 179.34	8
~~175.50 - 179.74~~	~~0.12~~
180.40 - 184.64	9
~~180.80 - 185.04~~	~~0.13~~
185.70 - 189.94	10
~~186.10 - 190.34~~	~~0.14~~
191.00 - 195.24	11
~~191.40 - 195.64~~	~~0.15~~
196.30 - 200.54	12
~~196.70 - 200.94~~	~~0.16~~
201.60 - 205.84	13
~~202.00 - 206.24~~	~~0.17~~
206.90 - 211.14	14
~~207.30 - 211.54~~	~~0.18~~
212.20 - 216.44	15
~~212.60 - 216.84~~	~~0.19~~
217.50 - 221.74	16
~~217.90 - 222.14~~	~~0.20~~
222.80 - 227.04	17
~~223.20 - 227.44~~	~~0.21~~
228.10 - 232.34	18
~~228.50 - 232.74~~	~~0.22~~
233.40 - 237.64	19
~~233.80 - 238.04~~	~~0.23~~
~~239.10 - 243.34~~	~~0.24~~
~~244.40 - 248.64~~	~~0.25~~

~~(NOTE: This Chart is amended to reflect a two cent ($0.02) reduction in the distributor's margin based on a half (½) gallon of whole milk, as ordered by the Board of Milk Control on September 15, 1979.)~~

(NOTE: This Chart is amended to reflect a two cent ($0.02) reduction in the distributor's margin based on a half (½) gallon of whole milk, as ordered by the Board of Milk Control on July 24, 1976.)

4. The amendment to the rule is being proposed due to the petition of some members of the industry received in the offices of the department in March, 1980.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or agruments may also be submitted to Norman Grosfield, address below, no later than June 22, 1980.

6. Norman H. Grosfield, Esq., p.o. box 512, Helena, Montana, 59601, has been designated by the board and the department to preside over and conduct the hearing.

7. The authority of the board of milk control to conduct this hearing is based on 81-23-302, MCA. IMP - same.

BY ORDER OF THE BOARD OF MILK CONTROL

Curtis C. Cook
Curtis C. Cook
Chairman of the Board

By K. M. Kelly
K. M. Kelly
Administrator & Executive Secretary

CERTIFIED TO THE SECRETARY OF STATE THIS 6th DAY OF May, 1980.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 12-2.22(1)-S2200 Relating to Migratory Waterfowl Permits	)))))	NOTICE OF PROPOSED REPEAL OF A RULE RELATING TO MIGRATORY WATERFOWL PERMITS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. At its first meeting after June 14, 1980, the Montana Fish and Game Commission proposes to repeal Rule 12-2.22(1)-S2200 relating to migratory waterfowl permits.

2. The rule proposed to be repealed is on page 12-57 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because there is sufficient statutory authority elsewhere to render this rule unnecessary.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than June 12, 1980.

5. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address no later than June 12, 1980.

6. If the department receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 25.

7. The authority of the agency to make the proposed repeal is based on Sec. 87-1-201, MCA, and Sec. 87-1-301, MCA, and implements Sec. 87-3-403, MCA.

Robert F. Wambach, Director
Dept.Fish,Wildlife & Parks

Joseph J. Klabunde, Chairman
Montana Fish & Game Commission

Certified to Secretary of State April 22, , 1980.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12-2.6(1)-S690 relating to special licenses	) NOTICE OF PROPOSED AMENDMENT OF A RULE RELATING) TO SPECIAL LICENSES) NO PUBLIC HEARING) CONTEMPLATED

TO: All Interested Persons.

1. At its first meeting after June 14, 1980, the Montana Fish and Game Commission proposes to amend Rule 12-2.6(1)-S690 relating to special licenses.

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

12-2.6(1)-S690 ~~SPECIAL LICENSES~~ LIMITATION ON NUMBER OF HUNTING LICENSES (1) ~~In any special license district,~~ When the department sets a limitation or quota for the number of hunting licenses to be issued in any hunting district or other designated area, resident applicants shall receive at least 90% of the total ~~special~~ hunting licenses to be issued for that game species in that district. ~~Provided, in the event~~ When the number of resident applicants totals less than 90% of the quota for that district, ~~then~~ all resident applicants shall receive a ~~special~~ hunting license, for that game species. The remaining ~~special~~ licenses will be issued to the nonresident applicants for that district by ~~lot,~~ drawing. Any thereafter remaining ~~special~~ licenses for that district shall be issued in such manner as the ~~Fish and Game~~ director ~~shall~~ determines.

3. The rule is proposed to be amended to delete all references to special licenses as reflected by change in Montana law. The 90% quota applies to all licenses, not just special licenses, in districts where limitations are set.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Robert F. Wambach, Director, Department of Fish, Wildlife, and Parks, 1420 E. 6 Avenue, Helena, Montana 59601. Written comments in order to be considered must be received no later than June 12, 1980.

5. If a person who is directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Dr. Wambach at the above-stated address no later than June 12, 1980.

6. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code

Committee of the legislature; from a governmental 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 25.

7. The authority of the agency to make the proposed amendment is based on Sections 87-1-201 and 87-1-301, MCA, and implements Section 87-2-506, MCA.

Joseph J. Klabunde, Chairman
Montana Fish & Game Commission

Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State April 22, , 1980.

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

In the matter of the amendment of rules 16-2.18(10)-S18070, 16-2.18(10)-S18071, 16-2.18(10)-S18072, 16-2.18(10)-S18075, 16-2.18(10)-S18077, and 16-2.18(10)-S18078, establishing immunization requirements for public and private schools	NOTICE OF PROPOSED AMENDMENT OF RULES 16-2.18(10)-S18070, 16-2.18(10)-S18071, 16-2.18(10)-S18072, 16-2.18(10)-S18075, 16-2.18(10)-S18077, and 16-2.18(10)-S18078, (Immunization Standards for Schools) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 16, 1980, the Department of Health and Environmental Sciences proposes to amend rule 16-2.18(10)-S18070, definitions; rule 16-2.18(10)-S18071, stating immunization requirements for unconditional enrollment in school; rule 16-2.18(10)-S18072, stating the documentation of immunization status acceptable for persons enrolled prior to August 1, 1980; rule 16-2.18(10)-S18075, setting requirements for conditional enrollment; rule 16-2.18(10)-S18077, religious or personal exemptions; and rule 16-2.18(10)-S18078, administrative exemptions.

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

16-2.18(10)-S18070 DEFINITIONS The following definitions apply throughout this sub-chapter:

(1) through (6) same

(7) "School" means an institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12.

~~(7)~~ (8) same

16-2.18(10)-S18071 REQUIREMENTS FOR UNCONDITIONAL ENROLLMENT (1) same

(a) DTP, DT, or Td vaccine must be administered as follows:

(i) For a child aged less than 7 years, four or more doses of diphtheria and tetanus toxoids and pertussis vaccine (DTP) and/or diphtheria/tetanus (DT) toxoids must be administered, **~~with~~** at least one dose **~~(booster)~~** of which must be given after the fourth birthday~~,~~ unless (iii) below applies;

(ii) For a person 7 years old or older who has not completed the above requirement, any combination of three doses of either DTP, DT, or Td is acceptable, **~~with~~** at least one dose of which must be given after the fourth birthday~~,~~ unless (iii) below applies;

(iii) A person enrolled for the first time prior to August 1, 1980, need not have received a dose after his fourth birthday;

~~(iii)~~ (iv) Pertussis vaccine is not required for a person 7 years of age or older.

(b) Polio vaccine must be administered as three or more doses of live, oral, trivalent poliomyelitis vaccine, ~~with~~ at least one dose ~~(booster)~~ of which must be given after the fourth birthday~~.~~ unless the person receiving the vaccine was enrolled for the first time prior to August 1, 1980.

(c) through (d) same

(2) same

(a) For DTP, DT, Td, and polio,--the month and year the last dose ~~of a complete series~~ was administered, unless the person was enrolled prior to August 1, 1980, in which case only the year is necessary.

(b) For rubella ~~and boosters for DTP, DT, Td, and polio,~~ the month and year administered, unless the person was enrolled prior to August 1, 1980, in which case only the year is necessary.

(c) same

~~(d)~~ (3) If a person transfers into a Montana school from out-of-state, he or she must provide the same documentation as required above for a person who enrolled prior to August 1, 1980.

16-2.18(10)-S18072 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSON ENROLLING FOR THE FIRST TIME PRIOR TO AUGUST 1, 1980

(1) same

(2) If the documentation has not been provided to the school on one of the forms referred to in subsection (1) above, immunization information must be transferred onto one of those forms from one or more of the types of documentation listed below, and the form must be signed by the person performing the transfer, by November 15, 1980, or, if enrollment occurs later than November 1, 1980, within 15 days after enrollment:

(a) through (h) same

16-2.18(10)-S18075 REQUIREMENTS FOR CONDITIONAL ENROLLMENT

(1) A person may be admitted to school on a conditional basis if a physician or local health department indicates on the department's conditional enrollment form that immunization of the person has already been initiated by receiving, at a minimum, one DTP, (or DT or Td), one polio, one measles, and one rubella vaccination (unless rubella is not required because the person is a female 12 years of age or older). If a person is exempt from any of the foregoing vaccinations, the requirements of this rule apply to the remaining immunizations for which no exemption exists.

(2) through (3) same

(4) A person who is conditionally enrolled qualifies for unconditional enrollment when he receives the following number

of doses of each vaccine, and at intervals of no less than four weeks:

Number of Polio Doses Person Has Received:	Person Needs:
0	3
1	2
2	1
3	0
4	0
3 or more but none after 4th birthday (If enrolled for first time after July 31, 1980)	1

Number of DTP, DT, or Td Doses Person Has Received:	Person Before 7th Birthday Needs DTP or DT:	Person After 7th Birthday Needs Td:
0	3*	3*
1	2*	2*
2	2	2
3	1	1
4	0	0
3 or more but none since 4th birthday (If enrolled for first time after July 31, 1980)	1	1

*A booster dose 8-14 months following the third dose is recommended. Td boosters are also recommended every 10 years.

(5) same

16-2.18(10)-S18077 RELIGIOUS OR PERSONAL EXEMPTION

(1) A person seeking enrollment in school is exempt from all or part of the immunization requirements if the parent or guardian of that person, or the person himself if an adult, objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious or personal beliefs of the person signing the statement.

(2) The statement referred to in subsection (1) must be made on the department's certificate of immunization form, and, if exemption is desired from only a portion of the required immunizations, must indicate which immunizations the exemption covers.

(3) same

16-2.18(10)-S18078 ADMINISTRATIVE EXEMPTION

(1) same

(2) If some, but not all, of the required documentation is submitted, the administrative exemption covers, and the administrative exemption form shall state, only the immuniza-

tions for which documentation is lacking.

3. There are five basic proposed amendments, the rationale for which follows:

(a) The definition of school is proposed to be added in order to clarify the fact that the law and therefore the rules cover enrollment in any grade from kindergarten through grade 12, and was deemed advisable due to the discovery that a number of physicians were assuming the rules applied only to grades 1 through 12 since kindergarten is not compulsory.

(b) The second set of amendments emanate from comments received primarily from community health and school nurses after the rules were adopted pointing out the massive clerical problem which would be created by having to check school records of all students who have already been enrolled prior to the effective date of these rules to ensure one dose occurred after the fourth birthday and by having to conditionally enroll or exempt the potentially numerous students who lack only the single dose after the fourth birthday.

Administration of one dose of a series after the fourth birthday is preferred medical practice, but, in order to ease the burden on schools and presently enrolled pupils, the proposed amendments would require only those students entering school for the first time, i.e. kindergartners or first graders, to have at least one dose of DTP/DT/Td and polio after the fourth birthday, though it is recommended practice for everyone.

A companion amendment to subparagraph (2)(d) of rule 16-2.18(10)-S18071 would make it a separate paragraph (3) so that its language modifies the entire rule instead of paragraph (2) alone. The effect is to hold students transferring to a Montana school from out-of-state to the same standards, including exemption from the dose-after-fourth-birthday requirement, as students already enrolled in Montana schools prior to August 1, 1980, which is consistent policy throughout the rules.

(c) Since physicians are not uniform in what they regard as a "complete series" of doses--some regarding two doses as a series and two more as boosters, while other regard three as a series, followed by one or two boosters--references in 16-2.18(10)-S18071 to vaccination series and boosters have been eliminated to simplify the rule and avoid confusion about what constitutes a series or booster.

(d) Amendments are also proposed to deal with situations whereby students meet the requirements for full or conditional enrollment except for the fact that complete information on all vaccinations has not been submitted, action has not been taken to complete immunization for all the covered diseases, or a partial, rather than blanket, exemption exists. The proposed amendments to 16-2.18(10)-S18074, -S18077, and -S18078

indicate how records are to be kept in such mixed cases.

(e) Finally, a phrase is proposed to be added to 16-2.18(10)-S18072 requiring school personnel who transfer immunization data onto the certificate of immunization or an equivalent form to sign the latter forms, in order to be consistent with the requirements of 16-2.18(10)-S18073 and -S18074.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Robert Solomon, Cogswell Building, Helena, Montana, no later than June 13, 1980.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, no later than June 13, 1980.

6. If the department 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 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.

7. The authority of the agency to mke the proposed amendment is based on section 20-5-407, MCA, and the rules implement sections 20-5-402 through 20-5-406, and 20-5-408, MCA.

A. C. KNIGHT, M.D., Director

By: JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State May 6, 1980

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 23-2.6AII(2)-S620 concerning qualifications for the Highway Patrol	)	NOTICE OF PROPOSED AMENDMENT OF RULE 23-2.6AII(2)-S620 (Applicants for Highway Patrol NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to amend rule 23-2.6AII(2)-S620 concerning qualifications for applicants for the Highway Patrol.

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

23-2.6AII(2)-S620 ~~APPLICANTS FOR~~ HIGHWAY PATROL APPLICANTS

The ~~following~~ policies of subsections (1) through (6) ~~shall~~ govern ~~members in regard to~~ the processing of ~~all~~ applications for uniformed positions with the Highway Patrol.

1. Minimum qualifications--set forth below are the minimum qualification requirements that must be satisfied before any person may be considered for a position with the Highway Patrol:

(a) Age--Between 22-35

(b) ~~Height--Minimum 5'10" (without shoes) Maximum 6'4"~~

~~(c) Weight--Minimum 154 pounds, maximum 225 pounds~~

~~(d)~~ Physical and Mental condition--excellent physical and mental condition--no existing physical or mental handicaps or ailments.

~~(e)~~(c) Education--high school graduate.

~~(f)~~(d) Prior experience--No prior police experience required.

~~(g)~~(e) Physical appearance--Must present neat physical appearance. No disfiguring scars or blemishes.

~~(h)~~(f) Driving ability-Must be capable of operating a motor vehicle and possess a valid Montana driver license.

~~(i)~~(g) Driving record--No convictions for offenses requiring revocation or suspension of driver's license.

~~(j)~~(h) General reputation--Must have a good moral character and a good reputation in his community.

~~(k)~~(i) Citizenship and residence--Must be a U.S. citizen and a resident of Montana for one year immediately prior to appointment. (Time spent in military service by Montana resident is considered Montana residency.)

2. Application [same as present rule].
3. Procedure for screening applicants [same as present rule].
4. Procedure for investigating applicants [same as present rule].
5. Appointments to service [same as present rule].
6. Instructions to medical examiners.

(a) The medical examiner should check the applicant's answers, secure such additional information as ~~he considers~~ is considered desirable, and witness the applicant's signature. Any of the following conditions or diseases ~~at any time during the applicant's life~~ may disqualify him:

(i) Anemia, pernicious
(ii) Asthma, chronic or recurrent after ~~twelve (12)~~ years of age,
(iii) Bronchitis, chronic or broncheictasis.
(iv) Colitis, recurrent; or recurrent spastic bowel conditions or removal of portion of gastro-intestinal tract.
(v) Convulsions
(vi) Coronary artery disease
(vii) Diabetes
(viii) Dislocation of joint, recurrent
(ix) Emotional trouble
(x) Epilepsy
(xi) Flat feet causing symptoms
(xii) Goiter or hyperthyroidism
(xiii) Heart disease, active
(xiv) Hypertension
(xv) Laryngitis, chronic
(xvi) Malignant tumor
(xvii) Nephritis, if chronic, or absence of a kidney
(xviii) Nervous breakdown
(xix) Neuromuscular disorder
(xx) Osteomyelitis
(xxi) Peptic ulcer, active or recurrent
(xxii) Psychotic diagnosis
(xxiii) Purpura or hemophilia
(xxiv) Rheumatic fever with valvular damage
(xxv) Rhinitis, if chronic or deviation of septum if obstructive
(xxvi) Ruptured intervertebral disk or back trouble
(xxvii) Tonsillitis, if chronic or unduly recurrent
(xxviii) Tuberculosis

(b) If the applicant has suffered from any of the following conditions within the last ~~three (3)~~ years, he or she may ~~should~~ be disqualified:

(i) Allergic condition which was disabling
(ii) Kidney stone
(iii) Pilonidal cyst or sinus which was infected or drained

(c) All abnormalities of history or physical examination, whether or not considered disqualifying, should be recorded.

(d) Each applicant must meet the following standards (listed according to the number appearing on the physical examination form).

(i) Age-Between 22 and 35 years of age

~~Height--Minimum, 70 inches (without shoes); maximum, 76 inches~~

~~Weight--Minimum, 154 pounds (without shoes); maximum, 225 pounds (h~~

(ii) Height and weight ratio should be reasonable~~)~~

(iii) Development--Applicants must be well proportioned and of good muscular development. Obesity, muscular weakness, poor physique, or congenital or acquired deformity that is apt to interfere with function are disqualifying.

(iv) Blood pressure--Maximum, 135 systolic or 80 diastolic; minimum, 100 systolic or 55 diastolic.

(v) Pulse--Between 50 and 91 (resting).

(vi) Eyes--Loss of vision in either eye, marked strabismus, or a disease or deformity affecting vision or function are disqualifying; must have visual activity of at least 20/40 and correctable to 20/20 with glasses; color vision, applicant should not miss more than 4 plates of the American Optical Company Chart.

(vii) Ears--Chronic otitis media, drum perforation, or mastoiditis in either ear are disqualifying; hearing, normal hearing with each ear is required. Test each ear separately with whispered voice while masking opposite ear.

(viii) Nose--Nose must be free of deformity and breathing must be unobstructed.

(ix) Mouth--The mouth must be free from deformities or conditions that interfere with distinct speech or that predispose to diseases of the ear, nose or throat; teeth, serviceable natural or artifical teeth which are clean and well cared for are required. The jaws must be free from badly broken or decayed teeth that cannot be filled or crowned. Throat, there must be no disease ~~of~~ or hypertrophy ~~or~~ of tonsils.

(x) Neck--Thyroid, enlargement is disqualifying; nodes, enlargement requires study to establish cause. Acceptable if benign.

(xi) Chest--Heart, the action of the heart must be uniform, free and steady, its rhythm regular, and free from

organic changes. Arteriosclerosis, hypertension, or active ~~cardiac-vascular~~ cardiovascular disease of any kind are disqualifying; lungs, respiration must be full, easy and regular. The respiratory murmur must be clear and distinct over both lungs, and tuberculosis or other active pulmonary disease must not be present.

(xii) Abdomen--Examine for tenderness, masses, enlarged organs and muscle tone. Hernia, actual or potential hernia in any form must reject.

(xiii) Genitalia--Must be free from deformities and marked varicocele, hydrocele, enlargement of the testicle, structure or urinary incontinence. Retained testicle or bilateral atrophy rejects. Active genito-urinary disease, including ~~venereal~~ venereal disease, is disqualifying.

(xiv) Anus--Fissures, fistulas, and ~~external~~ external or internal piles ~~are~~ may be disqualifying.

(xv) Skin--Applicant must be free of lesions, large naevi or scars which are apt to become ulcerated, and parasitic or systemic skin diseases such as eczema, psoriasis, lupus, etc.

(xvi) Spine--Pronounced scoliosis, kyphosis, or other back disability is disqualifying.

(xvii) Extremities--Applicant must be free from arthritis, infections of the joints, sprains, stiffness, or other conditions such as flat feet, etc., which would prevent the proper and easy performance of duty. Varicose ulcer or large varicose veins are disqualifying. First (index), second (middle), and the third (ring) fingers and thumb must be present in its entirety.

3. The Department proposes to amend this rule in order to reflect the present practice of the Department by eliminating height and weight requirements for Highway Patrol applicants, which may have the impact of discriminating against women. In addition, the Department proposes to amend this rule in order to clarify that medical conditions will not disqualify an applicant unless the condition adversely affects that applicant's ability to perform the job. Finally, the agency proposes to make minor editorial changes in the rule to clarify it.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

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

with any written comments he has to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature, from a governmental 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 75 persons based on the 500 applicants for a Highway Patrol class and the 250 Highway Patrol officers.

7. The authority of the agency to make the proposed amendment is based on section 44-1-103, MCA, and the rule implements sections 44-1-102, 44-1-303(2), and 44-1-401, MCA.

By: MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the repeal of rules 23-2.6AII(1)-S600 and 23-2.6AII(2)-S610, concerning operations of the Highway Patrol Bureau	)))))	NOTICE OF PROPOSED REPEAL OF RULES (Operations of Highway Patrol Bureau) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to repeal rules 23-2.6AII(1)-S600 and 23-2.6AII(2)-S610, concerning operations of the Highway Patrol Bureau.

2. The rules proposed to be repealed are on pages 23-64.1E through 23-64.1G of the Administrative Rules of Montana.

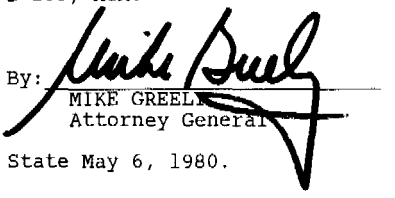
3. The agency proposes to repeal these rules because they are surplusage. Rule 23-2.6AII(1)-S600 concerns departmental organization, which is covered by Rule 23-2.1(1)-0100. Rule 23-2.6AII(2)-S610 defines terms that are not used elsewhere in the subchapter.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 75 persons based on the 500 applicants for a Highway Patrol class and the 250 Highway Patrol officers.

7. The authority of the agency to make the proposed repeal is based on section 44-1-103, MCA.

By: 
MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the Amendment) of rule 23-2.6AVI(2)-S6010) concerning the posting of bond) monies by an alleged traffic) violator cited by the Highway) Patrol)	NOTICE OF PROPOSED AMENDMENT OF RULE 23-2.6 AVI(2)-S6010 (Posting Bond Monies With Court) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to amend rule 23-2.6AVI(2)-S6010 concerning the posting of bond monies by an alleged traffic violator cited by the Highway Patrol.

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

23-2.6AVI(2)-S6010 POSTING BOND MONIES WITH COURT

~~Section 31-112, R.C.M., 1947, authorizes members of the Highway Patrol to set and accept a deposit for appearance justifiable for the offense charged.~~

~~The member when accepting bond, shall give a signed receipt to the offender setting forth the amount received and shall then deliver the bail bond to the justice of the peace before whom the offender is to appear, and the Justice of the Peace shall give a receipt to the member for the amount of bail bond delivered to him. Any questionable incident relating to misappropriation of bond-money would result in considerable embarrassment to the member and the department and would certainly jeopardize the convenience that we now enjoy.~~

(1) Any monies collected as bail bond ~~shall~~ should be remitted to the justice of the peace within ~~five-(~~ 5 ~~)~~ days from the date such money was collected or accepted. All ~~members shall be~~ officers are subject to individual "on the spot" audit of their records and collection of monies. Any audit revealing any mishandling or misappropriation of monies or disobedience ~~of~~ or non-compliance to this ~~order shall be~~ rule will subject the officer to dismissal or severe disciplinary action.

(2) Bond monies may not be accepted from any violators who have been released ~~as the commission on lower courts has instructed this bureau that once~~. Once released, the violator is within the jurisdiction of the court system. ~~Therefore, an officer would be in error to accept bond after release.~~ Violators who wish to post bond after

release ~~will~~ must be instructed to post bond with the nearest court, which court will then transmit the bond monies to the court of the appropriate jurisdiction.

3. The rule is proposed to be amended to eliminate unnecessary language and clarify the rule. Paragraph 1 merely repeats what is contained in section 44-1-1101(3) MCA. Paragraph 2 merely repeats what is contained in section 44-1-1102 MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature, from a governmental 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 61,000 persons based on the 610,000 licensed drivers in Montana

7. The authority of the agency to make the proposed amendment is based on section 44-1-103, MCA, and the rule implements sections 44-1-1101 and 1102 MCA.

By: _____
MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the Amendment of rule 23-2.6AVI(2)-S620 concerning authorized emergency vehicles	NOTICE OF PROPOSED AMENDMENT OF RULE 23-2.6 AVI(2)-S620 (Authorized Emergency Vehicles) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to amend rule 23-2.6AVI(2)-S620 concerning authorized emergency vehicles.

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

23-2.6AVI(2)-S620 ~~AUTHORIZED~~ EMERGENCY VEHICLES

~~1. Definition, vehicles classified as emergency vehicles include the following:~~

~~(a) Vehicles of the fire department and the fire patrol~~

~~(b) Ambulance~~

~~(c) Special vehicles designated by the Bureau~~

~~2. Definition, vehicles classified as police vehicles include the following:~~

~~(a) Any vehicle used in the services of any law enforcement agency.~~

~~3. Definition, vehicles classified as emergency service vehicles include the following:~~

~~(a) Service vehicle for municipal, state, or federal departments.~~

~~(b) Public service vehicle which by nature of their operation cause a vehicular traffic hazard.~~

~~(c) Tow cars.~~

~~4. Drivers of authorized emergency vehicles or police vehicles when responding to an emergency call or when in the pursuit of an acutal or suspected violator of the law or when responding to a fire alarm, may exercise the following privileges:~~

~~(a) Park or stand, irrespective of parking regulations.~~

~~(b) Proceed past red or stop signals or stop signs, but only after slowing down to assure safe operation.~~

~~(c) Exceed speed limits so long as no lives or property is endangered.~~

~~(d) Disregard regulations governing direction of movement or turning.~~

~~The above privileges may not be exercised, once the emergency nature of the call no longer exists. For example, fire equipment returning from a fire or an ambulance returning to its station after discharging a patient is not extended the privilege of disregarding traffic regulations.~~

~~The privilege of disregarding traffic regulations is granted only when the operator of an emergency or police vehicle is making use of audible and visual signals as are required on such vehicles. In no case do the privileges granted operators of emergency or police vehicles release such operator from the duty to drive with due regard to the safety of all highway users, nor do such privileges protect them from the consequences of his reckless disregard for the safety of others.~~

~~5. Equipment, audible and visual signals:~~

~~(a) Audible signal. Every authorized emergency or police vehicle shall be equipped with a siren, exhaust whistle or bell capable of giving an audible signal. Such siren, whistle or bell shall be capable of emitting sound audible under normal conditions from a distance of not less than five hundred (500) feet and of a type approved by the bureau.~~

~~(b) Use of audible signal, sirens, whistles and bells on emergency or police vehicles. Shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which event the driver of the emergency vehicle shall sound the audible signal when reasonably necessary to warn pedestrians and other drivers of the approach thereof.~~

~~(c) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this act be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles, the obligation to yield right of way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.~~

~~(d) Blue, red and amber lights required shall be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two (2) alternately flashing lights of the specified color located at the same level and to the rear two (2) alternately flashing lights of the specified color located at the same level or as an alternative, one (1) rotating light of the~~

~~specified color, mounted as high as is practicable which shall be both visible front and rear. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The use of blue lights as required in subsection (a) of this act shall be restricted to police vehicles as defined in section 32-2102, R.C.M., 1947.~~

6. When a ~~member~~ Highway Patrol officer observes a vehicle equipped with audible or visual signals which would identify such vehicles as an authorized emergency vehicle or police vehicle, and the ~~member is suspicious~~ officer has probable cause to believe that the vehicle does not have ~~bureau~~ authorization for emergency vehicle status, enforcement action should be taken ~~to discourage such practice~~.

3. The rule is proposed to be amended to eliminate unnecessary language and clarify when enforcement action should be taken against unauthorized vehicles. Subsection (1) merely repeats what is contained in section 61-1-119 MCA. Subsection (2) merely repeats what is contained in section 61-1-118 MCA. Subsection (3) merely repeats what is contained in section 61-1-120 MCA. Subsection (4) merely repeats what is contained in section 61-8-107 MCA. Subsections (5)(a) and (b) merely repeat what is contained in section 61-9-401(4) MCA. Subsection (5)(c) merely repeats what is contained in sections 61-9-402(5) MCA. Subsection (5)(d) merely repeats what is contained in section 61-9-402(6) MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

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

mined to be 37,500 persons based on the 375,000 owners of motor vehicles within the state.

7. The authority of the agency to make the proposed amendment is based on section 44-1-103, MCA, and the rule implements sections 61-9-226, 227, 401 and 402 MCA.

By: MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the repeal of rules 23-2.6AVI(1)-S600 and 23-2.6AVI(2)-S610, and 23-2.6A VI(2)-S690, concerning the enforcement of traffic laws by the Highway Patrol	NOTICE OF PROPOSED REPEAL OF RULES (Enforcement of Traffic Laws by the Highway Patrol) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to repeal rules 23-2.6AVI(1)-S600 and 23-2.6AVI(2)-S610, and 23-2.6AVI(2)-S690, concerning the enforcement of traffic laws by the Highway Patrol.

2. The rules proposed to be repealed are on pages 23-64.1N through 23-64.1P of the Administrative Rules of Montana.

3. The agency proposes to repeal rules 23-2.6AVI(1)-S600 and 23-2.6AVI(2)-S610 because they are unnecessary. Rule 23-2.6AVI(1)-S600 contains information about the Department's organization, which is already covered by rule 23-2.1 (1)-0100. Rule 23-2.6AVI(2)-S610 defines terms which are not used in the subchapter. The agency proposes to repeal rule 23-2.6AVI(2)-S690 because it conflicts with section 44-1-1103, MCA, enacted in 1977 by section 1, chapter 295, 1977 Montana Laws.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 61,000 persons based on the 610,000 licensed drivers in Montana.

7. The authority of the agency to repeal the rules is based on section 44-1-103. MCA.

By: MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the repeal of rules 23-2.6B(1)-0600 and 23-2.6B(2)-S610, 23-2.6B(2)-S620, 23-2.6B(2)-S650, and 23-2.6B(2)-S670, concerning the Registrar's Bureau	)))))	NOTICE OF PROPOSED REPEAL OF RULES (Registrar's Bureau) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to repeal rules 23-2.6B(1)-0600, 23-2.6B(2)-S610, 23-2.6B(2)-S620, 23-2.6B(2)-S650, and 23-2.6B(2)-S670, concerning the Registrar's Bureau.

2. The rules proposed to be repealed are on pages 23-64.19 through 23-64.22 and pages 23-64.24 through 23-64.25 of the Administrative Rules of Montana.

3. The agency proposes to repeal the rules because they are unnecessary. Rule 23-2.6B(1)-0600 concerns Departmental organization, which is covered by rule 23-2.1(1)-0100. Rule 23-2.6B(2)-S610 merely repeats what is contained in section 61-3-313 and 61-3-314(1) MCA. Rule 23-2.6B(2)-S620(1)(a) concerns the transition to anniversary date registration which is now completed. (See § 53-158, R.C.M. 1947, not recodified.) Rule 23-2.6B(2)-S620(1)(b) merely repeats what is contained in section 61-3-314(2) and (3) MCA. Rule 23-2.6B(2)-S620(1)(c) merely repeats what is contained in section 61-3-315 MCA. Rule 23-2.6B(2)-S650 also concerns the transition to anniversary date registration which is now completed. Rule 23-2.6B(2)-S670 merely repeats what is contained in sections 61-3-311 and 312 MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, which-

ever is less, of the persons who are directly affected by the proposed repeal; 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 37,500 persons based on the 375,000 licensed drivers in Montana.

7. The authority of the agency to repeal the rules is based on section 61-3-315 MCA.

By: MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the Amendment of rule 23-2.6B(2)-S680 concerning the payment of fees while a vehicle is owned and held for sale	)	NOTICE OF PROPOSED AMENDMENT OF RULE 23-2.6B(2)-S680 (Dealer Lot Exemptions)
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to amend rule 23-2.6B(2)-S680 concerning the payment of fees while a vehicle is owned and held for sale.

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

23-2.6B(2)-S680 DEALER LOT EXEMPTIONS

~~(1) If a motor vehicle, subject to anniversary date registration, is owned and held for sale by a new or used motor vehicle dealer on the 25th day of the anniversary registration period assigned to that particular motor vehicle, the requirement for registration and payment of taxes shall abate until such time as the motor vehicle is sold.~~

~~(2) The purchaser of a motor vehicle for which registration and taxes have abated as set forth in (1) above shall register the motor vehicle within ten (10) days of purchase and shall pay such prorated property taxes as are required by the Department of Revenue.~~ "If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes or the fee in lieu of property taxes abate on such vehicle properly reported with the Department of Revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes or the fee in lieu of tax due and owing on the vehicle." § 61-3-501 MCA.

(2) All other fees, ~~IN ADDITION TO THE PRORATED TAXES PAID, SHALL BE~~ are computed on a yearly basis and are not prorated. ~~The anniversary registration period assigned to such motor vehicle shall remain the same as that period first- assigned to it under anniversary date registration.~~

~~(3) The exemption from registration and payment of fees and taxes as set forth in (1) above shall apply to new or used motor vehicle dealers in Montana only if,~~

~~(a) they are duly registered and licensed as new or used motor vehicle dealers by the State of Montana; and~~

~~(b) the motor vehicle for which the exemption is sought has been duly reported to the Department of Revenue in the manner required by such department.~~

3. The agency proposes to amend this rule to eliminate unnecessary language. The portions of the rule that are eliminated merely paraphrase the statutory language that is added, § 61-3-501(2); or restate what is already contained in other statutes, §§ 61-3-315 and 316.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Assistant Attorney General Dennis J. Dunphy, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature, from a governmental 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 100 persons based on the 1,000 licensed new and used car dealers in Montana.

7. The authority of the agency to make the proposed amendment is based on section 61-3-315 MCA, and the rule implements section 61-3-315 MCA.

By: MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the repeal of rules 23-2.10B(2)-S1030, and 23-2.10B(10)-S10390, concerning the Fire Marshal Bureau	))))))	NOTICE OF PROPOSED REPEAL OF RULES 23-2.10B(2)-S1030 and 23-2.10B(10)-S10390 (Fire Marshal Bureau) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to repeal rules 23-2.10B(2)-S1030 and 23-2.10B(10)-S10390, concerning the Fire Marshal Bureau.

2. The rules proposed to be repealed are on pages 23-76.3 and pages 23-76.14 through 76.15 of the Administrative Rules of Montana.

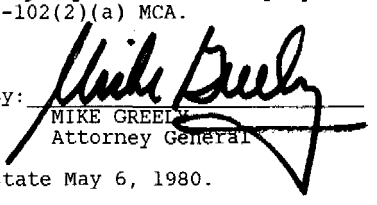
3. The agency proposes to repeal these rules because they are unnecessary. Rule 23-2.10B(2)-S1030 concerns the internal management of the Fire Marshal Bureau. See § 2-4-102(10)(a) MCA. Rule 23-2.10B(10)-S10390 simply paraphrases what is contained in section 50-39-102 MCA and adds a statement concerning the internal management of the Fire Marshal Bureau. See § 2-4-102(10)(a).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Assistant Attorney General Sheri K. Sprigg, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed repeal of rules 23-2.10B(2)-S1030 and 23-2.10B(10)-S10390 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 Assistant Attorney General Sheri K. Sprigg, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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.

7. The authority of the agency to make the proposed repeal is based on section 50-3-102(2)(a) MCA.

By: 
MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the repeal of rule 23-2.10(1)-S1000, providing for the duties of the Public Safety Division	)	NOTICE OF PROPOSED REPEAL OF RULE 23-2.10(1)-S1000 (Introduction) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1980, the Department of Justice proposes to repeal rule 23-2.10(1)-S1000, providing for the duties of the Public Safety Division

2. The rule proposed to be repealed is on page 23-65 of the Administrative Rules of Montana.

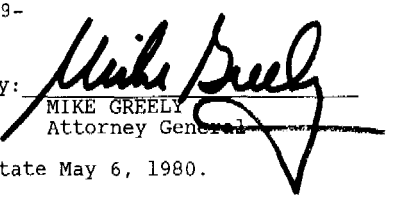
3. The agency proposes to repeal this rule because it concerns the organization of the Department of Justice, which is already covered by rule 23-2.1(1)-0100.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Assistant Attorney General Sheri K. Sprigg, State Capitol, Room 225, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed repeal of rule 23-2.10(1)-S1000 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 Assistant Attorney General Sheri K. Sprigg, State Capitol, Room 225, Helena, Montana 59601, no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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.

7. The authority of the agency to make the proposed repeal is based on section 2-4-201 MCA.

By: 
MIKE GREELY
Attorney General

Certified to the Secretary of State May 6, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32-2.6A(78)-S6330 to clarify horse import requirements	))))	NOTICE OF PROPOSED AMENDMENT TO ARM 32-2.6A(78)-S6330 (Clarifying Horse Import Requirements) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after June 15, 1980, the Board of Livestock proposes to amend ARM 32-2.6A(78)-S6330 only in subsection (19) to clarify import requirements for horses.

2. The subsection of Rule 32-2.6A(78)-S6330 as it is proposed to be amended reads as follows: (no other part of the rule is affected; new material underlined.)

"(19) Horses, mules and asses may enter the state of Montana provided they are moved in conformity with paragraphs (1) through (14) of this rule. Such animals 6 months of age and over coming from areas in which equine infectious anemia (EIA) is endemic may be required to be tested negative for EIA as a condition for obtaining the permit required by paragraph (4)."

3. This rule is proposed for amendment to eliminate confusion among importers from EIA endemic areas. Under other portions of this rule, especially paragraph (8), the department has required EIA testing if equidae from endemic areas, notably the southeastern United States since mid 1978 when the requirement that all equidae be tested for EIA as a condition of entry regardless of point of origin. Unfortunately a number of persons requesting permits from endemic areas were unaware of the requirement and hence had to delay or cancel imports until the necessary testing (which takes at least 3 days) could be done. By this proposal the department hopes to give better notice of the test requirements to importers from endemic areas. In no way is this an attempt to broaden EIA testing beyond that which is presently required.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Department of Livestock, Capitol Station, Helena, MT 59601, no later than June 15, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments, orally or in writing at a public hearing he must make written request to Dr. Glosser at the address shown in paragraph 4 no later than June 15, 1980.

6. The department has determined that this proposal may directly affect more than 250 persons. Therefore, if the department receives written requests from 25 directly

affected persons; 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.

7. The authority to make this amendment is found in section 81-2-102 MCA. The same section is implemented.

ROBERT G. BARTHELMESS
Chairman, Board of
Livestock

BY:
JAMES W. GLOSSER, D.V.M.
Administrator & State
Veterinarian

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

In the matter of the adoption of rules implementing the Governor's emergency powers during electricity shortages	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO ELECTRICITY SHORTAGES

TO: All Interested Persons

1. On June 4, 1980, from 1:30 to 3:30 p.m. at the City-County Library, 101 Adams, Missoula, Montana; on June 5, 1980, from 1:30 to 3:30 p.m. at the Scott Hart Auditorium, Old Highway Building, 303 Roberts, Helena, Montana; and on June 9, 1980, from 1:30 to 3:30 p.m. at the Liberal Arts Building, Library Room 231, Eastern Montana College, Billings, Montana, public hearings will be held to consider the adoption of rules implementing the Governor's emergency powers during electricity shortages. The Governor has designated the Department of Natural Resources and Conservation to conduct the public hearings.

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

3. The proposed rules provide as follows:

RULE I PURPOSES (1) These rules describe procedures implementing the governor's emergency powers under Title 90, Chapter 4, Part 3, MCA in the event of electricity supply shortages.

(2) The purposes of these rules are to:

(a) establish functions to be undertaken by public and private entities during an energy supply alert or emergency;

(b) establish principles to guide actions during an energy supply alert or emergency;

(c) establish minimum activities for utilities and local governments to adopt during an energy supply alert or emergency thus minimizing public confusion by providing an advance indication of those actions most likely to be undertaken;

(d) establish procedures for the monitoring and enforcement of mandatory curtailment activities during an energy supply emergency; and,

(e) establish a procedure for administering appeals, adjustments and exemptions from mandatory curtailment activities during an energy supply emergency.

RULE II DEFINITIONS As used in these rules, the following definitions apply:

(1) "Authority" means the civil authority empowered to implement mandatory curtailment.

(2) "Base period" means the corresponding billing period in the twelve month period ending immediately before implementation of voluntary curtailment.

(3) "Base period energy" means the energy consumed by a customer during a base period.

(4) "Conservation" means the wise and efficient use of electrical energy to eliminate waste.

(5) "Current usage" means the energy consumed by the customer during the most recent billing cycle.

(6) "Curtailment" means the action of reducing the use of electric energy by voluntary and mandatory measures that are in addition to any conservation presently employed. Curtailment measures may affect convenience, comfort, service delivery and employment.

(7) "Customer" means any individual, partnership, corporation, firm, governmental entities, or organization supplied with electric service at one location and one point of delivery. Service furnished to a customer at one location through more than one meter regardless of rate classifications or schedules shall be deemed service to one customer.

(8) "Deficient utility" means a utility which under identified probabilities is expected to have an energy demand greater than its resources.

(9) "Excess energy utility" means a utility which under identified probabilities is expected to have an energy supply greater than its demand.

(10) "Excess usage" means usage greater than base period energy less any curtailment requirement.

(11) "Local government" means any county, city, town, municipal corporation, or other political subdivision of the state.

(12) "Major use customer" means a customer who used more than 75,000 KWH in any billing month in the base period, or who is estimated to use more than 75,000 KWH (without curtailment) in any billing month in the twelve month period after the base period.

(13) "Major resource" means a generating unit with a rated capability of 100 megawatts or greater.

(14) "Media" means the use of radio, television, newspapers, publications and any vehicle of communication used to contact the customer.

(15) "Priority loads" mean loads necessary for the public health, safety, and welfare as enumerated in Rule XVI.

(16) "Region" means the area including service areas of the utilities in the northwest power pool and in the mid-continent area power pool.

(17) "Utility" means any investor-owned utility, joint operating agency, municipal utility, public utility district, or cooperative which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state.

RULE III REGISTRATION Upon promulgation of these rules, the governor shall request the northwest power pool, mid-continent area power pool, water and power resource service, and each utility supplying electricity in Montana to designate an employee

who shall be responsible for supplying information requested under these rules and to supply the name, address, and telephone number of the employee to the administrator of the energy division, department of natural resources and conservation, 32 South Ewing, Helena, Montana 59601.

RULE IV UTILITY CURTAILMENT PLANS (1) Upon promulgation of these rules, utilities supplying electricity in Montana shall be required to submit a curtailment plan modeled on the procedures outlined in these rules within 90 days. Each utility's curtailment plan shall include the following information:

(a) description of the utility's power resources and obligations including peak and average, firm and interruptible loads;

(b) description of the measures the utility will take to curtail its own uses of electricity under stage 1 of a supply alert as specified in Rule X and the estimated energy savings from these measures;

(c) description of the voluntary conservation measures the utility will recommend to its customers under stage 1 and 2 of a supply alert as specified in Rules X and XI;

(d) identification of priority load customers, description of the utility's ability to isolate and maintain service to these customers in the event of stage 3 of an energy emergency as described in Rule XV, and the notification procedure the utility will follow prior to any unavoidable curtailment;

(e) description of the monitoring procedures the utility will follow and the methodology that will be used to estimate energy savings in each stage of a supply alert and emergency;

(f) identification of the utility's major use customers and their average consumption;

(g) identification of the utility's supply obligations by customer class and approximate number of customers in each class; and,

(h) the proposed membership for the utility's adjustment committee as specified in Rule XX(2)(a).

(2) The curtailment plan described in subsection (1) may contain additional provisions to reflect the particular circumstances of the utility.

(3) Each utility's curtailment plan shall be reviewed by the governor or his designee and the energy policy committee established under Section 90-4-303, MCA.

(4) Following acceptance of the curtailment plan, the utility shall keep the plan in reserve for implementation upon declaration of an energy supply alert or emergency.

(5) Utilities may be requested to update their curtailment plans periodically to reflect current or changed conditions.

RULE V INFORMATION Information and data regarding electricity supply shortages which may require curtailment action shall be provided as follows:

(1) For regional hydro-electricity supply shortages, the northwest power pool and the water and power resource service shall provide reservoir inventory information upon which decisions regarding the need for curtailment actions will be based. This information shall be updated as current information becomes available.

(2) For all other electricity supply shortages which may require curtailment action the individual deficient utilities shall provide information regarding their load requirements relative to their power resources on an ongoing basis.

(3) The information provided under this rule shall be submitted to the energy division, department of natural resources and conservation, 32 S. Ewing, Helena, Montana 59601.

RULE VI EVALUATING INFORMATION (1) The energy division shall evaluate the information provided under Rule V and may recommend the voluntary curtailment provisions of an energy supply alert if unacceptably high probabilities of future mandatory curtailment exist.

(a) In evaluating the data provided under Rule V (1) the energy division may recommend:

(i) stage 1 voluntary curtailment actions when there is a 40% probability that stage 1 mandatory curtailment will be imposed in the current or ensuing July-June period, and

(ii) stage 2 voluntary curtailment actions when there is a 60% probability of implementing stage 1 mandatory curtailment in the current or ensuing July-June period.

(b) In evaluating the data provided under Rule V (2), the level of voluntary curtailment recommended will depend on the severity of the shortage.

(2) The energy division may recommend declaration of an energy emergency and imposition of mandatory curtailment measures if unacceptably high probabilities of future inability to meet regional firm energy requirements exists or if an individual utility cannot meet its firm loads.

(a) In evaluating the data provided under Rule V (1) the Energy division may recommend:

(i) stage 1 mandatory curtailment measures when there is a 20% probability of depleting the generating capability of regional reservoirs before the next April 30;

(ii) stage 2 mandatory curtailment measures when there is a 40% probability of depleting the generating capability of regional reservoirs before the next April 30; and

(iii) stage 3 mandatory curtailment provisions when the region's reservoir generating capability is in imminent danger of being depleted and greater curtailment is required than has been achieved or is attainable under stages 1 and 2 of mandatory curtailment.

(b) In evaluating the data provided under Rule V (2) the level of mandatory curtailment recommended will depend on the severity of the shortage.

RULE VII DETERMINING THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY (1) The data provided under Rule V with the recommendations derived under Rule VI shall be used to inform and advise the governor of the need for curtailment activities.

(2) The information provided under subsection (1) shall be made available to the energy policy committee established by Section 90-4-303, MCA, and the committee's advice shall be sought concerning the existence of an energy supply alert or energy emergency situation.

(3) During the process of determining the existence of an energy supply alert or emergency, the governor shall seek the advice of consumers, utilities and state agencies.

(4) The criteria that the governor shall follow in determining whether to declare an energy supply alert or energy emergency are set forth in Sections 90-4-308 and 90-4-310, MCA. Also, the governor shall take cognizance of the language in Section 90-4-302(6) and (7), MCA, which define energy supply alert and emergency.

RULE VIII DECLARATION OF ENERGY SUPPLY ALERT OR ENERGY EMERGENCY Upon determining that the energy supply alert or energy emergency situation exists, the governor shall declare the same to be in existence by executive order. The governor, or his designee, shall notify state agency heads of the declaration and of its requirements by memorandum. The governor, or his designee shall notify local governmental entities in the same manner. Utilities affected by the declaration shall be notified by letter from the governor's office. Also, the governor's office shall issue a press release describing the action taken.

RULE IX ENERGY SUPPLY ALERT PROCEDURES Upon declaring the existence of a electricity supply alert, the governor with the advice of the energy policy committee shall select and implement any combination of the procedures specified in Rules X and XI as he considers necessary or as the circumstances of the electricity supply alert change.

RULE X SUPPLY ALERT STAGE 1 (1) Stage 1 of a supply alert is intended to bring energy supply and demand into balance without eliminating employment or curtailing commercial operations or industrial production.

(2) In stage 1 of a supply alert the governor may issue orders to direct any state or local governmental agency to implement curtailment action or provide information relating to the consumption of energy. The governor may also request utilities and electricity consumers to take voluntary action to alleviate the shortage. In implementing this rule the governor may initiate the following measures:

(a) direct each state agency and local government institution and request each utility to curtail its own uses of electricity;

(b) request each utility to seek voluntary curtailment of use in all large buildings;

(c) request each utility to seek voluntary curtailment of

use by its major use customers;

(d) utilize media pronouncements to request all consumers to curtail electricity use. The utility, in consultation with local government, should support these requests and recommend specific measures to be taken by all customers. Such activities shall not be as stringent as those minimums set forth in Rule XI(2)(d) under stage 2 of a supply alert;

(e) request each deficient utility to replace, by purchase or other means, energy included in its planned resources but not generated due to outages of its major resources; and,

(f) direct the department of health and environmental sciences to examine all restrictions relating to air quality where electricity use could be affected directly or offset by other fuels, and recommend to the governor what action should be taken, if any, in each stage of a supply alert and emergency.

(3) Compliance with the provisions of subsection (2) is at the customers' discretion; utilities and local governments act in advisory and informational capacity and are self-monitoring for their own compliance.

(4) Enforcement of the provisions of subsection (2) is not applicable.

RULE XI SUPPLY ALERT STAGE 2 (1) Stage 2 of a supply alert is a more intensive effort to bring energy supply and demand into balance without eliminating employment or curtailing commercial operations or industrial production.

(2) In stage 2 of a supply alert the governor may direct further implementation of the stage 1 curtailment programs as follows:

(a) continued self-curtailment by utilities and governmental units;

(b) continued requests for voluntary curtailment in large buildings and from major use customers;

(c) urgent requests for voluntary curtailment by all customers;

(d) media publications by utilities and government units of specific measures affecting electric energy consumption which should be undertaken by all customers. These measures include, but are not limited to, the following conservation activities:

(i) 65 degrees F maximum thermostat setting for daytime space heating;

(ii) 55 degrees F maximum thermostat setting for nighttime space heating;

(iii) 85 degrees F maximum thermostat setting for space cooling;

(iv) 105 degrees F maximum thermostat setting for water heating;

(v) line drying of clothes;

(vi) elimination of:

(A) outdoor decorative lighting;

(B) window display, outdoor display, area and sign lighting, except during nighttime hours when the place of business is

open. At all times, such lighting should be reduced to the lowest possible level; and,

(C) parking lot lighting, except during nighttime hours when the place of business is open and then only to the levels required for safety and security; and,

(e) further request deficient utilities to purchase all available electric energy in amounts needed to offset deficits.

(3) Compliance with the provisions of subsection (2) is at the customers' discretion; utility and local government are self-regulating and act in an advisory and information role, but the urgency of the situation should be stressed.

(4) Enforcement of the provisions of subsection (2) is not applicable.

RULE XII ENERGY EMERGENCY PROCEDURES Upon declaring the existence of an electricity emergency, the governor, with the advice of the energy policy committee, shall select and implement any combination of the procedures specified in Rules XIII, XIV and XV as he considers appropriate. The governor may modify any procedure as he considers necessary or as the circumstances of the electricity supply emergency change. Any energy supply alert measures in effect at the time the energy emergency is declared shall remain effective except as ordered by the governor.

RULE XIII ENERGY EMERGENCY STAGE 1 (1) Stage 1 of an energy emergency is intended to have a minimal impact on employment, production and commercial operations.

(2) In stage 1 of an energy emergency the governor may issue orders as described in Section 90-4-310, MCA, to:

(a) implement programs, controls, standards, and priorities for the production, allocation, and consumption of energy;

(b) establish and implement regional programs and agreements for the purpose of coordinating the energy programs and actions of the state with those of the federal government and of other states and localities; and,

(c) implement the following activities:

(i) continued curtailment of electrical use by utilities and government units;

(ii) media publications by utilities and governmental units of specific minimum actions which are now required by all customers:

(A) 65 degrees F maximum thermostat setting for daytime space heating;

(B) 55 degrees F maximum thermostat setting for nighttime space heating;

(C) 85 degrees F minimum thermostat setting for space cooling;

(D) 105 degrees F maximum thermostat setting for water heating;

(E) line drying of clothes;

(F) elimination of:

(aa) outdoor and indoor decorative lighting;

(bb) window display, outdoor display, area and sign

lighting, except during nighttime hours when the place of business is open. At all times, such lighting shall be reduced to the lowest practicable level; and,

(cc) parking lot lighting, except during nighttime hours when the place of business is open, and then only to the levels required for safety and security.

(3) Each utility shall monitor compliance by its customers of the directives of stage 1 of an energy emergency as set forth in Rule XVIII.

(4) Enforcement of the provisions of subsection (2) shall be carried out as set forth in Rule XIX.

RULE XIV ENERGY EMERGENCY STAGE 2 (1) Stage 2 of an energy emergency is intended to protect the public health, safety, and welfare with moderate impact on the economy while bringing supply and demand into balance.

(2) In stage 2 of an energy emergency the governor may issue orders as described in Section 90-4-310, MCA, to:

(a) direct further implementation of programs, controls, standards and priorities for the production, allocation and consumption of energy;

(b) direct further implementation of regional programs and agreements for the purpose of coordinating energy programs in the region; and,

(c) implement the following measures:

(i) request operation of all available state, federal and private generating units with capacity in excess of owner's current need for delivery of such excess power into the regional system to be purchased by deficient utilities;

(ii) request the administrator of the bonneville power administration (bpa) or the administrator of the western area power administration (wapa) or both to prepare plans which insure the return of all outstanding advance energy from direct service industrial customers of bpa or wapa or both prior to the time such energy is needed to meet the region's firm load. The governor may request that no additional sales of advance energy be made while mandatory curtailment is in effect;

(iii) direct utilities to require all customers, except priority load customers, to curtail electric energy consumption by an equal percentage as declared necessary to bring anticipated resources and requirements into balance; and,

(iv) as necessary, restrict operation and energy consumed by retail, commercial, industrial, and governmental operations. A statewide restriction of operating hours may be achieved through a percentage reduction of hours as determined by the governor.

(3) Each utility shall monitor compliance by its customers of the directives of stage 2 of an energy emergency as set forth in Rule XVIII.

(4) Enforcement of the provisions of subsection (2) shall be carried out as set forth in Rule XIX.

(5) Utility adjustment committees and the state appeals board shall operate in stage 2 of an energy emergency following the procedures set forth in Rules XX and XXI.

RULE XV ENERGY EMERGENCY STAGE 3 (1) Actions required in stage 3 of an energy emergency shall emphasize minimizing unemployment and other economic and social dislocations while preserving the generation, transmission and distribution system and bringing loads into balance with available supply.

(2) In stage 3 of an energy emergency the governor may issue orders as described in Section 90-4-310, MCA to:

(a) direct further implementation of programs, controls, standards, and priorities for the production, allocation and consumption of energy;

(b) direct further implementation of regional programs and agreements for the purpose of coordinating energy programs in the region;

(c) curtail usage by fixed percentages of specified large industrial customers if such curtailment is necessary to balance regional loads and resources;

(d) cease operations of specified large industrial customers after advance notice has been given to permit an orderly shutdown of operations;

(e) interrupt the service of all customers on a rotating basis. These service interruptions shall be imposed equally, and to the extent necessary to achieve the required reduction of energy consumption. To the extent possible, public notice shall be given before such procedures are imposed. To the extent practical, priority loads shall not be interrupted;

(f) direct the implementation of other appropriate emergency actions.

(3) Where monitoring is required, each utility shall monitor compliance by its customers of the directives of stage 3 of an energy emergency as set forth in Rule XVIII.

(4) Service interruptions and termination of operations as required under subsection (2) shall be carried out by utilities and government entities as specified by the governor.

(5) Procedures for appeals and adjustments to mandatory action taken under subsection (2) are set forth in Rules XXI and XXII.

RULE XVI PRIORITY LOAD CUSTOMERS - EXEMPTION PROCEDURE (1) Certain customers set out below because of the critical nature of their operations shall be exempt from stage 2 mandatory curtailment once the customer has demonstrated to its utility that all non-essential electrical energy use has been eliminated:

(a) public health and safety functions such as:

(i) hospitals, nursing homes, and other health care facilities;

(ii) police and fire stations; and

(iii) sewage treatment and domestic water treatment installations;

(b) emergency services including essential communication facilities;

(c) governmental operations;

(d) public mass transit operations including, but not limited to, airports;

(e) food production and processing facilities includ-

ing irrigation;

(f) energy supply and storage facilities such as:

(i) refineries;

(ii) oil and gas pipelines;

(iii) coal handling facilities; and,

(iv) wood waste processing and handling facilities associated with energy production; and

(g) mining.

(2) Each utility shall to the extent feasible identify and notify its priority load customers prior to declaration of an energy supply emergency. A priority load customer listing shall be submitted to the energy division.

(3) If stage 2 of an energy emergency is implemented, the utility adjustment committee as outlined in Rule XX (2)(a) shall grant exemption of priority load customers that appear on the approved list, provided the applicant has demonstrated that all non-essential electrical energy use has been eliminated. No priority load exemptions shall be granted unless an application is filed by the applicant and the applicant appears on the approved list. Appeals from the committee decision shall be to the state appeals board as provided for in Rule XIX(2)(b).

RULE XVII NON-PRIORITY LOAD APPELLANTS An aggrieved customer may seek a non-priority load exemption from the provisions of stage 2 of an energy emergency by filing application with the utility adjustment committee as specified in Rule XX (1)(a). The committee shall forward the application to the state appeals board as specified in Rule XX (1)(b) and assist in gathering information and evaluating the applications. The state appeals board shall recommend to the governor either approval, denial, or approval with conditions of the application for non-priority exemption based upon the following criteria:

(1) curtailment would result in unreasonable exposure to health or safety hazards;

(2) curtailment would result in extreme economic hardship relative to the amount of energy saved;

(3) curtailment would be counter-productive for efficient energy use or energy production; and

(4) all non-essential electrical energy use has been eliminated.

RULE XVIII MONITORING Monitoring procedures for each stage of a supply alert and energy emergency shall be carried out as specified in this rule.

(1) In stage 1 of a supply alert:

(a) no customer monitoring procedures are required;

(b) the estimated savings of actions taken under stage 1 of a supply alert shall be determined by each utility and reported to the energy division; and,

(c) the overall impact on energy supply shall be monitored by the northwest power pool (nwpp) or the mid-continent area power pool (mapp) or both if the shortage is regional in nature.

(2) In stage 2 of a supply alert:

(a) monitoring of customer compliance is at the utility's discretion, although each utility should begin assembling data necessary for customer monitoring required in an energy emergency;

(b) the estimated savings of actions taken under stage 1 and 2 of a supply alert shall be determined by each utility and reported to the energy division; and,

(c) the overall impact of action taken under stages 1 and 2 of a supply alert on energy supply shall be monitored by the nwpp or the mapp or both if the shortage is regional in nature.

(3) In stage 1 of an energy emergency:

(a) each utility shall be prepared to monitor customer compliance on the basis of comparing current energy usage with the applicable base period energy and any possible reduction in use. Each utility shall be prepared to monitor major use customers on a monthly basis. Monitoring procedures shall be tested and operational in anticipation of stage 2 of an energy emergency being initiated;

(b) if restriction of lighting for retail, commercial, industrial and governmental establishments is required, local governments shall monitor compliance on a complaint basis. If a local government, based upon a complaint, requests a utility to monitor a customer's energy consumption, the utility shall cooperate. The number of complaints filed with local governments and the apparent degree of compliance shall be reported to the governor or his designee;

(c) the estimated savings of all curtailment actions taken to date shall be determined by each utility and reported to the energy division; and,

(d) the overall impact of action taken under stage 1 of an energy emergency on energy supply shall be monitored by the nwpp or the mapp or both if the shortage is regional in nature.

(4) In stage 2 of an energy emergency:

(a) all customers shall be required to curtail usage by the percentage declared necessary to bring supply and demand into balance. Each utility shall monitor compliance by its customers. Subject to adjustments as set forth in Rule XXI, monitoring shall be on the basis of comparing current energy usage with the applicable base period energy less the required curtailment.

(b) all major use customers shall be individually monitored on a monthly basis; all customers reported in violation of action required under stage 1 of an energy emergency shall be individually monitored. For all other customers, the utility shall monitor compliance with curtailment requirements by an appropriate sampling of customers;

(c) all customers shall be given notice if service interruptions appear imminent. Each utility shall report its estimated monthly savings due to curtailment efforts, and the methodology used in making these estimates, to the energy division; and,

(d) the overall impact of stage 2 emergency actions shall be monitored by the nwpp or the mapp or both if the shortage is

regional in nature.

(5) Monitoring of stage 3 emergency actions shall be carried out by utilities, local governments, the nwpp and the mapp as required by order of the governor.

RULE XIX ENFORCEMENT In an energy supply alert or energy emergency local governments and utilities shall cooperate in implementing the enforcement measures described in this rule as directed by the governor.

(1) In stages 1 and 2 of a supply alert:

(a) self-regulation and compliance is required by government institutions; and,

(b) utility and individual customer compliance with actions requested is at utility and customer discretion.

(2) In stage 1 of an energy emergency:

(a) if a complaint regarding violation of operating hours is filed with local government, and the complaint is substantiated, the local government shall notify the retail, commercial, industrial or governmental establishment of such complaint, and indicate that the supplying utility shall be requested to monitor energy consumption; and,

(b) The utility shall be prepared to monitor and record energy consumption of the customer and notify such customer that if stage 2 emergency actions are instituted, such customer shall be monitored on an individual basis rather than be subject to sampling procedures.

(3) In stage 2 of an energy emergency each utility shall establish a curtailment target as directed by the governor for all customers being monitored. The actual energy consumption of a customer shall be compared with the base period consumption less the required percentage curtailment (target) to determine customer compliance. (To the extent possible prior to an emergency, utilities should inform customers of what their consumption patterns have been and indicate what reductions may be required if emergency curtailment activities are ever instituted. This will promote an awareness of energy use and may promote conservation.) If a customer's actual consumption is above the target, then the customer may be penalized.

(4) During the first month of monitoring under stage 2 of an energy emergency, the utility shall notify all customers of surcharge rates for excess consumption and provide a description of the appeals procedure outlined in Rule XX. An appeal may result in an adjustment to the customer's base period, in which case no surcharge shall be assessed for the month in question. If no adjustments are merited and energy consumption exceeds the target, imposition of excess energy surcharge rates shall be directed by the governor.

(5) During an energy supply emergency, the rate setting procedures for any surcharge shall be coordinated and accelerated by the public service commission. The following surcharge provisions for excess usage are recommended:

(a) apply surcharges to entire bill:

(i) first month of excess use, 25% surcharge;
(ii) second consecutive month of excess use after first fined month, 50% surcharge;
(iii) third consecutive month of excess use after first fined month, 100% surcharge; and
(iv) after the fourth consecutive month of excess use after first fined month, service termination for the period required to generate the target savings required in the previous five months of noncompliance.

(b) apply surcharge only to excess use of the following percent basis:

Percent of Excess Use	Surcharge on Excess per KWH
0 - 10%	$0.04
11 - 25%	$0.045
26 - 50%	$0.05
51 - 100%	$0.06

RULE XX APPEALS An appeals process shall be established to resolve disputes over the application of a rule or order to specific individuals or business entities. The affected entities may have grounds for disputing the application of the rule or order to their specific situation. The grounds may be that the order is viewed as unlawful, may not apply because of special circumstances, or may cause an undesirable hardship. An appeals procedure is only required when mandatory actions are directed by the governor.

(1) Utility adjustment committees and a state appeals board shall be established and shall have certain responsibilities as specified in this rule.

(a) Each utility shall establish an adjustment committee. The utility shall have an at-large county and municipal seat on the committee to be filled by officials from the appellant's jurisdiction. The utility adjustment committee shall:

(i) receive and review all applications for exemption or adjustment;

(ii) act on matters relating to priority load customers; and,

(iii) act on adjustments to base period energy of non-major use customers.

(b) A state appeals board shall be established consisting of 12 members: the administrator of the energy division or his designee who shall serve as chairman, the chairman of the psc or his designee, and one representative appointed by the energy policy committee from each of the following groups- rural electric cooperatives, investor-owned utilities, county and municipal government, commercial and industrial users, and four citizens at large. The state appeals board shall:

(i) hear appeals from utility adjustment committee actions;

(ii) make recommendations to the governor on adjustments to base period energy of major use customers;

(iii) make recommendations to the governor on non-priority load appellants;

(iv) act on adjustments to scheduling of curtailment by non-major use customers; and,

(v) make recommendations to the governor on adjustments to scheduling of curtailment by major use customers.

(2) The appeals process shall be as follows:

(a) Any person who desires to contest the operation of a rule or order with respect to his or her individual situation should make application for an exemption or adjustment to the utility adjustment committee. The utility adjustment committee shall be empowered to grant certain exemptions and adjustments and will screen all applications. As required, the utility adjustment committee shall forward reports to the state appeals board which shall in turn make recommendations for the governor on certain exemptions and adjustments.

(b) Each appeal from an emergency action shall state:

(i) the action appealed from, including the entity taking the action, and the nature and date of the appeal;

(ii) the reason for the appeal, including the reason why the appellant believes the order to be unjust or unwise;

(iii) the nature of the relief sought, whether exemption, adjustment or some other relief; and

(iv) a demand for a hearing, or all appeal documents if no oral hearing is requested.

(c) Hearing procedures shall be established in accordance with the Montana Administrative Procedures Act.

RULE XXI ADJUSTMENTS Applications for adjustments to base period energy or for scheduling curtailments shall be filed with the utility adjustment committee.

(1) Adjustments to base period energy shall be based on the following criteria:

(a) for major use customers:

(i) suggested adjustments to base period energy of existing major use customers shall be made by the utility, taking into account installed increases or decreases in normal load;

(ii) customers becoming major use customers in the period after the base energy period by reason of increased usage shall have their base period energy calculated by the utility on the basis of the projected usage before curtailment; and

(iii) the state appeals board shall grant, deny or modify base period energy adjustments as suggested by the utility and requested by the applicant major use customer.

(b) for non-major use customers adjustments to base period energy shall be made by the utility adjustment committee. A customer requesting such adjustment shall supply the utility with a description of where additional energy requirements have occurred and the reason why such additional energy consumption cannot be avoided during the curtailment period.

(2) Customer-owned generating facilities may be used to meet the customer's energy requirements during periods of mandatory curtailment, provided that the energy provided by the utility to such customer is reduced by not less than the percentage curtailment required.

(3) Adjustments to scheduling of curtailment are provided for as follows:

(a) A customer may schedule energy curtailment in any period and in any manner to minimize economic costs, hardships or inconvenience, provided that the required energy curtailment, if determined on other than a daily basis, shall be assured within each billing period. However, if a utility can shift energy saved in a current period within the projected shortage period, then a customer of such utility may schedule such future period curtailment in the future period. Any such scheduling shift shall be approved by the state appeals board.

(b) Major use customers who would otherwise be subject to curtailment at more than one location in the region, may schedule curtailment among multiple locations in the region in any manner **which assures the required curtailment level will be achieved.** No such scheduling among locations may go into effect until the user provides to the utility and the state appeals board, in writing:

(i) an outline of the proposed curtailment schedule;

(ii) a statement of the manner in which the total curtailment level will be calculated and assured;

(iii) a description of the effect of the schedule on employees and customers; and

(iv) if the proposed schedule also shifts the energy load from one utility to another, each affected utility must consent to the proposed schedule.

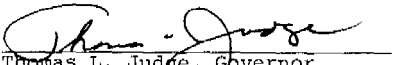
(4) The state appeals board shall submit its recommendations derived under subsection (1) and (3) regarding adjustments to base period energy and for scheduling of curtailments to the governor for determination.

4. The governor is proposing these rules to implement the governor's emergency powers during electricity shortages. The governor has chosen to adopt these rules through the rule-making procedures of the Montana Administrative Procedures Act (MAPA), notwithstanding the exemption from the provisions of MAPA granted to the governor in Title 2, Chapter 4, MCA. The purpose of following the rule-making provisions of MAPA is to provide the maximum opportunity for public input into the consideration of the proposed rules.

5. Interested persons may present their data, views, or arguments, either orally or in writing at the hearings. Written data, views or arguments may also be submitted to William Gosnell, Administrator, Energy Division, Department of Natural Resources and Conservation, Helena, Montana 59601, no later than June 18, 1980.

6. Robert N. Lane has been designated to preside over and conduct the hearing.

7. The governor may adopt the proposed rules under the authority granted by Section 90-4-316, MCA, and the rules implement Title 90, Chapter 4, Part 3, MCA.



Thomas L. Judge, Governor
State of Montana
State Capitol
Helena, MT 59601

Certified to the Secretary of State May 5, 1980.

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

In the matter of the adoption of rules implementing the Governor's emergency powers during petroleum fuels shortages	)))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO PETROLEUM SHORTAGES

TO: All Interested Persons

1. On June 4, 1980, from 7:00 to 9:00 p.m. at the City-County Library, 101 Adams, Missoula, Montana; on June 5, 1980, from 7:00 to 9:00 p.m. at the Scott Hart Auditorium, Old Highway Building, 303 Roberts, Helena, Montana; and on June 9, 1980, from 7:00 to 9:00 at the Liberal Arts Building, Library Room 231, Eastern Montana College, Billings, Montana, public hearings will be held to consider the adoption of rules implementing the Governor's emergency powers during petroleum fuels shortages. The Governor has designated the Department of Natural Resources and Conservation to conduct the hearings.

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

3. The proposed rules provide as follows:

RULE I PURPOSE These rules describe procedures implementing the Governor's emergency powers under Title 90, Chapter 4, Part 3, MCA, in case of shortages of motor gasoline, middle distillates or aviation gasoline. These rules contain guidelines that the Governor shall follow in dealing with petroleum fuel shortages.

RULE II DEFINITIONS As used in these rules, the following definitions apply:

(1) "Aviation gasoline" means all of the various grades of aviation gasoline as defined in American Society for Testing and Materials (ASTM) D 910-70.

(2) "Middle distillate" means any derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a fifty percent boiling point in the ASTM D86 standard distillation test falling between 371 degrees and 700 degrees F. "Middle distillate" does not include naptha-based jet fuel, heavy fuel oils grades #4, 5, and 6, intermediate fuel oils which are blends containing #6 oil, and all specialty items such as solvents, lubricants, waxes, and process oil.

(3) "Motor gasoline" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140 degrees to 390 degrees F. and whose source is distillation of petroleum and cracking, polymerization, and other chemical reactions by which naturally occurring petroleum hydrocarbons are converted to those that have superior fuel properties.

(4) "Person" is defined in 90-4-302, MCA.

(5) "Retailer" means any individual, firm, partnership, association, trustee or corporation, owning, leasing, renting, managing or operating a service station, truck stop, or other facility offering for sale, selling, or otherwise dispensing petroleum products to the general public.

(6) "Wholesale purchaser - reseller" means any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) product and resells or otherwise transfers it to other purchasers without substantially changing its form.

RULE III NOTIFICATION OF THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY Upon determining that an energy supply alert or energy emergency situation exists, the Governor shall declare the same to be in existence by Executive Order. The Governor shall notify state agency heads and local government entities of the declaration and of its requirements by memorandum. The Governor or his designee shall notify refiners and distributors affected by the declaration by letter. Also, the Governor or his designee shall issue a press release describing the action taken.

RULE IV ENERGY SUPPLY ALERT PROCEDURES - MOTOR GASOLINE Upon declaring the existence of a motor gasoline supply alert, the Governor, with the advice of the energy policy committee established under Section 90-4-303, MCA, shall select and implement any combination of the procedures described in Rules V and VI he considers appropriate. The Governor may modify any procedure as he considers necessary or as the circumstances of the motor gasoline supply alert require.

RULE V PUBLIC SECTOR SUPPLY ALERT PROCEDURES The Governor may implement the following procedures that apply to the public sector in a motor gasoline supply alert:

(1) State agencies and local governments shall reduce miles driven each month by employees on governmental business, in comparison with the corresponding month of the previous year, by a percentage as determined by the Governor in an Executive Order. The Governor may designate a more appropriate comparison period or may adjust comparison period mileage in appropriate cases as he sees fit.

(2) Each agency and local government shall report monthly mileage figures.

(3) Heads of state agencies and local government shall issue written reprimands to employees found guilty (includes forfeiting bonds) of exceeding the statewide 55 mph highway speed limit while on state business and shall discharge employees found guilty of three such offenses.

(4) Administrators of state and local governmental motor pools shall institute and operate a system for ensuring car pooling whenever possible.

(5) Heads of state agencies and local governments shall encourage employees to walk or bicycle to and from work by providing incentives for their doing so.

(6) State agencies with employees in Helena shall stagger

the work hours of their Helena employees to reduce traffic congestion. Schedules shall be arranged so that approximately one-third of each Helena office's employees will be on each of the following shifts:

(a) 7 a.m. to 11 a.m. -- 12 p.m. to 4 p.m.

(b) 7:30 a.m. to 11:30 a.m. -- 12:30 p.m. to 4:30 p.m.

(c) 8 a.m. to 12 p.m. -- 1 p.m. to 5 p.m.

(7) Parking at all state, school, city, and university system parking lots shall be restricted to:

(a) give preference to carpools;

(b) give preference to vanpools;

(c) attempt to achieve a 50% reduction in commuter use of vehicles.

(8) State agencies and local governments shall schedule all meetings, hearings, and other proceedings in the location and at the time that will minimize passenger car travel.

(9) State and local government employees shall substitute telephone and mail communication for travel whenever possible.

(10) When travel is essential, state and local government employees shall use public transportation whenever feasible.

RULE VI PRIVATE SECTOR SUPPLY ALERT PROCEDURES

The Governor may implement the following procedures that apply to the private sector in a supply alert:

(1) The Governor may request the public to observe the following conservation guidelines:

(a) keep passenger car travel to a minimum;

(b) when travel is necessary, use public transportation whenever possible;

(c) carpool whenever possible;

(d) keep vehicles properly maintained;

(e) practice fuel efficient driving habits;

(f) walk or bicycle whenever possible;

(g) plan ahead to avoid unnecessary automobile trips; and

(h) in the case of businesses, adopt walk and bicycle incentives for employees and adopt staggered work hours for employees.

(2) The Governor may request companies with vehicle fleets to develop and monitor guidelines designed to reduce fuel consumption by 10% in the use of such vehicles.

(3) The Governor may request employers to implement self-designed conservation programs for their employees aimed at reducing commuter use of autos by 10%.

(4) The Governor may request gasoline retailers to implement the following measures:

(a) post signs legible from off the premises stating business days and hours of operation for dispensing gasoline;

(b) manage their monthly fuel allocation so that it will last through the month;

(c) indicate, using flags of at least 18 inches square, their gasoline supply and service situation by the following

flag system:

(i) a green flag meaning gasoline is available;

(ii) a yellow flag meaning the station is out of gasoline, but automobile servicing is available;

(iii) a red flag meaning the station is closed; and

(iv) a sign legible from off the premises indicating which grades are not available, if a retailer is out of any grade of gasoline, but is still dispensing other grades;

(d) place a sign indicating the last vehicle which will be served in a gasoline line before the retailer closes for the day.

RULE VII ENERGY SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES Upon declaring the existence of a middle distillate fuel supply alert, the Governor shall select and implement any combination of the procedures described in Rules VIII and IX as he considers appropriate. The Governor may modify any procedure as he considers necessary or as the circumstances of the middle distillate fuel supply alert change.

RULE VIII PUBLIC SECTOR SUPPLY ALERT PROCEDURES The Governor may implement the following procedures that apply to the public sector in a middle distillate supply alert:

(1) State agencies and local governments shall reduce their use of middle distillates each month, in comparison with the corresponding month of the previous year, by a percentage as determined by the Governor in an Executive Order. The Governor may designate a more appropriate comparison period or may adjust comparison period usage in appropriate cases as he sees fit.

(2) Each agency and local government shall report monthly middle distillate use figures as directed by the Governor or his designee. Usage for the corresponding month of the previous year (comparison period usage) shall be reported at the same time.

(3) The Department of Health and Environmental Sciences shall examine all restrictions relating to air quality where middle distillate use could be affected directly or offset by other fuels and recommend action to the Governor.

(4) The Public Service Commission shall examine all restrictions relating to fuel hauling and recommend action to the Governor.

(5) Each state agency and institution which has more than 10,000 gallon storage capability for middle distillates shall report reserves.

(6) The Governor may request the U.S. Department of Energy to redirect supplies of middle distillate to Montana.

RULE IX PRIVATE SECTOR SUPPLY ALERT PROCEDURES The Governor may implement the following procedures which apply to the private sector in a middle distillate supply alert:

(1) The Governor may request refineries to maximize middle

distillate production.

(2) The Governor may request all non-essential commercial and industrial middle distillate users to curtail a percentage of monthly consumption to be specified by the Governor at the time the supply alert is called. The Governor may request wholesale purchaser-resellers to reduce deliveries accordingly.

(3) The Governor may request all commercial and industrial users of middle distillates to switch to other fuels where feasible and when energy saving will be achieved.

(4) The Governor may encourage wholesale purchaser-resellers and retailers of middle distillates to manage their monthly allocations to make them last through the month.

(5) The Governor may request residential energy consumers to voluntarily reduce thermostat settings to 65 degrees F during the day and 55 degrees F at night, except in cases when such action might jeopardize health or safety.

(6) The Governor may request wholesale purchaser-resellers to not deliver middle distillate to large users (those with more than 1000 gallon storage tanks) unless they have less than one week's inventory.

RULE X ENERGY SUPPLY ALERT PROCEDURES - AVIATION GASOLINE

Upon declaring the existence of an aviation gasoline supply alert, the Governor, with the advice of the energy policy committee, may request aviation gasoline wholesale purchaser-resellers and retailers to prioritize the sale of fuel according to the following categories which may be expanded if the situation warrants a higher degree of specificity:

(1) emergency services,

(2) commercial operations,

(3) all other operations (including flight training).

RULE XI ENERGY EMERGENCY PROCEDURES - MOTOR GASOLINE

Upon declaring the existence of a motor gasoline emergency, the Governor, with the advice of the energy policy committee, shall select and implement any combination of the procedures described in Rules XII and XIII as he considers appropriate. The Governor may modify any procedure as he considers necessary or as the circumstances of the motor gasoline emergency change. Any energy supply alert measures in effect at the time the energy emergency is declared shall remain effective except as ordered by the Governor.

RULE XII PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES

The Governor may implement the following procedures which apply to the public sector in a motor gasoline energy emergency:

(1) All state agencies shall reduce motor vehicle mileage driven by private and state-owned vehicles for state business up to 50 percent as compared to the same month of the previous year.

(2) The work week of state employees shall change to a four-day work week of 10 hour days. The Governor may request employees to observe one no driving day on the days off.

(3) Parking at all state, school, city, and university

system parking lots shall be restricted at least 50%. Parking preference shall be given to carpools and vanpools.

RULE XIII PRIVATE SECTOR EMERGENCY PROCEDURES The Governor may implement the following procedures which apply to the private sector in a motor gasoline energy emergency:

(1) The Governor may request implementation of company plans to reduce gasoline consumed in company travel by 25%.

(2) Gasoline retailers shall comply with the following rules:

(a) Each gasoline retailer shall clearly post by signs legible from off the premises stating the days and hours gasoline will be dispensed to the general public, including, but not limited to, which weekend day and time the station will be open.

(b) Each gasoline retailer shall open at the hour posted pursuant to subsection (2)(a) on each Saturday of the month if the number of his station's street address is odd or on each Sunday of the month if the number of his station's street address is even and shall dispense gasoline to the public until he has sold at least one-sixth of his weekly gasoline allocation.

(c) Subsection (2)(b) shall not apply to any gasoline retailer who:

(i) is out of gasoline because of late delivery;

(ii) as a normal business practice prior to February 1, 1979 remained closed on Saturday and Sunday; or

(iii) had a gasoline sales volume of less than 750,000 gallons in 1978.

(d) A retailer with an odd numbered street address station location may for bonafide religious reasons open on Sunday instead of Saturday, and a retailer with an even numbered street address station location may for bonafide religious reasons open on Saturday instead of Sunday.

(e) In order to gain an exemption from all or part of subsection (2)(b) because of either normal business practice or bonafide religious reasons, the retailer shall first file with the administrator of the Energy Division of the Department of Natural Resources and Conservation a statement setting forth the basis for the exemption.

(3) An odd-even day gasoline dispensing system as described in Rule XIV shall be established.

(4) At the retail level, no more than two gallons of gasoline may be dispensed into a separate container, and no more than one separate container may be used in a single transaction. This does not apply to containers used for a commercial purpose such as containers used to fuel commercial landscaping and gardening equipment, construction equipment, or electrical generators.

(5) No retail gasoline sales may be made for vehicles having four cylinders in an amount less than $5.00 and in an amount less than $7.00 for vehicles having more than four cylinders. Minimums may be adjusted upward if considered necessary. This sale does not apply to container sales or to sales for vehicles with gas tank capacity of less than 8 gallons, for motorcycles,

mopeds, or scooters, or for emergency vehicles.

(6) Unless otherwise specified, the provisions of subsections (2) through (5) apply to vehicle operators, employees of gasoline retailers, and gasoline retailers. A violation of these regulations may result in a criminal charge under Section 90-4-319, MCA. Local authorities shall be responsible for monitoring and enforcing these regulations. Any violation should be reported to local law enforcement officials.

RULE XIV ODD-EVEN DAY GASOLINE DISPENSING SYSTEM

The procedure for dispensing gasoline on odd and even numbered days shall be as follows:

(1) At the retail level, gasoline may be dispensed on odd numbered days of the month only to vehicles with odd license plate numbers and on even numbered days only to vehicles with even license plate numbers, except as provided in subsection (2). For purposes of this rule, personalized license plates shall be considered to be plates with an odd number and vehicles without permanent registration shall be considered to have plates with an even number.

(2) The following vehicles may be supplied with gasoline on any day:

(a) vehicles with out-of-state license plates;

(b) vehicles driven by persons whose residences as shown on their driver's licenses are more than 100 miles distant from the place of gasoline purchase;

(c) public transportation vehicles, including, but not limited to, school buses, taxis, buses, and vehicles rented for less than 30 days;

(d) U.S. Postal Service vehicles;

(e) emergency vehicles, including:

(i) any publicly-owned ambulance, lifeguard or life-saving equipment, or any privately owned ambulance used to respond to emergency calls;

(ii) any publicly-owned vehicle operated by the following persons, agencies, or organizations:

(A) any fire department vehicles of any public agency or municipality;

(B) any police department, including those of the Montana State University System, sheriff's department (including search and rescue vehicles on official business), or the Montana Highway Patrol; and

(C) peace officer personnel of the Department of Institutions;

(iii) any vehicle owned by the state or any bridge and highway district and equipped and used either for fighting fires, towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment or emergency maintenance;

(iv) any state-owned vehicle used in responding to emergency fire, rescue, or communications calls and operated by any public agency (including disaster and emergency services) or industrial fire department;

(v) any state-owned vehicle operated by a Fish, Wildlife and Park warden;

(vi) other emergency repair and service vehicles, whether public or private, used for functions directly related to the protection of life, property or public health;

(vii) vehicles operated in an emergency situation in the judgment of the gasoline retailer;

(viii) doctors' and nurses' vehicles when used for professional purposes;

(f) vehicles operated by handicapped persons who have no practical alternative to auto transportation;

(g) motorcycles, mopeds, and similar two-wheel vehicles; and

(h) vehicles being used for commercial purposes according to the following identifying criteria:

(i) vehicles which by their design, size, or recognizable company identification are obviously being used for commercial purposes;

(ii) vehicles which are owned and operated as part of a company vehicle fleet as may be determined by company marking or the vehicle's registration;

(iii) individually-owned vehicles used for commercial purposes, as evidenced by the presence of a specialized equipment, instruments, tools of the trade or profession, supplies or other material which cannot be readily carried on by the vehicle operator on public transportation, or any other evidence that it is necessary to use the vehicle for commercial purposes.

(3) In months which have 31 days, gasoline may be dispensed to any vehicle on the 31st day of the month, or in a leap year, gasoline may be dispensed to any vehicle on the 29th day of February.

(4) Operators of vehicles exempt from this rule under subsection (2) are urged to purchase gasoline only on appropriate alternate days whenever possible.

RULE XV ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES

Upon declaring the existence of a middle distillate energy emergency, the Governor, with the advice of the energy policy committee, shall select and implement any combination of the procedures described in Rule XVI and XVII as he considers appropriate. The Governor may modify any procedure as he considers necessary or as the circumstances of the middle distillate emergency change. Any energy supply alert measures in effect at the time the energy emergency is declared shall remain effective except as ordered by the Governor.

RULE XVI PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES

The Governor may implement the following procedures which apply to the public sector in a middle distillate energy emergency:

(1) Thermostats on space heating systems whether in public or private buildings including all residences may not be set higher than 65 degrees F for daytime space heating and may not be set higher than 55 degrees F for nighttime space heating.

(2) All schools using middle distillates for heating fuel will close.

(3) The Governor may request the Department of Military Affairs to reduce middle distillate consumption to an absolute minimal level and to make product available when and where possible.

(4) The Governor may curtail or suspend those procedures or requirements that result in consumption of middle distillates and that are not considered to be an essential use for purposes of the public health and safety of the citizenry of Montana.

RULE XVII PRIVATE SECTOR ENERGY EMERGENCY PROCEDURES

The Governor may implement the following procedures which apply to the private sector in a middle distillate energy emergency:

(1) Retailers of diesel fuel shall restrict sales to a maximum of 75 gallons per customer per purchase.

(2) Motor carriers which carry freight on regularly scheduled routes shall to the extent possible, refrain from making runs with less than full loads.

(3) Trucks will be requested to carry return loads.

(4) Operating hours of commercial establishments shall be restricted.

(5) Any practice which would delay sale, distribution, or delivery of middle distillates in order to allow the seller to obtain a higher price is prohibited.

RULE XVIII ENERGY EMERGENCY PROCEDURES - AVIATION FUEL

Upon declaring the existence of an aviation gasoline energy emergency, the Governor, with the advice of the energy policy committee, shall request aviation gasoline wholesale purchaser-resellers, and retailers to prioritize the sale of aviation gasoline according to the following categories which may be expanded if the situation warrants a higher degree of specificity:

(1) emergency services;

(2) commercial operations;

(3) all other operations (including flight training).

4. The Governor is proposing these rules to implement the Governor's emergency powers during petroleum fuel shortages. The Governor has chosen to adopt these rules through the rule-making procedures of the Montana Administrative Procedures Act (MAPA), notwithstanding the exemption from the provisions of MAPA to the Governor in Title 2, Chapter 4, MCA. The purpose of following the rule-making provisions of MAPA is to provide the maximum opportunity for public input into the consideration of the proposed rules.

5. Interested persons may present their data, views, or arguments, either orally or in writing at the hearings. Written data, views or arguments may also be submitted to William Gosnell, Administrator, Energy Division, Department of Natural Resources and Conservation, Helena, Montana 59601 no later than June 18, 1980.

6. Robert N. Lane has been designated to preside over and conduct the hearing.

7. The Governor may adopt the proposed rules under the authority granted by Section 90-4-316, MCA, and the rules implement Title 90, Chapter 4, Part 3, MCA.

Thomas L. Judge, Governor
State of Montana
State Capitol
Helena, MT 59601

Certified to the Secretary of State May 5 1980.

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION OF THE
STATE OF MONTANA

In the matter of the repeal of rules 36-2.14N(1)-S1400 through 36-2.14N(1)-S14220 relating to renewable resource development loans to ranchers and farmers	NOTICE OF PROPOSED REPEAL OF RULES 36-2.14N(1)-S1400 THROUGH 36-2.14N(1)-S1422 RELATING TO RENEWABLE RESOURCE DEVELOPMENT LOANS TO RANCHERS AND FARMERS

TO: ALL INTERESTED PERSONS

1. On June 26, 1980, the Department of Natural Resources and Conservation proposes to repeal rules 36-2.14N(1)-S1400 through 36-2.14N(1)-S14220 relating to renewable resource development loans to ranchers and farmers.

2. The rules proposed to be repealed are on pages 36-30.25A through 36-30.25K of the Administrative Rules of Montana.

3. The Department proposes to repeal these rules because the rules implement Sections 90-2-105 and 90-2-106, MCA, that were repealed by Section 5, Chapter 51, Laws of 1979. Therefore the rules are no longer valid, Section 2-4-305, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Robert Lane, Legal Counsel, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, no later than June 12, 1980.

5. If a person who is directly affected by the proposed repeal of rules 36-2.14N(1)-S1400 through 36-2.14N(1)-S14220 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Robert Lane at the address given in paragraph 4 no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 on the number of farmers and ranchers in Montana.

7. The authority of the Department to make the rules is given by Section 90-2-108, MCA, and the rules implemented Sections 90-2-105 and 90-2-106, MCA, repealed by Section 5, Chapter 51, Laws of 1979.

Ted J. Doney, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State 5/6/80 .

9-5/15/80 MAR Notice No. 36-17

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION OF THE
STATE OF MONTANA

In the matter of the repeal of rule 36-2.6(1)-S600 that describes Grass Conservation and Soil Conservation Bureau Rules	))))	NOTICE OF PROPOSED REPEAL OF RULE 36-2.6(1)-S600 RELATING TO GRASS CONSERVATION AND SOIL CONSERVATION BUREAU RULES NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On June 26, 1980, the Department of Natural Resources and Conservation proposes to repeal rule 36-2.6(1)-S600 relating to Grass Conservation and Soil Conservation Bureau Rules.

2. The rule proposed to be repealed is on page 36-13 of the Administrative Rules of Montana.

3. The Department proposes to repeal this rule because the rule states only that the Grass Conservation Bureau does not have any rules to administer and that the Soil Conservation Bureau rules are found in a different chapter. The Department feels the rule does not have any substantive effect and does not serve any useful purpose.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Robert Lane, Legal Counsel, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, no later than June 12, 1980.

5. The authority of the Department to make the proposed rule is based on Section 2-4-201, MCA, and the rule implements Section 2-4-201, MCA.

Ted J. Doney, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State 5/6/80.

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION OF THE
STATE OF MONTANA

In the matter of the repeal of rules 36-2.14(1)-S1400 and 36-2.14(1)-S1410 designating a controlled groundwater area	NOTICE OF PROPOSED REPEAL OF RULES 36-2.14(1)-S1400 AND 36-2.14(1)-S1410 RELATING TO THE DESIGNATION OF A CONTROLLED GROUNDWATER AREA NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On June 26, 1980, the Department of Natural Resources and Conservation proposes to repeal rules 36-2.14(1)-S1400 and 36-2.14(1)-S1410 relating to the designation of a controlled groundwater area.

2. The rules proposed to be repealed are on pages 36-29 and 36-30 of the Administrative Rules of Montana (ARM).

3. The Department proposes to remove these rules from the ARM because the Department has determined the rules are not rules as defined by the Montana Administrative Procedure Act (MAPA) in Section 2-4-103(10) and are not subject to the rule-making provisions of MAPA. The rules are an order issued pursuant to Title 85, Chapter 2, part 5, and the contested case provisionsof MAPA. The removal of these rules because they do not properly belong in the Administrative Rules of Montana does not in any way affect the validity of the order establishing a controlled groundwater area known as the Hell Creek Fox Hills Aquifer.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Robert Lane, Legal Counsel, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, no later than June 12, 1980.

5. If a person who is directly affected by the proposed repeal of rules 36-2.14(1)-S1400 and 36-2.14(1)-S1410 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Robert Lane at the address given in paragraph 4 no later than June 12, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 on the number of people residing within the Hell Creek Fox Hills Aquifer.

7. The authority of the Department to make the order is

given by Section 85-2-507, MCA, and the order implements Section 85-2-507, MCA.

Ted J. Doney, Director
Department of Natural Resources
and Conservation

Certified to the Secretary of State 5/6/80.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ARCHITECTS

IN THE MATTER of the Proposed Amendments of ARM 40-3.10(6)-S1040 subsection (1)(a) concerning reciprocity rules; ARM 40-3.10(6)-S10010 subsection (2) concerning reciprocity; and ARM 40-3.10(6)-S10040 subsection (1)(a) concerning qualifications required of architects registered outside of Montana.	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.10(6)-S1040 RULES AND REGULATIONS - RECIPROCITY; ARM 40-3.10(6)-S10010 RECIPROCITY; and ARM 40-3.10(6)-S10040 QUALIFICATIONS REQUIRED OF ARCHITECTS REGISTERED OUTSIDE MONTANA NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1980 the Board of Architects proposes to amend subsection (1)(a) of rule ARM 40-3.10(6)-S1040 concerning reciprocity rules; subsection (2) of rule ARM 40-3.10(6)-S10010 concerning reciprocity; and subsection (1)(a) of rule 40-3.10(6)-S10040 concerning qualifications required of architects registered outside of Montana.

2. The proposed amendment of ARM 40-3.10(6)-S1040 amends subsection (1)(a) and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.10(6)-S1040 RULES AND REGULATIONS - RECIPROCITY

(1)....

(a) The address of the office of the N.C.A.R.B. is:

N.C.A.R. Boards
~~2100 M Street N.W.~~ 1175 New York Avenue Northwest
Suite ~~706~~ 700
Washington, D.C. 2003~~7~~06 "

3. The board is proposing the change as the NCARB office has had an address change.

4. The proposed amendment of ARM 40-3.10(6)-S10010 will amend subsection (2) and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.10(6)-S10010 RECIPROCITY (1)...

(2) All applicants for registration by reciprocity who were licensed in their respective jurisdiction prior to 1964 shall submit evidence of having successfully completed an ~~A.I.A. or~~ NCARB approved seminar on seismic forces."

5. The board is proposing the amendment as the A.I.A. no longer offers a seminar on seismic forces.

6. The proposed amendment of rule ARM 40-3.10(6)-S10040 subsection (1)(a) will read as follows: (new matter underlined, deleted matter interlined)

"40-3.10(6)-S10040 QUALIFICATIONS REQUIRED OF ARCHITECTS REGISTERED OUTSIDE OF MONTANA (1)....

(a) The associated architect (Montana ~~registrant~~ resident licensee) must acknowledge this association

in writing to the Montana Board of Architects, and stipulate in this document that he does so with full understanding of his responsibilities for the soundness and accuracy of all contract documents, as related to all the Rules and Regulations of the Practice of Architecture in Montana, all codes and ordinances pertaining to the design and construction of this commission, and the compliance of the contract documents with all requirements, to insure the occupants relative to their health and safety.

(2)....."

7. The board is proposing the amendment so that subsections (1), (2) and (3) are consistent.

8. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Architects, Lalonde Building, Helena, Montana 59601 no later than June 12, 1980.

9. 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 Architects, Lalonde Building, Helena, Montana 59601 no later than June 12, 1980.

10. 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 amendment; 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 30 based on the 300 applicants by reciprocity and those registered outside of Montana.

11. The authority of the board to make the proposed amendments is based on section 37-65-305 MCA and implements the same.

BOARD OF ARCHITECTS
MARTIN W. CRENNEN, A.I.A.
PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 6, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHARMACISTS

IN THE MATTER of the Proposed Amendment of ARM 40-3.78(6)-S78030 concerning statutory rules and regulations - Dangerous drugs, Subsection (5)(b)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.78(6)-S78030 STATUTORY RULES AND REGULATIONS - DANGEROUS DRUGS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1980, the Board of Pharmacists proposes to amend subsection (5)(b) of ARM 40-3.78(6)-S78030 concerning statutory rules and regulations - dangerous drugs.

2. The proposed amendment will add a drug to the controlled substances under Schedule II of the above stated rule and will read as follows: (new matter underlined, deleted matter interlined)

"40-3.78(6)-S78030 STATUTORY RULES AND REGULATIONS - DANGEROUS DRUGS.....

(5)....

(b) Schedule II: Amobarbital, Pentobarbital, Secobarbital, Methaqualone, Etorphine Hydrochloride, Diprenorphine, Apomorphine, Codeine, Ethylmorphine, Hydrocodone, Hydromorphone, Metopon, Morphine, Oxycodone, Oxymorphone, Thebaine, Cocaine, Methylphenidate, Norpethidine, Phencyclidine~~.~~ , Phenylacetone, also known as phenyl-2-propanone, benzyl methyl ketone, methyl benzyl ketone, and P2P.

Single entity ORAL dosage forms of amphetamine, dextroamphetamine or methamphetamine, or ORAL amphetamine-dextroamphetamine combinations.

....."

3. The proposed action results from this product being placed in Schedule II by the U.S. Department of Justice, Drug Enforcement Administration, February 11, 1980. There has been increasing evidence of the use of phenylacetone as a major immediate chemical precursor to methamphetamine and amphetamine in their illicit cladestine synthesis. The effect of the present order provides regulatory controls upon the manufacture, distribution, dispensing, importation and exportation of this immediate precursor of methamphetamine and amphetamine.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Pharmacists, Lalonde Building, Helena, Montana 59601 no later than June 12, 1980.

5. If a person who is directly affected by the proposed amendment 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 Pharmacists, Lalonde Building, Helena, Montana 59601 no later than June 12, 1980.

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

7. The authority of the board to make the proposed amendment is based on sections 50-32-103 and 203 MCA and implements sections 50-32-202,203,223, and 224 MCA.

BOARD OF PHARMACISTS
JAMES R. CARLSON, R. Ph.,
PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 6, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PSYCHOLOGISTS

IN THE MATTER of the Proposed) Amendment of ARM 40-3.90(6)-) S90040 concerning the code of) professional conduct.)	NOTICE OF PROPOSED AMENDMENT OF ARM 40-3.90(6)-S90040 CODE OF PROFESSIONAL CONDUCT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1980, the Board of Psychologists proposes to amend ARM 40-3.90(6)-S90040 subsections (4),(5),(6),(7) and (8) concerning the code of professional conduct.

2. The proposed amendment will delete subsections (4),(5),(6),(7), and (8) of rule ARM 40-3.90(6)-S90040 CODE OF PROFESSIONAL CONDUCT in their entirety. The rule is located at pages 40-351 through 40-353, Administrative Rules of Montana.

3. The board is proposing the repeal as these subsections have been determined to be in violation of federal antitrust laws by the Antitrust Enforcement Bureau in a letter to the board dated June 6, 1979.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Psychologists, Lalonde Building, Helena, Montana 59601, no later than June 12, 1980.

5. If a person who is directly affected by the proposed amendment 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 Psychologists, Lalonde Building, Helena, Montana 59601, no later than June 12, 1980.

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

7. The authority of the board to make the proposed amendment is based on section 37-17-202 (1) MCA. The remainder of the rule implements section 37-17-311 MCA.

BOARD OF PSYCHOLOGISTS
MARK MOZER, Ph.D., CHAIRMAN

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 6, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

IN THE MATTER of the Proposed Repeal of ARM 40-3.94(6)-S94010 concerning examinations and applications and ARM 40-3.94(6)-S94060 concerning fees and inactive list.	NOTICE OF PROPOSED REPEAL OF ARM 40-3.94(6)-S94010 EXAMINATIONS - APPLICATIONS AND ARM 40-3.94(6)-S94060 FEES, INACTIVE LIST

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1980, the Board of Public Accountants proposes to repeal ARM 40-3.94(6)-S94010 concerning applications and examinations and ARM 40-3.94(6)-S94060 concerning fees and inactive lists.

2. The proposed repeal of ARM 40-3.94(6)-S94010 EXAMINATIONS - APPLICATIONS will repeal the rule in its entirety. The rule is located at pages 40-383 and 40-384 Administrative Rules of Montana.

3. The board is proposing the repeal as the section of the statute which the rule implemented was not codified with the remaining sections by the legislature in 1979 as it was a temporary provision.

4. The proposed repeal of ARM 40-3.94(6)-S94060 FEES, INACTIVE LIST deletes the rule in its entirety. The rule is located at page 40-385 Administrative Rules of Montana.

5. The board is proposing the repeal as subsection (1) indicates a license fee which is set out in the fee schedule and is therefore repetitive. Subsection (2) of the rule is not needed as a licensed public accountant once he becomes a certified public accountant would have no need to be considered an inactive licensed public accountant.

6. Interested parties may submit their data, views or arguments concerning the proposed repeals in writing to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601, no later than June 12, 1980.

7. If a person who is directly affected by the proposed 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 Public Accountants, Lalonde Building, Helena, Montana 59601, no later than June 12, 1980.

8. If the board receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeals; 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 Administative Register.

9. The authority of the board to make the proposed repeals

is based on section 37-50-201 MCA. No implementing section exists for the first repeal. The second repeal implemented section 37-50-314 MCA.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, CPA
CHAIRMAN

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 6, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WATER WELL CONTRACTORS

IN THE MATTER of the proposed Repeal of ARM 40-3.106(6)-S10670 concerning duplicate or lost licenses.	NOTICE OF REPEAL OF ARM 40-3.106(6)-S10670 DUPLICATE OR LOST LICENSES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1980, the Board of Water Well Contractors proposes to repeal rule ARM 40-3.106(6)-S10670 concerning duplicate or lost licenses.

2. The proposed amendment will repeal in its entirety rule ARM 40-3.106(6)-S10670 DUPLICATE OR LOST LICENSES which is located at page 40-404, Administrative Rules of Montana.

3. The board is proposing the repeal as they lack the authority to charge the fee stated in the rule and the remainder of the rule is in conflict with the statutes in that it allows duplicate license cards to be given to partnerships, firms or corporations, where the statute only allows for licensure of "natural persons".

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Board of Water Well Contractors, Lalonde Building, Helena, Montana 59601, no later than June 12, 1980.

5. If a person who is directly affected by the proposed 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 Water Well Contractors, Lalonde Building, Helena, Montana 59601, no later than June 12, 1980.

6. If the board receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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.

7. The authority of the board to make the proposed repeal is based on section 37-43-202 MCA.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 6, 1980.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal of rules relating to the rule numbering method and breakdown of ARM before recodification and the revision of rules relating to specific recodification procedures	)))))	NOTICE OF THE PROPOSED REPEAL AND REVISION OF PROCEDURAL RULES IN TITLE 1, CHAPTER 2, GENERAL PROVISIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. The Secretary of State proposes to repeal rules in Chapter 2, General Provisions, relating to the old rule numbering method and the breakdown of the Administrative Rules of Montana (ARM) before recodification, and revise rules relating to specific recodification procedures. The effective dates of changes are listed below.

2. The rules proposed to be repealed are as follows and are located in the Administrative Rules of Montana on the pages indicated:

1.2.203 BREAKDOWN OF THE CODE (BEFORE RECODIFICATION) pages 1-10 through 1-14. Effective July 1, 1980.

1.2.213 CODE NUMBERING OF RULES (BEFORE RECODIFICATION) pages 1-20 through 1-22.1. Effective July 1, 1980.

1.2.311 SCHEDULE FOR SUBMITTING RECODIFIED PAGES pages 1-22.6 and 1-22.7. Effective September 10, 1980.

1.2.513 TYPING FORMAT FOR OLD TO NEW NUMBERING TABLE AND NEW TO OLD NUMBERING TABLE, pages 1-22.25 and 1-22.26. Effective September 10, 1980.

The following rules will be revised to indicate changes made in procedures relating to repealed rules, placement of tables in ARM and the information required on the tables: 1.2.204 POSITIONING OF CODE ITEMS; 1.2.321 OLD TO NEW NUMBERING TABLE; 1.2.331 REMOVAL OF REPEALED RULES FROM ARM; 1.2.403 BIENNIAL REVIEW OF RULES BY AGENCY; 1.2.206 LOCATION OF RULE CHANGES; 1.2.322 NEW TO OLD NUMBERING TABLE.

The old to new numbering table lists the old ARM rule number assigned before recodification and the new ARM rule number assigned during recodification. During the early phases of the recodification process, it was decided that the table would be inserted in ARM on decimal point pages directly after the title's chapter table of contents. It has been determined that this table is more logically inserted after the rule section of each title with other tables relating to ARM. Also, at that time, the repealed rule information was to be listed on that table. Because the information regarding repealed rules must remain permanently in ARM, the repealed rule numbers and

other pertinent information will be listed on a separate repealed rule table which will be inserted after the rule section of each title. Repealed rules will not be removed from ARM during an agency's biennial review as originally planned. Instead, the procedures followed before recodification as outlined in ARM 1.2.206 will be continued.

3. The Secretary of State proposes to repeal the rules listed above as they will no longer be applicable after the recodification process is completed. The rules are being noticed at an early date so that they may be removed or revised before the pages in Chapter 2 are prepared for printing in the newly recodified set of ARM.

4. Interested parties may submit their data, views or arguments concerning the proposed repealed rules in writing to Leonard C. Larson, Chief Deputy, Secretary of State's Office, Room 202, Capitol Building, Helena, Montana 59601, no later than June 12, 1980.

5. The authority of the Office of the Secretary of State to make the proposed repeals and amendments is based on section 2-4-306, MCA, and is implemented by section 2-4-306, MCA.

Dated this 6th day of May, 1980.

Frank Murray

FRANK MURRAY
Secretary of State

Leonard C. Larson

By: Leonard C. Larson
Chief Deputy

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

In the matter of the amendment of Rule 46-2.10(18)-S11451B, Rule 46-2.10(18)-S11451D, and Rule 46-2.10(18)-S11451E pertaining to the reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11451B, RULE 46-2.10(18)-S11451D AND RULE 46-2.10(18)-S11451E FOR REIMBURSEMENT FOR SKILLED AND INTERMEDIATE CARE SERVICES, REIMBURSEMENT METHOD AND PROCEDURE.

TO: All Interested Persons

1. On June 6, 1980, at 9 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, at 111 Sanders, Helena, Montana, to consider the amendment of Rule 46-2.10(18)-S11451B(1), Rule 46-2.10(18)-S11451D subsections (2)(c)(iii), (2)(e), (2)(h), (2)(j), (2)(k), (3)(c), (4)(1), (6)(a), (6)(b), (6)(c), (6)(d), (6)(e), (6)(f), (7)(a), (7)(b), and Rule 46-2.10(18)-S11451E subsections (6)(a), (6)(b), (6)(d), (8)(h) pertaining to reimbursement for skilled nursing and intermediate care services.

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

46-2.10(18)-S11451B REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PURPOSE AND DEFINITIONS (1) Reasonable cost related reimbursement for skilled nursing and intermediate care facility services is mandated by section 249 of Public Law 92-603, the 1972 amendment to the Social Security Act.

The purpose of the following rules is to meet the requirements of Title XIX including section 249 of Public Law 92-603 and 42 CFR 447 et seq, while treating the eligible recipient, the provider of services, and the department fairly and equitably.

The rates determined under the following rules exclude costs estimated to be in excess of those necessary in the efficient delivery of needed health services, but shall not be set lower than the level which the department reasonably finds to be adequate to reimburse in full actual allowable costs of a provider operating economically and efficiently and having no deficiencies.

The rules for determining rates and the rate setting methodology may be amended or revised from time to time, but such amendments or revisions will become effective only after members of the public have had adequate opportunity to review

and comment according to procedures established under Montana state law.

The department will pay providers the amounts determined under these rules on a monthly basis upon receipt of an appropriate billing representing the determined rates applied to eligible recipients.

(2) As used in these rules governing nursing home care reimbursement the following definitions apply:

(a) "CPI" means the all items figure from the consumer price index for all urban consumers published monthly by the bureau of labor statistics, U.S. department of labor.

(b) "Labor index" means the average hourly earnings, of production or nonsupervisory workers of nursing and personal care facilities published by the bureau of labor statistics, U.S. department of labor. Such earnings amount shall be utilized as an index.

(c) "Department" means the Montana department of social and rehabilitation services.

(d) "Facility" means a long-term care facility which provides skilled nursing or intermediate care, or both to two or more persons and which is licensed as such by the Montana department of health and environmental sciences.

(e) "Patient day" means an individual present and receiving services in a nursing home facility for a whole 24-hour period. Even though an individual may not be present for a whole 24-hour period on day of admission, such day will be considered a patient day. When department rules provide for the reservation of a bed for a patient who takes a temporary leave from a facility to be hospitalized or make a home visit, such whole 24-hour periods of absence will be considered patient days.

(f) "HIM 15" means provider reimbursement manual, health insurance manual 15, part I, 1967.

(g) "HIM 16" means the audit manual for extended care facilities under the Health Insurance for the Aged Act, Title XVIII.

(h) "Routine nursing care services" means skilled or intermediate nursing care as defined in rules for nursing home care in ARM 46-2.10(18)-S11443 and S11444.

(i) "ICF/MR" means a facility certified to provide intermediate care for patients who are mentally retarded according to federal regulations under 42 CFR 442.400.

(j) "Owner" means any person, agency, corporation, partnership or other entity which has an ownership interest, including a leasehold or rental interest, in assets used to provide nursing care services pursuant to an agreement with the department.

(k) "Provider" means any person, agency, corporation, partnership or other entity which has entered into an agreement with the department for the providing of nursing care services.

(l) "Administrator" means the person, including an owner, salaried employee, or other provider, with day-to-day responsibility for the operation of the facility. In the case of a facility with a central management group, the administrator, for the purpose of these rules, may be some person (other than the titled administrator of the facility), with day-to-day responsibility for the nursing home portion of the facility. In such cases, this other person must also be a licensed nursing home administrator.

(m) "Related parties" for purposes of interpretation hereunder, shall include the following:

(i) An individual or entity shall be deemed a related party to his spouse, ancestors, descendants, brothers and sisters, or the spouses of any of the above, and also to any corporation, partnership, estate, trust, or other entity in which he or a related party has a substantial interest or in which there is common ownership.

(ii) A substantial interest shall be deemed an interest directly or indirectly, in excess of ten percent (10%) of the control, voting power, equity, or other beneficial interest of the entity concerned.

(iii) Interests owned by a corporation, partnership, estate, trust, or other entity shall be deemed as owned by the stockholders, partners, or beneficiaries.

(iv) Control exists when an individual or entity has the power, directly or indirectly, whether legally enforceable or not, to significantly influence or direct the actions or policies of another individual or entity, whether or not such power is exercised.

(v) Common ownership exists when an individual has substantial interests in two or more providers or entities serving providers.

(n) "Fiscal year" and "fiscal reporting period" both mean the facility's internal revenue tax year.

(o) "Property Costs" are amounts allowable for facility or equipment depreciation, interest on loans for a facility or equipment, and leases or rental of a facility or equipment.

(p) "Operating costs" are the difference between total allowable cost and property costs.

(q) "Certificate of Need" is the authorization to proceed with the making of capital expenditures under Section 1122, Title XI of the Social Security Act, and MCA, Sections 50-5-101 through 50-5-307 (R.C.M., 1947, Sections 69-5201 through 69-5212).

(r) "New facility" means an entirely newly-constructed facility which has not provided nursing care services long enough to have a cost report with a complete audit as provided under ARM 46-2.10(18)-S11451E(6) covering a twelve-month fiscal reporting period.

(s) "New provider" means a provider who acquires ownership or control of a skilled nursing or intermediate care

facility whether by purchase, lease, rental agreement, or in any other way, subsequent to the effective date of this rule.

(t) "Date of interest" is the date to be used in determining changes in the prospective rate. When computing changes in the CPI the dates of interest are the beginning date of a prospective rate period and the ending date of a prospective rate period. The date of interest related to adding a trend factor to cost per day is the beginning date of a prospective rate period.

(u) References to laws and regulations refer to citations current as of March 20, 1979.

46-2.10(18)-S11451D REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, REIMBURSEMENT METHOD AND PROCEDURES (1) Reimbursable Cost. Reimbursable cost is the amount the department pays for routine nursing home services provided to a medicaid patient. Reimbursable cost for the applicable period is determined by multiplying the prospective rate times medicaid patient days and deducting therefrom the amount a patient participates in the cost of care.

(2) Prospective Rates. Prospective rates are the rates on record with the department's fiscal intermediary as of March 31, 1979, or the rates determined as follows, whichever are higher. Prospective rates shall be announced no later than the beginning date of the period for which the prospective rate is to be effective, unless a prospective rate is determined through the alternative rate review process according to rule ARM 46-2.10(18)-S11451D(6).

(a) The prospective rate for each facility is the sum of its cost per day (see ARM 46-2.10(18)-S11451D(2)(c)), a trend factor (see ARM 46-2.10(18)-S11451D(2)(d)), adjustments for property cost increases (see ARM 46-2.10(18)-S11451D(2)(i)), a performance incentive factor (see ARM 46-2.10(18)-S11451D(2)(f)), and an occupancy adjustment factor (see ARM 46-2.10(18)-S11451D(2) (e)). The prospective rates are subject to a maximum prospective rate (see ARM 46-2.10(18)-S11451D(2)(g)) and to private pay limitations (see ARM 46-2.10(18)-S11451D(2)(h)). Prospective rates are effective for periods beginning on or after April 1, 1979, and will be updated by the trend factor at the beginning of each six-month period thereafter, or until rebasing under ARM 46-2.10(18)-S11451D(2)(b) establishes a new initial date.

(b) Prospective rates are based on cost reports that represent nursing home costs for facilities participating in the program during a base period. The initial base period will include the most recent fiscal year cost report ending on or before November 30, 1977 for each facility participating in the program during that period. Rates beginning on April 1, 1979 will be based on cost reports from this initial base period. Subsequent base periods will be established when the end date of the oldest cost report used to establish rates is more than three years old. (For example, the oldest cost

reports used for the initial base period will be three years old on December 31, 1979. A more current base period will be established upon which to determine rates effective January 1, 1980.)

(c) Cost per day is the allowable cost for a facility divided by related total patient days.

(i) A facility's cost per day for the initial base period shall be computed utilizing the most recent cost report of the facility ending on or before November 30, 1977. Those facilities not having submitted cost reports from which the department can obtain the requisite cost information will be assigned an estimated cost per day as determined by the department. This estimate will be revised based on a cost report containing the requisite information to be filed no later than October 1, 1979. If such a cost report is not made available by that date, the provider's total reimbursement shall be withheld. Any amounts withheld under these circumstances will be payable to the provider upon submission of cost report containing the requisite information and applicable to the base period then in effect.

(ii) Each facility's cost per day for subsequent base periods shall be based on cost reports applicable to that particular base period.

(iii) If the total patient days represented in the cost report used to determine cost per day represents an occupancy rate of less than ~~85~~ 50 percent, property cost per day for that cost report will be computed on the basis of ~~85~~ 50 percent occupancy.

(d) The trend factor is an amount that is added to cost per day at a date of interest to reflect changes in the CPI and labor index. This factor is determined by deriving the mean operating cost per day from the costs per day determined in ARM 46-2.10(18)-S11451D(2)(c) after such costs per day have been adjusted by the CPI and labor index to the end date of the base period. The mean operating cost per day is multiplied by a percentage based 30% on the CPI percentage change between two dates of interest and 70% on the labor index percentage change between the same two dates of interest to yield the trend factor percentage. The change in the CPI and labor index is determined by using the index established for the fourth month previous to the date of interest. For example, to determine the trend factor percentage to be applied to prospective rates beginning on October 1, 1979, the index for the months ending July 31, 1977 (four months before the cost report date of November 30, 1977) and May 31, 1979 (four months before the date of interest, October 1, 1979), would be used.

(e) The occupancy adjustment factor is an amount that will be added to or deducted from a facility's next prospective rate should the occupancy rate during any six-month period after April 1, 1979 vary more than 3 percentage points from the occupancy rate used to determine a facility's base period cost per day. Any computations under this section

shall be subject to the ~~85~~ 50 percent occupancy factor as described in ARM 46-2.10(18)-S11451D(2)(c)(iii). This factor will be determined as follows:

(i) The percentage of variance in total patient days for each period shall be determined. Such percentage shall be reduced by 56 percent, which is deemed to be the portion related to costs that vary with occupancy.

(ii) When the prospective rate is being updated as called for in ARM 46-2.10(18)-S11451D(2)(d) the prospective rate will be increased or decreased by the adjusting percentage determined in (2)(e)(i) of this rule.

(iii) All providers shall submit monthly occupancy reports on forms provided by the department. Such reports shall be filed within fifteen days of the close of each month. If the report is late and not received by the next date of reimbursement, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate occupancy report.

(f) The performance incentive factor is determined by a facility's relation to the 90th percentile of costs per day. If the facility's cost per day is at or above the 90th percentile, its performance incentive factor is zero. If the facility's cost per day is less than the 90th percentile, the performance incentive factor is 50 percent of the difference between the 90th percentile of all costs per day and its cost per day up to $1.50 per patient day.

(g) The maximum prospective rate that will be allowed any facility is the cost per day as adjusted by ARM 46-2.10(18)-S11451D (2)(d) that is applicable to the facility that is at the 90th percentile.

(h) The prospective rate for any facility shall not exceed private pay limitations, except that a state or county facility charging nominally is not subject to the private pay limitation. The ~~lowest scheduled~~ weighted average charges for similar nursing care services to private paying patients in effect any time during the period for which the prospective rate applies ~~excluding the first month after the rate is in effect~~ shall be used in determining whether the prospective rate is limited or not. The provider shall be responsible for notifying the department immediately if or when the prospective rate exceeds the private pay rate.

(i) Prospective rates shall be adjusted for property cost increases needed for routine nursing care services implemented after the period covered by the cost report used to determine cost per day in ARM 46-2.10(18)-S11451D (2)(c) provided those increases have been approved through the certificate of need process. Cost per day in ARM 46-2.10(18)-S11451D(2)(c) shall be adjusted accordingly. However, the cost per day so adjusted shall be subject to the same performance incentive factor determined in ARM 46-2.10(18)-S11451D (2)(f) and the maximum prospective rate in ARM 46-2.10(18)-S11451D(2)(g) during the interim between rebasing dates.

(j) New facilities participating for the first time in the program will be given an initial prospective rate based on ~~the sum of the mean operating cost per day determined in 46-2.10(18)-S11451D(d) (adjusted by the change in CPI and labor index according to that rule to the beginning date of the initial prospective rate period) and property expenses using the 85 percent occupancy factor. Property expenses will be established on the basis of costs defined under Certificate of Need procedures.~~ an evaluation of a budget and a staffing pattern report submitted on forms provided by the department. The budget will be evaluated in terms of rates currently in effect for similar size facilities participating in the program. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. However, the provider may request that the department perform a patient assessment and facility evaluation to determine actual staff needs. Unless justification for a variance is explicitly demonstrated and accepted by the department, the new facility will receive the same rate for similar size facilities. Once the facility has provided the department with a twelve-month cost report acceptable for use in determining prospective rates, submission of budgets for rate determination will no longer be required.

(k) An individual who is a new provider by reason of his purchase or lease of a facility which is currently participating in the program will ~~receive the prospective rate set for the previous provider except that portion determined by property costs. The prospective rate will be adjusted for property cost increases due to sale or lease according to 46-2.10(18)-S11451D(2)(i). Depreciation allowed the previous owner will not be recaptured on sales in effect after April 1, 1979.~~ be given an initial prospective rate based on an evaluation of a budget and a staffing pattern report submitted on a form provided by the department. The budget will be evaluated in terms of rates in effect for the prior provider. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. However, the provider may request that the Department perform a patient assessment and facility evaluation to determine actual staff needs. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate as the prior provider. Once the new provider has provided the department with a twelve-month cost report acceptable for use in determining prospective rates, submission of budgets for rate determination will no longer be required.

(3) Intermediate Care Facilities for the Mentally Retarded. If a facility is certified to provide care for patients under federal and state ICF/MR regulations, then the reimbursable cost for such a facility shall be allowable costs covering the period of reimbursement, subject to the limits provided below.

(a) An ICF/MR shall receive interim rates based on

estimated costs. The rates shall be determined for an ICF/MR's fiscal year and shall be developed in two parts.

(i) Part one shall identify routine nursing care services and determine a rate for this part that shall not exceed the prospective rate for such services during the same period that would be allowed under ARM 46-2.10(18)-S11451D(2).

(ii) Part two shall identify services applicable to the mentally retarded patients over and above the costs of routine nursing care services, and determine a rate for these incremental ICF/MR services, provided the estimated costs for such services are deemed reasonable and necessary.

(iii) Cost of providing services to patients will be reimbursed according to the appropriate interim rates depending on what level of care has been established for each patient by the Montana foundation for medical care.

(b) Interim rates may be updated from time to time.

(i) Part one rates will be updated for rebasing or other adjustments as provided in ARM 46-2.10(18)-S11451D(2).

(ii) Part two rates will be updated upon request from a facility provided sufficient documentation is submitted to support the necessity of an increase.

(c) Final reimbursement will be determined when cost reports for the period have been audited according to ARM 46-2.10 (18)S11451E(6). Reimbursement attributable to routine nursing care services shall be limited to the reimbursement that would be allowed for the same period according to ARM 46-2.10 (18)-S11451D(2). Reimbursement attributable to ICF/MR services over and above those allowed as routine nursing care services shall be paid as allowable costs determined under ARM 46-2.10(18)-S11451D(4); however, such payments will not exceed the amount that would be paid under the medicare principles of provider reimbursement.

(4) Allowable Cost. Allowable costs for cost reports with ending dates before April 1, 1979 shall be determined according to rules for allowable cost then in effect. Allowable costs for cost reports with ending dates after April 1, 1979 will be determined in accordance with HIM 15 subject to the exceptions and clarifications herein provided, including the following:

(a) Return on equity will not be an allowable cost.

(b) Costs incurred in the provision of routine nursing care services to the extent such costs are reasonable and necessary are allowable. Routine services include regular room, dietary services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of routine nursing care services are:

(i) all general nursing services including but not limited to administration of oxygen and related medications, hand-feeding, incontinent care, tray service, and enemas;

(ii) items furnished routinely and relatively uniformly to all patients without charge, such as patient gowns, water pitchers, basins and bed pans;

(iii) items stocked at nursing stations or on the floor

in gross supply and distributed or used individually in small quantities without charge, such as alcohol, applicators, cotton balls, bandaids, antacids, aspirin (and other non-legend drugs ordinarily kept on hand), suppositories, and tongue depressors;

(iv) items which are used by individual patients which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(v) special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet;

(vi) laundry services whether provided by the facility or by a hired firm, except for patients' personal clothing which is dry cleaned outside of the facility.

(c) Allowable property cost shall be limited to the property cost per day for the 90th percentile facility identified in cost reports for Montana facilities participating in the medicaid program during a base period. The initial base period shall utilize those cost reports filed with the department that demonstrate the requisite data and are the most recent twelve-month cost reports available through November 30, 1977. Subsequent base periods will use the same cost reports used for rebasing in ARM 46-2.10(18)-S11451D(2)(b). In order to apply the property cost limit test, the 90th percentile property cost per day from the most recently available base period shall be indexed using the CPI to the end date of the cost report being reviewed, which amount shall then limit the property cost per day in the cost report being reviewed. That portion of property costs related to a certificate of need under ARM 46-2.10(18)-S11451D(2)(i) shall not be subject to this property cost limit until the next rebasing date.

(d) Administrators compensation:

(i) Administrators compensation is limited to the amounts allowed according to HIM 15.

(ii) Administrators compensation and the reporting of administrators' compensation shall include:

(A) salary amounts paid to the administrator for managerial, administrative, professional and other services.

(B) employee benefits excluding employer contributions required by state or federal law--FICA, WCI, FUI, SUI. For a self-employed administrator, an amount equal to what would have been the employer's contribution for FICA and WCI may be excluded from such employee benefits;

(C) deferred compensation either accrued or paid;

(D) supplies, services, special merchandise, and the cost of assets paid or provided for the personal use or benefit of the administrator;

(E) wages of a domestic or other employee who works in the home of the administrator;

(F) personal use of a car owned by business;

(G) personal life, health, or disability insurance premium paid;

(H) a portion of the physical plant occupied as a personal residence;

(I) other types of remuneration, compensation fringe benefits or other benefits whether paid, accrued, or contingent.

(e) Employee benefits:

(i) Employee benefits are defined as amounts paid to or on behalf of an employee, in addition to direct salary or wages, and from which the employee or his beneficiary derives a personal benefit before or after the employee's retirement or death.

(ii) All employer contributions which are required by state or federal law, including FICA, WCI, FUI, SUI are allowable employee benefits. In addition, employee benefits which are uniformly applicable to all employees are allowable. A bona fide employee benefit must directly benefit the individual employee, and shall not directly benefit the owner, provider or related parties.

(iii) Costs of activities or facilities which are available to employees as a group, such as condominiums, swimming pools or other recreational activities, are not allowable.

(iv) For purposes of this subsection, an employee is one from whose salary or wages the employer is required to withhold FICA. Stockholders who are related parties to the corporate providers, officers of a corporate provider, and partners owning or operating a facility are not employees even if FICA is withheld for them.

(v) Paid vacation and sick leave shall be considered employee benefits to the extent that the facility has in effect a written policy which is uniformly applicable to all employees within a given class of employees, and paid vacation and sick leave are reasonable in amount.

(f) Bad debts, charity and courtesy allowances are deductions from revenue and shall not be allowable as costs.

(g) Revenues received for services or items provided to employees and guests are recoveries of cost and shall be deducted from the related cost.

(h) Dues, membership fees or subscriptions to organizations unrelated to the provider's provision of nursing care services are not allowable costs.

(i) Charges for services of a chaplain are not an allowable cost.

(j) Fees for management or professional services (e.g., management, legal, accounting or consulting services) are allowable to the extent they are identified to specific services, and the hourly rate charged is reasonable in amount. In lieu of compensation on the basis of an hourly rate, the provider may compensate for professional services on the basis of a reasonable retainer agreement which specifies in detail the services to be performed. Documentation that such services were in fact performed shall be provided by the provider. No cost in excess of the agreed upon retainer fee shall be allowed for services specified under the fee.

(k) Transportation costs for travel related to patient care are allowable in accordance with internal revenue guidelines for items of expense. Vehicle operating costs will be pro-rated between business and personal use based on mileage logs or a prior approved percentage derived from a sample mileage log or other method acceptable to the department. For vehicles used primarily by the administrator, any portion of vehicle costs disallowed on pro-ration shall be included as compensation subject to the limits specified in ARM 46-2.10(18)-S11451D(4)(d). Depreciation shall be allowed on a straight-line basis (subject to salvage value) with a minimum of 3 years. Depreciation and interest or comparable lease costs may not exceed $2,400 per year. Other reasonable vehicle operating expenses will be allowed. Public transportation costs will be allowable at tourist or other available commercial rate (not first class).

(l) Purchases from related parties. Costs applicable to services, facilities and supplies furnished to a provider by parties related to that provider shall not exceed the lower of costs to the related party or the price of comparable services, facilities or supplies purchased elsewhere. Providers shall identify such related parties and costs in the annual cost report (42 ~~--CFR---250.30(a)(3)(iii)(B))~~ (42 CFR 447.284(a) and (b)).

(5) Ancillaries. Ancillary medical supplies and services are not allowable costs. The provider shall be paid for ancillary medical supplies and services in addition to the reimbursement rate determined by this rule provided that the ancillary medical supplies and services have been previously authorized by the Montana foundation for medical care to signify that the item is medically necessary and the bills for these items have the authorization on the face of the claim form. Payment for ancillary medical supplies and services are limited to the medical supplies and services needed to provide nursing care to patients who are required by doctor's orders to receive extraordinary care, and shall be the actual cost the provider incurred. The provider must maintain a separate cost center or centers for ancillary medical supplies and services. Revenues received from the department and/or patients for ancillary medical supplies or services are recoveries of cost and shall be deducted from the related cost when determining allowable cost. Any cost remaining after offsetting the related revenues must be eliminated from the cost report before determining allowable costs.

Ancillary medical supplies and services shall be billed by the provider licensed to provide such supplies or services and shall be designated on bills using codes established by the department and are limited to the following: oxygen (code 932-3308-00), wheelchairs customized with special design for a unique condition (code 932-3242-00), wheelchairs that are standard but motorized (code 932-3237-00), wheelchairs for children and are motorized (code 932-3241-00), helmets (code 932-3315-00), disposable colostomy appliances

(code 932-4210-00), colostomy shield appliances (code 932-4213-00), disposable ielostomy appliances (code 932-4219-00), catheters (urethral, rubber or silicone) (code 932-4233-00), catheters (indwelling Foley balloon retention) (code 932-4234-00), miscellaneous catheters (code 932-4235-00), scrotal truss (code 932-6101-00), umbilical truss (code 932-6102-00), shoulder braces (code 932-6103-00), sacroiliac supports (code 932-6104-00), lumbosacral supports (code 932-6105-00), post hernia truss (code 932-6106-00), hinged joint steel knee cap (code 932-6707-00), wrist support leather (code 932-6108-00), corsets (code 932-6109-00), abdominal supports (code 932-6110-00), dorso lumbar supports (code 932-6111-00), orthopedic braces (code 932-6113-00), elastic stockings (sheer type, Jobst or comparable) (code 932-6201-00), elastic stockings (surgical type, Jobst or comparable) (code 932-6201-00), prescription drugs; occupational, speech, physical and other therapy; x-rays; supplies that are not required as a part of routine nursing care services for a particular patient and not otherwise compensated under ARM 46-2.10(18)-S11451D.

(6) Reviews and Adjustments of Rates. The department will review a rate determined under rule ARM 46-2.10(18)-S11451D for a possible increase if it is found that the established rate is set below the minimum level defined in rule ARM 46-2.10 (18)-S11451B(1).

(a) A rate may be reviewed according to this rule if a provider submits to the department a ~~letter requesting~~ a rate review~~, which letter~~ application and supportive documents which:

(i) references a letter of warning from the state department of health and environmental sciences that the facility is in jeopardy of being decertified as a provider of nursing home care to medicaid patients due to certain specified deficiencies, and/or

(ii) provides documentation which clearly indicates that the established rate affects facility revenues to such an extent that reductions in essential services will be necessary and will very likely, in the provider's opinion, cause deficiencies that could lead to decertification by the department of health and environmental sciences.

(iii) details total revenue estimates for the period using private and established medicaid and non-medicaid rates and patient occupancy projections;

(iv) provides detailed expenditure projections according to line items mutually acceptable to the provider and the department along with supporting documentation justifying each item;

(v) provides other normally available information that the department may request in support of its review efforts.

(b) Within 14 days of receipt of a rate review application ~~letter~~ according to rule ARM 46-2.10(18)-S11451D(6) (a), the department will determine, based on the rate review application, the documentation provided and other information

available to the Department, whether the circumstances warrant rate review.

(i) The department will reject an application for rate review if substantial evidence shows that the established rate is not set below the minimum level defined in rule ARM 46-2.10(18)-S11451B(1). The department will use measurable indices of central tendency for facility cost centers and staff volumes to make this determination.

(ii) If the provider is not satisfied with the departmental decision to reject a request for rate review, such provider may seek a fair hearing in accordance with rule ARM 46-2.10(18)-S11451F.

(c) If the department determines that a rate should be reviewed, the department will negotiate an interim prospective rate with the provider, which rate will be in effect ~~during the time~~ from the first day of the quarter in which the review application is received by the department until such time as it takes to review the adequacy of the established rate and effect a rate revision should such be the result of the review. In no case, will the negotiated interim rate exceed 120% of the rate on record with the department's fiscal intermediary on the day previous to the beginning of the state's fiscal quarter in which the request for rate review is initiated according to rule ARM 46-2.10(18)-S11451D(6)(a).

(d) ~~If the Department determines that a rate should be reviewed according to 46-2.10(18)-S11451D(6)(a), the provider will supply the Department with the following information so that the Department may conduct the review in terms of a budget for the facility.~~ The budget period to be used for the review and rate setting will include at least one fiscal year for any provider who is determined to be eligible for rate review. If extraordinary or unanticipated circumstances dictate, a request for budget amendment can be submitted and a revised prospective rate determined. A longer budget period may be included if it is mutually agreeable to the department and the provider. All of the ~~following~~ items submitted for the purposes of review shall be evaluated for reasonableness and cost relatedness, the conclusions of which are subject to administrative and judicial review.

~~(i)--Total revenue estimates for the period using private and established Medicaid rates and patient occupancy projections;~~

~~(ii)-Detailed expenditure projections according to line items mutually acceptable to the provider and the Department along with supporting documentation justifying each item;~~

~~(iii)Other normally available information that the Department may request in support of its review efforts.~~

(e) After determining the necessary costs that will contribute to economic and efficient operation during the budget period, the department will add the performance incentive factor calculated according to ARM 46-2.10(18)-S11451D(2)(f) and recommend to the provider a rate that will reasonably compensate those necessary costs. ~~for those facilities that are profit making, in addition to~~

~~reasonable and necessary costs, a profit factor shall be included as a component of reasonable compensation in the rate.~~ Should the provider disagree with the recommended rate, the provider may seek a fair hearing according to rule ARM 46-2.10(18)-S11451F.

(f) The rate determined according to rule ARM 46-2.10(18)-S11451D(6)(e) will be made effective for the budget period used to conduct the review. ~~The rate may be revised from time to time as the provider and the department may mutually agree or~~ Three months prior to the end of the budget period used to conduct the review, the provider may apply for a new review according to rule ARM 46-2.10(18)-S11451D(6)(a) to become effective the following fiscal year, or continue with the rate established under ARM 46-2.10(18)-S11451D(6)(e) until the rates established under rule ARM 46-2.10 (18)-S11451D (2) may be found to be adequate.

(g) If the interim prospective rate determined in ARM 46-2.10(18)-S11451D(6)(c) is found to produce an overpayment or underpayment with respect to the rate determined through review for the period the interim rate was in effect, then such overpayment or underpayment will be administered according to rule ARM 46-2.10(18)-S11451E(8)(b) through (g). As thorough examinations of and limits on staffing patterns will be accomplished prior to full facility evaluation, no recovery of directly patient care related staffing salary amounts shall be undertaken following the review process. In addition, recovery of nondirectly patient care related staffing salary sums shall be effected only upon completion of administrative and judicial review of such contested amounts.

(7) Reimbursement for authorized absence.

(a) No payment or subsidy will be made to a nursing home for holding a bed while the recipient is receiving medical services elsewhere, such as in a hospital except in a situation where a nursing home is full and has a waiting list of potential residents. A nursing home will be considered full if its beds are occupied or being held for a patient temporarily in a hospital. In this exceptional instance, a payment may be made for holding a bed while the resident is temporarily receiving care in a hospital, is expected to return to the nursing home, and the cost of holding the nursing home bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate nursing home bed would otherwise become available. Furthermore, payment in this exceptional instance, may be made only upon approval from the director of the department or his designee.

(b) Reimbursement will be made to a nursing home for reserving a bed while the recipient is temporarily absent if the recipient's plan of care provides for therapeutic home visits. A total of twenty-four (24) days annually will be allowed for therapeutic home visits. The facility is responsible for notifying the department on a form provided by the department when a resident leaves the facility for a thera-

peutic home visit. Reimbursment for therapeutic home visits will not be allowed unless the form is filed with the department. Absences are restricted to no more than seventy-two (72) consecutive hours per absence. Additional days and longer hours per absence may be allowed if determined medically appropriate and prior authorized by the director of the department or his designee.

46-2.10(18)-S11451E REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

(1) Accounting Principles. Generally accepted accounting principles shall be used by each provider to record and report costs. As part of the cost report these costs will be adjusted in accordance with these rules to determine allowable costs.

(2) Method of Accounting. The accrual method of accounting shall be employed, except that, for governmental institutions that operate on a cash method or a modified accrual method, such methods of accounting will be acceptable.

(3) Cost Finding. Cost finding means the process of allocating and prorating the data derived from the accounts ordinarily kept by a provider to ascertain its costs of the various services provided. In preparing cost reports, all providers shall utilize the step down method of cost finding described at 42 CFR 405.453(d)(1) which is hereby incorporated and made a part of this rule by reference. Notwithstanding the above, distinctions between skilled nursing and intermediate care need not be made in cost finding.

(4) Uniform Financial and Statistical Report. Provider costs are to be reported based upon the provider's fiscal year using the financial and statistical report form provided by the department. The use of the department's financial and statistical report form is mandatory for participating facilities. These reports shall be complete and accurate; incomplete reports or reports containing inconsistent data will be returned to the provider for correction.

(a) Filing period -- Cost reports must be filed within 90 days after the end of the provider's fiscal year.

(b) Late filing -- In the event a provider does not file within 90 days of the closing date of its fiscal year, or files an incomplete cost report, an amount equal to 10 percent of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete a second month, 20 percent shall be withheld. For each succeeding month the report is overdue or incomplete, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the

filing deadline. However, there is a maximum limitation of a 30-day extension.

(c) Cost reports shall be executed by the individual provider, a partner of a partnership provider, the trustee of a trust provider, or an authorized officer of a corporate provider. The person executing such reports shall sign under penalties of false swearing, that he has examined the report including accompanying schedules and statements, and that to the best of his knowledge and belief, the report is true, correct, and complete, and prepared consistent with governing laws and regulations.

(d) Cost reports shall be signed by the preparer stating that the report has been prepared based on all information of which he has knowledge. The preparer shall be deemed to be any individual who prepares for compensation any cost reports or a portion thereof. If more than one individual participates in preparation of the report, each participating individual shall sign as preparer. Clerical assistants who furnish typing, reproducing, or other routine assistance shall not be deemed preparers.

(5) Maintenance of Records. Records of financial and statistical information supporting cost reports shall be maintained by the provider and the department for three years after the date a cost report is filed, or the date the cost report is due, whichever is later.

(a) Each provider facility will maintain, as a minimum, a chart of accounts, a general ledger and the following supporting ledgers and journals: revenue, accounts receivable, cash receipts, accounts payable, cash disbursements, payroll, general journal, patient census records identifying the level of care of all patients individually, all records pertaining to private pay patients and patient trust funds.

(6) Audits. Department audit staff will perform a desk review of cost statements prior to rate setting and may conduct on-site audits of provider records. Where appropriate, audit procedures defined in the HIM 16 shall be adopted by the department but the department shall not be confined to these guidelines and may utilize other methods.

(a) Desk review of cost reports will determine the adjustments to be applied to reported costs for rate determination. Incomplete reports, or inconsistency in reported costs will cause the return of the cost report to the facility for correction and may result in withholding payment as set forth in the (4)(b) of this rule. Department audit staff will conduct a desk review of each cost report within six months of its receipt to verify, to the extent possible, that the provider has provided a complete and accurate report that complies with federal requirements cited under 42 CFR 447.274.

(b) On-site audits of provider detailed records shall be made to assure validity of reports, costs and statistical information in conformity with federal laws and regulations. (42 CFR 447.292 and 42 CFR 447.293). Audits will meet generally accepted auditing standards. Audits of providers' cost

reports, financial records and other pertinent data will be adequate to verify that the provider has included only those expense items that are specified as allowable costs under ARM 46-2.10(18)-S11451D(4) in compiling the costs of services, that the provider has accurately determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b)(1), that the provider has accurately attributed allowable costs to costs of services according to federal requirements cited under 447.274(b)(2), and that the provider's allowable costs are reasonable. On-site audits of the financial and statistical records will be conducted at a minimum of one-third of the facilities each year until all providers are audited by December 31, 1980. After that time, on-site audits will be conducted yearly in at least 15 percent of the facilities. Ten percent of these facilities will be selected using factors established by the department. The remaining five percent will be chosen at random.

(c) On conclusion of a review of a cost report, an exit conference may be held in which evidential facts can be submitted and reviewed, following which a summary of findings and recommendations shall be mailed to the provider.

(d) Upon conclusion of each on site audit the department audit staff will submit an audit report to the medical assistance bureau. The report will meet generally accepted auditing standards and will state the auditor's opinion as to whether, in all material respects, the cost report submitted by the provider has included only those expense items that are specified as allowable costs under ARM 46-2.10(18)-S11451D(4) in compiling the costs of services, and have been accurately determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b)(1). The department will keep audit reports on file for at least 3 years after receipt.

(7) Administrative review. Within 10 days of receipt of the written findings or recommendations the provider may detail in writing, any objections or justifications concerning the findings, and may also request a conference. Such conference shall be held no later than 30 days after the department receives the provider's written objections and justifications, and the request for a conference. The department's medical assistance bureau shall conduct the conference based on audit findings and recommendations and the provider's written objections and justifications. No later than 60 days following receipt of the written objections and justifications, or the conference, whichever is later, the department's medical assistance bureau, after consultation with the audit bureau and the office of legal affairs, shall mail a written final determination concerning the provider's objections and justifications, and the position the department takes concerning the audit findings.

(8) Overpayment and underpayment.

(a) Where the department finds that the prospective rate was based on an erroneous cost report resulting in overpay-

ment, the department will correct the rate and notify the provider of overpayment.

(b) In the event of an overpayment the department will, within 30 days after the day the department notifies the provider that an overpayment exists, adjust the provider's rate and arrange to recover the overpayment by set-off against amounts paid under the adjusted rate or by repayments by the provider.

(c) If an arrangement for repayment cannot be worked out within 30 days after notification of the provider, the department will make deductions from rate payments with full recovery to be completed within 120 days from date of the initial request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment. In the discretion of the department such recovery may be delayed in whole or in part if a request for fair hearing under ARM 46-2.10(18)-S11451F has been made.

(d) Errors in cost report data identified by the provider may be corrected and given consideration for rate adjustment if submitted within 30 days after rate notification. Adjustments will also be made for computational errors in rate determination review by the department.

(e) In the event an underpayment has occurred, the department will reimburse the provider promptly following the department's determination of error.

(f) Court or administrative proceeding for collection of overpayment or underpayment shall be commenced within five years following the due date of the original cost report or the date of receipt of a complete cost report whichever is later. In the case of a reimbursement or payment based on fraudulent information, recovery of overpayment may be undertaken at any time. Court costs, including attorneys' fees, in connection with court or administrative proceedings shall be deemed allowable only when approved by the court or hearings officer.

(g) The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from the payment or a transfer of assets.

(h) The department will account for overpayments found in audits and confirmed by administrative review under ARM 46-2.10 (18)-S11451E(7) or fair hearing under ARM 46-2.10(18)-S11451F. Such overpayments will be accounted for in the department's quarterly statement of expenditures no later than the second quarter following the quarter in which the overpayment was found and/or confirmed.

3. The department is proposing these amendments to its rule for the following reasons: The Denver regional office of the health care financing administration has determined that the following rules must be amended to comply with federal

regulations regarding nursing home reimbursement: ARM 46-2.10(18) -S11451B(1)), 46-2.10(18)-S11451D subsections (2)(h), (2)(j), (3)(c), (4)(l), (6)(e), 46-2.10(18)-S11451E subsections (6) (a), (6)(b), (6)(d), (8)(h). The department has determined that rule 46-2.10(18)-S11451D(6) must be amended to clarify administrative procedures and to eliminate confusion over the intent of the rule. Finally, rules 46-2.10(18)-S11451D(2) subsections (c)(iii), (e), (j), (k), and S11451D(7) subsections (a) and (b) are being amended to minimize the need for rate reviews.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana, 59601, no later than June 16, 1980.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana, 59601 has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed amendments is based on Section 53-6-113 MCA, and the rule implements Section 53-6-141 MCA.

By: Keith L. Colbo
Director, Social and
Rehabilitation Services

Certified to the Secretary of State April 29, 1980.

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

In the matter of the repeal of Rules 46-2.10(46)-S103000 through 46-2.10(46)-S103050 all pertaining to medical assistance provisions for emergency situations	NOTICE OF PROPOSED REPEAL OF RULES 46-2.10 (46)-S103000 THROUGH 46-2.10(46)-S103050 PERTAINING TO MEDICAL ASSISTANCE PROVISIONS FOR EMERGENCY SITUATIONS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rules 46-2.10(46)-S103000 through 46-2.10(46)-S103050 all pertaining to medical assistance provisions for emergency situations.

2. The rules proposed to be repealed are on pages 46-94.45 through 46-94.47 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because the Department lacks authority to implement rules dealing with emergency situations caused by natural disasters.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rules 46-2.10(46)-S103000 through 46-2.10(46)-S103050 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those

persons directly affected has been determined to be 1,118 persons based on 11,184 medical assistance recipients.

7. The authority of the agency to propose the repeal of these rules is based on Section 53-2-201 MCA, and the rules implement Section 53-2-201 MCA.

Keith F. Colburn
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the repeal of Rule 46-2.10(18)-S11444 pertaining to personal care home services	) NOTICE OF PROPOSED REPEAL OF RULE 46-2.10 (18)-S11444 PERTAINING TO PERSONAL CARE HOME SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rule 46-2.10(18)-S11444 pertaining to personal care home services.

2. The rule proposed to be repealed is on page 46-94.7C of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule as this program is no longer allowed under federal regulations; therefore, it is obsolete.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rule 46-2.10(18)-S11444 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 20 persons based on 200 personal care service recipients.

7. The authority of the agency to propose the repeal of this rule is based on Section 53-6-111 MCA, and the rule implements Section 53-6-101 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the repeal of Rules 46-2.6(2)-S6030 (46.5.9901), 46-2.6(2)-S6040 (46.5.9902), and 46-2.6(2)-S6050 (46.5.9903) all pertaining to obsolete miscellaneous programs dealing with social services	)))))))	NOTICE OF PROPOSED REPEAL OF RULES 46-2.6(2) -S6030, 46-2.6(2)-S6040, AND 46-2.6(2)-S6050 PERTAINING TO OBSOLETE MISCELLANEOUS PROGRAMS DEALING WITH SOCIAL SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rules 46-2.6(2)-S6030 (46.5.9901), 46-2.6(2)-S6040 (46.5.9902), and 46-2.6(2)-S6050 (46.5.9903) all pertaining to obsolete miscellaneous programs dealing with social services.

2. The rules proposed to be repealed are on pages 46-36 and 46-37 of the Administrative Rules of Montana.

3. The agency proposes to repeal these rules because new ARM rules have been adopted to replace obsolete institutional care services' rules.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rules 46-2.6(2)-S6030, 46-2.6(2)-S6040, and 46-2.6(2)-S6050 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 120 persons based on 1,200 recipients of institutional care services.

7. The authority of the agency to repeal these rules is based on Section 53-2-201 MCA, and the rules implement Sections 53-4-111 and 53-4-212 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the repeal of Rules 46-2.6(6)-S6300 (46.5.9904), 46-2.6(6)-S6310 (46.5.9905), and 46-2.6(6)-S6320 (46.5.9906) all pertaining to obsolete miscellaneous programs dealing with social services	)))))))	NOTICE OF PROPOSED REPEAL OF RULES 46-2.6(6)-S6300, 46-2.6(6)-S6310, AND 46-2.6(6)-S6320 PERTAINING TO OBSOLETE MISCELLANEOUS PROGRAMS DEALING WITH SOCIAL SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rules 46-2.6(6)-S6300 (46.5.9904), 46-2.6(6)-S6310 (46.5.9905), and 46-2.6(6)-S6320 (46.5.9906) all pertaining to obsolete miscellaneous programs dealing with social services.

2. The rules proposed to be repealed are on pages 46-48.2 through 46-50 of the Administrative Rules of Montana.

3. These rules were based on 45 CFR, Part 221, effective September 10, 1973 which was repealed October 1, 1975 when Title XX became effective.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rules 46-2.6(6)-S6300, 46-2.6(6)-S6310, and 46-2.6(6)-S6320 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 140 persons based on 1,400 families with children receiving protective services.

7. The authority of the agency to repeal these rules is based on Section 53-2-201 MCA, and the rules implement Sections 53-4-212 and 53-5-205 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the repeal of Rules 46-2.6(6)-S6360 (46.5.9907) 46-2.6(6)-S6370 (46.5.9908) and 46-2.6(6)-S6380 (46.5.9909) all pertaining to obsolete miscellaneous programs dealing with social services	) NOTICE OF PROPOSED REPEAL OF RULES 46-2.6(6)-S6360, 46-2.6(6)-S6370 AND 46-2.6(6)-S6380 PERTAINING TO OBSOLETE MISCELLANEOUS PROGRAMS DEALING WITH SOCIAL SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rules 46-2.6(6)-S6360 (46.5.9907), 46-2.6(6)-S6370 (46.5.9908) and 46-2.6(6)-S6380 (46.5.9909) all pertaining to obsolete miscellaneous programs dealing with social services.

2. The rules proposed to be repealed are on pages 46-51 through 46-53 of the Administrative Rules of Montana.

3. These rules were based on 45 CFR, Part 221, effective September 10, 1973, which was repealed October 1, 1975 when Title XX became effective.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rules 46-2.6(6)-S6360, 46-2.6(6)-S6370 and 46-2.6(6)-S6380 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 120 persons based on 1,200 adults receiving protective services.

7. The authority of the agency to repeal these rules is based on Section 53-2-201 MCA, and the rules implement Section 53-5-205 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the repeal of Rule 46-2.6(6)-S6440 (46.5.9910) pertaining to obsolete miscellaneous programs dealing with social services	) NOTICE OF PROPOSED REPEAL OF RULE 46-2.6(6)-S6440 PERTAINING TO OBSOLETE MISCELLANEOUS PROGRAMS DEALING WITH SOCIAL SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rule 46-2.6(6)-S6440 (46.5.9910) pertaining to obsolete miscellaneous programs dealing with social services.

2. The rule proposed to be repealed is on page 46-55 of the Administrative Rules of Montana.

3. This rule is obsolete because sections 22.55 and 222.86 of 45 CFR, which governed limited services to AFDC potential recipients, have been repealed.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rule 46-2.6(6)-S6440 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 approximately 20 persons based on 200 potential recipients of AFDC limited services.

7. The authority of the agency to repeal the rule is based on Section 53-2-201 MCA, and the rule implements Section 53-4-212 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the repeal of Rule 46-2.6(6)-S6505 (46.5.9911) pertaining to obsolete miscellaneous programs dealing with social services	) NOTICE OF PROPOSED REPEAL OF RULE 46-2.6(6)-S6505 PERTAINING TO OBSOLETE MISCELLANEOUS PROGRAMS DEALING WITH SOCIAL SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rule 46-2.6(6)-S6505 (46.5.9911) pertaining to obsolete miscellaneous programs dealing with social services.

2. The rule proposed to be repealed is on pages 46-56.2F through 46-56.2Ga of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because the specialized program governed by this rule is now handled by the Department's Developmental Disabilities Division.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rule 46-2.6(6)-S6505 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 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 approximately 18 based on the 175 persons enrolled in the program.

7. The authority of the agency to repeal the rule is based on Section 53-2-201 MCA, and the rule implements Sections 53-20-203 and 53-20-204 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11511 pertaining to medical assistance, services provided, amount, duration -- transportation and per diem	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11511 PERTAINING TO MEDICAL ASSISTANCE, TRANSPORTATION AND PER DIEM. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(18)-S11511 pertaining to medical assistance, services provided, amount, duration -- transportation and per diem.

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

46-2.10(18)-S11511 ADDITIONAL REQUIREMENTS

(1) Transportation and per diem shall be allowed when medically necessary for a recipient to obtain nonemergency services which are not reasonably available locally.

(2) In-state transportation and per diem shall be prior authorized by the local county welfare director.

(3) Out-of-state transportation and per diem shall be prior authorized by the ~~Medical Assistance Bureau~~ county welfare director and is not allowed ~~if the needed services are~~ unless out-of-state service is medically necessary and the service is not reasonably available in the state.

(4) Recipient shall not be directly reimbursed for transportation and/or per diem.

(5) Transportation shall be by the least expensive available means suitable to the recipient's medical needs.

(6) Transportation and/or per diem are available only to get individuals to acceptable Medicaid providers of their choice who are generally available and commonly used by other residents of the community.

(7) Payments shall be made for transportation and per diem for an attendant when it is demonstrated that the recipient's condition or age requires the care of an attendant.

(8) Reimbursement for transportation and per diem to secure medical services not included under the Medicaid program shall not be allowed.

(9) When a recipient requires attendant care to obtain and return from hospitalization outside his own community, attendant per diem will be allowed during the hospitalization up to the maximum amount of one return round trip.

(10) When a recipient dies enroute to or during treatment outside of his community, the cost of the recipient's transportation to the medical service is allowed. The cost of returning a deceased recipient is not allowed.

3. The proposed amendment of this rule will allow the county to make out-of-state transportation and per diem prior authorizations for recipients. The county currently makes these authorizations for in-state. This amendment will provide a more efficient means of making these determinations while allowing more county involvement.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed amendment 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental 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 6 county directors based on the 56 county welfare departments in Montana.

7. The authority of the agency to make the proposed amendment is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-101 and 53-6-141 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the adoption of a rule listing excluded services under the medicaid program	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE LISTING EXCLUDED SERVICES UNDER THE MEDICAID PROGRAM

TO: All Interested Persons

1. On June 4, 1980, 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 59601, to consider the adoption of a rule listing excluded services under the Medicaid program.

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

3. The proposed rule to be adopted provides as follows:

RULE I SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) Items or medical services not specifically included within defined benefits of the medicaid program are not reimbursable under the medicaid program.

(2) The following medical and nonmedical services are explicitly excluded from the Montana medicaid program except for those services covered under the institutional licensure rules of the Montana department of health and environmental sciences:

(a) chiropractic services;
(b) acupuncture services;
(c) naturopathic services;
(d) inhalation or respiratory therapy service;
(e) dietician service;
(f) nurse practitioner service;
(g) psychiatric social work service;
(h) mid-wifery;
(i) social work service;
(j) physical therapy aide service;
(k) physician assistant service;
(l) nonphysician surgical assistance service;
(m) nutritional service;
(n) masseur or masseuse services;
(o) dietary supplements;
(p) homemaker service;
(q) telephone service in home, remodeling of home, plumbing service, car repair, and/or modification of automobile.

4. The rule is proposed to inform providers, recipients and other interested parties of what services are not included or reimbursable under the Medicaid program. The intent of this rule is to prevent unnecessary inquiries and misunderstandings.

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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 12, 1980.

6. The Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-103, 53-6-141, and 53-6-101 MCA.

Keith L. Colo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the adoption of a rule pertaining to the certification of persons assisting in the administration of medication	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE PERTAINING TO CERTIFICATION OF PERSONS, DEVELOPMENTAL DISABILITIES PROGRAM

TO: All Interested Persons

1. On June 9, 1980, at 9:00 a.m., a public hearing will be held in the auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana, to consider the adoption of a rule pertaining to certification of persons assisting in the administration of medication.

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

3. The proposed rule provides as follows:

RULE I CERTIFICATION OF PERSONS ASSISTING IN THE ADMINISTRATION OF MEDICATION (1) This rule establishes procedures under which an employee or an agent of a provider may assist and supervise a client in taking medication. Such assistance and supervision may only be given where a medication which is normally self-administered has been prescribed for a client and where the physician who prescribed the medication also prescribed assistance or supervision in the administration of the medication.

(2) For the purposes of this rule, the following definitions apply:

(a) "Assistance" means providing any degree of support or aid to a client who independently performs at least one component of medication-taking behavior;

(b) "Supervision" means critically observing and directing a client engaging in medication-taking behavior.

(3) No agent or employee of a provider may assist or supervise in the administration of medication to clients unless certified by the department as herein provided unless otherwise authorized by law to provide such assistance or supervision. Every provider shall maintain a current list of provider employees and agents certified to administer medication on file with the division.

(4) Certification to provide such assistance will be determined by the department upon written application to the Developmental Disabilities Division, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601. To be certified, an employee or agent of a provider must demonstrate knowledge of epilepsies and medications by

achieving a score of at least 90% on a comprehensive test administered by the department.

(5) Any provider may receive, free of charge, an instructional and reference aid entitled epilepsies and medications individualized instruction manual, which shall have been approved by the board of nursing.

(6) The department will administer the comprehensive test to a qualified applicant within thirty (30) days of receipt of a written application for certification. Notice of certification or noncertification will be mailed within ten (10) days of the date of testing. The notice will designate an effective date and an expiration date for the certification. Certification will in no event be longer than for a period of two years.

(7) Any assistance provided under this rule which occurs after the client has been enrolled in the program for thirty (30) days and which must be administered for a longer period than ten (10) consecutive days must be subject of a written individual habilitation plan. The individual program plan must describe a program to train the client to self-administer the medication and must specify at least:

(a) the target medication-taking behavior;

(b) the conditions (e.g., times and places) in which such behavior should occur;

(c) the conditions (e.g., times and places) in which such behavior will be trained;

(d) criteria for completion of the individual program plan;

(e) written strategies for training the target behavior;

(f) a data recording system which accounts for each prescribed medication dosage, and;

(g) a data recording system which specifies progress or lack of progress toward the target behavior on a daily basis.

(8) The department may revoke certification by notifying the certified person of the reason for revocation in writing at least ten (10) days prior to the effective date of revocation. The certified person may request, in writing, within the ten (10) days prior to revocation, a hearing from the division administrator, who will issue a decision no later than thirty (30) days from the date the request for hearing was received. When a request for a hearing is made, the revocation will not be effective until the division administrator's decision is made.

(9) A client is considered to be capable of self-administering medication when it has been documented that the client has self-administered all (100%) of prescribed medication dosages within a consecutive thirty (30) day period.

4. The rule is proposed because Section 53-20-204(2) MCA specifically requires the establishment of a procedure

whereby properly trained staff may assist in the administration of medication to persons with developmental disabilities.

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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 12, 1980.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Section 53-20-204(2) MCA, and the rule implements Section 53-20-204(2) MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11440(1)(f) and the adoption of rules pertaining to the medical assistance program, private duty nursing services	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11440 AND THE ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, PRIVATE DUTY NURSING SERVICES

TO: All Interested Persons

1. On June 9, 1980, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana to consider the amendment of Rule 46-2.10(18)-S11440(1)(f) and the adoption of rules pertaining to the medical assistance program, private duty nursing services.

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

~~(f) Private duty nursing service in a hospital setting may be provided in certain limited instances. Such service must be requested in writing or by telephone by the attending physician and must have the approval of the State Medical consultant.~~

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

RULE I PRIVATE DUTY NURSING SERVICE, DEFINITION

(1) Private duty nursing services are nursing services provided by a registered nurse or a licensed practical nurse to a hospitalized patient when the patient requires individual and continuous skilled nursing care beyond that routinely provided by the hospital nursing staff.

RULE II PRIVATE DUTY NURSING SERVICE, REQUIREMENTS

These requirements are in addition to those contained in ARM 46-2.10(18)-S11516 through 46-2.10(18)-S11522. (See MAR Notice No. 46-2-223 in the 1980 Register, Issue No. 5. These rules will be adopted in June.)

(1) Private duty nursing service must be ordered in writing by the patient's physician.

(2) Private duty nursing service must be authorized by the department prior to payment.

(3) Payment for private duty nursing service will not be made to the hospital.

RULE III PRIVATE DUTY NURSING SERVICE, REIMBURSEMENT
Payment for private duty nursing services shall not exceed the lowest of usual and customary charges which are reasonable, the maximum amount payable by medicare, or $40.00 per eight (8) hour shift.

4. The proposed amendment and adoption of rules are part of the Department of Social and Rehabilitation Services' plan to update all Medicaid rules to comply with current Medicaid practice and to facilitate the Department's ongoing rule recodification process. Part of the proposed adoption is to raise reimbursement rates within limits established by the legislature.

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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 12, 1980.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Section 53-6-113 MCA, and the rules implement Sections 53-6-101 and 53-6-141 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11512 pertaining to medical assistance, services provided, amount, duration -- transportation and per diem	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11512 PERTAINING TO MEDICAL ASSISTANCE, TRANSPORTATION AND PER DIEM. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(18)-S11512 pertaining to medical assistance, services provided, amount, duration -- transportation and per diem.

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

46-2.10(18)-S11512 TRANSPORTATION AND PER DIEM, REIMBURSEMENT (1) Reimbursement for common carrier will be paid on the basis of usual and customary charges.

(2) Reimbursement for transportation by private vehicle will be at the current state rate for state employees.

(3) Reimbursement for per diem shall be actual expenses incurred up to a maximum of $17.00 per day for each person.

(4) Reimbursement for private air charter shall be $ .93 per mile.

3. The amendment is proposed to make more explicit the Department's current medical assistance program and to update all Medicaid rules to comply with current Medicaid practice.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed amendment 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental 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 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to make the proposed amendment is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-101 and 53-6-141 MCA.

Keith F. Colburn
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11440(1)(j)(k)(l) and the adoption of three rules pertaining to medical assistance, dental services.	)))))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 46-2.10(18)-S11440 AND ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, DENTAL SERVICES

TO: All Interested Parties:

1. On June 10, 1980, 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 59601 to consider the amendment of Rule 46-2.10(18)-S11440 (1)(j)(k)(l) and the adoption of rules pertaining to medical assistance, dental services.

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

~~(j) Dental care which means "essential and other emergency treatment of the teeth which is provided under the supervision of a dentist, including all emergencies, all necessary fillings and treatments of acute infection". A dentist is a person licensed to practice dentistry or dental surgery by the State Board of Dental Examiners. All recipients will have freedom of choice of dental services.~~

~~(k) Routine and necessary emergency dental care is available through the program without prior authorization except as required in part (1) below. Dentists wishing to proceed with treatment should make certain the individual is eligible before proceeding.~~

~~(l) The medical assistance program may upon prior approval by the State Dental Consultant provide in addition to the above services certain types of crowns, bridges, prophylactic procedures, fluoride treatments and dentures. The specific treatments available with limitations if any will be:~~

~~(i) Diagnostic and preventive dental services.~~

~~(aa) Fluoride treatments may be allowed annually.~~

~~(ab) Full mouth X-rays allowed no more often than every three (3) years.~~

~~(ac) Bite-wing X-rays allowed annually.~~

~~(ad) Examination allowed every six (6) months.~~

~~(ae) Prophylaxis allowed no oftener than every six (6) months.~~

~~(ii) Dental services essential to vocational rehabilitation.~~

~~(iii) Restoration of carious teeth.~~

(aa) No gold inlays allowed.
(ab) No crowns allowed on deciduous incisors.
(ac) No fee allowed for pulp capping.
(iv) Oral surgery.
(aa) Extensive, elective oral surgery must be approved by a local review committee.
(v) Endodontics.
(aa) Limited to upper and lower six anterior teeth.
(vi) Prosthetics.
(aa) Full dentures.
(aaa) Where the patient has gone five (5) years without any teeth, the case must be referred to the local review committee.
(aab) Where the patient is wearing a denture which is less than ten (10) years old, the case must be referred to the local review committee.
(aac) Relines on immediate dentures not allowed sooner than six (6) months after placement of the denture.
(aad) No relines allowed oftener than three (3)- year intervals.
(aae) No cold cure relines allowed.
(aaf) Tissue conditions are considered part of the original denture fee.
(ab) Partial Dentures.
(aaa) Allowed when one or more anterior teeth are to be included on the partial.
(aab) Allowed when four (4) or more posterior teeth (exclusive of third molars) are missing but in this situation, the chrome-cobalt type is not allowed.
(vii) Crowns and Fixed Bridges.
(aa) Esthetic crowns are limited to U/L six anteriors.
(ab) Full gold crowns allowed only on broken-down teeth not restorable in any other way.
(ac) Necessary entra-oral periapical X-rays must be authorized (no full-mouth X-rays may be done without prior authorization).
(ad) Fixed bridges allowed only when two or less anterior teeth are missing.
(ae) Three-quarter crowns and steeles facings must be used when possible.
(af) Requests for ceramco bridges must go through the local review committee.
(ag) X-rays required for:
(aaa) Crowns - stainless, full gold others.
(aab) Endodontic cases.
(aac) Any case where pulp treatment is involved.
(viii) Orthodontal and periodontal services may be covered by the Medical Assistance Program if it is demonstrated that the physical and psycho-social well-being of the recipient is severely affected in a detrimental manner as

~~a result of such a condition or ailment. These services must be previously authorized by the Medical Assistance Bureau. The request for authorization shall include statements from the provider of the service and the social worker involved with the case and must clearly document the necessity for the service and assurance that the plan will be followed to completion.~~

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

RULE I DENTAL SERVICES, DEFINITION Dental service is the treatment of the teeth and associated structures of the oral cavity and treatment of disease, injury or impairment which may effect the oral and general health of the individual. The services must be provided by a licensed dentist or a licensed dental hygienist under the direct supervision of a licensed dentist. The services must be within the scope of their professions, as defined by law.

RULE II DENTAL SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46-2.10(18)-S11516 through 46-2.10(18)-S11522. (See MAR Notice No. 46-2-223 in the 1980 Register, Issue No. 5. These rules will be adopted in June.)

(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: extensive oral surgery must be prior authorized by the designated professional review organization.

(a) general anesthesia in a dental office. This service must be prior authorized by the designated peer review organization;

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

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

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

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

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

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

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

(i) alveolectomy, not in conjection with extractions;

(j) excision of hyperplastic tissue;

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

(l) removal of cyst;

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

(n) frenectomy;

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

(p) biopsy;

(q) maxilla, open reduction;

(r) fracture, simple, maxilla, treatment and care;

(s) mandible, open reduction;

(t) fracture, simple, mandible, treatment and care;

(u) facial surgery.

(5) The following endodontic services are benefits of the medicaid program: All nonemergency endodontics must be authorized by the designated peer 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) The following full denture services are benefits of the medicaid program: All full dentures must be prior authorized by the designated peer 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.

(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: All partial dentures must be prior authorized by the designated peer 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: all periodontia must be prior authorized by the designated peer review organization.

(a) deep scaling and currettage up to four (4) 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: These services must be prior authorized by the designated peer 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;

(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) prior authorization by the designated peer review organization required;

(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) The following orthodontic services are benefits of the medicaid program: All orthodontia must be prior authorized by the designated peer 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.

(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.

RULE III DENTAL SERVICES, REIMBURSEMENT Payment for dental services shall be limited to the lowest of usual and customary charges which are reasonable; the maximum amount payable by medicare, or the following fee schedule:

(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/adult - 16.90;
(s) prophylaxis, includes routine scaling and polishing/ 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.) - 175.50;
(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 or 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) or (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;
(b) pontic - ceramic only - 147.50;
(c) cured acrylic, laboratory processed, veneer - 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 Steel'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;
(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 (1) 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.

4. The proposed amendment and adoption of rules is part of the Department of Social and Rehabilitation Services plan to update all Medicaid rules to comply with current Medicaid practice and to facilitate the Department's ongoing rule recodification process. The proposed rules have been developed with assistance of a committee from the Montana Dental Association and the state's Dental Consultant. The proposed reimbursement rule reflects the recommendations of

the committee that increases be granted for frequently used services, often involving the use of precious metals while staying within guidelines established by the legislature.

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 Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than June 13, 1980.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Section 53-6-113 MCA, and the rules implement Sections 53-6-101 and 53-6-141 MCA.

Keith P. Colla
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the adoption of rules pertaining to occupational therapy services	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, OCCUPATIONAL THERAPY SERVICES

TO: All Interested Persons

1. On June 5, 1980 at 2:00 p.m.; a public hearing will be held in the auditorium of the State Department of Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the adoption of rules pertaining to occupational therapy services.

2. The proposed rules provide as follows:

RULE I OUTPATIENT OCCUPATIONAL THERAPY SERVICES, DEFINITION (1) Occupational therapy means medically directed treatment of physically and/or mentally disabled individuals by means of constructive activities designed and adapted by a qualified occupational therapist to promote the restoration of useful function.

(2) Qualified occupational therapist is one who is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.

RULE II OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46-2.10(18)-S11516 through 46-2.10(18)-S11522. (See MAR Notice No. 46-2-223 in the 1980 Register, Issue No. 5. These rules will be adopted in June.)

(1) Outpatient occupational therapy service is limited to a maximum of 200 visits per fiscal year.

(2) All occupational therapy services must be physician referred.

(3) All occupational therapy services must be reviewed and renewed by the referring physician at a minimum of 90 day intervals except occupational therapy provided to nursing home residents must be reviewed by the attending physician every 30 days.

(4) Written physicians' orders and occupational therapy reports must be current and available upon request of the department or its designated representative.

(5) Outpatient occupational therapy services will be subject to review by the designated professional review organization.

(6) Occupational therapy services provided through a home health care agency shall be part of the agencies 200 visit limitation.

RULE III OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REIMBURSEMENT Medicaid payment for outpatient occupational therapy services will be the lesser of usual and customary charges which are reasonable, the maximum allowed by medicare, or the following occupational therapy fee schedule:

A. D. L.	16.50
Occupational Therapy Evaluation	27.50
Home Instruction	27.50
One Modality	11.00
Two Modalities	12.10
Three Modalities	16.50
Four Modalities	16.50
Five Modalities	19.80

3. The rules to be adopted are part of the Department of Social and Rehabilitation Services' plan to update all Medicaid rules to comply with current Medicaid practice and to facilitate the Department's ongoing rule recodification process. There is a 10% increase in reimbursement; the first proposed since 1974, this increase is within the margin of increase provided by legislative guidelines.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than June 12, 1980.

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

6. The authority of the agency to make the proposed rules is based on Section 53-6-113 MCA, and the rules implement Sections 53-6-101 and 53-6-141 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11440 (1) (i) and the adoption of rules pertaining to home health services	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11440 AND THE ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, HOME HEALTH SERVICES.

TO: All Interested Parties:

1. On June 9, 1980, at 10:00 a.m., a public hearing will be held in the auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana 59601, to consider the amendment of Rule 46-2.10(18)-S11440 (1) (i) and the adoption of rules pertaining to medical assistance, home health services.

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

~~(i) Home health care services are "visiting nurse services and other home care therapy requested by the physician and provided through a public or private non-profit agency operating in accordance with the policies and standards established by the State Department of Health". Such services may be given in the home of the individual. These services shall be provided in the home on a visit basis to the patient who is under the care of a physician. In those communities where nursing services have not been developed under the above definition, arrangements may be made for the employment of a registered nurse on a part-time or an hourly basis in accordance with the policies and standards established by the State Department of Health. These services may be given only to those recipients who live in their own homes.~~

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

RULE I HOME HEALTH SERVICES, DEFINITION (1) Home health services are the following services provided by a licensed home health care agency on a part-time or intermittent basis to a recipient in his place of residence:

(a) nursing services;
(b) home health aide services;
(c) physical therapy;
(d) occupational therapy;
(e) speech therapy;
(f) medical supplies and equipment suitable for use in the home.

(2) Nursing service may be provided by a licensed registered nurse in geographic areas not covered by a licensed home health agency.

RULE II HOME HEALTH SERVICES, REQUIREMENTS (1) A home health agency must be licensed by the Montana department of health and environmental sciences and be medicare certified.

(2) Home health services are available only through those home health agencies that have a contract with the department.

(3) Home health services must be prescribed by the recipient's attending physician and be part of a written plan of care.

(4) Home health services must be reviewed and renewed by the recipient's attending physician at a minimum of 60 day intervals.

(5) Written physician orders and care plans must be current and available upon request of the department or its designated representative.

(6) Home health services are limited to a maximum of 200 visits per recipient per fiscal year.

RULE III HOME HEALTH SERVICES, REIMBURSEMENT (1) Reimbursement for home health services will be at cost, subject to upper limits defined in (3), as determined by an audit conducted according to Title XVIII of the Social Security Act definition of allowable costs, except that payment by the home health agency for contracted therapy services may not exceed the Montana state medicaid therapy fee schedule as an allowable cost for the contracted service.

(2) Reimbursement will be paid through interim rates during a cost report period as determined by the home health agencies' Title XVIII of the Social Security Act fiscal intermediary, with retroactive settlement for actual allowable costs at the conclusion of the report period.

(3) Reimbursement for home health services will be the lesser of usual and customary charges which are reasonable or the maximum amount payable by medicare.

(4) Total payment for home health services will not exceed $400.00 per recipient per month without prior authorization of the department.

(5) Reimbursement for nursing service provided by a licensed registered nurse in geographic areas not covered by a home health agency will be $7.50 per hour.

4. The rules to be adopted are substantially different from our present rules and are to replace the proposed amendment of Rule 46-2.10(18)-S11440(1)(i). This proposed adoption and amendment has been in part developed in conjunction with the Home Health Association. The proposed increase in

reimbursement is within the margin of increase provided by legislative guidelines.

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 Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than June 12, 1980.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Section 53-6-113 MCA, and the rules implement Sections 53-6-101 and 53-6-141 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11502 pertaining to medical assistance, psychological services, reimbursement	NOTICE OF PUBLIC HEARING FOR THE AMENDMENT OF RULE 46-2.10(18)-S11502 PERTAINING TO MEDICAL ASSISTANCE, PSYCHOLOGICAL SERVICES

TO: All Interested Persons

1. On June 4, 1980, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the amendment of Rule 46-2.10(18)-S11502 pertaining to medical assistance, psychological services, reimbursement.

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

46-2.10(18)-S11502 PSYCHOLOGICAL SERVICES, REIMBURSEMENT Reimbursement for services shall be the lowest of:

(1) customary charges which are reasonable, or

(2) the amount payable by medicare for the same service, or

(3) ~~thirty-two~~ thirty-four dollars and ~~ten~~ twenty-seven cents ~~($32.10)~~ ($34.27) for individual psychological services, or

(4) ~~nine~~ ten dollars and ~~sixty-three~~ twenty-eight cents ~~($9.63)~~ ($10.28) for group psychological services.

3. The amendment of the above-mentioned rule is proposed to raise reimbursement rates for psychological services within limits established by the legislature.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, no later than June 12, 1980.

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

6. The authority of the agency to make the proposed amendment is based upon Section 53-6-113 MCA, and the rule implements Sections 53-6-101 and 53-6-141 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

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

In the matter of the adoption of a rule pertaining to medical assistance, services provided	) NOTICE OF PROPOSED ADOPTION OF A RULE PERTAINING TO MEDICAL ASSISTANCE, SERVICES PROVIDED. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to adopt a rule pertaining to medical assistance, services provided.

2. The proposed rule provides as follows:

RULE I SERVICES PROVIDED (1) The following items of medical or remedial care and services shall be available to all persons who are certified eligible for Medicaid benefits, subject to the conditions and limitations contained in the rules on definition, requirements and reimbursement for each type of service:

(a) inpatient hospital services;
(b) outpatient hospital services;
(c) other laboratory and x-ray services;
(d) skilled and intermediate nursing services in long term care facilities;
(e) early and periodic screening, diagnosis and treatment;
(f) physician's services;
(g) podiatry services;
(h) outpatient physical therapy services;
(i) speech therapy, audiology and hearing aids;
(j) outpatient occupational therapy services;
(k) home health care services;
(l) personal care services in a recipient's home;
(m) home dialysis;
(n) private duty nursing services;
(o) clinic services;
(p) dental services;
(q) outpatient drugs;
(r) prosthetic devices and medical supplies;
(s) eyeglasses and optometric services;
(t) transportation and per diem;
(u) family planning services;
(v) psychological services;

3. The proposed adoption is part of the Department of Social and Rehabilitation Services' plan to update all Medicaid rules and to facilitate the Department's ongoing rule recodification process. To organize the most explicit format, this rule is proposed to merely list services covered; limitations, requirements and reimbursement schedules are contained in the rules on the individual types of service.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

5. 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; 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 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-103 and 53-6-141 MCA.

Keith P. Cobb
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11440(1)(s) and the adoption of rules pertaining to medical assistance, home dialysis for end stage renal disease	)))))))	NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11440 AND THE ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, HOME DIALYSIS FOR END STAGE RENAL DISEASE. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.10(18)-S11440(1)(s) and adopt rules pertaining to medical assistance, home dialysis for end stage renal disease.

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

~~(s) Home Dialysis for Chronic Kidney Disease Patients. Payment for home dialysis related services including training at a Certified Home Dialysis Training Center and assistance of a "back-up" person in dialysing a patient at home can be provided by the medical program. The availability of Medicare funds, Vocational Rehabilitation funds, and any other resources will be coordinated on an individual case basis to supplements under Medicaid.~~

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

RULE I HOME DIALYSIS FOR END STAGE RENAL DISEASE, DEFINITION (1) Home dialysis service for end stage renal disease is the provision of equipment required for the renal dialysis of a recipient in his home.

(a) Related services includes training at a certified home dialysis training center for a recipient and a "back-up" person, if necessary, in dialysing a patient at home.

RULE II HOME DIALYSIS FOR END STAGE RENAL DISEASE, REQUIREMENTS (1) The provision of home dialysis and related services by the medicaid program shall be coordinated with the Title XVIII medicare renal disease program and any other program providing the same or similar service. Application for medicare benefit is required if medicaid coverage is to be allowed.

(2) Any interest in equipment accrued by means of lease or purchase by the department shall be retained by the department. In no case will a recipient have or be entitled to any property interest in the equipment leased or purchased.

(3) Home dialysis and related services shall be provided only to a person who has been diagnosed as suffering from chronic end stage renal disease by a physician.

(4) Medical necessity and appropriateness of the services shall be subject to review by the designated professional review organization.

(5) In all cases where feasible and necessary, a member of the recipient's household shall be trained as the "back-up" person.

RULE III HOME DIALYSIS FOR END STAGE RENAL DISEASE, REIMBURSEMENT (1) Reimbursement for equipment shall be the lesser of the following: usual and customary charges which are reasonable, or the amount allowable by medicare.

(2) Payment to a nonrelated individual for "back-up" services shall be negotiated between the department and the provider on a case-by-case basis. Members of a recipient's family shall not be reimbursed for providing this service. Reimbursement shall only be allowed in those cases where a family member is not available to provide "back-up" services.

4. The proposed amendment and adoption of these rules are part of the Department's plan to update all Medicaid rules to comply with current practice and to facilitate the Department's recodification process. There is no change in reimbursement for home dialysis.

5. Interested parties may submit their data, views or arguments concerning the proposed adoptions and amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

6. If a person who is directly affected by the proposed adoptions and amendment 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

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

or from an association having 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 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

8. The authority of the agency to make the proposed adoptions and amendment is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-101 and 53-6-141 MCA.

Keith F. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11440(1)(q)(i)(ii)(iii)(iv)(aa) and the adoption of rules all pertaining to physical therapy except the proposed amendment also pertains to occupational therapy services.	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46-2.10(18)-S11440 AND THE ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, PHYSICAL AND OCCUPATIONAL THERAPY SERVICES

TO: All Interested Persons

1. On June 5, 1980, at 3:00 p.m., a public hearing will be held in the auditorium of the State Department of Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the amendment of Rule 46-2.10(18)-S11440(1)(q) (i)(ii)(iii)(iv)(aa) and the adoption of rules pertaining to medical assistance, physical and occupational therapy services.

2. The rule, 46-2.10(18)-S11440(1)(q)(i)(ii)(iii)(iv)(aa), as proposed to be amended provides as follows:

~~(q)--Physical therapy, occupational therapy, and speech therapy must be done by a therapist licensed by the respective state licensing board. Occupational therapy, speech therapy, and physical therapy may be provided up to a maximum of 200 visits each fiscal year under the following circumstances.~~

~~(i)--Inpatient Hospital Services. These therapies may be provided as a part of inpatient hospital services, limited to the maximum 30 days hospitalization in one fiscal year, or may be part of the deductible paid for Medicare patients in one term of illness. Hospital based services by a therapist are to be part of the hospital bill.~~

~~(ii) Home Health Services. Physical therapy, speech therapy, and occupational therapy may be provided through a home health care agency. Under these circumstances, the therapy visits will be part of 200 visits provided by the home health care agency.~~

~~(iii) Skilled Nursing Home. Physical therapy, occupational therapy and speech therapy may be provided for patients receiving skilled nursing care. These therapists must be ordered by the attending physician. The Medical Assistance Bureau will not pay the physical therapist for services provided by employees of a nursing home.~~

~~(iv) Outpatient Physical Therapy. Physical therapy may be provided on an outpatient basis up to a maximum of 200 visits in a fiscal year. All outpatient physical therapy must have authorization from the Montana Foundation for Medical~~

~~Care. A copy of the physical therapy prescription and treatment program must be sent to the Montana Foundation for Medical Care, 1400 Eleventh Avenue, Helena, Montana 59601, within 21 days from the initiation of treatments. If no request for treatment is received or authorized, not more than 30 days of treatment will be paid. Authorization by the Montana Foundation for Medical Care for physical therapy will not be given for more than ninety (90) days. If more treatment is required, there must be re-evaluation and approval by the attending physician and a copy of this evaluation and treatment program sent to the Montana Foundation for Medical Care for authorization.~~

~~(aa) Physical therapy may be done by a physical therapy aide employed and supervised by the licensed physical therapist. A physical therapist may be paid for time spent in behalf of a patient in giving instruction and supervision to staff members of a nursing home or to a relative of a patient.~~

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

RULE I OUTPATIENT PHYSICAL THERAPY SERVICES, DEFINITION (1) Outpatient physical therapy means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental disability. Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, light, water, electricity, and sound. Physical therapy also includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures, the establishment and modification of treatment, and consultative, educational, and other advisory services, and instruction and supervision of supportive personnel.

RULE II OUTPATIENT PHYSICAL THERAPY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46-2.10(18)-S11516 through 46-2.10(18)-S11522. (See MAR NOTICE No. 46-2-223 Register Issue No. 5. Rules will be adopted in June.)

(2) All physical therapy must be provided by a licensed physical therapist.

(3) Outpatient physical therapy service is limited to a maximum of 200 visits per fiscal year.

(4) All physical therapy must be prescribed by a physician.

(5) Prescription for physical therapy is valid for 90 days except physical therapy prescription for nursing home resident is only valid for 30 days.

(6) Written physicians' prescription and physical therapy reports must be current and available upon request of the department or its designated representative.

(7) Outpatient physical therapy will be subject to review by the designated professional review organization.

(8) Physical therapy services provided through a home health care agency shall be part of the agencies 200 visit limitation.

(9) A physical therapy assistant, student or aide may assist in the practice of physical therapy under direct supervision of the licensed physical therapist who is responsible for and participates in the patients treatment program.

RULE III OUTPATIENT PHYSICAL THERAPY SERVICES, REIMBURSEMENT Medicaid payment for outpatient physical therapy services will be the lesser of usual and customary charges which are reasonable, the maximum allowed by Medicare, or the following physical therapy fee schedule:

A. D. L.	16.50
Consultation	27.50
Electrophysiological evaluation	27.50
Electromyography	55.00
Physical Therapy Evaluation	27.50
Home Instruction	27.50
Muscle Testing	27.50
Hubbard Tub	22.00
Hubbard Tub + 1 modality	22.00
Hubbard Tub + 2 modalities	25.30
Hubbard Tub + 3 modalities	27.50
Isolation Hubbard Tub	22.00
Whirlpool	13.20
Whirlpool + 1 modality	14.30
Whirlpool + 2 modalities	22.00
Whirlpool + 3 modalities	33.00
Gait Training	22.00
Postural Drainage	14.30
Therapeutic Exercise	16.50
One Modality	11.00
Two Modalities	12.10
Three Modalities	16.50
Four Modalities	16.50
Five Modalities	19.80

4. The rules to be adopted cover both limitations and reimbursement and reflect the Department of Social and Rehabilitation Services' plan to update all Medicaid rules to comply with current Medicaid practice while facilitating the Department's ongoing rule recodification process. The rule to be adopted along with another rule noticed separately is to

replace the proposed amendment of rule 46-2.10(18)-S11440 (1)(q)(i)(ii)(iii)(iv)(aa). This proposed adoption has received input from the Montana Chapter of the American Physical Therapist Association. The 10% increase in reimbursement, the first proposed since 1974, is within the margin of increase provided by legislative guidelines.

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 Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than June 12, 1980.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Section 53-6-113 MCA, and the rules implement Sections 53-6-101 and 53-6-141 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the adoption of rules and the repeal of 46-2.10 (18)-S11430 pertaining to medical assistance, eligibility.	NOTICE OF PROPOSED ADOPTION OF RULES AND THE REPEAL OF RULE 46-2.10 (18)-S11430 PERTAINING TO MEDICAL ASSISTANCE, ELIGIBILITY. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to adopt rules and repeal 46-2.10(18)-S11430 pertaining to medical assistance, eligibility.

2. The rule proposed to be repealed is on page 46-91 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I DEFINITIONS (1) Recipient means a person who is currently receiving or who has at any time received benefits under the Montana medicaid program.

(2) Applicant means a person who has applied for but is not currently receiving benefits under the Montana medicaid program.

(3) Provider means an individual, firm, corporation, association or institution which is providing or has been approved to provide medical assistance to a recipient pursuant to the state medical assistance program.

4. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Section 53-6-113 MCA.

RULE II APPLICATION (1) Any individual who is a United States citizen, or an alien lawfully admitted for permanent residence, or otherwise permanently residing in the United States under color of law and who is a resident of the state of Montana may make application for medicaid.

(a) For purposes of this part, resident means an individual who is living in the state voluntarily with the intention to remain permanently or for an indefinite period of time or is living in the state for purposes of employment. Temporary absence from the state with the intent to return does not interrupt continuity of residence.

(2) Application for medicaid shall be made to the public welfare office in the county where the individual is residing. In instances where the individual is unable to make applica-

tion on his own behalf, the application may be made by a guardian and/or interested party.

(a) Application may be made in the county in which medicaid services are received, and that county shall forward such application to the county of residence within 5 days of the date of application.

(2) Eligibility will be determined within:

(a) 60 days from the date of application for applicants who apply for medicaid on the basis of disability; and

(b) 45 days for all other applicants except in unusual circumstances.

(3) Anyone who knowingly provides false information with the intent to obtain medical benefits under the Montana medicaid program is subject to prosecution for theft.

(4) Persons applying for cash assistance under the Montana aid to families of dependent children program or the SSI program are not required to file a separate application for medicaid except when it is necessary to determine retroactive eligibility for SSI recipients.

5. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-132, 53-6-121, 53-6-133, 53-6-131, 53-6-114 MCA.

RULE III COUNTY ADMINISTRATION (1) The county department of public welfare shall be charged with determining the nonmedical conditions of eligibility of applicants for medicaid.

(2) The Montana medicaid program shall be in effect in each and every county of the state and administration and supervision shall be uniform throughout the counties of the state in accordance with the rules of the department.

6. The authority of the agency to make the proposed adoption is based on Section 53-6-113 and the rule implements Sections 53-6-114, 53-6-121, 53-6-103 MCA.

RULE IV ELIGIBILITY Any person who is categorically needy or medically needy, as defined in Rules V and VI, and who meets all other requirements is eligible to receive the benefits provided by the medicaid program.

7. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Section 53-6-131 MCA.

RULE V CATEGORICALLY NEEDY The following groups of individuals are eligible for medicaid as categorically needy:

(1) Individuals receiving aid to families with dependent children (AFDC); supplemental security income (SSI); or the

state supplement to SSI; or who would be eligible for, but are not receiving, cash assistance.

(2) Individuals, who in December 1973, were eligible for medical assistance as an "essential spouse", as defined in section 1905(a) of the Social Security Act and who have continued to live with and be essential to, the well being of a recipient of SSI, as long as the recipient of the SSI continues to meet the December 1973 eligibility criteria of the state of Montana's aid to the aged, blind, or permanently and totally disabled program. This includes the 1973 financial eligibility requirements as well as the 1973 catagorically needy criteria.

(3) All persons who, in December 1973, met all of the conditions of eligibility under the state's aid to the needy blind, and permanently and totally disabled plans, and continues to meet the financial criteria for SSI, and continues to be considered blind or disabled under the 1973 state criteria.

(4) Individuals in medical institutions in December 1973, who, if they had not been institutionalized, would have been eligible for old age assistance (OAA), aid to the needy blind (ANB), or aid to the permanently and totally disabled (APTD), and continue to meet the December 1973 eligibility criteria of OAA, ANB, and APTD and remain institutionalized in need of this type of care.

(5) Individuals in medical institutions, who, if they were no longer in the institutions, would be eligible for financial assistance under SSI or AFDC.

(6) Those SSI or state supplement recipients who became ineligible due solely to social security cost-of-living increases after April, 1977.

(7) Individuals who were eligible for retired survivors disability insurance (RSDI) in August, 1972 and were receiving OAA, ANB, APTD, or AFDC, including those who:

(a) would have been eligible for these programs if they had applied; or

(b) would have been eligible if they were not in a medical institution; or

(c) would currently be eligible for SSI or AFDC except for the 20% 1972 RSDI increase.

(8) An AFDC or AFDC-unemployed parent family whose assistance payments are terminated solely due to increased hours of employment or increased income from employment, will continue to be eligible for medical assistance for four months beginning with the month the family becomes ineligible for AFDC provided:

(a) the family received AFDC for three of the six previous months; and

(b) at least one member of the family continues to be employed for the four months. The four-month period begins on the date AFDC is actually terminated.

(9) Individuals under 21 years who:
(a) would be eligible for AFDC payments except for age or school attendance requirements; or
(b) are in foster-care under the supervision of the state, a private non-profit child care agency, or a private child care institution, which is assuming full or partial financial responsibility of the child; or
(c) were in foster care under supervision of the state and have been adopted as "hard-to-place" children, if those adoptions are subsidized in part or in full by a public agency; or
(d) are in intermediate care facilities; or
(e) are receiving active treatment in facilities or programs accredited by the joint commission on accreditation of hospitals (JCAH).
(10) Individuals who would be eligible for AFDC cash assistance except they have refused to meet the WIN registration requirements and/or have refused to assign child support rights to the agency.

8. The authority of the agency to make the proposed adoption is based on Sections 53-6-113, 53-2-201 MCA, and the rule implements Sections 53-6-131, 53-2-206, 53-2-204 MCA.

RULE VI MEDICALLY NEEDY Individuals who meet the nonfinancial criteria for the categorically needy (AFDC or SSI) but have income and/or resources which exceed the amounts allowable to the categorically needy are medically needy if the following criteria are met:
(1) The medically needy income levels (MNIL) will be 133 1/3 percent of the highest money payments which would ordinarily be made to a family of the same size, in accordance with the rules for AFDC in ARM 46-2.10(14)-S11121 . Persons whose income, after amounts disregarded in accordance with SSI rules or the department's AFDC rules, exceeds the applicable categorically needy standards, but does not exceed the applicable MNIL and are otherwise eligible are medically needy.
(2) A person whose income exceeds the applicable MNIL may become eligible by incurring medical expenses equal to the income in excess of the applicable MNIL.
(a) Current medical expenses do not include expenses to which medicaid benefits are applied or which may be paid by a liable third party.
(b) In establishing financial eligibility, excess income is applied toward any medical expenses, which are the current liability of the person, in the following order:
(i) medical insurance premiums, including medicare premiums;
(ii) co-payments or deductibles imposed under any health insurance program in which the individual is enrolled;

(iii) for necessary medical or remedial care recognized under state law, but not provided for under the state medical assistance plan; and

(iv) for necessary medical or remedial care provided for under the state plan.

(d) Incurred expenses which have been paid or which will be paid by a third party shall not be considered a liability of the applicant and thus shall not be deducted from his excess income.

(e) An individual in an institution which participates in the medicaid program, may become financially eligible as medically needy by spending down excess income to a reduced MNIL (personal needs amount).

(i) To establish financial eligibility the individual must incur medical expenses equal to the amount of his net income (after disregards) above the personal needs amount, but once eligiblity is established, all available income, (including amounts disregarded) above the personal needs amount is applied toward medical care costs.

(A) Medical care costs may include health insurance premiums, deductibles, or co-insurance charges;

(B) necessary medical care recognized under state law but not provided under the state medicaid program; and

(C) for items of care included in the state's medicaid program, including the cost of care in the facility.

(3) All persons in a medical institution which participates in the medicaid program shall have $40.00 per month of their income protected for personal needs.

(4) Institutionalized persons who have earned income from work considered essential toward satisfying their developmental need to achieve a degree of independence shall have an additional $65 per month of the earned income protected for their personal needs.

(5) In addition to the personal needs amount the department may protect, with a physicians certification, a portion of an individual's income, not to exceed the monthly SSI income maintenance level if one of the following conditions exists:

(a) the individual is likely to be discharged to a less restrictive living arrangement within 6 months; or

(b) If a spouse or family remaining at home has income less than the SSI or AFDC maintenance level for the family size.

(6) The following groups shall not be required to incur medical expenses to establish eligibility:

(a) families with dependent children entitled to four months continued medicaid coverage after AFDC eligibility is terminated due to increased income or hours of employment;

(b) aged, blind and disabled persons receiving state supplementary payments mandated under Sec. 212 of P.L. 93-66;

(c) essential spouses of persons who received cash assistance as aged, blind or disabled in December 1973;

(d) aged, blind and disabled persons residing in medical institutions who were eligible for medicaid in December 1973 under provisions then in effect for coverage of institutionalized persons as categorically needy.

(e) Persons who would be financially eligible for cash assistance except for increased income from the 20% social security increase they received in 1972.

(f) Recipients of optional state supplementary payments.

(g) Persons receiving emergency SSI benefits until such time as a final determination of disability is established (presumptively eligible).

9. The authority of the agency to make the proposed adoption is based on Sections 53-6-113, 53-2-201 MCA, and the rule implements Sections 53-6-131, 53-2-206 53-2-204 MCA.

RULE VII INCOME DETERMINATION AND LIMITS (1) Income means the receipt by a person of any property or service which he can apply, either directly, or by sale or conversion, to meet his basic needs for food, clothing and shelter. Income is available if it is actually in hand or within the control of the applicant.

(2) Categorically needy persons will have their available income determined as follows:

(a) for AFDC related cases according to ARM sections 46-2.10(14)-S11180 through 46-2.10(14)-S11200; and

(b) for the aged, blind and disabled, SSI related cases, according to 20 CFR 416.1101 through 416.1190.

(3) The determination of income for SSI related cases will be performed by the social security administration and the department will accept such determination pursuant to section 1634 of the Social Security Act, as amended.

(4) Medically needy persons will have their available income determined by the county welfare office using AFDC or SSI rules as appropriate except that:

(a) income shall be evaluated over a time period not to exceed four months; and

(b) the disregard of the first $30 plus 1/3 of the remainder of earned income used in determining the payment amount for AFDC is not applicable in determining financial eligibility for medicaid as medically needy unless the applicant has received cash assistance in one of the preceeding four months.

10. The authority of the agency to make the proposed adoption is based on Sections 53-6-113, 53-2-201 MCA, and the rule implements Sections 53-2-206, 53-6-133, 53-6-131, 53-6-142, 53-6-141 MCA.

RULE VIII RESOURCE DETERMINATION AND LIMITS (1) Resource means cash, or other liquid assets, real or personal property that a person owns and could convert to cash to be used for his support and maintenance. If the person has the right, authority, or power to liquidate property, or his share of property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource to the person. Burial insurance and trusts, which by their terms and in fact are irrevocable and comply with 72-27-201 MCA, are not considered as resources.

(2) Categorically needy persons shall have their resources determined as follows:

(a) for AFDC related cases according to ARM 46-2.10(14)-S11210; and

(b) for the aged, blind, disabled (SSI) related cases according to 20 CFR 416.1201 through 416.1262

(3) Medically needy persons shall have their resources determined according to the criteria for AFDC or SSI as applicable and shall not exceed $1500 for a single individual, $2,250 for two persons plus $100 for each additional eligible person in the household.

11. The authority of the agency to make the proposed adoption is based on Sections 53-6-113, 53-2-201 MCA, and the rule implements Sections 53-6-133, 53-2-206 MCA.

RULE IX DURATION OF ELIGIBILITY (1) Eligibility for medicaid extends from the first day of the month in which application is made to end of month except that persons who become eligible as medically needy by reason of a spenddown shall be eligible only from the day following the date on which the required incurment is met.

(2) Eligibility may extend retroactively to the first day of the third month prior to the month of application provided all eligibility criteria were met during that period.

(a) Such retroactive eligibility extends to deceased persons, who would have been eligible but whose death prevented them from applying.

(3) Persons shall be notified of termination of medical benefits no less than 10 days prior to the date of closure except:

(a) when death of the recipient has been confirmed;

(b) the recipient requests in writing that assistance be terminated;

(c) the recipient has been committed to a penal institution;

(d) the recipient's whereabouts is unknown, and cannot be ascertained by reasonable inquiry; or

(e) a recipient has been accepted for assistance in another jurisdiction.

(4) Recipients must be notified of their right to a fair hearing upon closure.

(5) Medicaid coverage will be continued when:

(a) the person has requested a fair hearing, in accordance with ARM 46-2.2(2)-P211 through 46-2.2(2)-P340;

(b) a family becomes ineligible for AFDC payments due to increased earnings, or hours of employment;

(c) the person or family continues to receive cash assistance for a temporary period while a factor of deprivation is being overcome;

(d) it is necessary to determine whether a former SSI recipient is eligible as a medically needy person, and;

(e) it is necessary to provide timely notice of closure.

12. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-131 and 53-6-133 MCA.

RULE X PERIODIC REVIEWS Redetermination of eligibility will be completed in accordance with the rules of the category to which assistance is related; that is, AFDC related cases every six months and SSI related cases every 12 months, except for those medically needy cases which require a closure and re-application every four months.

13. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-142, 53-6-131, 53-6-133 MCA.

14. The proposed repeal and adoptions of rules are part of the Department of Social and Rehabilitation Services' plan to update all Medicaid rules to comply with current Medicaid practice and to facilitate the Department's ongoing rule recodification process. The proposal will reorganize the Medicaid rules into a more usable format.

15. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59601, no later than June 16, 1980.

16. If a person who is directly affected by the proposed adoptions 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 Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601 no later than June 16, 1980.

17. If the agency receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having 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 1,118 persons based on a Department budget analysis that shows a total of 11,184 Medicaid recipients.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

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

In the matter of the adoption of rules pertaining to medical assistance, audiology services	NOTICE OF PROPOSED ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, AUDIOLOGY SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to adopt rules pertaining to medical assistance, audiology services.

2. The proposed rules provide as follows:

RULE I AUDIOLOGY SERVICES Audiology services means hearing aid evaluation (HAE) and basic audio assessment (BAA) provided by a licensed audiologist, upon physician referral, to individuals with hearing disorders.

RULE II AUDIOLOGY SERVICES, REQUIREMENTS (1) Audiology services must be physician referred.

(2) Medicaid coverage for audiology services is limited to those services medically required preliminary to the purchase or obtaining of a hearing aid/device.

(3) Written physicians orders, diagnostic and evaluative reports must be current and available upon request of the Department or its designated representative.

(4) Audiology services will be subject to review by the designated professional review organization.

(5) Basic audio assessment (BAA) under ear phones must include as a minimum a speech discrimination test, a speech reception threshold, a pure tone air threshold, and either a pure tone bone threshold or one of the following: tympanogram, acoustic reflex, tympanometry for tubal function, static compliance.

(6) Hearing aid evaluation (HAE) must be in a free field setting with comparison of representative makes and models of hearing aids to determine those acoustical specifications most appropriate for clients hearing loss, and will include at least one follow-up visit.

RULE III AUDIOLOGY SERVICES, REIMBURSEMENT Payment for audiology services shall not exceed the lowest of; usual and customary charges which are reasonable, actual charges, or the rates allowed by the audiology fee schedule:

AUDIOLOGY FEE SCHEDULE

Basic Audio Assessment (BAA)	$40.00
Hearing Aid Evaluation (HAE)	20.00
Speech Discrimination Test	8.00
Speech Reception Threshold	8.00
Pure Tone Air Threshold	8.00
Pure Tone Bone Threshold	8.00
Tympanogram (unilateral)	3.00
Tympanogram (bilateral)	6.00
Acoustic Reflex (bilateral)	8.00
Static Compliance	6.00
Bekesy	10.00
SISI (two or more frequency)	10.00
Loudness Balance or ABLB	10.00
Stenger	10.00
Doefler - Stewart	10.00
Lombard	10.00

3. The proposed adoption of rules are part of the Department of Social and Rehabilitation Services' plan to update all Medicaid rules to comply with current Medicaid practice and facilitate the Department's ongoing rule recodification process. Audiology rules were separated from hearing aid rules to make more explicit definitions and requirements specific to this service. The fee schedule found in the proposed reimbursement rule is a mere incorporation of the schedule in use since July 1, 1979.

4. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed adoptions 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 Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601 no later than June 16, 1980.

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

istrative Register. Ten percent of those persons directly affected has been determined to be 1,118 persons based on a Department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Section 53-6-101 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the adoption of rules pertaining to medical assistance, early periodic screening diagnosis and treatment.	)))))	NOTICE OF PROPOSED ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to adopt rules pertaining to medical assistance, early periodic screening diagnosis and treatment (EPSDT).

2. The proposed rules provide as follows:

RULE I EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT, DEFINITION (1) Early periodic screening diagnosis and treatment services (EPSDT) includes the screening and diagnosis of eligible individuals under the age of 21 to ascertain their physical or mental defects and the full range of services provided by the medicaid program to treat, correct, or alleviate defects in chronic conditions discovered.

(2) Screening services are standardized tests performed under medical direction in a mass examination of a designated population.

RULE II EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT, REQUIREMENTS These requirements are in addition to those contained in ARM 46-2.10(18)-S11516 through 46-2.10(18)-S11522. (See MAR Notice No. 46-2-223 in the 1980 Register, Issue No. 5. These rules will be adopted in June.)

(1) Early and periodic screening and diagnosis and treatment services shall be provided only to persons under the age of 21 who are eligible for medicaid.

(2) Such services shall be provided subject to all other conditions and limitations imposed on medicaid program services by the rules of the department.

RULE III EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT, REIMBURSEMENTS (1) Providers of EPSDT services shall be reimbursed in accordance with the rules of the department governing the specific services provided.

(2) Screening services reimbursement shall be based on reasonable costs and shall not exceed prevailing charges in the state for comparable services under comparable circumstances.

3. The proposed adoption is part of the Department of Social and Rehabilitation Services' plan to update all

Medicaid rules to comply with current Medicaid practice and to facilitate the Department's ongoing rule recodification process. The Early Periodic Screening Diagnosis and Treatment service is a mandatory Medicaid service. These proposed adoptions are necessary to deliver this service.

4. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed adoptions 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 Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having 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 1,118 persons based on a Department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to make the proposed adoption is based on Section 53-6-113 MCA, and the rule implements Section 53-6-101 MCA.

Keith P. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the amendment of 46-2.10(18)-S11440(1)(o) and the adoption of rules pertaining to medical assistance, ambulance services	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO RULE 46-2.10(18)-S11440 AND THE ADOPTION OF RULES PERTAINING TO MEDICAL ASSISTANCE, AMBULANCE SERVICES

TO: All Interested Persons

1. On June 9, 1980, at 2:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601 to consider the amendment of Rule 46-2.10(18)-S11440(1)(o) and the adoption of rules pertaining to medical assistance, ambulance services.

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

~~(o) Transportation by ambulance may be authorized upon the recommendation of the attending physician. Ambulance services providing the transportation must be certified by the department of health before payment can be made for such services.~~

3. The proposed adoption of rules is as follows:

RULE I AMBULANCE SERVICES, DEFINITION (1) Ambulance means any vehicle that is specially designed, equipped with customary patient care equipment and supplies as required by state or local law and maintained for the medical care and transportation of the sick or injured.

(2) Emergency ambulance service means immediate response services provided by a licensed ambulance provider in the ground or air transportation of a sick or injured person in a specially designed and equipped vehicle as defined above, which includes a trained ambulance attendant who has current advanced American red cross first aid training or its equivalent.

(3) Nonemergency ambulance service means service provided by a licensed ambulance provider in the transportation of a patient to obtain medical service when such transportation is medically necessary and does not require immediate action.

RULE II AMBULANCE SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46-2.10(18)-S11516 through 46-2.10(18)-S11522 (See MAR Notice

No. 46-2-223 in the 1980 Register, Issue No. 5. These rules will be adopted in June.)

(2) Medicaid payment for ambulance service will be made only to a licensed ambulance provider.

(3) No payment will be made for ambulance service in cases where some means of transportation other than the ambulance could be utilized without endangering the patients health, whether or not such other transportation is actually available.

(4) Medicaid benefits cease at the time of death. When a recipient is pronounced dead after an ambulance is called but before pickup, the ambulance service provided to the point of pickup is covered at the base rate. If a recipient is pronounced dead by a legally authorized individual before the ambulance is called, no payment will be made.

(5) Ambulance claims will be screened for medical necessity and appropriateness by the designated professional review organization.

RULE III AMBULANCE SERVICES, REIMBURSEMENT (1) Ambulance attendant services are included in the providers base rate.

(2) Reusable devices and equipment such as backboards, neckboards and inflatable leg and arm splints are considered part of the ambulance service and are included in the providers base rate.

(3) Nonreusable items and disposable supplies such as oxygen, gauze and dressings, are reimbursable as a separate charge.

(4) Medicaid reimbursement for mileage is allowed for patient loaded miles only outside the city limits.

(5) Medicaid reimbursement will be the lesser of usual and customary charges which are reasonable, the individual providers medicare rate or the individual providers January 1980 medicaid rate plus 10 percent, except that the base rate for nonemergency ambulance service shall not exceed $30.00.

4. The proposed rules are necessary to enable the Department to cover only medically necessary services. Specific requirements and specific definitions are needed so that covered services can be identified. Many recommendations of the Montana Emergency Medical Services Association are incorporated in these rules. The proposed reimbursement rule allows for the maximum increase possible based on budget guidelines and limitations imposed on the Department by the legislature. The maximum is proposed because there has been no increase in this service for two years while costs have risen sharply.

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 Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than June 13, 1980.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Section 53-6-113 MCA, and the rules implement Section 53-6-101 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1980.

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

In the matter of the repeal of Rule 46-2.10(18)-S11460 pertaining to medical assistance, providers of services	NOTICE OF PROPOSED REPEAL OF RULE 46-2.10(18)-S11460 PERTAINING TO MEDICAL ASSISTANCE, PROVIDERS OF SERVICES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rule 46-2.10(18)-S11460, pertaining to medical assistance, providers of services.

2. The rule proposed to be repealed is on page 46-94.8A of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because it is redundant. The provisions of this rule are now included in the Department's new provider sanction and provider requirement rules to be effective June 27, 1980.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P.O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rule 46-2.10(18)-S11460 wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P.O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to repeal this rule is based on Section 53-6-113 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

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

In the matter of the repeal of Rule 46-2.10(18)-S11490 pertaining to medical assistance, third party liability cases	NOTICE OF PROPOSED REPEAL OF RULE 46-2.10(18)-S11490 PERTAINING TO MEDICAL ASSISTANCE, THIRD PARTY LIABILITY CASES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to repeal Rule 46-2.10(18)-S11490, pertaining to medical assistance, third party liability cases.

2. The rule proposed to be repealed is on page 46-94.13 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because it is redundant. The provisions of this rule are now included in the Department's new third liability case rule to be effective June 27, 1980.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, P.O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed repeal of Rule 46-2.10(18)-S1140 wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to the Office of Legal Affairs, P.O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons 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 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to repeal this rule is based on Section 53-6-113 MCA.

Keith P. Colby
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6 ,1980.

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

In the matter of the adoption of rules and the repeal of rules 46-2.10(14)-S11170 through 46-2.10(14)-S11200 pertaining to evaluating income of applicants and recipients in the AFDC program	))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES AND THE REPEAL OF RULES 46-2.10 (14)-S11170 THROUGH 46-2.10 (14)-S11200 PERTAINING TO EVALUATING INCOME OF APPLICANTS AND RECIPIENTS IN THE AFDC PROGRAM

TO: All Interested Persons

1. On June 4, 1980, at 2:00 p.m., a public hearing will be held in the auditorium of the State Department of Social and Rehabilitation Services building, 111 Sanders, Helena, Montana 59601, to consider the repeal of rules 46-2.10(14)-S11170 through 46-2.10(14)-S11200 which pertain to evaluating income of applicants and recipients in the AFDC program and the adoption of 11 rules which pertain to evaluating income of applicants and recipients in the AFDC program.

2. The rules proposed to be repealed can be found on pages 46-72 through 46-77 of the Administrative Rules of Montana.

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

RULE I UNEARNED INCOME, DEFINITION (1) "Unearned Income" means all income that is not earned income as defined in Rule V. Unearned income includes, but is not limited to social security income benefits, veteran's benefits or payments, workmen's compensation payments, unemployment compensation payments, and returns from capital investments with respect to which the individual is not actively engaged.

(2) Unearned income shall be treated as provided in Rules II through IV.

RULE II DISREGARDED UNEARNED INCOME (1) In determining need and amount of assistance, the following unearned income shall be disregarded:

(a) complementary assistance from other agencies and organizations which consists of:

(i) goods and services not included in or duplicated by the AFDC payment,

(ii) a supplement to AFDC payments, for a different purpose.

(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 fulltime 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 VII 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 (PL 92-433 and PL 93-150);
(i) all monies awarded to Indian tribes by the Indian claims commission or Court of Claims shall be disregarded as authorized by PL 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) any contribution furnished by relatives or others which is unavailable directly to the recipient;
(l) the tax exempt portions of payments made pursuant to PL 92-203, the Alaska Native Claims Settlement Act;
(m) all payments under Title I of the elementary and secondary Education Act;
(n) all weekly incentive allowances paid under PL 93-203, the Comprehensive Employment and Training Act of 1973;
(o) incentive payments or reimbursement of training-related expenses made to WIN participants by the manpower agency;
(p) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, 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 PL 93-113;
(q) payments to individual volunteers under Title I (VISTA) of PL 93-113, pursuant to section 404(g) of that law;
(r) individuals receiving supplemental security income shall not be considered as a member of the assistance unit unless they choose to relinquish their SSI grant.

RULE III COUNTABLE UNEARNED INCOME (1) All unearned income, not specifically disregarded by rule II shall be counted.
(2) The amount of the assistance payment shall be determined by estimating the income reasonably expected to exist during the month of application and the month immediately following the month of application. Any income received prior to the date of application is not counted. Unearned income of a recipient is counted from the first to the last day of the second month prior to grant determination.

RULE IV SPECIALLY TREATED UNEARNED INCOME (1) The types of income listed below shall be treated as follows:

(a) Lump sum payments are considered as income for only the month after the ten-day notification to the recipient of grant amount change. After this month, any sum that is retained will be considered against the property resources limitation. The following are examples of lump sum payments: social security, veteran's benefits, unemployment compensation, railroad retirement or disability, workmen's compensation.

(b) Income tax refunds shall be considered toward the property resources limitation and not treated as income.

(c) Indian per capita payments may be considered toward the property resources limitation.

(d) Income from leased land, land sale, and other accrued income may be considered as income available to meet need when received, prorated over the year, or programmed for special needs, such as, but not limited to: housing and home repair, household furnishings and equipment, financial institution debts, education and/or training, recreation equipment, medical debts, bedding and clothing, necessary repair or replacement of a vehicle. Programming must have the approval of the recipient, paying agent, and the county welfare department.

RULE V EARNED INCOME (1) "Earned income" means all income earned by an individual through the receipt of wages, salary, commissions, tips, or any other for profit activity in which he is actively engaged.

(2) Earned income from self-employment means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross income received with the business expenses or total cost of the production of the income. Return from capital investments are earned income when produced as a result of the individual's own efforts, including managerial responsibilities.

(3) Earned income shall be treated as provided in Rules VI through IX.

RULE VI DISREGARDED EARNED INCOME (1) In determining need and amount of assistance, the following earned income shall be disregarded:

(a) earned income of a child under 14 years of age;

(b) earned income of a child over 14 years of age who is a full or part-time student;

(c) earned income of an AFDC family member conserved for future educational needs of a child, if the department has given prior approval for the use of this income;

(d) income received under Title II of CETA "youth employment demonstration programs," of PL 95-93. These programs

include the youth incentive pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs.

RULE VII TREATMENT OF EARNED INCOME (1) The following are methods and treatment of earned income:

(a) The income reasonably expected to exist during the month of application and the month immediately following the month of application shall be estimated. Any income received prior to the date of application shall not be considered.

(b) Business expenses such as materials, labor, tools, rental equipment, supplies and utilities shall be subtracted from the gross self-employment income to arrive at gross income for disregard purposes. Personal employment expenses and work related expenses are not business expenses.

RULE VIII EARNED INCOME DISREGARDS (1) The following disregards are applied to earned income of applicants for and recipients of AFDC, except as provided in Rule IX:

(a) $30 from the gross monthly income;

(b) one-third (1/3) of the remainder;

(c) the mandatory deductions as determined by the employer's tax guide tables for the maximum number of exemptions the individual is entitled under the law. Mandatory deductions are state, federal, FICA taxes, and other deductions over which the individual has no control;

(d) work related expenses of $25 per month or more if the need is documented;

(e) the full cost of public transportation or $.12 per mile if the individual's own vehicle is used to and from work;

(f) child care as a work expense in determining initial eligibility of an applicant. When a suitable placement is not available under Title XX, day care expenses may be allowed as a work related expense.

RULE IX EARNED INCOME NOT DISREGARDED Disregards of mandatory deductions, work related expenses, transportation, and child care shall be allowed. The $30 + 1/3 disregards outlined in Rule VIII shall not be allowed as follows:

(a) to the children's natural or adoptive parents in stepparent cases when the natural or adoptive parents are not included in the AFDC payment;

(b) to any individual whose needs are not included in the AFDC payment;

(c) to new applicants (those who have not received AFDC within any of the previous four months prior to application);

(d) to any person included in the AFDC payment who reduced his/her income, or terminated or refused employment, within the preceding thirty (30) days without good cause;

(e) to income from public service employment under WIN.

RULE X TERMINATION OF INCOME When unearned or earned income terminates, the AFDC payment shall be adjusted the month immediately after the income terminates.

RULE XI SUPPLEMENTAL PAYMENTS When earned or unearned income terminates, the AFDC payment may be adjusted and a supplemental payment made to eligible recipients who request such payment in the month of termination. The recipient is eligible for a supplemental payment if his income is less than 80% of the amount the department would pay for a similar family with no income.

4. The proposed repeal and adoption of these rules are part of the Department's overall plan to update all AFDC rules to comply with current practice and to facilitate the Department's recodification process.

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 Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than June 12, 1980.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Section 53-4-212 MCA, and the rules implement Sections 53-4-231, 53-4-241 and 53-4-242 MCA.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980

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

In the matter of the amendment of Rule 46-2.10(34)-S11930 pertaining to AFDC, amount of assistance	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46-2.10(34)-S11390 PERTAINING TO AFDC, AMOUNT OF ASSISTANCE

TO: All Interested Persons

1. On June 4, 1980 at 3:00 p.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana, to consider the amendment of rule 46-2.10(34)-S11930.

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

46-2.10(34)-S11930 ~~INCOME STANDARDS~~ AMOUNT OF ASSISTANCE (1) The amount of general assistance ~~to be~~ allotted to a recipient ~~may be found~~ shall be based upon need for shelter and food; however, not below the minimum standard for decency and health, and shall not exceed the amount of assistance as found in the table of assistance standards (AFDC) ~~in Economic Assistance~~ which is found in rule 46-2.10(14)-S11121.

3. The department is proposing this amendment to its rule to clarify the present rule. Recipients have argued that the present rule means that the county must pay a full AFDC grant; however, this is not the case or practice. The present rule is a discretionary guide as to the amount of assistance a county can pay. Many general assistance recipients only need help with rent, food or clothing. The proposed amended rule will allow a county to make payments based on a recipient's need; however, these payments cannot exceed those given to recipients of AFDC.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, no later than June 13, 1980.

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

6. The authority of the agency to make the proposed amendment is based on section 53-3-102 MCA, and the rule implements section 53-3-301 MCA.

Keith L. Colo
Director, Department of Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

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

In the matter of the amendment of Rule 46-2.6(2)-S680(2)(f) extending eligibility for day care assistance	) NOTICE OF PROPOSED AMENDMENT OF RULE 46-2.6(2)-S680 PERTAINING TO DAY CARE ASSISTANCE ELIGIBILITY. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 17, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46-2.6(2)-S680 (2)(f) extending eligibility for day care assistance.

2. All figures on the proposed scale are new based on the new median income level for fiscal year 1981. All figures on the former scale which were based on the median income level for fiscal year 1980 have been replaced with the following:

SLIDING SCALE DAY CARE

Household Size	150% AFDC level $$$$	MONTHLY INCOME LEVELS STEPS 1	2	3	4	5	6	7	8	9	10	11	12	75% Median Income $$$$
1	231	232 260	261 289	290 318	319 348	349 377	378 406	407 435	436 464	465 493	494 522	523 551	552 580	581
2	289	290 328	329 367	368 407	408 446	447 485	486 524	525 564	565 603	604 642	643 681	682 720	721 759	760
3	388	389 434	435 480	481 526	527 572	573 618	619 663	664 709	710 755	756 801	802 847	848 893	894 938	939
4	496	497 547	548 598	599 650	651 702	703 754	755 805	806 857	858 909	910 961	962 1012	1013 1064	1065 1116	1117
5	571	572 631	632 691	692 751	752 812	813 872	873 932	933 993	994 1053	1054 1114	1115 1174	1175 1235	1236 1295	1296
6	649	650 717	718 786	787 854	855 923	924 992	993 1061	1062 1130	1131 1199	1200 1267	1268 1336	1337 1405	1406 1474	1475
7	711	712 777	778 843	844 909	910 976	977 1042	1043 1108	1109 1175	1176 1241	1242 1308	1309 1374	1375 1441	1442 1507	1508
8	805	806 866	867 927	928 988	989 1050	1051 1111	1112 1172	1173 1234	1235 1295	1296 1357	1358 1418	1419 1480	1481 1541	1542
SUPPORT LEVELS														
Percent SRS Pays	100% (XX)	92.3%	84.6%	76.9%	69.2%	61.5%	53.8%	46.2%	38.5%	30.8%	23.1%	15.4%	7.7%	0%

3. This change is necessary to reflect changes in the median income figures for fiscal year 1981. Monthly income levels for households of one person have been added to make the scales consistent with eligibility factors for stepparent families.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed amendment 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than June 16, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental 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 200 homes and centers based on 2,000 licensed homes and centers.

7. The authority of the agency to make the proposed amendment is based on Section 53-4-111 MCA, and the rule implements Sections 53-4-516 MCA.

Keith L Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

OF THE STATE OF MONTANA

In the matter of the repeal of Rules 48-2.26(2)-S2610 through 48-2.26(2)-S26010; Rules 48-2.26(6)-S26020 through 48-2.26(6)-S26050; Rules 48-2.26(10)-S26140; Rules 48-2.26(14)-S26150 through 48-2.26(14)-S26200; and Rules 48-2.26(18)-S26210 through 48-2.26(18)-S26230, concerning the governance and administration, personnel, programs, funding and evaluation for vocational education.	NOTICE OF PROPOSED REPEAL OF RULES FOR VOCATIONAL EDUCATION

TO: All interested persons

1. On June 30, 1980 the superintendent of public instruction will repeal the rules in sub-chapters 2, 6, 10, 14, 18 in Chapter 26 of Title 48 concerning governance and administration, personnel, programs, funding and evaluation for vocational education.

2. The rules to be repealed are on pages 48-476 through 48-501 of the Administrative Rules of Montana.

3. The superintendent is repealing these rules because they do not conform to the changes in governance for vocational education provided in House Bill 634 enacted by the 46th Legislature and signed into law by the Governor.

ALVE THOMAS
DEPUTY SUPERINTENDENT

Certified to the Secretary of State May 2, 1980.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule ARM 48-2.18(38)-S18680 to allow the addition of one half- or three-quarter time supervisors of special education	NOTICE OF PROPOSED AMENDMENT OF RULE ARM 48-2.18(38) S18680 PERTAINING TO SUPERVISORS OF SPECIAL EDUCATION. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 18, 1980, the office of public instruction proposes to amend rule ARM 48-2.18(38) - S18680 pertaining to supervisors of special education.

On October 22, 1979 a public hearing was held to consider the amendment of rule ARM 48-2.18(38) - S18680 and testimony was heard. The testimony that was heard at the hearing and written testimony will be responded to when the notice of adoption for the rule is published.

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

48-2.18(38) - S18680 SUPERVISOR OF SPECIAL EDUCATION.

(1) For budgeting approval, a full-time supervisor of special education must have a minimum of at least twelve full-time special education personnel or a regular student population of 3,000 regular students. ~~In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the Office if Public Instruction.~~ School districts are encouraged to establish cooperative special education programs under the direction of one supervisor of special education in order to meet minimum approval levels. Consideration should be given to include rural schools under this individual's supervision even though the rural school may not have a special education teacher.

(2) For school districts that have special education personnel in excess of the minimum stated, additional full-time three-quarter time, or half-time supervisors may be added upon request to and approval of the superintendent of public instruction. For school districts that have fewer education personnel than the minimum stated, three-quarter or half-time supervisors of special education may be added upon request to and approval of the superintendent of public instruction.

3 The superintendent of public instruction is proposing this amendment because school districts in excess of the minimum stated may need a part-time supervisor rather than the addition of another full-time supervisor. School districts that don't meet the minimum stated may need a part-time rather than a full-time supervisor.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601, no later than June 16, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601, no later than June 16, 1980.

6. If the agency receives requests for a public hearing from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental 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 over a thousand persons based on the number of special education personnel and parents of special education children in Montana.

7. The authority of the agency to make the proposed amendment is based on Section 20-7-402(1)(e), (2), MCA, and the rule implements Section 20-3-324(1),(23), MCA.

GEORGIA RICE,
SUPERINTENDENT OF PUBLIC INSTRUCTION

By Alve Thomas
ALVE THOMAS
Deputy Superintendent
Authorized Representative

Certified to the Secretary of State April 18, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

OF THE STATE OF MONTANA

In the matter of the repeal of rule 48-2.18(1)-S1801: Concerning special education supervision and policy on planning prepared for the Board of Public Education by the Superintendent of Public Instruction.	NOTICE OF PROPOSED REPEAL OF A RULE FOR SPECIAL EDUCATION

To: All Interested Persons

1. On June 30, 1980 the superintendent of public instruction will repeal rule 48-2.18(1)-S1801 concerning planning, supervision and policy for special education.

2. The rule appears on pages 48-356.2, 48-356.3 and 48-357 of the Administrative Rules of Montana.

3. The superintendent is repealing this rule to bring the special education rules into conformity with changes in special education statutes in Title 75, Chapter 78 resulting from enactments of the 45th Legislature.

Alve Thomas

ALVE THOMAS
DEPUTY SUPERINTENDENT

Certified to the Secretary of State May 6, 1980.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of rules to define the handicapping conditions "Deaf-blind" and "Multihandicapped" which pertain to special education children.	NOTICE OF PROPOSED ADOPTION OF RULES PERTAINING TO THE DEFINITION OF "DEAF-BLIND" and "MULTIHANDICAPPED" NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 18, 1980, the office of public instruction proposes to adopt rules to define the handicapping conditions "Deaf-blind" and "Multihandicapped" which pertain to special education children.

On October 22, 1979 a public hearing was held to consider the adoption of the rules and testimony was heard. The testimony that was heard at the hearing and written testimony will be responded to when the Notice of Adoption for the rules is published.

2. The proposed rules provide as follows:

48-2.18(6)-S18051 DEAF BLIND. "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the children so impaired that they cannot be accommodated in special education programs designed solely for deaf or blind children.

48-2.18(6)-S18052 MULTIHANDICAPPED. "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that the children so impaired cannot be accommodated in special education programs designed solely for one of the impairments. The term does not include deaf-blind children.

3. The superintendent of public instruction is proposing these rules because of the need to correctly and uniformly define the handicapping conditions of special education children.

4. Interested parties may submit their data, views or arguments concerning the proposed rules to Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601, no later than June 16, 1980.

5. If a person who 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 Shirley Miller, Director of Special Education, Office of Public Instruction, Helena, Montana 59601, no later than June 16, 1980.

6. If the agency receives request for a public hearing

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

In the matter of the repeal of Rule 12-2.6(3)-S6170 relating to bird art stamp contest rules	NOTICE OF REPEAL OF RULE 12-2.6(3)-S6170

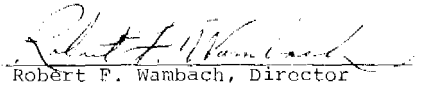
TO: All Interested Persons.

1. On March 27, 1980, the Department of Fish, Wildlife, and Parks published notice of a proposed repeal of a rule relating to bird art stamp contest rules at page 1001 of the 1980 Montana Administrative Register, issue No. 6.
2. The agency has repealed the rule as proposed.
3. No comments or testimony were received.

In the matter of the repeal of Rule 12-2.6(3)-S6180 relating to sale of unused or outdated bird art stamps	NOTICE OF REPEAL OF RULE 12-2.6(3)-S6180

TO: All Interested Persons.

1. On March 27, 1980, the Department of Fish, Wildlife, and Parks published notice of a proposed repeal of a rule relating to the sale of unused or outdated bird art stamps at page 1003 of the 1980 Montana Administrative Register, issue No. 6.
2. The agency has repealed the rule as proposed.
3. No comments or testimony were received.



Robert F. Wambach, Director
Dept. of Fish, Wildlife, and Parks

Certified to Secretary of State May 5, 1980

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of a rule adding to the list of regulated precursors to dangerous drugs	)))	NOTICE OF THE ADOPTION OF A RULE (Precursors to Dangerous Drugs)

TO: All Interested Persons.

1. On March 13, 1980, the Department of Justice published notice of a proposed adoption of a rule adding to the list of regulated precursors to dangerous drugs in section 50-32-401(1) MCA at page 683 of the 1980 Montana Administrative Register, issue number 5.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

By: MIKE GREELY
Attorney General

Certified to the Secretary of State April 23, 1980.

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

In the matter of the ADOPTION OF A RULE requalifying a person for unemployment where school was the reason for voluntary quit.	))))	NOTICE OF ADOPTION OF RULE 24.11.411 School as the basis for requalifying for benefits

TO: All Interested Persons.

1. On March 27, 1980, the Department of Labor and Industry published notice of the proposed adoption of a rule requalifying a person for unemployment where school was the reason for voluntary quit at page 1042 of the 1980 Montana Administrative Register, issue number 6.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

FRED BARRETT, Acting Commissioner
Department of Labor and Industry

Certified to Secretary of State May 15, 1980.

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

In the matter of the repeal of rules 24-3.10(10)-S10050, definition of total unemployment; 24-3.10(10)-S10086, self-employment; 24-3.10(10)-S10120, additional compensation.	))))))	NOTICE OF REPEAL OF RULES

TO: All Interested Persons.

1. On March 27, 1980, the Department of Labor and Industry published notice of the proposed repeal of rules 24-3.10(10)-S10050, definition of total unemployment; 24-3.10(10)-S10086, self-employment; 24-3.10(10)-S10120, additional compensation at page 1044 of the 1980 Montana Administrative Register, issue number 6.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

FRED BARRETT, Acting Commissioner
Department of Labor and Industry

Certified to Secretary of State May 5, 1980.

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

In the matter of the repeal of rules 24-3.10(18)-S10200, experience rating; 24-3.10(18)-S10210, first factor in experience rating; 24-3.10(18)-S10220, second factor in experience rating; 24-3.10(18)-S10230, third factor in experience rating; 24-3.10(18)-S10240, classification of employers and assigning rates; 24-3.10(18)-S10250, notice to employers of classification and rate; 24-3.10(18)-S10260, substitution of new account for existing account; 24-3.10(18)-S10270, merging of existing accounts; 24-3.10(18)-S10280, forms for substitutions, merging, acquisitions; 24-3.10(22)-S10321, other reports by employers; 24-3.10(34)-S10590, processing of bonuses and/or lump sum payments and bi-weekly pay periods.

NOTICE OF REPEAL OF RULES

TO: All Interested Persons.

1. On March 27, 1980, the Department of Labor and Industry published notice of the proposed repeal of rules 24-3.10(18)-S10200, experience rating; 24-3.10(18)-S10210, first factor in experience rating; 24-3.10(18)-S10220, second factor in experience rating; 24-3.10(18)-S10230, third factor in experience rating; 24-3.10(18)-S10240, classification of employers and assigning rates; 24-3.10(18)-S10250, notice to employers of classification and rate; 24-3.10(18)-S10260, substitution of new account for existing account; 24-3.10(18)-S10270, merging of existing accounts; 24-3.10(18)-S10280, forms for substitution, merging, acquisitions; 24-3.10(22)-S10321, other reports by employers; 24-3.10(34)-S10590, processing of bonuses and/or lump sum payments and bi-weekly pay periods at page 1041 of the 1980 Montana Administrative Register, issue number 6.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

FRED BARRETT, Acting Commissioner
Department of Labor and Industry

Certified to Secretary of State May 5, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the repeal of rule 32-2.6BI(10)-S6200 and the adoption of a new rule relating to manufactured milk products	)))))	NOTICE OF THE REPEAL OF RULE 32-2.6BI(10)-S6200 AND THE ADOPTION OF NEW RULE 32-2.6BI(10)-S6201

TO: All Interested Persons

1. On March 13, 1980 the Department of Livestock published notice of a proposed repeal of rule 32-2.6BI(10)-S6200 and the adoption of a new rule concerning definitions for manufactured dairy products on page 686 of the 1980 Montana Administrative Register, Issue No. 5.

2. The department has repealed rule 32-2.6BI(10)-S6200 as proposed and has adopted in its place new rule 32-2.6BI(10)-S6201 as proposed.

3. No comments or testimony were received.

In the matter of the repeal of rule 32-2.6B(1)-S600 relating to milk and egg rules	)))	NOTICE OF REPEAL OF RULE 32-2.6B(1)-S600

1. On March 13, 1980 the Department of Livestock published notice of a proposed repeal of rule 32-2.6B(1)-S600 concerning milk and egg rules on page 688 of the 1980 Montana Administrative Register, Issue No. 5.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment of rule 32-2.2(1)-P200 relating to the Attorney General's Model Procedural Rules	))))	NOTICE OF AMENDMENT OF RULE 32-2.2(1)-P200

1. On March 13, 1980 the Department of Livestock published notice of a proposed amendment to rule 32-2.2(1)-P200 concerning the Attorney General's Model Procedural Rules on page 689 of the 1980 Montana Administrative Register, Issue No. 5.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the repeal of sections 32-2.2(2)-P210 through P260 and 32-2.2(2)-P280 through P290, pertaining to the implementation of Montana Environmental Policy	))))))	NOTICE OF REPEAL OF RULES 32-2.2(2)-P210 THROUGH P260 AND 32-2.2(2)-P280 THROUGH P290 AND THE ADOPTION OF NEW RULES

Act (MEPA) and the adoption of)
new rules implementating MEPA)

1. On March 13, 1980 the Department of Livestock published notice of proposed repeal of rules 32-2.2(2)-P210 through P260 and 32-2.2(2)-P280 through P290 and the adoption of new rules in place of them concerning the implementation of the Montana Environmental Policy Act on page 690 of the 1980 Montana Administrative Register, Issue No. 5.

2. The agency has repealed the rules as proposed. The department has also adopted the new rules 32-2.2(2)-P291 through P310 as proposed.

3. No comments or testimony were received.

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

By: Les Graham
LES GRAHAM
Administrator

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the Proposed Adoption of rules adopting minimum filing standards for railroads.	NOTICE OF THE ADOPTION OF RULES ADOPTING MINIMUM FILING STANDARDS FOR RAILROADS

TO: All Interested Persons

1. On January 31, 1980, the Montana Public Service Commission published notice of proposed adoption of rules establishing minimum filing standards to be followed by railroads in filing their intrastate rate cases at page 379 of the 1980 Montana Administrative Register, issue number 2.

2. The Commission has adopted the rules as proposed with the following numbers assigned:

Rule I (38-2.24(14)-S24110) MINIMUM FILING STANDARDS:

Rule II (38-2.24(14)-S24120) SUBMISSION PROCEDURES AND POLICIES;

Rule III (38-2.24(14)-S24130) COST ANALYSES;

Rule IV (38-2.24(14)-S24140) OTHER SUPPORTING EXHIBITS.

3. All parties who appeared at the hearing to consider the rules held March 21, 1980, as well as the Department of Agriculture who filed a written statement, generally supported the rules. Mr. Dale L. Maristuen representing Burlington Northern, Inc. and Union Pacific Railroad Company suggested that railroads be exempted from making the full supportive filing in rate cases that only involve a small amount of additional revenue, e.g., less than $30,000 per annum. The Commission feels that it would be more appropriate to rely upon paragraph 2 of Rule II for the purposes of allowing exemptions rather than establishing an arbitrary cut-off point.

Mr. Maristuen also argued, in connection with paragraph (1)(d) of Rule I, that railroads have no method for allocating equity between interstate and intrastate traffic. However, the Commission feels that that paragraph is necessary because it and the railroads must develop some method of determining return on equity from intrastate service in order to be able to justify any intrastate rate increase. Also, this same requirement is already in effect in other state jurisdictions.

4. These rules were adopted to assure that the Commission will have adequate information available to allow it to determine whether an intrastate rate increase is justified under Section 69-14-311, MCA, and the law as set out in Montana Citizen's Freight Association v. Board of Railroad Commissioners of the State of Montana, et al., 128 Mont. 127 (1954).

5. The authority for the Commission to adopt these rules is contained in Section 69-14-301, MCA.

WILLIAM J. OPITZ
Executive Director

CERTIFIED TO THE SECRETARY OF STATE May 6, 1980.

BEFORE THE BOARD OF PROFESSIONAL AND OCCUPATIONAL LICENSING OF THE STATE OF MONTANA

In the matter of the Repeal of the overall department procedural rules ARM 40-2.2(1)-P200 through ARM 40-2.2(10)-P2390 and the adoption of the Attorney General's Model Procedural Rules 1.3.101 through 1.3.234	NOTICE OF REPEAL OF THE OVERALL DEPARTMENT PROCEDURAL RULES ARM 40-2.2(1)-P200 through 40-2.2(10)-P2390 and ADOPTION OF THE ATTORNEY GENERAL'S MODEL PROCEDURAL RULES 1.3.101 through 1.3.234

TO: All Interested Persons:

1. On March 27, 1980, the Department of Professional and Occupational Licensing published a notice of proposed repeal of the department procedural rules ARM 40-2.2(1)-P200 through ARM 40-2.2(10)-P2390 and proposed adoption of the Attorney General's Model Procedural Rules 1.3.101 through 1.3.234 with one exception and one addition at pages 1054 through 1055, 1980 Montana Administrative Register, issue number 6.

2. The department has adopted the rules exactly as proposed.

3. No comments or testimony were received.

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, May 6, 1980.

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

In the matter of the amendment of Rule 46-2.10(18)-S11460 pertaining to medical assistance, providers of services and the repeal of 46-2.10(18)-S11470 pertaining to medical assistance, peer review, utilization review and medical review and the adoption of rules pertaining to medical assistance, provider requirements	NOTICE OF THE AMENDMENT OF RULE 46-2.10(18)-S11460 AND THE REPEAL OF 46-2.10(18)-S11470 AND THE ADOPTION OF RULES ALL OF PERTAINING TO MEDICAL ASSISTANCE

TO: All Interested Persons

1. On March 13, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11460, the repeal of 46-2.10(18)-S11470 and the adoption of rules pertaining to medical assistance; peer review, utilization review and medical review; provider requirements at page 707 of the 1980 Montana Administrative Register, issue number 5.

2. The agency has repealed 46-2.10(18)-S11470 as proposed.

3. The agency has amended 46-2.10(18)-S11460 as proposed.

4. The agency has adopted the rules as proposed with the following changes:

46-2.10(18)-S11516 PROVIDER PARTICIPATION As a condition of participation in the Montana medicaid program all providers of service shall abide by all applicable state and federal statutes and regulations, including but not limited to federal regulations and statutes found in Title 42 of the Code of Federal Regulations and the United States Code governing the medicaid program, and all pertinent Montana statutes and rules governing licensure and certification.

46-2.10(18)-S11517 CONTRACTS (1) Providers shall enter into a written contract with the department delineating the services to be provided and reimbursement to be paid for duration, and referral. Natural persons who are providers need not enter such a contract.

(a) Providers under written contract may not obtain reimbursement for services which are not reimbursable to providers who are natural persons unless the services are unique to the specific provider. Reimbursement for these

unique services shall be in accordance with the rules of the department.

(b) Providers under written contract shall not receive higher reimbursement rates for similar services than the rates allowed by the Montana medicaid program to providers, who are natural persons.

(c) Waivers of this written contract requirement may be granted to specific type providers at the discretion of the department if the provision of services and reimbursement rates for such services are governed specifically by the rules of the department.

(2) Providers, whose services are covered by the Title XVIII program (medicare), shall meet the certification standards of medicare.

(3) Providers shall render services to an eligible medicaid recipient in the same scope, quality, duration and method of delivery as to the general public, unless specifically limited by these regulations.

(4) Providers shall not discriminate in the provision of service to eligible Medicaid recipients on the grounds of race, creed, color, sex, national origin, or handicap. Providers shall comply with the department of health, education, and welfare regulations under Title VI and Title IX of the Civil Rights Acts, Public Law 93-112 (sections 504 and 505) and 49-1-101, 102 MCA; 49-2-101, 102 MCA; 49-2-202 MCA; 49-2-301 through 49-2-308 MCA; 49-2-401 through 49-2-404 MCA; 49-2-501 through 49-2-505 MCA; 49-2-601 MCA, as amended and all requirements imposed by or pursuant to the regulations implementing the statutes.

46-2.10(18)-S11518 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) Providers shall submit claims within 180 days of the date the service was performed, within 180 days after the applicants eligiblity is determined, or within 180 days after a written notice from a third party resource, whichever occurs last. For providers of hospital services, the service shall be deemed to have been performed upon the recipient's discharge from one continuous confinement. A written inquiry to the department or to the local county welfare department regarding eligibility within the 180 day limit shall constitute evidence of an effort to bill medicaid for these services.

(a) All claims to the Montana medicaid program are to be submitted on personally signed state approved billing forms, or they shall not be considered valid and proper claims.

(2) The program shall pay 90 per cent of all valid and proper claims within 30 days after receipt of said claim. Should the bureau contend that a claim is not valid or proper, the bureau shall inform the provider of the details of such contention within 30 days after receipt of the claim.

(a) The program shall pay 99 per cent of all valid and proper claims within 90 days of receipt of such claims.

(b) The program shall make payment on all claims within 180 days of the receipt of the claim unless it determines payment to be improper under this chapter or applicable federal regulations.

(c) The department shall be entitled to promptly (within 60 days) recover all payments erroneously or improperly made to a provider. At the option of the provider, refunds shall be accomplished either by mailing a check made out to "State Department of Social and Rehabilitation Services" directly to that department at Box 4210, Helena, MT 59601, or by notifying the department in writing of the receipt and the amount of payment over and above the amount reimbursable by the Montana medicaid program, which amount shall then be automatically deducted from future payments to the provider. Regardless of the method of repayment chosen, the provider shall identify on the check or notifying document the patient, by name and claim number, who received services for which the over payment was made and specify the dates of services for which over payments were received. If the provider contests the department's decision that the provider has been overpaid, recovery shall depend on the final administrative decision.

(3) Unless stated elsewhere, payments made by the Montana medicaid program shall not exceed the lower of the amount payable for like services in the same locality by the medicare program (Title XVIII of the Social Security Act), or the provider's usual and customary charges that are reasonable.

(4) Providers are required to accept, as payment in full, the amount paid by the Montana medicaid program for a service provided to an eligible medicaid recipient in accordance with the rules of the department. Providers shall not seek any payment in addition to or in lieu of the amount paid by the Montana medicaid program from a recipient or his representative.

(5) In the event that a provider of services is entitled to a retroactive increase of payment for services rendered, the provider shall submit a claim within 180 days of the written notification of the retroactive increase or the provider forfeits any rights to the retroactive increase.

(6) The Montana medicaid program shall make payments directly to the individual provider of service unless the individual provider is required, as a condition of his employment, to turn his fees over to his employer.

(a) Exceptions to the above requirement may, at the discretion of the department, be made for transportation and/or per diem costs incurred to enable a recipient to obtain medically appropriate services.

(7) The method of determining payment rates for out-of-state providers will be the same as for in-state providers

except as otherwise provided in the rules of the department.

46-2.10(18)-S11519 THIRD PARTY LIABILITY (1) The department is subrogated to the recipient's right to third party recoveries to the extent necessary to reimburse the department for services provided by the Montana medicaid program, when the third party's liability is established after assistance is granted, and in any other case in which the liability of the third party exists, but was not treated as a current source of payment.

(2) Before payments can be made to providers, all other identifiable sources of payment must be exhausted by recipients and/or providers, as follows:

(a) For known medicaid-eligible individuals, the provider shall use its usual and customary procedures for inquiring about sources of payment for non-Medicaid patients. This inquiry includes ascertaining the identity of any potentially liable tortfeasor only if such identity may be learned using the provider's usual and customary inquiry procedures.

(b) Prior to billing the Montana medicaid program for services rendered to a medicaid-eligible individual, the provider shall bill any other source of payment identified by means of the provider's usual and customary inquiry procedures, and which has been properly assigned by the individual to the provider if the provider requires assignment, except that the provider is not required to bill or to pursue in any way any potentially liable tortfeasor. The provider shall not be required to send to an identified source of payment more than one billing statement.

(c) For bills for which no source of payment is identified other than a potentially liable tortfeasor and the Montana medicaid program, the provider shall bill the Montana medicaid program indicating that services were rendered as the result of a possible tortious act, and, if known, the identity of the tortfeasor.

(d) If the provider receives no payment or notice of rejection from the liable third party within 45 days of the date of billing, it may bill the Montana medicaid program noting the lack of timely response. Medicaid will make payment for services rendered to the medicaid-eligible individual in all cases within 180 days of the date of receipt of the bill.

(e) If the provider receives partial payment or notice of rejection of the claim within 45 days, it may bill the Montana medicaid program noting the rejection or the amount of credit. The Montana medicaid program will make payment of the balance due for services rendered to medicaid-eligible individuals up to the maximum allowed by the rules of the department as soon as the normal course of business allows, and in all cases within 180 days of receipt of the bill.

(3) In the event the provider receives payments from the Montana medicaid program and one or more third-party sources, any amount received over and above the amount reimbursed by the Montana medicaid program shall be promptly (within 60 days) refunded by the provider to the Montana medicaid program. At the option of the provider, refunds shall be accomplished either by mailing a check made out to "State Department of Social and Rehabilitation Services" directly to that department at Box 4210, Helena, MT 59601, or by notifying the department in writing of the receipt and the amount of payment over and above the amount reimbursed by the Montana medicaid program, which amount shall then be automatically deducted from future payments to the provider. Regardless of the method of repayment chosen, the provider shall identify on the check or notifying document, the patient, by name and claim number, who received services for which the double payment was made and specify the dates of services for which double payments were received.

(4) In the event a provider delivers to a known medicaid recipient a copy of a billing statement for services for which payment has been received or is being sought from the Montana medicaid program, the provider must clearly indicate on the recipient's copy that the department is subrogated to the right of the recipient to recover from liable third parties.

(a) The words "subrogation notice--billed to medicaid," or a similar statement giving clear notice of the department's subrogation rights, indelibly stamped, typed or printed on the statement shall be sufficient to meet the notification requirement of subsection (3).

(b) If a provider fails to meet the requirements of section (3) the department may withhold or recover from the provider any amount lost to the department as a result of that failure.

(5) Referrals shall be made to the Program Integrity Bureau, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601. The program integrity bureau may send referrals to the department of revenue for recovery.

46-2.10(18)-S11520 DETERMINATION OF MEDICAL NECESSITY

(1) The department shall only make payment for those services which are medically necessary as determined by the department or by the designated professional review organization designated by the department.

(2) In determining medical necessity the department or designated professional review organization shall consider the type or nature of the service, the provider of the service, and the setting in which the service is provided.

(3) Experimental procedures are not a benefit of the program.

46-2.10(18)-S11521 PROVIDER RIGHTS (1) Although the department must necessarily limit reimbursable services, the department shall not interfere with a provider's right and responsibility to exercise professional judgment in rendering services.

(2) Providers shall have the right to manage their business affairs as they deem proper within the conditions and limitations imposed by these rules.

(3) A provider shall have the right to appeal any administrative decision which directly affects the rights or entitlements of the provider.

(4) A provider shall have the right to appeal on behalf of an applicant or recipient an administrative decision affecting the applicant's or recipient's rights or entitlements under the program.

(a) Notwithstanding subsection (4), nursing home and hospital care providers shall not have the right to appeal a denial of benefits to an applicant or recipient which was based upon the service provided not being medically necessary.

46-2.10(18)-S11522 MAINTENANCE OF RECORDS AND AUDITING (1) All providers of service shall maintain records which fully disclose the extent and nature of the services provided to individuals receiving assistance under the Montana medicaid program, and which support the fee charged or payment sought for such services. These records shall be retained for a period of at least three years from the date on which the service was rendered.

(a) In maintaining financial records, providers shall employ generally accepted accounting methods. Generally accepted accounting methods are those approved by the national association of certified public accountants.

(b) The department shall have access to all medicaid recipient records so maintained and retained regardless of a provider's continued participation in the program.

(c) In the event of a change of ownership, the original owner must retain all required records unless an alternative method of providing for the retention of records has been established in writing and approved by the department.

(2) In addition to the recipient's medical records, any medicaid information regarding a recipient or applicant is confidential and shall be used solely for purposes related to the administration of the Montana medicaid program. This information shall not be divulged by the provider or his employees, to any person, group, or organization other than those listed below or a department representative without the written consent of the recipient or applicant.

(3) The department, the designated professional review organization, the legislative auditor, the department of health, education and welfare, the department of revenue, and

their legal representatives shall have the right to inspect or evaluate the quality, appropriateness, and timeliness of services performed by providers, and to inspect and audit all records required by this rule.

(a) Refusal to permit such inspection, evaluation or audit shall result in the imposition of provider sanctions in accordance with the rules of the department.

5. The Department responds to the following comments received at the hearing:

Comment

46-2.10(18)-S11517 (Rule II) requires providers to enter into a written contract; why is this now necessary? Isn't this a coerced agreement?

Response

42 CFR 431.107 requires the Department to have provider agreements. Participation in the Medicaid program is optional for a provider; consequently, the Federally-mandated provider agreement is voluntary.

Comment

46-2.10(18)-S11517(3) (Rule II) could adversely affect patient care; is the Department attempting to administer hospital programs?

Response

42 CFR 440.230 allows the Department to establish limits on services if services are sufficient to reasonably achieve their purposes. The intent of this rule is to provide a quality of care for Medicaid recipients similar to the level of care for nonrecipients with some reasonable limitations.

Comment

There should be a provision for extension of the 180 day limit in 46-2.10(18)-S11518(1) (Rule III) when a provider can show good cause.

Response

The Department has changed 46-2.10(18)-S11518(1) (Rule III) by adding the following to the first paragraph:

"A written inquiry to the Department or to the local county welfare department regarding eligibility within the 180 day limit shall constitute evidence of an effort to bill Medicaid for these services."

Comment

46-2.10(18)-S11518(1)(a) (Rule III) requires personally signed state approved billing forms; the state should coordi-

nate its forms with those of the hospitals to reduce undue paperwork. A uniform billing system should be adopted so red tape will be kept to a minimum.

Response
The rule does not specify which form will be proper; this gives the Department the flexibility to use other standardized forms which meet administrative requirements of the Department and the varied types of providers. The UB-16 Form will be used for hospital billing when a new fiscal agent contract is signed.

Comments
46-2.10(18)-S11518 2(a) through 2(c) (Rule III) allows the Department an unreasonable period of time to process claims.

Responses
42 CFR 447.45(d) sets criteria for the state to follow. The Department contracts out part of its claims payment function to a fiscal agent; payment follows as swiftly as possible. For the most part, payment is much faster than the outside limits set by this rule.

Comments
46-2.10(18)-S11518(2)(c) (Rule III) fails to recognize cases where there may be a dispute as to the propriety of a claim.

Responses
In order to clarify provider rights the following will be added to 46-2.10(18)-S11518(2)(c) (Rule III):
"If the provider contests the Department's decision that the provider has been overpaid, recovery shall depend on the final administrative decision."

Comments
46-2.10(18)-S11518(4) (Rule III) should be clarified so there is no confusion as to services Medicaid will not pay.

Responses
The Department has just proposed a new rule (MAR Notice No. 46-2-252 SERVICES COVERED) concerning services that are covered. When a service is covered the particular service must be medically necessary; a provider can't bill a recipient for a medically unnecessary covered service.

Comments
46-2.10(18)-S11518(5) (Rule III) should more clearly spell out the type of notice and to whom notice shall be given before there are any forfeitures of rights.

Responses
The Department has added the word "written" to 46-2.10(18)-S11518(5) (Rule III). The Department does not wish to specify the exact format of any notice; rather flexibility is needed to be certain to get written notice to the providers affected.

Comments
46-2.10(18)-S11520 (Rule V) fails to list objective criteria to properly notify providers what is expected of them.

Responses
The definition of medical necessity is found in a rule published under MAR Notice No. 46-2-222. Limitations on specific services has been defined in the rules relating to those services; criteria used for judging medical necessity is based on professional judgments of the designated professional review organization.

Comments
46-2.10(18)-S11521(4)(a) (Rule VI) states an appeal process is not available to findings of medical necessity by nursing homes, why? Could the rules be clarified to make clear any other appeal mechanism through the PSRO?

Responses
PSRO findings on medical necessity for nursing home and hospital care are binding on this agency by Federal regulation (42 CFR 463 Subpart B). The agency has modified the amendment to reflect the hospital's inability to appeal outside their appeal rights found in the Federal regulations just like nursing homes.

Comments
46-2.10(18)-S11522(2) and (3) (Rule VII) seems to conflict with each other on who has access to records.

Responses
The Department has modified 46-2.10(18)-S11522(2) (Rule VII) by adding "those listed below or" to "a Department representative" to clarify who has access to records.

Comments
46-2.10(18)-S11522(3) (Rule VII) allows all named entities to evaluate the "quality, appropriateness, and timeliness of services performed by providers", even if they are unqualified to do so.

Responses

All entities listed require, for various reasons, the authority to review and/or evaluate from the records of providers. No organization without expertise will evaluate for quality of medical services.

Keith P. Colby
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

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

In the matter of the amendment of Rule 46-2.10(38)-S102030 pertaining to eligibility, medical resources	))))	NOTICE OF THE AMENDMENT OF RULE 46-2.10(38)-S102030

TO: All Interested Persons

1. On March 13, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(38)-S102030 pertaining to eligibility, medical resources at page 722 of the 1980 Montana Administrative Register, issue number 5.

2. The agency has amended the rule as proposed except for the following changes:

(2) County medical assistance shall not be available to cover medical services for individuals who are, or would be, eligible UPON APPLICATION for assistance through medicaid. ~~even when a provider refuses to participate in the medicaid program.~~

3. Following are comments made to the Department of Social and Rehabilitation Services and the Department's responses:

Comment

The implication of the amendment is that the county is absolved of its responsibility to care for the medically needy if providers elect not to participate in the Medicaid program.

Response

The amendment reflects a recent amendment to 53-3-103 MCA which was supported by the Department to protect counties from providers who would attempt to be reimbursed for services in excess of amounts determined to be reasonable by Medicaid.

Comment

53-3-103 MCA provides the definition of "medically needy" that does not allow county payment for persons who are eligible for Medicaid, but it says nothing about provider participation in the Medicaid program.

Response

The agency has changed the amendment's wording to strike references to providers. The change creates no substantial change in the meaning.

Keith L. Colbo
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

OF THE STATE OF MONTANA

In the matter of the ADOPTION OF RULES establishing policy for the conduct of vocational education in Montana in accordance with the provisions of Section 20-7-301, MCA 1979	NOTICE OF THE ADOPTION OF RULES 1 THROUGH 33

TO: All interested persons

1. On February 14, 1980 the superintendent of public instruction proposed the adoption of rules concerning definitions of terms; polices for governance and administration of vocational education; policies regarding the recruitment, selection and advancement of vocational education personnel; policies for the development and implementation of vocational education; policies for funding vocational education programs; policies for planning alterations and construction of facilities at pages 535 through 562 of the 1980 Montana Administrative Register, issue number 3.

2. The agency will adopt the rule as proposed on June 30, 1980.

3. No comments or testimony were received.

ALVE THOMAS
DEPUTY SUPERINTENDENT

Certified to the Secretary of State May 2, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

OF THE STATE OF MONTANA

In the matter of amending Rule 10.7.111 subsections (3) and (4) concerning the grace period for a bus driver obtaining a first-aid certificate and penalties for a driver's failure to do so.	NOTICE OF THE AMENDMENT OF A RULE.

To: All Interested Persons

1. On March 27, 1980, the superintendent of public instruction published a notice of amendment to rule 10.7.111, subsections (3) and (4) which sets forth the requirements for a person to qualify as a driver of Montana school buses. It further sets the grace periods for a driver's acquiring a first-aid certificate and penalties for a driver's failure to do so.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Alve J. Thomas

ALVE THOMAS
DEPUTY SUPERINTENDENT

Certified to the Secretary of State May 6, 1980.

VOLUME NO. 38 OPINION NO. 75

COUNTIES - Statutory authority to establish joint self-insurance program;
INTERGOVERNMENTAL COOPERATION - Necessity of interlocal agreement to establish joint self-insurance program;
INSURANCE - Authority of counties to establish joint self-insurance program;
LOCAL GOVERNMENT - Necessity of interlocal agreement to establish joint self-insurance program.
MONTANA CODE ANNOTATED - Sections 1-2-105(3), 2-9-211, 7-11-104.

HELD: 1. It is permissible for Montana counties to enter into a joint self-insurance program.

2. An interlocal agreement pursuant to section 7-11-104, MCA, is not the exclusive means by which counties might establish a joint self-insurance program.

17 April 1980

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion concerning certain aspects of a proposed joint self-insurance program for Montana counties. I have summarized and stated your questions as follows:

1. Is it permissible for Montana counties to enter into a joint self-insurance program?

2. If counties may enter into a joint self-insurance program, are they limited to providing such a program by means of an interlocal agreement pursuant to section 7-11-104, MCA?

Section 2-9-211, MCA, provides:

(1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

Subdivision 1 of this section is subject to two interpretations. It may be read as first authorizing political subdivisions to procure insurance separately or jointly and second as authorizing political subdivisions to use a deductible or self-insurance plan. When read in this way, there is no specific grant of authority to procure insurance jointly using a self-insurance plan. Alternatively, the statute may be read as authorizing political subdivisions to procure insurance jointly and use a self-insurance plan. This reading contains a specific grant of authority to counties to jointly self-insure. Two considerations lead me to conclude that the latter interpretation is correct.

First, while the remaining subsections, which address administrative details, refer to single political subdivisions, section 1-2-105(3), MCA, specifically provides in construing statutes:

The singular includes the plural and the plural includes the singular.

Second, two provisions of the Montana Constitution of 1972, which predates the enactment of section 2-9-211, MCA, support the latter interpretation of that statute. Art. XI, Section 4(2) provides that the powers of counties are to be liberally construed. Art. XI, Section 7(1)(a), provides:

> Unless prohibited by law or charter, a local government unit may (a) cooperate in the exercise of any function, power, or responsibility with... [one or more other local government units.]

Read in light of these constitutional provisions section 2-9-211, MCA, authorizes Montana counties to enter into a joint self-insurance program.

Section 7-11-101 et seq., MCA, provides one vehicle, the interlocal agreement, by which counties could establish such a program. The basic question then becomes whether the interlocal agreement is the sole means by which the counties might establish a self-insurance program.

Nothing in the "Interlocal Cooperation Act" indicates that its provisions are intended to be the exclusive means by which political subdivisions may construct cooperative agreements. Moreover, section 2-9-211, MCA, contains no reference to the "Interlocal Cooperation Act." Had the legislature intended to delimit the means by which the counties might provide such an insurance program, it could have included such a reference. In this case the lack of specific reference to the "Interlocal Cooperation Act" coupled with the constitutional provisions providing for liberal construction of county powers indicates that the counties may use means other than an interlocal agreement provided the method they ultimately select is not specifically prohibited by law.

THEREFORE, IT IS MY OPINION:

1. It is permissible for Montana counties to enter into a joint self-insurance program.

2. An interlocal agreement pursuant to section 7-11-104, MCA, is not the exclusive means by which counties might establish a joint self-insurance program.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 76

GIFTS - To public servants by persons subject to jurisdiction;
SHERIFFS - Receipt of gifts from persons subject to jurisdiction;
SHERIFFS - Propriety of sales as fund raising activities;
MONTANA CODE ANNOTATED - Sections 45-2-101(44), (51); 45-7-101; and 45-7-104.

HELD: 1. Section 45-7-104, MCA, prohibits the receipt by a sheriff's department of pecuniary gifts from individuals or organizations within the sheriff's regulatory or investigative jurisdiction.

2. Section 45-7-104, MCA, does not prohibit the use by sheriff's departments of fund-raising programs involving the sale of goods or services.

22 April 1980

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion as to whether fund-raising activities such as the solicitation of donations and the sale of tickets to a circus by the sheriff's department constitute a violation of section 45-7-104, MCA. The pertinent provisions are as follows:

> 45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising a regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

***

(5) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contracts and involving no substantial risk of undermining official impartiality.

***

This statute was enacted to cover situations not commonly thought to be within the definition of bribery. The gravamen of the felony offense of bribery is the giving of consideration for the purpose of affecting a particular action or transaction. See section 45-7-101, MCA. In order to prove the misdemeanor offense of receipt of a gift by a public servant under section 45-7-104, MCA, the particular intent to affect a given action need not be shown. The latter statute governs situations where a pecuniary benefit is bestowed upon a public servant by one who is or may be subject to that public servant's regulatory or investigatory jurisdiction even absent a present intention to influence an official action. The statute punishes the appearance of or potential for improper influence. This view is born out by the exceptions stated in subsection (5). One exception permits the receipt of money as a fee prescribed by law or in exchange for "legitimate consideration." The other permits the receipt of "trivial" pecuniary benefits arising from personal, professional, or business contracts, when there is "no substantial risk of undermining official impartiality."

In my opinion, the solicitation or receipt by the sheriff's department of gifts from individuals or organizations subject to the sheriff's investigative or regulatory jurisdiction (i.e., those who are located in the county) is prohibited by the statute. The donors are "persons" within the meaning of the statute, see section 45-2-101(44), MCA, and the sheriff and his deputies are obviously "public servants" exercising regulatory and investigative jurisdiction. Section 45-2-101(51), MCA. More to the point, the potential for the appearance of favoritism in the department's dealings with the donor organization is obviously present. This is not to suggest that the sheriff's department in this or any other county might show favoritism or

engage in any other kind of impropriety. However, the Legislature has determined that the giving of gifts to or receipt of gifts by the department under circumstances which might create the appearance of such impropriety is simply against the public policy of this state.

The second example you give -- the sale of circus tickets -- presents a different question. The statute explicitly recognizes the propriety of receiving a pecuniary benefit if the donor receives a corresponding "legitimate consideration." In my opinion, the provision allows the use of mercantile fund-raising projects such as sales, dances (e.g., the traditional Policemen's Ball), circuses and the like. The "donor" in such cases receives a "legitimate consideration" in return for the pecuniary benefit bestowed on the sheriff, in the form of goods sold, tickets to a dance or circus, etc. The Legislature has determined that such exchanges are not subject to criminal penalty.

THEREFORE, IT IS MY OPINION:

1. Section 45-7-104, MCA, prohibits the receipt by a sheriff's department of pecuniary gifts from individuals or organizations within the sheriff's regulatory or investigative jurisdiction.

2. Section 45-7-104, MCA, does not prohibit the use by sheriff's departments of fund-raising programs involving the sale of goods or services.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 77

POLICE DEPARTMENTS - Costs of investigating felony offenses to be prosecuted by the county attorney;
COUNTIES - Costs for investigation of felony offenses by city police.
MONTANA CODE ANNOTATED - Sections 7-4-2712, 7-4-2716, 7-6-2426, 7-6-2351, 44-2-115, 46-8-201.

HELD: Charges incurred by city police in the preservation and preparation of evidence to be used in felony cases prosecuted by the county attorney in the name of the State are the financial responsibility of the county.

23 April 1980

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis & Clark County Courthouse
Helena, Montana 59601

David N. Hull, Esq.
Deputy City Attorney
P.O. Box 534
Helena, Montana 59601

Dear Sirs:

You have requested my opinion on a question which I have phrased as follows:

> Which governmental entity--state, county, or city--bears the financial responsibility for costs incurred after arrest by city police in the investigation of felony offenses against the laws of the State of Montana?

Your question concerns expenses generally involved in the preservation, evaluation, and preparation of evidence to be used at trial, e.g., costs of impounding vehicles, costs of scientific analysis of chemicals, costs of handwriting analysis.

Initially, it is clear that the costs of criminal investigation are not the responsibility of the State. Montana law generally makes the detection, investigation, and prosecution of crime a local function. While Montana has a State

Criminal Investigation Bureau, Title 44, Chapter 2, MCA, it functions to provide expert assistance upon the request of the other, primarily local, agencies charged with the responsibility of investigating criminal activity. Section 44-2-115, MCA. I am aware of no statutory or constitutional authority for assessing the costs of investigation against the State, nor is there a fund in the State Treasury from which such costs could be paid. I therefore conclude that the costs of criminal investigation by local law enforcement officers are not chargeable to the State.

As a general rule, enforcement of state law is a county responsibility. The county attorney serves as the prosecuting attorney in virtually all felonies prosecuted in the name of the State. Sections 7-4-2712, 7-4-2716, MCA. Virtually all expenses incurred in the trial of felonies are the responsibility of the county. See 37 OP. ATT'Y GEN. NO. 37 (1977). The county attorney's expenses are a county charge. Section 7-6-2426(2), MCA. The counties bear the initial responsibilty for establishing and maintaining the district courts. Sections 7-6-2351, 7-6-2352, MCA. See 38 OP. ATT'Y GEN. NO. 31 (1979). The provision of defense services for indigent criminal defendants is a county responsibility. Section 46-8-201, MCA. The costs of serving arrest warrants, boarding prisoners, empanelling juries, procuring the attendance of witnesses, and all expenses necessarily incurred by the coroner, are chargeable to the county. Section 7-6-2426(3)-(6), MCA. In contrast, my research discloses no provision of State law requiring the cities and towns to bear any portion of the costs of such felony criminal prosecutions.

The expenses detailed in your letter are, in the final analysis, costs incurred in the prosecution of an offense. The county attorney's duty as public prosecutor includes the duty to acquire and prepare evidence, i.e., to investigate the case. See State ex rel Juhl v. District Court, 107 Mont. 309, 314, 84 P.2d 979, 981 (1938). Section 7-6-2426(2), MCA, makes the county responsible for "expenses necessarily incurred by (the county attorney) in criminal cases arising within the county." It has long been recognized that investigation costs are county charges under this provision. 10 OP. ATT'Y GEN. 63; 8 OP. ATT'Y GEN. NO. 419 (1920); 5 OP. ATT'Y GEN. NO. 377 (1913); 2 OP. ATT'Y GEN. NO. 5 (1906). In my opinion, costs incurred in the collection of evidence after arrest by city police are, in effect, "expenses necessarily incurred by (the county attorney) in criminal cases" and they are properly chargeable to the county.

Please bear in mind the limited scope of this opinion. It applies only in those circumstances in which the duty of prosecution rests on the county attorney. Further, it applies only to charges incurred for the preservation and preparation of evidence. I do not suggest that a city may request reimbursement from the county for the salary of officers who devote their time to investigation of felony offenses against the State.

THEREFORE, IT IS MY OPINION:

Charges incurred by city police in the preservation and preparation of evidence to be used in felony cases prosecuted by the county attorney in the name of the State are the financial responsibility of the county.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 78

COUNTY GOVERNMENT - Industrial development revenue bonds; sale of;
INTEREST - Limitation as to industrial development revenue bonds: scope and application;
MUNICIPAL GOVERNMENT - Industrial development revenue bonds: sale of;
REVENUE BONDS - Industrial Development Project Act: sale of bonds at a discount;
MONTANA CODE ANNOTATED - Sections 17-5-102, 90-5-102, 90-5-103.

HELD: 1. The sale of industrial revenue bonds issued pursuant to Title 90, chapter 5, part 1, MCA, at a price less than the face value of the bonds does not violate section 17-5-102, MCA, if the yield of the bonds exceeds nine percent.

2. A payment made directly to the purchaser of industrial development revenue bonds by the user-beneficiary of the bond proceeds from the user-beneficiary's own funds need not be considered in applying the interest limitation of section 17-5-102, MCA.

17 April 1980

Jeffrey M. Sherlock, Esq.
Helena City Attorney
Civic Center
Helena, Montana 59601

Dear Mr. Sherlock:

You have requested my opinion on the following questions:

1. Whether the sale of industrial development revenue bonds issued pursuant to Title 90, chapter 5, part 1, MCA, at a price less than the face value of the bonds violates section 17-5-102, MCA, if the yield of the bonds exceeds nine percent.

2. Whether a payment made directly to the purchaser of industrial development revenue bonds by the user-beneficiary of the bond proceeds from the user-beneficiary's own funds must be considered in applying the interest limitation of section 17-5-102, MCA.

You have indicated that the city of Helena is considering the issuance and sale of industrial development revenue bonds for the purpose of making a loan to a local hospital. The bonds would be issued pursuant to the Industrial Development Projects Act of 1965, sections 17-5-101 through 113, MCA. Authority for the issuance of such bonds is found in section 90-5-102(1)(c), MCA, which provides:

> (1) In addition to any other powers which it may now have, each municipality and each county may:
>
> ***
>
> (c) enter into agreements, upon terms the governing body considers advisable and not in conflict with the provisions of this part, to loan the proceeds of its revenue bonds to others for the purpose of defraying the cost of acquiring or improving any project.

Your questions concern matters relating to the sale of the bonds. The Act itself sets no limitation as to the interest industrial development revenue bonds may bear when they are sold. Section 90-5-103(2), MCA, provides that the bonds "may ... bear interest at such rate or rates ... as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued." Section 17-5-102, MCA, however, limits the interest industrial development revenue bonds may bear to a rate which "shall not exceed 9%." The rate of interest a bond bears is a factor in determining the bond's yield, which is the return the purchaser receives on his investment. Under present economic conditions bonds which produce a yield of nine percent or less may not be generally marketable. You have questioned the effect of 17-5-102 on two measures which have been proposed to enhance the marketability of bonds issued under the Act by increasing their yield.

The first measure involves the sale of industrial development revenue bonds bearing a nominal interest rate of nine percent at a price less than their par or face value. If the city's bonds were discounted in this manner, taking the discount into account the yield of the bonds would exceed nine percent. In my opinion the sale of industrial development revenue bonds at such discount comports with the Legislature's intent and does not violate section 17-5-102, MCA.

There are no Montana decisions on point. The Supreme Court has discussed the effect of section 17-5-102, MCA, on the maximum rate of interest on a city's special improvement district bonds. See State ex rel. Townsend v. D. A. Davidson, Inc., 166 Mont. 104, 531 P.2d 370 (1975). That court has also discussed various aspects of the Industrial Development Projects Act. See Fickes v. Missoula County, 155 Mont. 258, 470 P.2d 287 (1970). However, the court has not been asked to harmonize or reconcile 17-5-102 and the provisions of the Act.

The threshold question is whether section 17-5-102, MCA, limits merely the nominal rate of interest industrial development revenue bonds may bear, or the bonds' yield to the purchaser. Pertinent authority from other jurisdictions is divided.

The better view, in my opinion, is represented by the holdings in Rowland v. Deck, 195 P. 868 (Kan. 1921), and Golden Gate Bridge and Highway District v. Filmer, 21 P.2d 112 (Cal. 1933). In Rowland, the sale of certain bonds at a discount resulted in a yield of six percent. A statute provided that the bonds could not bear more than five percent interest. The court construed that statute as referring only to the nominal rate of interest on the bonds, not the price at which they could be sold. The court noted, "The established doctrine that bonds may be sold at a discount unless such course is forbidden recognizes the obvious distinction between the rate of interest provided in the bond itself and what the municipality using it actually pays for the use of the money it borrows by means thereof." Rowland v. Deck, supra, 195 P. at 870. The court acknowledged that its view restricted the scope of the statute limiting the maximum rate of interest on the bonds; it found that statute did not have the purpose of limiting the actual compensation the municipality would pay for the use of the proceeds. Id., 195 P. at 870-71. Further, the court rejected the argument that the statutory interest ceiling related to the productive value of the bonds. Id., 195 P. at 872. Compare, Hattrem-Nelson & Co. v. Salmon River Grand R.H., 285 P. 231 (Ore. 1930).

Golden Gate Bridge and Highway District v. Filmer, supra, is the case that is perhaps most frequently cited for the proposition that a statute fixing a maximum rate of interest on bonds refers to the description and form of the bonds rather than their yield. There, the court ruled that the term "interest" used in a statute limiting the interest rate

to five percent on certain bonds was meant to carry its usual, everyday meaning. The court held accordingly that "interest" did not mean "effective interest," and found the statute was not violated where the yield of the bonds in question exceeded five percent due to the sale of the bonds at a discount. As in Rowland v. Deck, supra, the court in this case emphasized that the applicable state law did not forbid the sale of the bonds at a discount. Quoting from Kiernan v. Portland, 122 P. 764 (Ore. 1912), the court concluded that in the absence of such a proscription it was reasonable to infer "that it was the intent of the lawmaking power to grant ... the entire discretion to sell at the best advantage possible under the circumstances." Golden Gate Bridge and Highway District v. Filmer, supra, 21 P.2d at 115.

In the absence of a provision barring the sale of industrial development revenue bonds at a discount, I see no reason why a Montana court would not follow the line of authority represented by the above decisions. In fact, the Act does speak to the sale of bonds at a discount. Rather than forbidding such sales, which would preclude the proposed sale in question, the Act expressly allows the sale of industrial development revenue bonds at a discount. This was accomplished through an amendment to section 90-5-103(3), MCA, enacted by the 1979 Legislature, Laws of Montana (1979), ch. 656, sec. 3. As amended, 90-5-103(3) provides:

> Any bonds issued under the authority of this part may be sold at public or private sale in such manner, at such time or times, and at such price above or below par as may be agreed upon by the lessor of the project or the borrower of the funds. (Amendatory material emphasized.)

It is presumed that the Legislature would not pass useless legislation. State ex rel. Irvin v. Anderson, 164 Mont. 513, 523, 525 P.2d 564 (1974). In determining the Legislature's purpose in amending section 90-5-103(3), MCA, as it did, I note also that statutes for industrial promotion "confer upon municipalities a much greater degree of discretion than has been granted to them in the past ... in other areas of municipal activities," and that such statutes "are to be given a liberal interpretation in order to accomplish their broad social purposes." Green v. City of Mt. Pleasant, 131 N.W.2d 5, 27 (Iowa 1964).

By amending 90-5-103(3) as it did, the Legislature plainly meant to give a municipality or county the power to sell industrial development revenue bonds at a premium (above par) or at a discount (below par). The only condition placed on a municipality or county's power to sell its bonds at a discount is that the user-beneficiary must agree to such sale. Applying the principle that in construing a statute the function is to declare what is stated therein, and not to insert what has been omitted, Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660 (1968), I conclude the Legislature did not intend to impose any other condition on the power to sell industrial development revenue bonds at a discount.

As the foregoing discussion shows, sections 17-5-102 and 90-5-103(3), MCA, can be harmonized to give effect to each. The former refers to the compensation that is paid by the issuer of industrial development revenue bonds, expressed in terms of a rate of interest that is fixed at the time the bonds are issued and offered for sale. The latter refers to the price at which the bonds are sold, which may result in a yield to the purchaser that is greater or lower than the fixed nominal interest rate. In my opinion, the city may sell its industrial development revenue bonds at a discount even if the yield of the bonds exceeds nine percent.

Your second question concerns a proposal whereby the user-beneficiary of the bond proceeds would pay the bonds' purchaser a certain amount from its own funds to induce the purchaser to buy the bonds. The bonds themselves would bear a rate of interest within the nine percent limitation of section 17-5-102, MCA, and would be sold at a price that, taking any discount or premium into account, would result in a yield to maturity of nine percent or less. You have asked whether such a payment would constitute "interest" under 17-5-102.

I have concluded above that as used in section 17-5-102, MCA, the term "interest" refers to the fixed rate of interest industrial development revenue bonds bear. It follows that amounts paid directly to the purchaser by the user-beneficiary of the bond proceeds need not be considered as interest in applying the nine percent limitation of 17-5-102. Even assuming that 17-5-102 limits the yield of such bonds, it does not follow that 17-5-102 would be violated by a payment of the kind you describe.

I reach this conclusion for two reasons. First, the Act contemplates that the interest on industrial development revenue bonds is the amount paid by the county or municipality, out of the project's revenues, for the use of the bond proceeds. See sections 90-5-103(1), 90-5-106, MCA. The hospital, not the city, would be making the proposed payment. In addition, I find nothing in the Act indicative of a legislative intent to restrict such a payment. The city would receive no benefit, nor would its position be impaired in any way.

THEREFORE, IT IS MY OPINION THAT:

1. The sale of industrial revenue bonds issued pursuant to Title 90, chapter 5, part 1, MCA, at a price less than the face value of the bonds does not violate section 17-5-102, MCA, if the yield of the bonds exceeds nine percent.

2. A payment made directly to the purchaser of industrial development revenue bonds by the user-beneficiary of the bond proceeds from the user-beneficiary's own funds need not be considered in applying the interest limitation of section 17-5-102, MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 79

CONFLICT OF INTEREST - City officer may not sell supplies to city;
MUNICIPAL GOVERNMENT - City officer may not sell supplies to city;
PUBLIC OFFICERS - City officers may not sell supplies to city. City officers prohibited from dealing in city warrants;
WARRANTS - City officers prohibited from dealing in city warrants;
MONTANA CODE ANNOTATED - Sections 2-2-204, 7-5-4109, and 7-14-4109.

HELD: 1. A city council person violates the conflict of interest provisions of section 7-5-4109, MCA, by selling supplies to the city.

2. An elected or appointed city official may not purchase a sidewalk, curb, or gutter warrant, provided for in section 7-14-4109, MCA, without violating section 2-2-204, MCA, which prohibits city officers from purchasing or selling city warrants.

1 May 1980

Norbert F. Donahue
City Attorney
P.O. Box 1035
Kalispell, Montana 59901

Dear Mr. Donahue:

You have requested my opinion concerning whether a number of specific practices contemplated by city officers may offend the provisions of the Montana Code Annotated that address conflicts of interest. I have summarized and stated your questions in the following manner:

1. May a business operated by an elected city officer, or owned by a corporation in which the officer is a major stockholder sell supplies to the city?

2. May an elected or appointed officer of a city purchase a "sidewalk-gutter-curb" warrant issued

pursuant to section 7-14-4109, MCA, without violating section 2-2-204, MCA?

Section 7-5-4109, MCA, is the controlling statute regarding conflicts of interest in a city such as Kalispell, which has a municipal council-mayor form of local government. That statute provides:

> The mayor, any member of the council, any city or town officer, or any relative or employee thereof must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

This provision of the Montana Codes has been a part of Montana law since before the turn of the century. The Montana Supreme Court has only addressed the statute in two opinions, neither of which addresses the requirements for a transaction to be termed a "contract" within the context of conflicts of interest.

However, the court has had occasion to address the underlying considerations of a similar question in Schumacher v. City of Bozeman, 174 Mont. 519, 529, 571 P.2d 1135, 1141 (1977). In Schumacher a question arose with respect to the activities of a city commissioner. The court noted that a city official's position "places him on a different level of review regarding his business transactions, than would be that of the ordinary citizen."

A recent opinion from this office addressing a similar conflict of interest statute recognized that courts have generally held monetary or proprietary interests to be the focus of conflict of interest statutes as opposed to merely abstract interests. 38 Op. Att'y Gen. No. 55 (1979). That opinion said such a limitation provides a clear and workable standard for application of the statutes.

Turning to the transactions you described in your request, it is apparent that a pecuniary benefit accrues to the council person who is also the proprietor of, or major interest holder in, a business. Close scrutiny of any of the transactions you describe reveals an implied contract. But, consistent with the reasoning of prior opinions, the crucial factor in applying conflict of interest statutes is the presence of a pecuniary or proprietary interest. Consequently, it is my opinion that a business operated by an

elected city official or owned by a corporation in which the officer is a major stockholder may not sell supplies to the city.

Turning to the second question presented, section 2-2-204, MCA, provides:

> The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

Your question addresses a particular type of warrant provided for in section 7-14-4109(5), MCA. The special sidewalk, curb, or gutter warrants provided for in that statute are not contained in either of the exceptions listed in section 2-2-204, MCA. They are not held by a city officer for services rendered and they are not evidence of the funded indebtedness of the city. In my opinion the proscription against city officers dealing in warrants found in section 2-2-204, MCA, applies to the special sidewalk, curb, or gutter warrants provided for in section 7-14-4109(5), MCA.

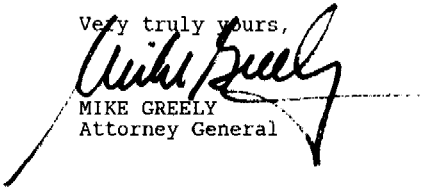
THEREFORE, IT IS MY OPINION:

1. A city council person violates the conflict of interest provisions of section 7-5-4109, MCA, by selling supplies to the city.

2. An elected or appointed city official may not purchase a sidewalk, curb, or gutter warrant, provided for in section 7-14-4109, MCA, without violating section 2-2-204, MCA, which prohibits

city officers from purchasing or selling city warrants.

Very truly yours,



MIKE GREELY
Attorney General