MONTANA ADMINISTRATIVE REGISTER

1978 ISSUE NO. 3
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MONTANA ADMINISTRATION REGISTER

ISSUE NO. 3

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RULE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the Repeal of Rules 2-2.6(6)-S640 through 2-2.6(6)-S6030 Relating to Regulation of Purchasing Activities	) NOTICE OF PROPOSED) REPEAL OF RULES) NO PUBLIC HEARING) CONTEMPLATED)

TO ALL INTERESTED PERSONS:

1. On the 24th day of April, 1978, the Department of Administration proposes to repeal Rules 2-2.6(6)-S640 through 2-2.6(6)-S6030.

2. The Rules proposed to be repealed are on pages 2-21 through 2-24 of the Administrative Rules of Montana.

3. Rationale: The Department of Administration proposes to repeal these rules in order to allow for the proposed adoption of substitute Rules 2-2.16(1)-S1600 through 2-2.16(1)-S16040, reference MAR Notice No. 2-2-26, relating to the same subject matter.

4. Interested parties may submit their data, views, or arguments covering the proposed repeal in writing to Jack C. Crosser, Director, Department of Administration, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 21st day of April, 1978.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit his request, along with any written comments, to Mr. Crosser at the above stated address prior to the 21st day of April, 1978.

6. If the Director receives requests for a public hearing on the proposed repeal of the foregoing rule from 50 or more persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected has been determined to be in excess of 50.

8. The authority of the Department of Administration to repeal the above rules is based upon Section 82-1902.1, R.C.M. 1947. Imp. - Same.

Dated this 14th day of March, 1978.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, March 15, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules 2-2.16(1)-S1600 through 2-2.16(1)-S16040 Relating to Regulation of Purchasing Activities	) NOTICE OF PROPOSED ADOPTION OF RULES) NO PUBLIC HEARING CONTEMPLATED)

TO ALL INTERESTED PERSONS:

1. On or after the 24th day of April, 1978, the Department of Administration proposes to adopt Rules 2-2.16(1)-S1600 through 2-2.16(1)-S16040 relating to the regulation of purchasing activities.

2. The proposed rules replace those rules previously adopted and repealed by the Department of Administration, reference MAR Notice No. 2-2-25, of the same subject matter.

3. The proposed rules provide in summary as follows:

(a) ARM 2-2.16(1)-S1600 DEFINITIONS. This section defines several terms used throughout the rules.

(b) ARM 2-2.16(1)-S1610 REQUISITION TIME SCHEDULE. This section covers the importance of compliance with the schedule of dates issued by the Purchasing Division.

(c) ARM 2-2.16(1)-S1620 REQUISITION PROCEDURES. This section covers procedures to be followed in preparing and submitting requisitions.

(d) ARM 2-2.16(1)-S1630 AGENCY PURCHASING AUTHORITY. This section outlines conditions under which individual purchases may be made at the agency level.

(e) ARM 2-2.16(1)-S1640 TERM CONTRACTS. This section outlines procedures for purchasing from established term contracts.

(f) ARM 2-2.16(1)-S1650 BIDDER REQUIREMENTS. This section covers the bidders obligations relative to being placed on, or removed from, state bid lists, and proper preparation of bid forms.

(g) ARM 2-2.16(1)-S1660 SOLICITATION OF BIDS. This section covers the solicitation and opening of bid quotations.

(h) ARM 2-2.16(1)-S1670 AWARDING OF CONTRACTS. This section outlines evaluations and consideration to be made in awarding state contracts.

(i) ARM 2-2.16(1)-S1680 RECORD OF BIDS. This section explains the abstract of bids maintained by the Purchasing Division.

(j) ARM 2-2.16(1)-S1690 QUALITY CONTROL. This section outlines the agency responsibility for quality control inspection.

(k) ARM 2-2.16(1)-S16000 NON-PERFORMANCE BY VENDOR. This section outlines procedures for filing a vendor non-performance complaint.

(l) ARM 2-2.16(1)-S16010 NON-PERFORMANCE BY STATE. This section outlines procedures for filing a state non-performance complaint.

(m) ARM 2-2.16(1)-S16020 JOINT GOVERNMENTAL PURCHASE. This section outlines the responsibilities of political subdivisions when participating in state contracts.

(n) ARM 2-2.16(1)-S16030 NEGOTIATED REHABILITATION CONTRACTS. This section covers purchases made by State Agencies from rehabilitation workshops.

(o) ARM 2-2.16(1)-S16040 CLOSING. This section includes examples of the forms mentioned.

4. The reason for these Rules is as follows: The proposed rules will be substituted for those rules previously adopted and repealed by the Department of Administration, pertaining to the regulation of purchasing activities.

5. Interested parties may submit their data, views, or arguments covering the proposed adoption in writing to Jack C. Crosser, Director, Department of Administration, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 21st day of April, 1978.

6. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit his request, along with any written comments, to Mr. Crosser at the above stated address prior to the 21st day of April, 1978.

7. If the Director receives requests for a public hearing on the proposed adoption of these rules from 50 or more persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

8. Ten percent (10%) of those persons directly affected has been determined to be in excess of 50.

9. The authority of the Department of Administration to adopt the above rules is based upon Section 82-1902.1, R.C.M. 1947. Implementing - Ch. 19, Title 82, R.C.M. 1947.

Dated this 14th day of March, 1978.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, March 15, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules providing holiday pay for State employees)	NOTICE OF PROPOSED ADOPTION OF THE HOLIDAY PAY RULE. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or after April 14, 1978 the Department of Administration proposes to adopt a rule providing holiday pay for State employees.

2. The proposed Rule does not replace or modify any section currently found in the Montana Administrative Rules.

3. The proposed Rule provides as follows:

Rule I. DEFINITIONS. (a) Employee means any person employed by the state of Montana on a permanent, temporary, full-time, part-time or seasonal basis. This does not include an individual under contract with the State as an independent contractor.

(b) Legal State Holiday means any one of those holidays provided by law to afford a day off with pay to State employees.

Rule II. LEGAL HOLIDAYS. (a) State employees are entitled to receive a day off for each legal holiday, regardless of the day on which the holiday falls or the employee's work week (Opinion #27, Volume 34, Attorney General). State primary election days are not State holidays. (Opinion #20, Volume 34, Attorney General).

(b) Pursuant to section 59-1009, R.C.M. 1947, any State employee who is scheduled for a day off on a day which is observed as a legal holiday shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

Rule III. POLICY. (a) Holidays, including those allowed in lieu of the actual holiday, occurring while an employee is in a pay status shall be earned by the employee and not charged as sick leave, vacation leave, etc.

(b) Holidays, including those allowed in lieu of the actual holiday, occurring while an employee is absent without pay will not be earned by the employee unless the employee is in a pay status on either the last working day immediately preceding the holiday or on the first scheduled working day immediately following the holiday. If qualified, the employee shall receive pay for those hours that he or she is normally scheduled to work.

(i) For those employees who have a regularly scheduled workweek, the employee must be in a pay status, either the day before or the day after those numbers of hours he/she is regularly scheduled to work to qualify to be paid for that full number of hours. Otherwise, an average of the hours

worked in the pay period in which the holiday(s) occurs will be taken and the employee will be paid for the average number of hours worked.

(ii) For those employees who work varying hours during the week, an average of the number of hours worked during four full pay periods prior to the holiday should be taken and the employee will be paid for the holiday on the basis of the average number of hours worked. Example: An employee's schedule for the last four pay periods would look like this:

1st week	=	28 hours worked	4 days
2nd week	=	22 hours worked	3 days
3rd week	=	33 hours worked	5 days
4th week	=	30 hours worked	4 days
5th week	=	37 hours worked	5 days
6th week	=	25 hours worked	5 days
7th week	=	23 hours worked	3 days
8th week	=	40 hours worked	5 days
		238 hours worked	34 days

238 hours worked: 34 days = 7 hours average. Employee would be paid 7 hours for the holiday.

(c) If an employee transfers from one State agency to another one immediately before a holiday, and provided that the employee is in a pay status on the regularly scheduled work day immediately following the holiday, the new employing agency shall be responsible for paying the employee for the holiday.

(d) If a new employee reports to work on the day immediately after a holiday, the employee shall not receive pay for the holiday.

(e) When an employee works on a legal holiday and is given another day off in accordance with section 59-1009, R.C.M. 1947, the time worked should be recorded as regular time and the day off recorded as holiday time even though the day worked was actually the holiday.

(f) When an employee is entitled to a day off for a legal holiday, but is required to work on that day and no time off is subsequently allowed, the employee must be paid a minimum of double time and one half. This applies to non-exempt (from the Montana Minimum Wage Law of 1971) employees; exempt employees shall earn compensatory time on an hour-for-hour basis. Example: If the employee works 8 hours on a legal holiday, eight hours are to be coded to SBAS expenditure identification code 1105 or 1205 (Holiday) at the employee's regular rate of pay and 8 hours coded to 1102 or 1202 (Overtime) at time and one-half.

Rule IV. CLOSING. (a) This Rule shall be followed unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

(b) The attached table illustrates the applications of statutory provisions and policy noted above.

4. Reason for this Rule is as follows: There is a critical need to provide uniform rules to be consistently applied in the administration and pay of legal holidays provided all State employees. Adoption of these Rules will lessen the possibility of discriminatory or unfair regulation of holiday pay by State agencies.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption to Mr. William S. Gosnell, Administrator, Personnel Division, Department of Administration, Room 101, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he/she must make written request for a public hearing along with any written comments to Mr. William Gosnell before April 12, 1978.

7. If the department receives requests for a public hearing on the proposed Rule from more than ten percent (10%) or twentyfive (25) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication to the Administrative Register.

8. The authority of the Department to make the proposed adoption of the Rule is based on Section 59-913, R.C.M. 1947. Implementation is based on Sections 19-107 and 59-1009, R.C.M. 1947.

Jack C. Crosser

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, March 15, 1978.

TABLE OF DAYS OFF FOR LEGAL HOLIDAYS

IF THE LEGAL HOLIDAY FALLS ON:	AND IF THE EMPLOYEE'S SCHEDULED DAYS OFF ARE:	THEN THE EMPLOYEE'S ALLOWED HOLIDAY IS:	PROVIDING THE EMPLOYEE WORKS* EITHER THE PRECEDING OR FOLLOWING:
MONDAY	Saturday and Sunday	Monday	Friday or Tuesday
	Sunday and Monday	Tuesday	Saturday or Wednesday
	Monday and Tuesday	Sunday	Saturday or Wednesday
	Tuesday and Wednesday	Monday	Sunday or Thursday
	Wednesday and Thursday	Monday	Sunday or Tuesday
	Thursday and Friday	Monday	Sunday or Tuesday
	Friday and Saturday	Monday	Sunday or Tuesday
TUESDAY	Saturday and Sunday	Tuesday	Monday or Wednesday
	Sunday and Monday	Tuesday	Saturday or Wednesday
	Monday and Tuesday	Wednesday	Sunday or Thursday
	Tuesday and Wednesday	Monday	Sunday or Thursday
	Wednesday and Thursday	Tuesday	Monday or Friday
	Thursday and Friday	Tuesday	Monday or Wednesday
	Friday and Saturday	Tuesday	Monday or Wednesday
WEDNESDAY	Saturday and Sunday	Wednesday	Tuesday or Thursday
	Sunday and Monday	Wednesday	Tuesday or Thursday
	Monday and Tuesday	Wednesday	Sunday or Thursday
	Tuesday and Wednesday	Thursday	Monday or Friday
	Wednesday and Thursday	Tuesday	Monday or Friday
	Thursday and Friday	Wednesday	Tuesday or Saturday
	Friday and Saturday	Wednesday	Tuesday or Thursday
THURSDAY	Saturday and Sunday	Thursday	Wednesday or Friday
	Sunday and Monday	Thursday	Wednesday or Friday
	Monday and Tuesday	Thursday	Wednesday or Friday
	Tuesday and Wednesday	Thursday	Monday or Friday
	Wednesday and Thursday	Friday	Tuesday or Saturday
	Thursday and Friday	Wednesday	Tuesday or Saturday
	Friday and Saturday	Thursday	Wednesday or Sunday
FRIDAY	Saturday and Sunday	Friday	Thursday or Monday
	Sunday and Monday	Friday	Thursday or Saturday
	Monday and Tuesday	Friday	Thursday or Saturday
	Tuesday and Wednesday	Friday	Thursday or Saturday
	Wednesday and Thursday	Friday	Tuesday or Saturday
	Thursday and Friday	Saturday	Wednesday or Sunday
	Friday and Saturday	Thursday	Wednesday or Sunday
SATURDAY	Saturday and Sunday	Friday	Thursday or Monday
	Sunday and Monday	Saturday	Friday or Tuesday
	Monday and Tuesday	Saturday	Friday or Sunday
	Tuesday and Wednesday	Saturday	Friday or Sunday
	Wednesday and Thursday	Saturday	Friday or Sunday
	Thursday and Friday	Saturday	Wednesday or Sunday
	Friday and Saturday	Sunday	Thursday or Monday
SUNDAY	Saturday and Sunday	Monday	Friday or Tuesday
	Sunday and Monday	Saturday	Friday or Tuesday
	Monday and Tuesday	Sunday	Saturday or Wednesday
	Tuesday and Wednesday	Sunday	Saturday or Monday
	Wednesday and Thursday	Sunday	Saturday or Monday
	Thursday and Friday	Sunday	Saturday or Monday
	Friday and Saturday	Sunday	Thursday or Monday

*Or is on paid leave status.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules concerning the administration of the emergency and disaster fund.	)))))	NOTICE OF PROPOSED ADOPTION OF THE ADMINISTRATION OF EMERGENCY AND DISASTER FUND. NO PUBLIC HEARING CONTEMPLATED.

TO: All interested persons

1. On or after April 24, 1978, the Department of Administration proposes to adopt rules concerning the Emergency and Disaster Fund.

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

3. The proposed rules read as follows:

RULE I. EMERGENCY AND DISASTER DEFINED. (1) The emergency or disaster must be the result of hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods, or other acts of God.

(2) The emergency or disaster must result in damage or disaster to the works, buildings or property of the State or any political subdivision thereof or menace the health, welfare, safety, lives or property of a considerable number of persons in a county or community of the State.

RULE II. IMPLEMENTATION (1) Expenditures from the emergency and disaster fund shall be made only when the emergency or disaster justifies the expenditure and is declared an emergency or disaster by executive order of the Governor.

(2) The responsible governmental entity must demonstrate that:

(a) All available emergency levies will be exhausted.

(b) The emergency is beyond the financial capability of the responsible governmental entity.

(3) The County Disaster Committee must determine that an emergency exists and the Board of County Commissioners or the City Council must levy an emergency millage as provided in Title 11, Chapter 43, R.C.M. 1947.

RULE III. FINANCIAL CAPABILITIES (1) The financial capability of a responsible governmental entity shall be determined as follows:

(a) The board or council shall estimate the total expenditures necessary to respond to the emergency. These are preliminary estimates based on the best information available in an emergency situation and will be subject to revision when a more complete appraisal is made.

(b) Estimates should be limited to those costs that can not be absorbed in the normal operations and should be grouped as follows:

(i) Debris clearance.

(ii) Protective measures.
(iii) Damages to road systems.
(iv) Damages to water control facilities.
(v) Damages to public buildings and related equipment.
(vi) Damages to public utilities.
(vii) Damages to public facilities under construction.
(viii) Other miscellaneous damages.

(2) The board or council shall estimate the financial capability of the entity by completing the following calculations for each fund or account involved. The financial resources available to the entity shall include the maximum permissive levy for the fund or account financing the governmental function that is obligated to respond to the emergency. The estimated funds available for the emergency shall be calculated as follows:

Cash balance including reserves as of June 30, 19__	$_____
Receipts from two mill emergency levy	_____
Receipts from maximum permissive levy and other anticipated revenues	_____
SUB TOTAL	$_____
Less regular operating budget including reserve budgeted for current year per Sec. 16-1904(3)	$_____
BALANCE AVAILABLE TO RESPOND TO EMERGENCY	$_____

(a) If the total estimated expenditures necessary to respond to the emergency are greater than the estimated resources available for the emergency, the board or council may request the Governor to declare an emergency and to initiate action to provide State financial assistance in accordance with such declaration. The application should be made on the forms attached hereto.

4. The reason for these rules is as follows: The recent heavy blizzards and snow condition in the State of Montana have created an assistance relief situation for local government entities and said rules determining financial capability are not in effect at the present time.

5. Interested persons may submit their data, views or arguments concerning the proposed adoption to Mr. J. Michael Young, Administrator, Insurance and Legal Division, Department of Administration, Mitchell Building, Helena, Montana 59601.

6. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public

hearing, he must make written request for a public hearing and submit his request along with any written comments to Mr. J. Michael Young before April 21,1978.

7. If the department receives requests for a public hearing on the proposed Rules from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. Notification will be made by publication in the Administrative Register.

8. The authority of the department to make the proposed adoption of rules is based on Section 79-2503, R.C.M. 1947. Implementation is based on Section 79-2501, R.C.M. 1947.

Jack C. Crosser, Director
Department of Administration

Certified to the Secretary of State, March 14th, 1978.

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

Dear Governor Judge:

Pursuant to our authority as _____ of _____, Montana, we request that an emergency be declared immediately to provide supplemental disaster relief in accordance with the provisions of Title 79, Chapter 25, R.C.M. 1947.

1. SITUATION

A. (Date and description of conditions causing disaster)

B. (Description of damages to public sector)

C. (Description of damages to private sector)

D. (Description of economic impact)

2. OFFICIAL ACTION

A. The County Disaster Committee has determined by a majority vote that an emergency does exist. Attached is a copy of the signed resolution.

B. This _____ has levied the emergency two mill levy authorized by Section 11-4305, R.C.M. 1947. (Attach copy of resolution imposing the levy.)

C. (Other action taken)

3. DAMAGE ESTIMATES

A.	Debris Clearance	$_____
B.	Protective Measures	_____
C.	Road Systems	_____
D.	Water Control Facilities	_____
E.	Public Buildings and Related Equipment	_____
F.	Public Utilities	_____
G.	Public Facilities Under Construction	_____
H.	Other Damages (Not in Above Catagories)	_____
	TOTAL ESTIMATED DAMAGES	$_____

4. LOCAL RESOURCES

Names of funds or accounts involved: _____

_____

_____

ESTIMATED

Cash balance including reserves as of June 30, 19__ $_____

Receipts from two mill emergency levy _____

Receipts from maximum permissive levy and other anticipated revenues _____

SUB TOTAL $_____

Less regular operating budget including reserve budgeted for current year per Sec. 16-1904(3) $_____

BALANCE AVAILABLE TO RESPOND TO EMERGENCY $_____

5. ASSISTANCE REQUIRED

Total damage estimate (from No. 3) $_____

Less estimated resources available (from No. 4) $_____

ESTIMATED ASSISTANCE REQUIRED $_____

Date_____

_____
(Title of Board or Council)

By: _____
Chairman

_____
Member

_____
Member

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In The Matter of the Department of Agriculture Adopting a NEW rule for the Transportation Unit of the Department of Agriculture for the Administrative Rules of Montana	NOTICE OF PROPOSED ADOPTION of a NEW rule for Chapter 18, Transportation Unit. NO PUBLIC HEARING CONTEMPLATED.

To: All Interested Persons

1. On April 25, 1978, the Department of Agriculture proposes to adopt a NEW rule for Chapter 18, Transportation Unit, to comply with the Revised Codes of Montana as amended in the Forty-Fifth Legislative Session, House Bill 234.

2. The proposed NEW rule to be adopted is as follows:

REPORTS (1)(a) All grain merchandisers licensed by section 3-228.2, R.C.M. 1947, as a grain public warehouse, shall file with the department, on forms prescribed and provided by the Montana Department of Agriculture, monthly reports of shipments of grain from individual public warehouses located in Montana.

(b) Licensees having more than one (1) public warehouse shall submit separate reports for each.

(c) The report shall include, but not be limited to:

(i) the amount (bushels) of grain shipped;

(ii) the number of units (rail covered hopper - rail box car - truck) shipped;

(iii) the type of grain (winter wheat - durum wheat - other spring wheat - barley - oats) shipped; and

(iv) the destination of shipment(s). Actual destination need not be shown but shipments must be reported as within one of the destination groups provided on the form.

(d) Licensees providing the department with monthly internally generated computer reports with the herein foregoing movement data shall have complied with this rule.

(e) Monthly shipment reports required herein shall be filed with the department no later than twenty (20) days, (excluding saturdays, sundays, and holidays), following the end of the month within which the movement occurs.

(2)(a) All grain merchandisers licensed by section 3-228.2, R.C.M. 1947, as a grain dealer, or grain dealer/track buyer, shall file with the department, on forms prescribed and provided by the Montana Department of Agriculture, monthly reports of shipments of grain made.

(b) All shipments made during the reporting month shall be aggregated on one (1) reporting form.

(c) The provisions of 1(c), (d), (e), apply to all licensed grain dealers or grain dealer/track buyers.

(3)(a) All grain merchandisers licensed by section 3-228.2, R.C.M. 1947, as a grain dealer/trucker, shall file

with the department, on forms prescribed and provided by the Montana Department of Agriculture, monthly reports of shipments of grain made directly from the producing area (farm or ranch).

(b) All shipments made during the reporting month shall be aggregated on one (1) reporting form.

(c) The provisions of 1(c), (d), (e), apply to all licensed grain dealer/truckers.

3. The rationale for adopting this NEW rule is to establish reporting guidelines as directed in House Bill 234 of the Forty-Fifth Legislative Session.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption to Mr. W. Gordon McOmber, Director, Montana Department of Agriculture, 1300 Cedar Street, Airport Way-Bldg. West, Helena, Montana 59601.

5. If a person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit his request along with any written comments to Mr. W. Gordon McOmber before April 24, 1978.

6. If the department receives requests for a public hearing on the proposed adoption from more than ten percent (10%) or twenty-five (25) or more persons directly affected a public hearing will be held at a later date. You will be notified of a public hearing.

7. The authority of the department to adopt this NEW rule is based on Section 3-227, R.C.M. 1947.

W. GORDON McOMBER, Director

DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Department of Agriculture Adopting a NEW rule for Chapter 14, Plan Industry Division, of the Department of Agriculture for the Administrative Rules of Montana	NOTICE OF PROPOSED ADOPTION of a NEW rule for Chapter 14, Plant Industry Division. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On April 25, 1978, the Department of Agriculture proposes to adopt a NEW rule for Chapter 14, Plant Industry Division.

2. The proposed NEW rule is as follows:

Grain Standards. (1) The Montana Department of Agriculture hereby adopts the United States Department of Agriculture's grain standards as reflected in the United States Grain Standards Act, as amended and the rules thereunder, found in Title 7, Chapter 1, Part 26 of the Code of Federal Regulations as well as the Official United States Standards for Grain and/or any subsequent amendments made thereto.

(2) Copies of these regulations may be obtained by contacting the Montana Department of Agriculture, Plant Industry Division, 1300 Cedar Street, Airport Way-Bldg. West, Helena, Montana 59601.

3. The rationale for adopting this NEW rule is based on the laws of Montana which require this department to adopt rules for grain standards and these rules must not conflict with the United States Grain Standards Act.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption to Mr. W. Gordon McOmber, Director, Montana Department of Agriculture, 1300 Cedar Street, Airport Way-Bldg. West, Helena, Montana 59601.

5. If a person directly affected wishes to express their data, views or arguments orally or in writing at a public hearing and submit their request along with any written comments to Mr. W. Gordon McOmber before April 24, 1978.

6. If the department receives requests for a public hearing on the proposed adoption from more than ten percent (10%) or twenty-five (25) or more persons directly affected a public hearing will be held at a later date. You will be notified of a public hearing.

7. The authority of the department to adopt this NEW rule is based on Sections 3-209 and 3-210, R.C.M. 1947.

W. GORDON McOMBER, DIRECTOR

DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the Matter of the Department of Agriculture Adopting NEW rules for Chapter 30, Board of Hail Insurance, of the Department of Agriculture for the Administrative Rules of Montana	NOTICE OF PROPOSED ADOPTION of NEW rules for Chapter 30, Board of Hail Insurance. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 25, 1978, the Department of Agriculture proposes to adopt NEW rules for Chapter 30, Board of Hail Insurance.

2. The proposed NEW rules are as follows:

ADJUSTMENT OF HAIL LOSS. (1) When the adjustment of a hail loss is made, the percentage of loss allowed shall be that percentage of the crop which has been destroyed by hail only. The adjustment shall be subject to the condition mentioned in rule (4.2.600) Liability to Cease for State Board of Hail Insurance.

(2) The cost of cutting, pulling, binding, or harvesting in any manner shall not be considered in measuring the extent of the loss. Provided however, that payment of the loss be limited to not more than the estimated value of the damaged crop before the hail.

(3) The value shall be based on the price of similar undamaged grain at the insured's marketing place.

AT LEAST 5% LOSS NEEDED. (1) If any insured claims a loss and no appreciable part of any field shows a loss of at least 5%, the insured may be required to pay the adjusting expense. All loss claims must be filed with the State Board of Hail Insurance at Helena within three (3) days after the storm. If notice of loss is not received within three (3) days the cost of the adjustment may, at the discretion of the Board be charged to the claimant, unless the Board deems the delay excusable. If any insured grain has been damaged by hail and is ripe enough to harvest before the aduster appears, the insured may proceed with his harvesting with the exception that he must leave fair, representative samples in each field as directed on the Hail Loss Report Form and on the Acknowledgement of Loss Form.

INSURED CROPS. (1) The following crops may be insured at any time to August 15, inclusive:

wheat	corn	peas	rape
oats	rye	beans	sugar
flax	speltz	mustard	beets
barley	alfalfa	safflower	potatoes

HAY CROPS. (1) This hail insurance covers up to a total loss on any one-cutting hay crop, or partial losses on hay crops with more than one cutting per season, up to where the loss or losses amount to not more than the equivalent of a total loss of one cutting.

PROVISIONS OF COVERAGE. (1) Hail insurance on all insured crops is in force for the full growing season with the following provisions:

a. there will be no liability on grain until 75% of the plants are plainly jointed;

b. no liability is assumed on beans and peas until they show a practical stand;

c. no liability is assumed on any crops for loss or damage to blooms, leaves, or stems unless such loss or damage plainly reduces the quality or quantity of the production;

d. when loss or damage is sustained on immature crops the adjustment may be delayed until the extent of the damage may be more accurately determined; and

e. no liability is assumed on mustard or flax until 75% of the plants are 4 inches tall, and on sugar beets until they are thinned.

APPLICATION FOR INSURANCE. (1) Persons wishing to participate in the hail insurance program shall file a properly filled out and signed application in the office of the county assessor no later than August 15.

TIME POLICY BECOMES EFFECTIVE. (1) All policies will be in full force and effect from noon of the day following the acceptance by the county assessors. Any policy may be cancelled if fraud or misrepresentation is used in obtaining it.

REAPPRAISAL. (1) In case of disagreement on any adjustment, the insured must ask for reappraisal within ten (10) days. The insured may at his option submit the matter to arbitration as provided in Section 82-1516, R.C.M. 1947 or sue the State Board of Hail Insurance in the district court of the county where the loss occured.

FILING OF APPLICATION FOR REDUCTION AND SCHEDULE. (1) When an application for reduction of levy is filed with the State Board of Hail Insurance at Helena and approved, the rate on such crops withdrawn shall be computed in proportion to the time the insurance is in force, and in accordance with the maximum rate established herein for the zone in which said crops are growing. No application will be approved if the value of the crop exceeds $5.00 per acre.

Spring Crops		Winter Crops	
Before July 6th, inclusive	¼ rate	Before June 17th	¼ rate
Between July 6th & 12th	½ rate	Between June 17th & 23rd	½ rate
After July 12th	Full rate	After June 23rd	Full rate

SPECIAL CROPS REDUCTION. (1) All growers of grain and other special crops seeking a reduction of levy shall be subject to the above dates except as follows: Five (5) days additional shall be allowed all growers in the counties touching the Canadian border and also to those in other counties where the insured crops are growing at an elevation in excess of #,500 feet above sea level.

(2) When any insured crop has been practically destroyed by other means than hail after the dates provided in rule (4.2.400) Filing of Application for Reduction and Schedule, and part (1) of this rule, the insured may apply to the State Board of Hail Insurance for a reduction in the charge, but the requests for such reduction must be made before the grain is harvested. When the insured furnishes the required information proving the damage or destruction of the crop the State Board of Hail Insurance may approve a reduction of the charge to not less than one-half the regular charge for the season.

RECEIPT OF REFUND. (1) To receive a refund of any surplus funds declared by the Hail Board, a policy holder must have his hail levy paid in full by July 1st of the following crop season.

PROCESS OF PAYMENT FOR LOSSES. (1) Any losses accruing under the policy issued for this application shall be payable in two parts with state warrants as follows: any amount owing for current or delinquent state hail insurance shall be deducted from one-half the adjustment and forty (40) days of the occurrence of the loss. The balance due on the loss shall be mailed to the insured after the close of the hail season.

LOSSES EXCEEDING THE LEVY FOR THAT YEAR. (1) If the losses for any year exceed the levies for that year plus the reserve fund, if any, then the payment on losses shall be pro-rated share and share alike among all suffering loss by hail.

CUT OFF DATE. (1) Loss claims after October 1 will not be accepted.

LIABILITY TO CEASE FOR STATE BOARD OF HAIL INSURANCE. (1) The liability of the State Board of Hail Insurance for damage by hail to crops insured under this Act shall cease when:

a. the crops are headed, mowed, or harvested in any manner except that liability against damage by hail will

continue in force on grain or any other crop which has been bound, shocked, or windrowed until the insured has had a reasonable time to complete harvesting or threshing. The extended liability will not cover additional damage caused by wind or rain.

b. the insured neglects under favorable conditions to harvest the crops insured within a reasonable time after the grain is fully ripe.

c. the insured makes application for cancellation or reduction of the current hail insurance levy on account of the alleged distruction of said crops by other means than hail.

d. the crops are destroyed by other means than hail.

e. when the amount of the allowance is adjusting a loss under any policy equals the value of the crops as figured under rule (4.2.100) Adjustment of Hail Loss.

LIABILITY ON ALL CROPS. (1) The liability on all crops insured except sugar beets, will expire after September 15. Sugar beets after September 30. The insured may apply for an extension of the risk if his crops, except sugar beets, are not ripe and harvested before September 15, and if he applies for an extension before that date to the State Board of Hail Insurance at Helena, Montana.

3. The rationale for adopting these NEW rules is based on the need for the Hail Board to put into force rules and regulations that are applicable to the Hail Board Policy and the decisions made by the Hail Board.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption to Mr. W. Gordon McOmber, Director, Montana Department of Agriculture, 1300 Cedar Street, Airport Way, Bldg. West, Helena, Montana 59601.

5. If a person directly affected wishes to express their data, views or arguments orally or in writing at a public hearing and submit their request along with any written comments to Mr. W. Gordon McOmber before April 24, 1978.

6. If the department receives requests for a public hearing on the proposed adoption from more than ten percent (10%) or twenty-five (25) or more persons directly affected a public hearing will be held at a later date. You will be notified of a public hearing.

7. The authority of the department to adopt these NEW rules is based on Section 82-1501(2), R.C.M. 1947.

W. Gordon McOmber

W. GORDON McOMBER, DIRECTOR

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF FISH AND GAME
OF THE STATE OF MONTANA

In the Matter of the Adoption) NOTICE OF PUBLIC HEARING
of Rule 12-2.10(22)-S10250) FOR ADOPTION OF RULE
Relating to Game Farm)
Regulation)

To All Interested Persons:

1. On April 17, 1978, at 1:30 p.m., or as soon thereafter as practicable, a public hearing will be held at the Department of Fish and Game, Helena, Montana, in the commission room, to consider the adoption of Rule 12-2.10(22)-S10250 regarding Game Farm Regulation.

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:

12-2.10(22)-S10250 GAME FARM REGULATION

(1) Game Farm Permit. Game animals and game birds may not be possessed for game farm purposes until a prospective game farm operator first secures a valid game farm permit.

(a) A game farm permit shall be conspicuously displayed on the property where a game bird or game animal is held in captivity.

(b) A game farm permit shall be valid from the date of issuance until either of the following occurs:

(i) The game farm operator ceases to conduct the business of propagating, owning, and controlling game animals or game birds.

(ii) The department revokes the permit for violation of any of the provisions pertaining to game farm operations.

(c) If a game farm operator intends to raise, import, and propagate game birds or game animals not included under his game farm permit, he must obtain written authorization from the department to do so.

(2) Disposition of Game Upon Revocation. If a game farm permit is revoked, all game animals and game birds possessed under the permit must be disposed of within sixty (60) days after revocation. All game animals and game birds remaining on the premises beyond the disposal period shall be disposed of at the discretion of the department.

(3) Records and Reporting Requirements.

(a) An operator of a game farm must keep a written record which shall include the number, species, sex, and source of game animals and game birds purchased or under his control; the number, species, and sex of game animals and game birds sold or otherwise disposed of and the name and address of each purchaser or recipient; and the date of each sale or other transfer of possession.

(b) On or before January 31 of each year, a game farm operator must submit a verified report to the department which lists the following:

(i) The total number of each species of game birds and game animals killed, sold, shipped, or otherwise disposed of during the preceding year.

(ii) The name of each person to whom such game birds or game animals were sold, shipped, or transferred.

(iii) The name of the person in whose presence such game birds or game animals were tagged.

(iv) A complete list by species, number, and sex of the game birds and game animals in his possession at the time the report is made.

(4) Importation. No game animal or game bird may be imported into the state for game farm purposes unless:

(a) It has been inspected and found free from disease by a veterinarian accredited by the U.S. Department of Agriculture pursuant to Parts 160 and 161, Chapter 1, Subdivision 1, Title 9, CFR; and

(b) It is accompanied by an official health certificate issued by an accredited veterinarian following inspection; and

(c) It is accompanied by a permit issued by the Montana State Department of Livestock pursuant to ARM Section 32-2.6A(78)-S6330.

(5) Unlawful Capture. No person may capture or take any game animal or game bird from the wild in this state for use on a game farm. Any game animal or game bird possessed or confined in violation of this section will be seized by the department.

(6) Release of Wildlife. No game farm operator may release a game animal or game bird into the wild except as authorized by the department.

(7) Escape.

(a) If a game animal or game bird escapes, the game farm operator shall make every reasonable effort to recapture it.

(b) If the game farm operator fails to recapture the escaped game animal or game bird, the department may remove it from the wild by whatever means necessary when, in the opinion of the department, the game animal or game bird will conflict with native species or cause damage to public or private property.

(c) The game farm operator shall reimburse the department for all costs it incurs in removing from the wild such game animal or game bird pursuant to paragraph (b). The game farm operator shall be responsible for any damage caused to public or private property by escaped game animals or game birds.

(8) Involuntary Cessation of Operations.

(a) Cessation of game farm activities and destruction of contaminated game animals and game birds may be ordered by the department if it determines disease factors are present that pose a threat to wildlife.

(b) If the department determines that any game animal or game bird is not maintained under sanitary and humane conditions by a game farm operator, the department may seize and care for or dispose of it as the circumstances require.

(9) Identification of Game Animals and Game Birds. A game farm operator must permanently identify each game animal or game bird in confinement under a game farm permit with a non-reuseable tag furnished by the department in accordance with the following:

(a) No tag will be sold to anyone other than a game farm operator who is in lawful possession of the game animal or game bird to be tagged.

(b) Application for tags must be made within 10 days of game acquisition or 90 days of birth of game farm progeny.

(c) The tag must be attached within 30 days of receipt and remain attached until the game animal or game bird is killed and prepared for consumption.

(d) No tag so affixed may be used to identify more than one game animal or game bird.

(e) No game animal or game bird possessed under a game farm permit may be killed, sold, donated, or possession otherwise transferred by a game farm operator until tagged in accordance with this subsection.

(f) The fee for each tag is twenty-five cents (25¢).

(10) Invoice.

(a) When a game farm operator sells or transfers

possession of any game animal or game bird possessed under a game farm permit, he must deliver to the purchaser, donee, or transferee, or attach to a shipment destined to such person, an invoice signed by the game farm operator stating his permit number, date of transfer, species and sex of game, identification tag number, and name and address of purchaser, donee, transferee, or consignee.

(b) A game farm operator shall mail within 10 days of transfer, a duplicate of such invoice to the Administrator, Law Enforcement Division, at the Helena office of the Department of Fish and Game.

(11) Size and Location of Game Farm.

(a). Each game farm shall be restricted to not more than 1,280 contiguous acres and shall not be located in areas which will substantially reduce hunting areas available to the public as determined by the department. No person may obtain an additional game farm permit for land within 10 miles of any game farm operated by him unless the total acreage of such game farm does not exceed 1,280 acres.

(12) Removal of Native Wildlife from Game Farm. All native game animals, game birds, and furbearers within a proposed game farm area shall be removed by a prospective game farm operator, or by department personnel at the expense of the operator, in a manner approved by the director. Removal must be accomplished before game animals or game birds are introduced under a game farm permit.

4. This rule is designed to clarify the department's supervisory power over game animals and game birds within the state in implementing Sections 26-202, 26-307, 26-501, 26-501.1, 26-806, 26-1201, and 67-201 through 67-205, R.C.M. 1947.

5. Interested parties may submit their data, views, or arguments concerning the proposed rule orally or in writing at the hearing or prior to it to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601.

6. The presiding officer will be designated at a later date.

7. The authority of the department to make the proposed rule is based on Sections 26-104(1), 26-106.3, and 26-202.4, R.C.M. 1947.

Dated this 14th day of March, 1978.

ROBERT F. WAMBACH
DIRECTOR

by 
FLETCHER E. NEWBY
ACTING DIRECTOR

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

In the matter of the adoption of rule ARM 16-2.14(10)-S14465 regarding an in-situ mining of uranium control system	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULE ARM 16-2.14(10)-S14465 (In-Situ Mining of Uranium)

1. On May 12, 1978, at 9:00 a.m., or as soon thereafter as practicable, a public hearing will be held in the Governor's Reception Room, Room 205, State Capital, Helena, Montana, to consider the adoption of a rule 16-2.14(10)-S14465 regarding an in-situ mining of uranium control system.

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:

16-2.14(10)-S14465 MONTANA IN-SITU MINING OF URANIUM CONTROL SYSTEM

(1) Purpose. The purpose of this rule is to implement a permit system to control the discharge of pollutants into groundwaters from activities associated with in-situ solution mining of uranium. Permits shall be issued pursuant to Section 69-4809.1(1)(a), R.C.M. 1947. This rule supersedes ARM 16-2.14(10)-S14460(11), relating to the disposal of pollutants into waste disposal wells, to the extent that such wells disposing of wastes or pollutants associated with in-situ solution mining of uranium will be regulated and permitted pursuant to this rule. Notwithstanding anything contained in this rule, an applicant who obtains a permit from the department under this rule shall not be relieved from liability for pollution to any person suffering damage or injury or cause of action that he may have as a consequence thereof, or from the obligation to comply with other applicable state and federal laws.

(2) Definitions. In this rule, the following terms shall have the meanings indicated below and shall be used in conjunction with and supplemental to those definitions contained in Section 69-4802, R.C.M. 1947:

"Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit development as a water source.

"Baseline" means the parameters and their concentrations that describe the water quality of the aquifer prior to mining. If concentrations are below detectable limits, baseline shall be defined as this lower limit of detection.

"Clean-up Parameters" means the parameters which are to be used to determine if a clean-up trend has been achieved.

"Clean-up Trend" means a reduction in all clean-up parameter values in a monitor well affected by leaching chemicals

by at least 50% within 14 days and at least 90% within 21 days after the date of the verifying analysis. Failure to achieve the indicated reduction within either period of time means that an adequate clean-up trend has not been accomplished. The percentage reduction shall be calculated using the following formula:

$$\text{Percent Reduction} = \frac{V - Vi}{V - UL} (100)$$

V = Verifying analysis value
UL = Upper Limit for the affected mine area
Vi = Value determined on an Individual day

"Control Parameters" means those selected clean-up parameters which will be monitored on a routine basis and which will be used to indicate and confirm an excursion.

"EPA" means the United States Environmental Protection Agency.

"Excursion" means the movement of injected leach solution from the production area to any monitor well. An excursion is assumed to have occurred if the verifying analysis confirms that any control parameter in a monitoring well has increased in value to an amount equal to or greater than the upper limit value allowed.

"Groundwaters" means those state waters present beneath the surface of the earth.

"Injection Wells" means bored, driven, drilled, and dug wells whose principal function is the subsurface emplacement of fluids.

"In-situ Solution Mining of Uranium" (in-situ mining) means the recovering of uranium and other associated metals from in-place deposits beneath the surface of the earth achieved by introducing acids, solvents, oxidizing agents, water or other chemical agents; recovering the fluids; removing the dissolved or complexed uranium associated byproducts; and by disposing of wastes. The term specifically excludes all activities included and permitted as prospecting as defined in the "Montana Strip and Underground Mine Reclamation Act", Title 50, Chapter 10, R.C.M. 1947. The term specifically includes waste disposal wells associated with in-situ uranium solution mining.

"Mine Area" means the specific area included within the ring of monitor wells installed around a production area determined by the operator prior to injection of leaching chemicals.

"Mine Plan" means a map of the proposed production areas and a schedule indicating the sequence and time table for mining and restoration.

"Montana In-Situ Mining of Uranium Control System (MIMUCS)" means the system developed by the department for issuing permits

for the discharge of pollutants to groundwaters for in-situ mining.

"MIMUCS Permit" means any permit or equivalent document issued by the department to regulate the discharge of pollutants to groundwaters for in-situ mining.

"MIMUCS Permit Application" means the application form supplied by the department for a MIMUCS permit.

"Non-production zone" means a stratigraphic interval that is an aquifer or is a relatively permeable interval underlying or overlying the production zone.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a source discharging to groundwater pollutants for purposes of uranium solution mining.

"Permit Area" means the area for which the permittee is authorized by a MIMUCS permit to conduct in-situ mining operations.

"Pilot Testing" means limited scale testing of the in-situ mining process. A field pilot test shall be limited to a total area of not more than ten acres to be affected by the test plant and well field.

"Pollutant" means dredged spoil, tailings pond effluent, solid waste, sewage, garbage, chemical solutions, chemical wastes, biological materials, radioactive materials, heat, industrial processing wastes, and all other substances related to in-situ mining that may pollute state waters.

"Production Area" means the area generally defined by a line drawn through the outer perimeter of the injection and recovery wells used for in-situ mining.

"Production Vicinity" means the area surrounding and generally conforming in shape to the production area which makes up a total area of three times that of the production area when added to the production area.

"Production Zone" means the stratigraphic interval into which leaching chemicals are introduced. This interval extends vertically from the shallowest to the deepest stratigraphic unit into which leaching chemicals are introduced.

"Recovery Wells" means wells utilized for the subsurface extraction of fluids associated with in-situ mining.

"Source" means any system or facility, method, excavation, well, structure or activity of any kind whatsoever used, employed or operated, which results in the direct or indirect introduction of pollutants into groundwater from in-situ mining.

"Upper Limit" means the concentration of control or clean-up parameters above which excursion is defined to have occurred or to be occurring. For materials that pose minimal threat to human health or existing or potential uses of state waters, these limits will generally be set at a percentage above baseline values to allow for the natural temporal and spatial variations in the groundwater. For radioactive or toxic materials, these limits will be set at or only a small percentage above baseline values.

"Verifying Analysis" means a second sampling and analysis of the control parameters for the purpose of verification in the event a routine sample analysis indicates a significant

increase in any one control parameter above the upper limit.

"Waste Disposal Well" means any natural or man-made hole, well, crevasse, fissure or opening in the ground which is used or is intended to be used for disposal of any solid or liquid wastes, spills or leaks associated with in-situ mining.

(3) Need for MIMUCS Permit. The owner or operator of any existing or proposed source discharging pollutants to groundwater for purposes of in-situ mining shall comply with the following permit application requirements:

(a) The owner or operator of an existing source must file a MIMUCS permit application within sixty days following the effective date of this rule;

(b) The owner or operator having an existing MIMUCS permit contemplating any extension, modification, addition, or enlargement which may result in violation of the existing MIMUCS permit shall file a new MIMUCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the modified source; and

(c) The owner or operator of any proposed source shall file a completed MIMUCS permit application no less than 180 days prior to the day on which it is desired to commence operation of the source.

(4) Supplemental Information to be Submitted with MIMUCS Permit Application. The applicant shall submit the following information to the department:

(a) Site definition. Site definition shall include the following:

(i) Topographic map with ten foot contour intervals and an enlargement of a recent aerial photograph, both at 1:24,000 scale, locating the proposed site; other existing mining sites within two miles; the proposed production area for the life of the mine; major project facilities; and the flow of surface runoff traced from the mine area to the nearest major watercourse or lake.

(ii) Plan view of the leased area accurately locating the production area, production facilities, and ownership of all lands within two miles of the mine site.

(iii) Right to Mine Site. The applicant shall fully describe his legal rights to the site proposed for in-situ mining.

(iv) Production Area. A detailed plan view at a scale of 1:4,800 or larger of the area affected by in-situ mining for the duration of the MIMUCS permit. The plan shall include production areas, including sequential production segments, production facilities, waste storage and disposal areas, expected chemical composition of stored wastes or fluids, product storage areas and facilities for the emergency storage or disposal of spills, leaks and fluids pumped from the ground to control or confine excursions.

(v) Geology. A geologic map at a scale of 1:24,000 and an accompanying description covering an area at least two miles from the mine site. Cross-sectional views taken at right angles

to each other through the production area illustrating geologic features from the surface to a depth including at least the first underlying aquifer below the production zone shall be submitted. Cross sections shall include logs correlated between bore holes and any geophysical logs taken. The spacing between parallel cross sections shall be 250 or 500 feet, as the department may direct. Aquifers, geologic units, lithology and all faults, fracture zones and underground solution channels shall be clearly shown and a written description provided. Structural contour map(s) with ten foot contour intervals depicting the base of each production zone shall be submitted.

(vi) Mineralogy and geochemistry. The applicant shall submit mineralogic and geochemical data on the production zone and any other aquifer to which leachate solutions may escape, including clay mineralogy, cation exchange capacities, composition of cations naturally present on exchange sites and any other data which may influence the chemistry and mobility of leachate fluids should they escape the production zone.

(vii) Hydrology. The following hydrologic information for each production zone and each non-production zone above as well as the next non-production zone immediately below the production zone and/or the next lower aquifer if within 100 stratigraphic feet along with a description of the method used to obtain the information and the data supporting hydrologic conclusions reached shall be provided.

(A) Hydraulic gradient map of the production area aquifers within a two-mile radius of the mine site showing average piezometric level elevations and magnitude of natural variations determined over a period sufficient to define seasonal variations of the piezometric surface. Piezometric level elevations shall be correlated to barometric pressure. All observation wells and other data points shall be indicated on the map.

(B) Groundwater specific conductance contour map including the production vicinity as a minimum.

(C) Artesian or non-artesian conditions of each aquifer.

(D) A tabulation and map of appropriate scale of all water wells within a two-mile radius of the mine area. If reasonably ascertainable, water levels, well yields, aquifer being produced and the use, including but not limited to domestic, stock, irrigation use, shall be indicated. The distance and direction to the nearest municipal water supply well shall be shown.

(E) Groundwater quality data within a two-mile radius of the proposed in-situ mine shall be provided as directed by the department. Data required shall be sufficient to evaluate the proposed production zone and non-production zone aquifers for various beneficial uses.

(F) Accurate map showing the location of surface bodies of water, oil or gas wells, exploratory or test holes, all

with depths of penetration, surface and subsurface mines, quarries, residences, roads, and other pertinent surface features as reasonably ascertainable within at least a two-mile radius of the mine area. All considerations having a bearing on pollution hazards shall be discussed in an accompanying narrative.

(G) A tabulation of all wells and holes requested under subsection (F) which penetrate the proposed injection zone, showing operator, lease or owner; well number; surface casing size, weight, depth and cementing data; long string size, weight, depth and cementing data; and plugging data, to the extent that this information is reasonably ascertainable.

(H) A description of alternative water supplies, including source, depth and quality of waters, which could be developed to replace water supplies diminished in quality or quantity by solution mining activities.

(I) A listing of all alluvial aquifers within two miles of the mine site and special provisions proposed to prevent their contamination.

(b) Plans for process and waste storage.

(i) Plans for retention of process waters and the disposal of wastewaters at the processing plant shall be included. Expected chemical composition of these solutions shall be detailed. For ponds, plans for an approved lining, an underdrain leak detection system, pond surveillance wells, and easily readable freeboard gage shall be submitted. Plans shall show that the ponds are located out of drainageways.

(ii) Plans for the emergency storage, handling, treatment, and disposal of leaks, spills and waters pumped from underground to control or confine excursions shall be submitted.

(c) Description of proposed monitoring program.

(i) The applicant shall submit a proposed monitoring program to the department, which shall at a minimum include the following:

(A) A detailed description of the procedure to be used in establishing baseline water quality in the production area and production vicinity for each aquifer within 100 stratigraphic feet or that may be affected by production activity.

(B) A detailed description of the monitoring program to be established in the production area and production vicinity for each aquifer that may be affected by production activity.

(C) Maps showing the placement of a minimum of four baseline sample wells in the production area and a minimum of eight additional wells in the production vicinity for production areas up to 24 acres in size. For production areas larger than 24 acres, there shall be a minimum of one sample well for each two acres of production area. Sample wells generally shall be located uniformly and symmetrically through the area being sampled. The production vicinity wells shall typically be located to obtain samples representative of an area three times the production area.

(D) Maps showing the placement of production zone monitoring wells. These wells shall be shown through the entire

production zone interval, located no greater than 400 feet from the production area, and spaced no greater than 400 feet between centers. Additionally, the angle formed by lines drawn from any production well to the two nearest monitor wells shall not be greater than 75 degrees.

(E) Maps showing the placement of monitor wells for non-production zone aquifers. These wells shall be placed in the production area adjacent to each of the four indicated production zone wells and completed into the first underlying and first overlying aquifers. Plans for each of these wells shall demonstrate that construction will preclude hydrologic connection with any other aquifer and that these wells shall be sampled for baseline.

(F) A description of the baseline sampling to be carried on over a reasonable period of time, generally at least during a seasonal recharge and a seasonal discharge period, to define any natural time variation in the quality of the groundwater. The averages of the parameter values determined for each well in a particular production or mine area will be the baseline for that well. Cleanup and control paramater upper limits will also be determined from these analyses.

(G) The list of particular parameters required to be analyzed shall be compiled for each mine area based on the solutions to be used, and the geochemical characteristics of the particular site. If the concentrations of constituents are below detectable limits, the baseline will be this lower limit of detection for the analytical method used. In restoration of each well to baseline, the department will consider natural temporal and spatial variations in groundwater quality.

(d) Excursion Control.

(i) The procedures to be used to prevent leachate excursion horizontally from the production zone and vertically into non-production zones shall be described in detail and approved by the department.

(ii) Actions taken to confirm, determine the extent, and correct an excursion after any indication of an excursion shall be described in detail and approved by the department. This information shall include a schedule of events with a tentative time limit on each event.

(e) Well Completion. Proposed installation of injection, production, water quality sampling, and monitoring wells shall be described to include:

(i) Total depth and aquifer penetrated;

(ii) Type of completion: perforation, open hole, or screen;

(iii) Tubing and packer (if applicable): size, type, name, model and setting depth of packer;

(iv) Diagrammatic sketch of each type of well completion to be used.

(f) Production Facilities and Procedures. The following shall be submitted to the department by the applicant:

(i) A plan view and written description of production procedures and supporting facilities.

(ii) A schedule for the installation and completion of these facilities.

(iii) The typical composition of injected fluids.

(iv) The expected maximum daily injection volume and expected injection pressure.

(v) Chemical description of all waste residues and their disposition.

(vi) Description of all ponds and their construction including leakage detection and repair procedures.

(vii) Provisions for continuing activities vital to excursion prevention or detection during periods of emergency, breakdown, or maintenance.

(viii) Operating limitations including but not limited to pond freeboard, runoff and spill control, and bottom hole pressure.

(g) Restoration of affected groundwater after mining is completed.

(i) The restoration procedure proposed shall be described.

(ii) A restoration schedule shall be provided.

(h) Closing after mining is completed. All steps to be taken to reclaim the area affected by production activities after production is completed shall be described.

(i) Any additional supplemental information or testing results that the department determines are necessary to carry out the provisions of Section 69-4801, et seq., R.C.M. 1947.

(j) Signature. A MIMUCS permit application, when submitted to the department, must be signed as follows:

(i) In the case of corporations, by a principal executive officer at least at the level of vice president or his duly authorized representative who is responsible for the overall operation of the facility from which the discharge described in the MIMUCS application originates;

(ii) In the case of a partnership, by a general partner;

(iii) In the case of a sole proprietorship, by the proprietor; and

(iv) In the case of a municipal, state or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

(5) Pilot Testing.

(a) To determine an applicant's capability to conduct in-situ mining, pilot testing

(i) may be required by the department after receipt of a MIMUCS permit application and supplemental information, but prior to determination on issuance or denial of a MIMUCS permit, or;

(ii) may be determined necessary by the applicant after submission of a MIMUCS permit application and supplemental information.

(b) Before an applicant proceeds with pilot testing, he must

(i) receive a written request for pilot testing from the department; or

(ii) obtain written authorization from the department.

(c) Baseline groundwater quality data in the immediate vicinity of the proposed pilot test shall be provided as directed by the department prior to the beginning of the test. An appropriate monitoring program shall be required.

(6) Processing procedures for MIMUCS permit applications. A completed MIMUCS application shall include a completed MIMUCS permit application form and supplemental information required by the department pursuant to this rule.

(a) Upon receipt of a completed MIMUCS permit application, and pilot testing results, if pilot testing is required by the department or determined necessary by the applicant, the department shall make a tentative determination with respect to issuance or denial of a MIMUCS permit. A tentative determination to deny shall be based on the following:

(i) A determination that the submitted MIMUCS permit application form or supplemental information is inadequate; or

(ii) A determination that degradation of state waters including but not limited to groundwaters cannot be prevented.

(b) After making a tentative determination, the department shall take the following action:

(i) Tentative permit denial. If the determination is to deny a MIMUCS permit, the department shall give written notice of its action to the applicant, setting forth the reasons for denial.

(ii) Tentative permit issuance. If the determination is to issue a MIMUCS permit, the department shall prepare a draft MIMUCS permit.

(c) A public notice of every completed MIMUCS permit application shall be circulated by the department in accordance with the procedures described in subsection (13) of this rule to inform interested and potentially interested persons of the permit application and of the department's tentative determination.

(d) The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determination with respect to the completed MIMUCS permit application.

(e) A request or petition for public hearing shall be filed within the period prescribed in subsection (d) above and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The department shall hold a hearing if there is significant public interest from the affected area. Any hearing pursuant to this section shall be held in the geographical area of the proposed in-situ mine or other appropriate area. Public notice of any hearing held pursuant to this rule shall be in accordance with procedures described in subsection (13) of this rule.

(f) If a public hearing is not held pursuant to subsection (e) above and following the comment period provided for in subsection (d) above, the department shall make a final determination on issuance or denial of a MIMUCS permit. All written comments submitted during the 30-day comment period shall be considered by the department in the formation of its final determination.

(g) If a public hearing is held pursuant to subsection (e) above, the department shall make a final determination on issuance or denial of a MIMUCS permit following review of the information presented at the hearing and all written comments submitted during the comment period.

(7) Issuance or Denial of a MIMUCS Permit.

(a) After making the final determination to deny a MIMUCS permit or issue a MIMUCS permit with specified conditions and terms, the department shall:

(i) Proceed to issue a MIMUCS permit; or

(ii) Give written notice to the applicant of the department's action to deny the MIMUCS permit, providing reasons why the application is denied.

(8) Conditions of MIMUCS Permit. Conditions of a MIMUCS permit shall include but not be limited to the following:

(a) A MIMUCS permit may be modified, suspended, or revoked in whole or in part during its term under provisions of Section 69-4807.1, R.C.M. 1947, for cause, including but not limited to any of the following:

(i) violation of any conditions of the permit; or

(ii) obtaining a MIMUCS permit by misrepresentation or failure to disclose fully all relevant facts; or

(iii) a change in any conditions that require either a temporary or permanent reduction or elimination of the authorized discharge;

(iv) a failure or refusal by the permittee to comply with the requirements of Section 69-4809.2, R.C.M. 1947; or

(v) significant technological advances or the availability of significant new scientific data or information pertinent to the mining operation [see subsection (9)]; or

(vi) to implement current toxic standards or prohibitions promulgated by the U.S. Environmental Protection Agency; or

(vii) a demonstration of other just cause.

(b) The authorization of discharges of chemical solutions to groundwaters;

(c) The prohibition of certain discharges without prior approval from the department.

(d) List of upper limits of clean-up and control parameters.

(e) Self-monitoring requirements as specified by the department. The department may specify the:

(i) parameters to be monitored;

(ii) frequency of monitoring, recording, and reporting;

(iii) analytical and sampling methods to be utilized by

the permittee;

(iv) recording and reporting procedures to be utilized by the permittee; and

(v) procedures for reporting other considerations having an effect on authorized discharges or considerations that may affect any of the conditions of the permit. The permittee shall be required to maintain self-monitoring records for a specified period, but not less than three years.

(f) Conditions guaranteeing compliance with subsection (4).

(g) Excursion control requirements.

(i) General excursion control requirements. To prevent leachate excursion horizontally from the production zone and vertically into non-production zones, the following shall be required at a minimum:

(A) Injection pressures, flow balances, and composition of injected and recovered fluids shall be monitored, recorded and reported as required by the department.

(B) Monitoring data for this section shall be entered on forms supplied by the department and copies shall be kept readily available for review at the site. The permittee shall supply graphs of the data to the department.

(C) Analytical capability shall be available to allow analysis of leachate detection (control) and confirmation (verifying analysis) parameters within 24 hours of collection. These parameters will normally include specific conductance, pH, and indicator ions chosen according to the chemical process of the particular solution mining operation and the geochemistry of the subject production zone.

(D) Intended well locations, schedules, forms and equipment shall be provided.

(E) Samples shall be taken routinely from the wells referenced in subsections (4)(c)(i)(C) and (4)(c)(i)(D) of this rule as directed by the department and analyzed for the control and clean-up parameters designated for that production zone. Water level measurements shall accompany sample taking.

(F) Non-production zones shall have similar routine sampling procedures.

(G) In aquifers which have baseline water quality of over 10,000 milligrams per liter of total dissolved solids, or are otherwise unfit for use, the department may modify the monitoring procedure required.

(ii) Requirements after an excursion is indicated. The permittee shall confirm, determine the extent, and correct an excursion after any indication that an excursion has occurred.

(A) If an excursion is indicated, minimum actions to be taken by the permittee shall include verifying analyses and an investigation within 24 hours to determine the cause; notification of department; adjustment of production pumping, water level measurements and daily sampling until correction is accomplished; addition of secondary wells if a clean-up trend is

not established; termination of leaching fluid injection, if required by the department; and weekly reporting of actions, progress, and planned additional actions.

(B) Secondary wells to determine the extent of an excursion shall be drilled and shall be spaced no farther than 50 feet beyond the affected well, and shall be completed in the same aquifer as the affected well. If analysis indicates that leachates are not present in the secondary well, the operator shall continue analyzing samples taken every day from the secondary and affected monitoring wells until the affected well is returned to clean-up parameter values equal to or less than the upper limit values.

If analyses indicate that leachates are present in the secondary well, the operator shall terminate the addition of leaching agents to the circulated fluids in the affected mine area within a minimum radius of 500 feet of the affected monitor well or as otherwise instructed by the department. The operator shall continue drilling additional secondary monitor wells as required by the department until the extent of the leachate migration has been established. Daily sampling of any and all secondary and affected monitoring wells shall continue until the values determined from clean-up parameter analyses are less than the upper limit values for five consecutive sampling days and until the department is notified of the operator's intent to resume routine sampling.

(C) If the addition of leaching agents to the circulated fluids has been terminated in a particular production area because of the presence of leachates in a secondary monitor well, addition of leaching agents shall not be resumed in that production area until clean-up of all affected monitor wells has been confirmed by written communication and approval is obtained from the department.

(D) Groundwater quality in all affected monitor wells shall be returned to or below the upper limit values within 90 days of completing the verifying analysis.

(E) As a requirement for the issuance of a permit or at any time during the permit priod, the department may require that specified reducing agents or other chemicals be kept on the production site in forms and quantities that would allow prompt injection in specified production, monitoring, or secondary wells to precipitate radioactive or toxic materials leached from the ore body should they contribute to a dangerous excursion. Should such an excursion occur, the department may require the prompt injection of such specified chemicals.

(iii) Control of ponds. Weekly monitoring, including water levels of surveillance wells and leak detection inspection points shall be a minimum. Plan for immediate reporting and determination of extent of any subsurface contamination must be available in the event sampling indicates leakage has occurred.

(h) Reporting of monitoring data.

(i) Routine monitoring reports. Routine monitoring data shall be reported monthly to the department on forms supplied by the department with a narrative analyzing the data. The monthly reports shall be due within ten calendar days after the end of each month.

(ii) Corrective action reports. In the event of a verified excursion condition, the operator shall prepare and submit a written corrective action report every week. This report, at a minimum, shall include:

(A) a description of corrective actions taken during the week preceding the date of the report;

(B) the corrective actions to be taken in the following week;

(C) sample analysis values presented in tabular and graphic form with a narrative analyzing the data. The report shall be postmarked within two days after the end of each report period, Saturdays, Sundays, and holidays excepted. The first report period shall begin with the day the excursion was verified. The operator shall continue to make corrective actions reports every week until clean-up is accomplished.

(iii) Yearly summary. A summary of monitoring program results for the previous year shall be submitted to the department by January 30 for each year of operation. The summary shall be presented in narrative form with appropriate tabular and graphical illustrations.

(i) Restoration of affected groundwater.

(i) When the in-situ mining of the production area, or portion thereof, is completed, the operator shall notify the department and groundwater quality shall be re-established to levels consistent with the values shown in the restoration table for each mine area. Restoration table values shall be established considering the baseline summary tables, the Public Water Supplies rule as set forth in ARM 16-2.14(10)-S14381, and other available and reliable reference information. Restoration values specified may be modified by authority of the department if other water quality criteria established by recognized authorities warrant such action. Restoration parameter values shall not be established lower than the baseline values unless variation is shown to be natural. Radium-226 concentrations shall be returned to levels established by the department, consistent insofar as possible with the criteria referenced in this paragraph. In aquifers with baseline water quality having total dissolved solids of over 10,000 milligrams per liter or otherwise unfit for use, the department may modify the restoration procedure required.

(ii) Aquifer restoration for each mine area shall be accomplished as specified in the current mine plan. The authorization for expansion of mining into new production areas shall be contingent upon achieving restoration of previous production areas within the schedule provided in the current mine plan. If the expansion of mining is concurrent with the restoration of

previous production areas and said restoration is not meeting the degree of protection or time frames specified in the mine plan, the department may order the cessation of in-situ mining activities in the expansion area.

(iii) When the operator has accomplished restoration, he shall notify the department and complete an analysis of the baseline wells in the restored area for baseline parameters. If the final sample analysis indicates restoration is complete for the designated area, he shall file a written report documenting restoration with the department.

This sampling and analysis procedure shall be repeated at one-month intervals until three additional sample sets have been collected and analyzed. If the sample results confirm that restoration is complete and that the aquifer for the designated area has been returned to a stable condition, the department shall so notify the operator and monitoring and restoration activities in the area may cease.

If the aquifer for the designated area has not been returned to a stable condition at the end of the third month, the operator shall continue restoration efforts and monthly monitoring until it is clear that a stable condition has been achieved in this area and until such condition is acknowledged by the department in writing.

(j) Well completion. Records of installation of injection, production, water quality sampling, and monitoring wells shall be made available to the department and shall include:

(i) Total depth.

(ii) Type of completion: perforation, open hole or screen.

(iii) Casing: size, type, grade, weight, setting depths.

(iv) Tubing and packer (if applicable): size, type, name, model and setting depth of packer.

(v) Cement: class and volume used (sufficient cement shall be used to circulate to the surface). A description and the percent of all cement additives and slurry weight shall be provided.

(vi) Cementing technique: pump and plug displacement through casing is recommended.

(vii) Cementing equipment: guide shoe, float collar, plugs and basket.

(viii) Casing centralizers: location and spacing.

(ix) Diagrammatic sketch of each type of well completion used.

(x) Other requirements:

(A) All potential underground drinking water sources and all groundwater aquifers hydrologically linked to surface waters shall be protected by casing cemented to the surface.

(B) Injection shall be maintained through tubing with a suitable packer.

(C) There shall be no leaks in the system.

(D) Unless fracturing can be justified, surface injection pressure shall be limited to preclude the possibility of fracturing the formation.

(E) Annular injection shall not be practiced.

(k) Closing requirements after mining is completed.

(i) Reclamation of all surface disturbances shall meet the applicable performance standards of the Montana Strip and Underground Mine Reclamation Act, Section 50-1034, et seq., R.C.M. 1947, and other applicable state and federal laws. Liquids and all toxic solid materials remaining in process or waste disposal ponds shall be disposed of in accordance with a plan approved by the department.

(ii) Within 90 days after acknowledgement of completion of restoration of the final production area or portion thereof, all mining, monitoring, secondary and disposal wells shall be plugged as follows:

(A) a cement slurry shall be placed in each well from the bottom to a point at least 50 feet above the cement basket;

(B) the remainder of the hole less the top 15 feet shall be filled with heavy mud or cement;

(C) a cement plug of 10 feet or more shall be placed in the top of the casing; and

(D) the casing shall be cut off not less than four feet below ground level.

(l) Sampling, preservation, analysis and quality control. All water quality sampling procedures shall conform to the requirements set forth in subsection (10) of this rule.

(m) Additional requirements.

(i) Geology and hydrology. Before any oxidizing agents, pH adjustors or leach agents other than water are injected for production or pilot testing, the following additional items shall be provided:

(A) Raw pump test data sufficient to typify extremes and average permeability, transmissivity, and storage co-efficient for the production area aquifers. Interpretations of these data shall be shown on maps and sections as required.

(B) Rupture pressure of the production zone(s) in pounds per square inch as measured at the surface shall be estimated by conventional methods.

(C) Degree of hydraulic connection between aquifers as determined by pumping tests, and interpretation of data. The department may require that specific tracers be used during the pumping tests. If communication is detected, every reasonable effort shall be made to eliminate the communication whether due to unplugged holes, inadequate well completion or some other cause. The department may specify the measure to be taken including provisions to re-drill and re-backfill or cement unplugged holes, and may delay initiation of in-situ mining or pilot testing until the problems are remedied. If communication is natural or cannot be eliminated, a strategy for preventing, detecting and correction of excursion between interconnected aquifers shall be submitted.

(D) Pore volume of the production zone(s) in the production area.

(ii) Data required by subsection (4) to be submitted to the department by the applicant shall be amended as additional data is gathered under subsection (n).

(n) Duration of MIMUCS permit. Every permit issued under this rule shall have a fixed term not to exceed five years.

(9) Modifications of Conditions and Terms of MIMUCS Permits. Modifications of the permit conditions may be made by the department in light of new or more extensive information gathered on subsurface geology, hydrology, or water quality.

(10) Sampling, Preservation, Analysis and Quality Control.

(a) All water quality sampling related procedures undertaken either pursuant to obtaining a MIMUCS permit or in compliance with an issued MIMUCS permit shall conform to the following:

(i) To obtain a valid sample, the sample well shall be pumped until water is produced that is essentially free of mud and foreign material. As samples are taken during baseline or routine sampling, the sample well shall be pumped to evacuate a volume of water that is at least equal to the volume of water contained in the casing between the surface and aquifer being sampled. After one casing volume has been discharged, the stream of water shall be measured every ten minutes for temperature, specific conductance and pH until three consecutive measurements remain relatively constant in temperature, specific conductance and pH. The baseline sample shall be taken immediately after the third reading. The term, relatively constant, means that the three temperature readings fall within a range of not more than 1° C., the three specific conductance readings fall within a range of not more than 100 µmho/cm and the three pH readings fall within a range of not more than 0.2. Excessive waters pumped from the defined ore body shall be directed to retention or disposal facilities.

(ii) Sample preservation, analysis, and analytical quality control shall be performed as defined in "Techniques of Water Resources Investigations, Methods for Collection and Analysis of Water Samples for Dissolved Minerals and Gases", Book 5, Chapter A-1, U.S. Geological Survey, 1970, or as in the current issue of Methods for Chemical Analysis of Water and Waste and Analytical Quality Control in Water and Wastewater Laboratories (EPA - Technology Transfer), or as in the current issue of "Standard Methods for Examination of Water and Wastewater" as published by the American Public Health Association. Methods that are not listed in these manuals must be approved by the department.

(11) Reissuance of MIMUCS Permit.

(a) Any permittee who wishes to continue in-situ mining after the expiration of his MIMUCS permit must request reissuance of his permit at least 180 days prior to its date of expiration.

(b) The request for reissuance of a MIMUCS permit shall be in letter form and contain as a minimum the following information:

(i) the number of the issued MIMUCS permit and the date of its issue; and

(ii) any past, present, or future changes in the quantity or quality of the authorized discharge not reflected in the conditions and terms of the issued MIMUCS permit.

(c) The department shall review each request for reissuance of a MIMUCS permit, information provided by the permittee with the request for reissuance, and other information available to the department to insure that the following conditions exist:

(i) that the permittee is in compliance with or has substantially complied with all conditions and terms of the expiring MIMUCS permit;

(ii) that the operation is consistent with applicable requirements;

(iii) that the department has up-to-date information on the permittee's production levels and waste treatment practices and the quantity, quality, and frequency of the permittee's discharge, either pursuant to the submission of the new MIMUCS forms and applications or pursuant to monitoring records and reports submitted to the department by the permittee; and

(iv) that the permittee has conducted appropriate surface monitored down hole test(s) reaffirming the mechanical integrity of the casing of injection wells.

(d) Following the review of the request for reissuance of a MIMUCS permit and the other considerations described in subsection (c) above, the department shall make a tentative determination to reissue or refuse to reissue a MIMUCS permit.

(e) The processing procedures for MIMUCS permit applications described in subsection (6) shall be the procedures followed for every reissuance of a MIMUCS permit, except that the department may forego said public notice requirements when:

(i) there are no significant changes in the nature, volume, concentration, and timing of the solution mining operation;

(ii) there have been no significant problems associated with the operation;

(iii) there has been no significant expression of public concern regarding the operation; and

(iv) no significant problems are anticipated.

(12) Spills or Unanticipated Discharges.

(a) This section is applicable to spills or unanticipated discharges of mineralized waters or pollutants or chemical solutions from an in-situ mine, including wells drilled for exploration, development, or production of uranium which may adversely affect state waters.

(i) The owner, operator, or person responsible for the spill or unanticipated discharge must notify the department as soon as possible but no later than 24 hours after the spill or unanticipated discharge occurs, and provide all relevant information at his disposal.

(ii) Pursuant to Sections 69-4824 and 69-4824.1, R.C.M. 1947, and depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:

(A) take immediate remedial measures;

(B) monitor the direction, depth, and rate of movement of any contaminated groundwaters and of the spilled or discharged material itself;

(C) determine the impact, including the duration of impact, on existing water supply wells, springs, and anticipated future beneficial uses of the groundwater supply impacted;

(D) determine the impact, including the duration of impact, on surface waters that may be affected by contaminated groundwaters; and

(E) provide alternate water supplies to existing water uses disrupted by the spill or unanticipated discharge.

(13) Public Notice Procedures.

(a) Public notice of every completed MIMUCS application shall be mailed to any person upon request and shall be circulated within the geographical area of the proposed operation. Such circulation may include any or all of the following:

(i) posting in the post office and any designated public places of the municipality nearest the premises of the applicant in which the operation is located;

(ii) posting near the entrance to the applicant's premises; and

(iii) publishing at least three times, once during each of the first three weeks of the comment period, in local newspapers, or if appropriate, in a daily newspaper of general circulation in the area.

(b) Public notice of any public hearing held pursuant to this rule shall be circulated at least 30 days in advance of the hearing and at least as widely as was the notice for the MIMUCS application. Such circulation shall include at least the following:

(i) publication of notice in at least one newspaper of general circulation in the area;

(ii) distribution of notice to all persons and agencies receiving a copy of the notice for the MIMUCS application; and

(iii) distribution to any person or group upon request.

(14) Distribution of Information.

(a) The following governmental agencies shall be included on a mailing list for public notice of MIMUCS applications and shall be exempted from a copying fee where copies of a draft permit, or any related documents are requested:

(i) United States Environmental Protection Agency;

(ii) United States Bureau of Land Management;

(iii) United States Soil Conservation Service;

(iv) United States Forest Service;

(v) Montana Department of Natural Resources and Conservation;

(vi) Montana Department of Fish and Game;
(vii) Montana Department of Agriculture;
(viii) Montana Department of State Lands;
(ix) Montana Bureau of Mines and Geology;
(x) Any state or federal agency requesting an opportunity to comment on the MIMUCS; and
(xi) Any state whose waters may be affected by the issuance of a MIMUCS permit.

(b) Upon request, the department shall add the name of any person or group to a mailing list to receive copies of notices for MIMUCS applications.

(c) Interested parties may request or inspect a copy of the draft MIMUCS permit, or any related documents. A reasonable copying fee shall be charged for any of the aforementioned documents. The copying fee for the documents relating to any particular MIMUCS application will be included as part of the notice of application. A request for MIMUCS application documents shall not be processed unless payment of the stated copying fee is included with the request.

(d) Facilities shall be provided by the department for the inspection of all information relating to MIMUCS application and forms, except reports, papers, or information determined to be confidential in accordance with Section 69-4822, R.C.M. 1947. A copying machine shall be available to provide copies of this information at a reasonable fee.

4. Rationale for proposed rule: The Board of Health and Environmental Sciences is proposing this rule because of Section 50-1704, R.C.M. 1947, which directs the board to adopt rules regulating the solution extraction of uranium from in-place deposits, and because of Section 69-4808.2(1), R.C.M. 1947, which directs the board to adopt rules for the administration of Section 69-4801, et seq., R.C.M. 1947, and for the issuance, denial, modification or revocation of permits.

5. Interested persons may present their data, views or arguments, whether orally or in writing, either at the hearing or prior to it, to the Water Quality Bureau, 555 Fuller Avenue, Helena, Montana, 59601 (449-2407).

6. Mr. John Bartlett, Chairman of the Board of Health and Environmental Sciences, has been designated as the Presiding Officer.

7. The authority of the agency to make the proposed rule is based on Section 50-1704, R.C.M. 1947, and Section 69-4808.2 (1), R.C.M. 1947.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State March 15, 1978

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

In the matter of the amendment of rule ARM 16-2.14(1)-S1490 relating to open burning	)))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE ARM 16-2.14(1)-S1490 (Open Burning)

1. On May 12, 1978, at 3:00 p.m., or as soon thereafter as practicable, a public hearing will be held in the Governor's Reception Room, Room 205, State Capital, Helena, Montana, to consider proposed amendments of rule ARM 16-2.14(1)-S1490 relating to open burning. The proposed amendments, separately proposed by the Montana State Airshed Group and the Department of Health and Environmental Sciences, would modify present rule ARM 16-2.14(1)-S1490 found in the Administrative Rules of Montana.

2. The amendment proposed by the Montana State Airshed Group rearranges the rule to distinguish requirements for essential agricultural operations and accepted forestry practices from other kinds of open burning. The rationale for this proposed amendment is that there are significant differences between the burning of forest and non-forest materials.

The amendment proposed by the Department of Health and Environmental Sciences would allow the burning of substances not otherwise permitted to be burned upon a showing of immediate threat to public health and safety or to plant and animal life upon a showing of no alternative methods for removing the substance. The rationale for this proposed change is that situations can arise where burning is the only expedient way to deal with the situation quickly and effectively.

3. Rule ARM 16-2.14(1)-S1490 as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16-2.14(1)-S1490 OPEN BURNING RESTRICTIONS

(1) Except as specified in subsection ~~(3)~~ (2), no person shall cause, suffer or allow an open outdoor fire unless an air quality permit has been obtained, and further provided that the fire authority for the area of the burn shall be notified of intent to burn giving location, time and material to be burned and that proper fire safety directions given by the fire authority be complied with. Reasonable precautions shall be taken to keep the area of the burn within the confines for which the permit was given. Reasonable measures shall be taken to eliminate smoke when the purpose for which the fire was set has been accomplished. A permit shall be allowed only under the following conditions:

(a) When such fire is set or permission for such fire is given in the performance of the official duty of the responsible fire control officer.

(i) for the purpose of the elimination of a fire hazard which cannot be eliminated by any other means;

(ii) for instruction in methods of fighting fires, provided the material burned shall not be allowed to smolder after the initial burn has been completed. Facilities to put the fire completely out shall be on hand and used by the responsible fire control officer until all smoldering has ceased. The responsible fire control officer shall not leave the scene of the burn until all smoking debris has been clearly extinguished and no smoking or smoldering occurs.

(b) When such fire is set in the course of an essential agricultural operation in the growing of crops or in the course of accepted forestry practices, provided no public nuisance is created.

(c) When fires are set for a clearing of land for new roads, power lines, subdivisions, dams and other similar projects and no public nuisance is created.

(d) When materials to be burned originate on an individual's premises, excluding commercial, industrial and institutional establishments, where no provision is available by private hauler providing a public service or a tax supported service for collection of the material to be burned and no public nuisance is created.

~~(3)~~ (2) An air quality permit is not required under the following conditions:

(a) When small fires are used for outdoor cooking and other recreational purposes and no public nuisance is created.

(b) When salamanders or other devices are used for heating by construction or other workers and no public nuisance is created and provided no tires, or oily rags, or other materials producing dense smoke are burned.

(c) When in a county without a local air pollution control program pursuant to Section 69-3919, R.C.M. 1947, an open burning control officer designated by the county commissioners of any county publicly announces that, on a given day and time approved by the department, open burning will be permitted without an air quality permit. All other provisions of the open burning rule shall remain in effect. A burning permit is required from the responsible fire control agency during the closed fire season (May 1 - September 30).

(3) For the purpose of essential agricultural or forestry burning:

(a) Reasonable precautions shall be taken to initiate and complete all burning under this rule during periods of good ventilation.

(b) All reasonable measures shall be taken to extinguish any burning under this rule which is creating a public nuisance.

(4) For the purpose of disposing of nonagricultural non-forestry related wastes:

~~(2)~~ (a) An air quality control officer may require that alternate methods to open burning be practiced. The alternate method may be specified in the permit.

~~(4)~~ (b) No person shall cause, suffer, allow, or permit an open fire for the purpose of conducting a salvage operation.

~~(a)~~ (i) Persons conducting salvage operations where cutting torches or other procedures are employed that may cause a fire shall provide adequate fire control facilities at the site.

~~(5)~~ (c) No person shall cause, suffer, allow, or permit the disposal of trade waste by open burning, except that the department may permit such burning in a device or devices equivalent to an air curtain destructor, air swift pit incinerator or a similar device which can be demonstrated to emit smoke not darker than one Ringelmann or of equivalent opacity. The operator of such devices or system must show adequate knowledge of the procedure to assure correct starting, operation, and ending of the burn; not create a public nuisance or fire hazard; and must have applied for and received a permit from the department to construct and operate the destructor or pit.

~~(6)~~ (d) Reasonable precautions shall be taken to prevent ashes, soot, cinders, dust, or other particulate matter or odors incidental to burning from extending beyond the property line of the person allowed to burn under this rule.

~~(7)~~ (e) Chicken litter, animal droppings, garbage, dead animals or parts of dead animals, tires, pathogenic wastes, explosives, oil, railroad ties, tarpaper, or toxic wastes shall not be disposed of by open burning.

~~(8)~~ (f) Reasonable precautions shall be taken to initiate and complete all burning under this rule during periods of good ventilation.

~~(9)~~ (g) All reasonable measures shall be taken to extinguish any burning under this rule which is creating a public nuisance.

~~(10)~~ (h) Reasonable precautions shall be taken to prepare and store all material to be burned under this rule in a clean, dry condition.

(5) The director of the department may permit the burning of substances otherwise not permitted to be burned under this rule upon a written application to the department showing that the substance poses an immediate threat to public health and safety or to plant and animal life. The applicant shall demonstrate and certify in writing that there is no other alternative method for removing the substance.

4. Interested persons may present their data, views or arguments, whether orally or in writing, at the hearing.

5. Mr. John Bartlett, Chairman of the Board of Health and Environmental Sciences, has been designated as the Presiding Officer.

6. The authority of the Board to make the proposed amendment is based on Sections 69-3909 and 69-3913, R.C.M. 1947.

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State March 15 1978

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 23-3.14(10)-S14040	)	NOTICE OF PROPOSED AMENDMENT OF RULE 23-3.14(10)-S14040 (Requirements for Peace Officers Certification) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 28, 1978, the Board of Crime Control proposes to amend rule 23-3.14(10)-S14040 which provides for the certification of peace officers.

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

23-3.14(10)-S14040 REQUIREMENTS FOR PEACE OFFICERS CERTIFICATION

(4) The Basic Certificate. In addition to Sections 1 and 2 above, the following are required for the award of the Basic Certificate:

(a) Peace Officers hired after the effective date of this regulation

(i) shall have completed the probationary period prescribed by law but in no case have less than one (1) year experience.

(ii) shall have completed the Basic Course or the equivalency as defined by the P.O.S.T. Advisory Council.

(b) Peace officers hired before the effective date of this regulation

(i) shall have completed the probationary period prescribed by the employing agency and shall have served at least one (1) year with the present employing agency.

(ii) shall have completed the Basic Course at MLEA or an equivalency as defined by the P.O.S.T. Advisory Council or

(iii) all such officers have satisfied the requirements for the Basic Certificate by their experience and satisfactorily performing his duties as attested to by the head of the law enforcement agency for which he is employed.

(c) Peace officers with out-of-state experience and training and are employed by Montana law enforcement agencies

(i) shall have completed the probationary period prescribed by law but in no case have less than one year experience with the present employing agency.

(ii) whose training is determined by the POST Advisory Council as equivalent to the Basic Course must successfully complete an equivalency test, approved by the Council and administered by the Montana Law Enforcement Academy, by achieving a cumulative score of 75% or more and successfully

complete the Legal Training School conducted by MLEA. The Council will require those who fail the equivalency test to successfully complete the Basic Course at MLEA.

(iii) whose training is determined by the POST Advisory Council as not equivalent to the Basic Course must within one year of initial appointment, successfully complete the Basic Course.

(d) All of the training and equivalency requirements for the Basic Certificate must be accomplished within one year of the initial appointment.

(5) The Intermediate Certificate. In addition to Sections 1 and 2 above, the following are required for the award of the Intermediate Certificate:

(a) Must have served at least one (1) year with and has completed the probationary period prescribed by present employing agency and is satisfactorily performing his duties as attested to by the head of the employing law enforcement agency.

(b) Shall possess ~~or be eligible to possess~~ the Basic Certificate.

(c) Shall have completed the Intermediate Course or the equivalency as designated by the P.O.S.T. Advisory Council and

(i) If the Council determines the training to be equivalent to the Intermediate Course the officer must successfully complete an equivalency test, approved by the Council and administered by MLEA, by achieving a cumulative score of 75% or more. The Council will require those who fail the equivalency test to successfully complete the Intermediate Course at MLEA before awarding the Intermediate Certificate.

(ii) if the Council determines the training is not equivalent the officer must successfully complete the Intermediate Course.

(d) Has four (4) years experience and forty (40) points or

(e) Has five (5) years experience and thirty (30) training points or

(f) Has four (4) years experience, twenty (20) training points, and possess an Associate Degree or

(g) Has three (3) years experience, fifteen (15) training points, and possess a Baccalaureate Degree or

(h) Has two (2) years experience, ten (10) training points, and possess a Masters or Equivalent Degree.

(6) The Advance Certificate. In addition to Section 1 and 2 above, the following are required for the award of the Advance Certificate.

(a) Shall possess ~~or be eligible to possess~~ the Intermediate Certificate.

(b) Shall have completed the Advance Course or the equivalency as defined by the P.O.S.T. Advisory Council.

(i) if the Council determines the training to be equi-

valent to the Advance Course the officer must successfully complete an equivalency test, approved by the Council and and administered by MLEA, by achieving a cumulative score of 75% or more. The Council will require those who fail the equivalency test to successfully complete the Advance Course at MLEA before awarding the Advance Certificate.

(ii) if the Council determines the training is not equivalent the officer must successfully complete the Advance Course.

(c) Shall have completed at least eight (8) years service with a law enforcement agency except for holders of college degrees.

(d) Shall have acquired the following points related to combinations of education, training and experience.

(i) eight (8) years experience and eighty (80) points or

(ii) ten (10) years experience and sixty (60) points or

(iii) eight (8) years experience and, forty-five (45) training points, and possess an Associate Degree or

(iv) six (6) years experience and, thirty-five (35) training points, and possess a Baccalaureate Degree or

(v) four (4) years experience and, twenty-five (25) training points, and possess a Masters or Equivalent Degree.

3. The new rule sets forth the requirements for certification of peace officers with prior out-of-state experience and training and are being employed by Montana law enforcement agencies. In addition, the new rule permits certain qualified peace officers to take an equivalency test in lieu of completing the Intermediate and Advance Courses so they can be awarded the Intermediate and Advance Certificates. This will allow certain peace officers who have completed equivalent training but do not, for various reasons, have the opportunity to complete these courses at MLEA to have a method by which they can receive these certificates. Finally, the new rule increases the training requirements of holders of college degrees for eligibility for award of the Intermediate and Advance Certificates. The old rule did not contain any requirements for advanced training for these officers but did for peace officers who had no college degrees. Law enforcement administrators throughout this state had felt this was an oversight and have urged the Board of Crime Control to correct this.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Clayton Bain, Executive Director, P.O.S.T. Advisory Council, Board of Crime Control, 1336 Helena Avenue, Helena, Montana 59601, no later than April 24, 1978.

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 Mr. Bain no later than April 24, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10% or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, 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 the number of peace officers registered with the POST Advisory Council.

7. The authority to make the proposed amendment is based on Section 82A-1207, RCM 1947, as amended, and Section 11-1814, RCM 1947, as amended.

(Administrator)

Certified to the Secretary of State on March 4, 1978.

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

IN THE MATTER of the Proposed Amendment of ARM 40-3.34(10)-S3470, Set and Approve Requirements and Standards	NOTICE OF PUBLIC HEARING on the Proposed Amendment of ARM 40-3.34(10)-S3470, Set and Approve Requirements and Standards

TO: ALL INTERESTED PERSONS

The Notice of proposed amendment in the above entitled matter published in the Montana Administrative Register on January 25, 1978 at page 50, Issue No. 1 (Notice No. 40-3-34-7) is hereby amended because of a request for a public hearing by the required number of persons, and is hereby designated to read as follows:

1. On April 22, 1978 at 1:30 p.m. at the Highway Auditorium, corner of 8th and Roberts, in Helena, Montana, a public hearing will be held to receive testimony in the above entitled matter.

2. The amendment as now proposed will read exactly as did the original notice. This notice is solely for the purpose of announcing that a hearing will be held and the time and place of such hearing. Interested persons should refer to the full text printed in the original notice.

3. Written statements will be received in addition to or in lieu of oral testimony, and made a part of the record of hearing for the Boards' review. While every interested person is entitled to make an oral presentation, for the sake of expediency, the Board would request that persons filing petitions for hearing and other persons who may be a part of a group or association designate a spokesperson or persons to speak on their behalf.

4. The hearing will be conducted by the Board of Dentists or its designee.

5. The authority of the Board to make the proposed amendment is based on Sections 66-921 and 66-923.1 R.C.M. 1947.

DATED THIS 15th DAY OF March, 1978

BOARD OF DENTISTS
JOHN K. MADSEN, D.D.S.,
PRESIDENT

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

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HEARING AID DISPENSORS

IN THE MATTER of the Proposed Amendment of ARM 40-3.42(6)-S4230 Set and Approve Requirements and Standards - Traineeship; and the adoption of rules relating to re-examination and setting a pass/fail point.	NOTICE OF Proposed Amendment of ARM 40-3.42(6)-S4230 Set and Approve Requirements and Standards - Traineeship; and the adoption of rules relating to re-examination and setting a pass/fail point.
	No Hearing Comtemplated

TO: ALL INTERESTED PERSONS

1. On April 24, 1978 the Board of Hearing Aid Dispensors proposes to amend ARM 40-3.42(6)-S4230 Set and Approve Requirements and Standards - Traineeship; and the adoption of rules relating to re-examination and setting a pass/fail point.

2. The amendment of ARM 40-3.42(6)-S4230 Set and Approve Requirements and Standards - Traineeship as proposed will add the following language as sub-section (2) to the existing rule.

"(2) The trainee is required to enroll for the period of his traineeship in the National Hearing Aid Dealer course or a manufacturers course of equal value and report this course to the Board at the time of the examination."

The reason for the proposed amendment is that the Board has determined that the traineeship period alone has not been sufficient to enable the trainee to pass the examination, and that this additional requirement is an adequate and reasonable method for remedying this deficiency.

3. The Board is proposing to adopt the following as new rules of the Board:

1. " Any person failing their initial examination shall have the right to re-take the examination only two more times on the successive dates that the exam is offered. The re-examination fee shall be $30.00.

The reason for this proposed rule is to provide the necessary cut-off point for re-examination to prevent an endless, time consuming and expensive re-examination process for those who are unable to pass the exam after three (3) attempts. The Board further feels that the $30.00 fee is necessary to pay for the costs of re-examination.

2. "The passing score on the written examination shall be 80%. Applicants must pass both the written and oral

portion. A pass/fail on the oral portion shall be determined by a majority vote of Board Members present."

The reason for this proposed rule is to establish a cut-off point and to clarify how the pass/fail determination is made.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoption of new rules in writing to the Board of Hearing Aid Dispensors, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than April 21, 1978.

5. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Hearing Aid Dispensors, LaLonde Building, Helena, Montana, on or before April 21, 1978.

6. If the Board of Hearing Aid Dispensors receives requests for a public hearing on the proposed amendment and adoption of new rules from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

7. The authority of the Board of Hearding Aid Dispensors to make the proposed amendment and adoption of new rules is based on Section 66-3005, R.C.M. 1947.

DATED THIS 16th DAY OF March, 1978.

BOARD OF HEARING AID DISPENSORS
ROBERT JUROVICH
CHAIRMAN

BY: Ed Carney
Ed Carney
Director
Department of Professional
and Occupational Licensing

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING FOR
of rule MAC 4-2.12(1)-S1250) PROPOSED AMENDMENT OF RULE
) MAC 42-2.12(1)-S1250 regard-
) ing liquor samples.

TO: All Interested Parties

1. On April 27, 1978, at 9:30 a.m. a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of rule MAC 42-2.12(1)-S1250.

2. The rule, as proposed to be amended, provides as follows (stricken material is interlined, new material is underlined):

42-2.12(1)-S1250 SAMPLES (1) Definitions.

(a) "Agent" shall be that definition as provided in MAC 42-2.12(1)-S1200(1).

(b) "Department" shall be that definition as provided in Section 2-1-107(6).

(c) "Vendor" shall be that definition as provided in MAC 42-2.12(1)-S1200(3), it shall also include the principal or employer of an agent.

(d) "Sample" shall mean a quantity of liquor no greater than one fifth (25.6 ounces) or its metric equivalent of 750 ml (25.4 ounces) presented to a licensed **retailer** or the Department by an agent as representative of such characteristics as quality, taste, aroma and color, of a particular alcoholic beverage. No container of alcoholic beverage shall be treated as a sample under the Montana Alcoholic Beverage Code or regulations promulgated thereunder, if the container is not listed as a sample on the distributor's or wholesaler's books for federal and state tax purposes and on any other reporting forms required by law.

(2) A vendor shall be permitted to use as samples not more than twenty-four cases of liquor during any calendar year. This allotment shall include all brands of liquor manufactured, produced or sold by the vendor. ~~Such samples of liquor shall be purchased only through the State liquor Stores at retail price~~. A separate order for samples shall be placed for each registered agent, and the agent's name and permit number shall appear on the order. The vendor shall file with the Department a statement setting forth the territories and names of all registered agents under his supervision. ~~Each authorized agent shall keep a permanent stock ledger record of all samples purchased by him and distributed by him to any person as provided in this section together with quantity and brand~~.

(3) Registered Agents shall prepare and submit to the Investigation Division, Department of Revenue, a "Liquor Representative's Monthly Sample Report". These reports shall be prepared on such forms as are prescribed by the Department of Revenue. The report shall be filled out completely and verified by the reporting registered agent.

(4) The report shall be due 15 calendar days following the end of each month. Timely mailing shall be considered as timely filing. If the reports are not filed by the required due date, the Department may, in its discretion, invoke its powers as described in Section 4-4-402.

(5) Samples are obtainable only at State Liquor Stores approved by the Department of Revenue at the prevailing retail price. The Department shall prescribe several State Liquor Stores at which registered agents may obtain samples.

(6) The registered agent as well as his or her principal (vendor) shall be held jointly and severally accountable for the filing of complete and accurate reports. Failure to complete reports or to file said reports within the prescribed time may result in action being taken by the Department under Section 4-4-402.

(7) The Department may at any reasonable time and place examine the books and records of the registered agent or vendor for purposes of determining compliance with the requirements of this regulation. Reasonable time and place shall be construed as normal business hours. Thirty (30) calendar day's notice shall be given for any inspection conducted under this regulation.

3. The purpose of this proposed amendment is to strengthen the regulation and enforcement of sample reporting.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than April 27, 1978.

5. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

6. The authority of the Department of Revenue to make the proposed amendment is based on Section 4-1-303, R.C.M. 1947. **IMP. 4-3-103, R.C.M. 1947.**

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of a proposed rule "1"	)))	NOTICE OF PROPOSED ADOPTION OF THE EXEMPTION FOR HANDICAPPED CHILD

To: All Interested Persons

1. On April 27, 1978, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of rule "1".

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

3. The rule as proposed for adoption, provides as follows:

Rule 1. Exemption for Handicapped Child. A special exemption is allowed to a taxpayer who has a dependent child with a handicap. In order to qualify, the handicapped person must:

(1) Be the taxpayer's child, (including a stepchild or a legally adopted child) for whom the taxpayer is entitled to claim a dependency exemption under Regulation 8520.

(2) Have a permanent handicap of great enough severity that it constitutes at least 50% disability to the child's body as a whole, as certified to in writing by a licensed physician.

The special exemption for a handicapped child is claimed by completing the applicable lines of the exemption schedule appearing on the return form and attaching to the return the required physician's certificate or a photostatic copy thereof.

4. The regulation implements new legislation and adds essential information with respect to Chapter 500, Laws 1977.

5. Interested persons may present their data, views, or arguments concerning the proposed adoption in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than April 27, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 84-4910.1 and 84-4910.2. **IMP. 84-4910.1, R.C.M. 1947.**

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PROPOSED ADOPTION
of a proposed rule "1") OF INVESTMENT CREDIT

TO: All Interested Persons

1. On April 27, 1978, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of rule "1".

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

3. The rule as proposed for adoption, provides as follows:

Rule 1. Investment Credit. Effective for taxable years beginning after December 31, 1976, a credit is allowed against Montana Income Tax equal to 20% of the Federal Income Tax Investment Credit allowed for the taxable year with respect to "Internal Revenue Code Section 38 property."

The credit may not reduce tax liability below zero. An unused balance of credit may be carried forward to succeeding taxable years or carried back to preceding taxable years in accordance with the rules established for Federal Income Tax purposes. However, an unused credit may not be carried back to a taxable year beginning before January 1, 1977.

4. The regulation implements new legislation and adds essential information with respect to Chapter 412, Laws 1977.

5. Interested persons may present their data, views, or arguments concerning the proposed adoption in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than April 27, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 84-4960. **IMP. 84-4961, R.C.M. 1947.**

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of a proposed rule "1"	)	NOTICE OF PROPOSED ADOPTION FOR DEDUCTION ALLOWED FOR EXPENSES TO ENABLE AN INDIVIDUAL TO BE GAINFULLY EMPLOYED.

TO: All Interested Persons

1. On April 27, 1978, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of rule "1".

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

3. The rule as proposed for adoption, provides as follows:

Rule 1. Deduction Allowed for Expenses to Enable an Individual to be Gainfully Employed. Effective for taxable years beginning after December 31, 1975, Section 84-4906 (3), R.C.M. 1947, allows a deduction from adjusted gross income for child and dependent care expense. The deduction is allowed according to the provisions of Section 214 of the Internal Revenue Code that were in effect for the taxable year that began January 1, 1974. The Federal Income Tax regulations, rulings and decisions applicable to Internal Revenue Code Section 214 for the said taxable year shall be controlling in determining the deduction to be allowed.

In general, a taxpayer who maintains a household is entitled to a deduction for employment-related expenses incurred for the care of (a) a dependent under age 15 for whom an exemption may be claimed, (b) a dependent who, regardless of age, is unable to care for himself or herself because of a physical or a mental illness or, (c) a spouse who is unable to care for himself or herself because of a physical or mental illness. In order to qualify for the deduction:

(a) The taxpayer must have been gainfully employed during the period the expenses were incurred or in active search of gainful employment;

(b) The taxpayer must have maintained a household that included one or more qualifying individuals;

(c) The taxpayer's expenditures must have been necessary to enable him or her to have been gainfully employed;

(d) His payments for the services must have been to other than relatives (except cousins) or to dependent members of his household.

In the case of married persons living together, the deduction is allowed only if a joint return is filed. Also, both the husband and the wife must be gainfully employed on substantially a full-time basis, unless one or the other is disabled.

4. The regulation implements new legislation and adds essential information with respect to Chapter 102, Laws 1977.

5. Interested persons may present their data, views, or arguments concerning the proposed adoption in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than April 27, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 84-4906(c), R.C.M. 1947. **IMP. 84-4906, R.C.M. 1947.**

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of a proposed rule "1"	)	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF THE INTER-QUOTA AREA TRANSFERS

TO: All Interested persons

1. On April 27, 1978, 2:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of rule "1".

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

3. The rule as proposed for adoption, provides as follows:

Rule 1. Inter-Quota Area Transfers. (1) All-beverage licenses may be transferred between quota areas if the requirements of Section 4-4-206, R.C.M., 1947 are met. A license may be transferred out of a quota area when the total number of all-beverage licenses in that area exceeds 125% of the number of licenses to which that quota area is entitled based on the results of the most recent census. Licenses may be transferred from a quota area until the total number of licenses in the area falls below 125% of the number of licenses to which the quota area is entitled. If, upon transfer of a license, the number of licenses in a quota area falls below 125% of the number of licenses to which the area is entitled, no additional transfers may be made from the area until the number of licenses once again exceeds 125% of the number to which the area is entitled.

(2) All-beverage licenses may be transferred to any quota area in which the total number of licenses is less than 125% of the total number of licenses to which that area is entitled based on the results of the most recent census. If, as a result of the transfer of a license, the total number of licenses in a quota area exceeds 125% of the number of licenses to which the area is entitled, no additional transfers may be made to the area until the number of licenses falls below 125% of the number of licenses to which the area is entitled.

(3) A public hearing to determine public convenience and necessity must be held on all transfers between quota areas. Evidence and testimony on the question of public convenience and necessity will be received at the hearing on the application for the transfer of the license. The Department of Revenue must determine that public convenience and necessity will be satisfied in both quota areas before licenses can be transferred.

(4) No all-beverage license transferred pursuant to this regulation may be mortgaged or pledged as security or transferred to another person except in cases of transfer by inheritance upon the death of the licensee. The license may only be held by natural persons. The phrase "natural persons" shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license. If the licensee desires to terminate his operation prior to a transfer by inheritance, the license shall lapse and be of no force and effect. The lapse of a license under this regulation will not make a new license available in the quota area.

(5) Examples.

(a) If the quota for an area is two licenses and two have been issued the quota area is at 100% of quota. Therefore one additional license may be transferred to the quota area resulting in more than 125% of quota prohibiting the transfer of any additional licenses to that area.

(b) If the quota for an area is 18 licenses and 28 licenses have been issued the quota area is 177.8% of quota. Therefore 10 licenses may be transferred out of the quota area resulting in less than 125% of quota for that area prohibiting the transfer of any additional licenses from that area.

4. The purpose of this new regulation is to clarify the circumstances when an inter-quota transfer can be made pursuant to Section 4-4-206, R.C.M. 1947.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than April 27, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed adoption is based on Section 4-1-303, R.C.M. 1947. **IMP. 4-4-202, R.C.M. 1947.**

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State March 15, 1978.

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

In the matter of the adoption of eleven rules pertaining to reimbursement for skilled nursing and intermediate care services.	))))))	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF ELEVEN RULES PERTAINING TO REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES

TO: All Interested Persons

1. On April 12, 1978, an informal public hearing will be held in the Red Rock Motel in Miles City, Montana, at 1:30 p.m., to discuss eleven rules pertaining to reimbursement for skilled nursing and intermediate care.

On May 22, 1978, at 10:00 a.m., a formal rulemaking hearing pertaining to Section 82-4216 RCM 1947, will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the adoption of eleven rules pertaining to reimbursement for skilled nursing and intermediate care services.

2. The proposed rules replace all rules governing reimbursement for skilled nursing and intermediate care, currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

46-2.10(18)-S11450A REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE 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.

(a) The purpose of the following rules is to meet the requirements of Title XIX including Section 249 of Public Law 92-603 and 42 C.F.R. 450, while treating the eligible recipient, the provider of services, and the Department fairly and equitably. The rules prescribe rates of payment reasonably adequate to reimburse in full the actual allowable costs of skilled care and intermediate care facilities that are economically and efficiently operated.

(b) In addition, the system of reimbursement described in these rules is intended to facilitate a

transition from the current method of reimbursement to a more comprehensive system of reimbursement by providing the data required to implement such a system. A more comprehensive system is currently being studied by the Department.

(1) The following method of reimbursement shall be effective July 1, 1978, for all skilled nursing and intermediate care facilities participating in the Montana Medicaid Program.

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

(a) "CPI" means the All Items Consumer Price Index published monthly by the Bureau of Labor Statistics, U.S. Department of Labor, 911 Walnut Street, Kansas City, Missouri 64106.

(b) "MPI" means the Medical Care component of the CPI.

(c) "Date of entry into program" means the effective date of a contract between the Department and any individual or organization for the provision of nursing care.

(d) "Department" means the Montana Department of Social and Rehabilitation Services.

(e) "Facility" means a long term care facility which provides skilled or intermediate nursing care, or both to two or more persons and which is licensed as such by the Montana Department of Health and Environmental Sciences.

(f) "Grouping of facilities" means the classification of facilities by reference to their nature as free standing, nursing homes, combined hospital and nursing homes, or a facility serving the mentally ill or retarded, for purposes of determining average operating costs.

(g) "HIM 15" means Provider Manual 15, Part I, 1967, as updated, published by the U.S. Department of HEW, SSA.

(h) "HIM 18" means (same as above except no Part I).

(i) "New provider" means a provider who acquires ownership or control of a skilled nursing and intermediate care facility whether by purchase, lease, rental agreement, or in any other way subsequent to the effective date of this rule.

(j) "New facility" means a facility which has not participated in the program at any time prior to the date of entry into the program.

(k) "Nursing care services" means skilled or intermediate nursing care as defined in ARM 46-2.10(18)-S11443 and S11444.

(l) "Owner" means any person, agency, corporation, partnership or other organization which has an ownership interest, including a leasehold or rental interest, in assets used to provide nursing care services pursuant to

contract with the Department.

(m) "Provider" means any persons, agency, corporation, partnership or other organization which has entered into a contract with the Department for the provision of nursing care services.

(n) "Related parties" means husband and wife, parent and child, brother and sister, a grantor a fiduciary and a beneficiary of a trust are all related, employer and employee, partners in a partnership, and organizations and persons related by control or common ownership. Control exists when an individual or organization has the power, directly or indirectly, whether legally enforceable or not, to significantly influence or direct the actions or policies of another individual or organization, whether such power is exercised or not. Common ownership exists when a person or organization possesses significant ownership or equity in the assets of a provider and of the assets of an individual or organization serving the provider. In the case of corporations, ownership of 10% or more of the outstanding stock shall be deemed a significant ownership interest. The holdings of related individuals and organizations shall be attributed, one to the other, for purposes of determining relation to a third party.

46-2.10(18)-S11450B REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PROSPECTIVE RATES

(1) Reimbursement of the costs of skilled nursing and intermediate care services shall be by means of a prospective rate. The difference between the prospective rate for a rate period and the provider's actual cost for the same period shall constitute a profit or loss to that provider for that period.

(2) The initial prospective rate shall be effective from July 1, 1978 to July 1, 1979, but shall be adjusted quarterly for inflation and occupancy changes during that period. A new or revised prospective rate system will be implemented on July 1, 1979.

(3) For purposes of reimbursement, facilities shall be classified into two groups as defined in Rule 46-2.10(18)-S11450D(2).

(4) The prospective rate of reimbursement for a provider shall be based upon the operating costs reported in cost reports filed for the period ending March 31, 1977, to the extent those costs are allowable under Rule 46-2.10(18)-S11450E and the applicable provisions of HIM 15.

(5) The reported allowable operating costs of each provider shall be adjusted for inflation through June

1978, by reference to the CPI and MPI in accordance with the provisions of Rule 46-2.10(18)-S11450D(3)(a)(i).

(6) A management incentive, based upon a percentage of the difference between the provider's allowable operating cost as adjusted for inflation and the statewide average operating cost for the group as defined in rule 46-2.10(18)-S11450D(2) in which the provider is classified, as adjusted for inflation, shall be added to or deducted from the provider's allowable operating cost for purposes of setting the provider's prospective rate in accordance with the provisions of rule 46-2.10(18)-S11450D(3)(a)(ii). No provider whose ratio of nursing staff per occupied bed is below the group average and who reduces nursing staff shall receive the management incentive.

(7) The prospective per diem rate for the provider shall be based upon the actual occupancy for the cost reporting period ending March 31, 1978 and will be adjusted quarterly to reflect changes of more than 3 percentage points in occupancy in accordance with the provisions of Rule 46-2.10(18)-S11450D(3)(d).

(8) The operating cost portion of the provider's prospective rate shall be adjusted quarterly for inflation by reference to the CPI and MPI in accordance with the provisions of Rule 46-2.10-18)-S11450D(3)(c)(i).

(9) An adjustment for average actual inflation in the Montana nursing home industry shall be incorporated in all provider's prospective rates determined in the new or revised reimbursement system beginning July 1, 1979, and annually thereafter, in accordance with the provisions of Rule 46-2.10(18)-S11450D(3)(c)(ii).

(10) The provider's projected per diem property cost shall be added to the above per diem operating costs in accordance with the provisions of Rule 46-2.10(18)-S11450D(3)(b) to reach a prospective per diem rate.

(11) In no case will the prospective rate exceed the private pay limits prescribed in 42 C.F.R. 450.30(b)(6)(iii) which are hereby incorporated and made a part of this rule by reference.

(12) For operating costs there shall be no adjustment of the determined rate and recovery or payment of overpayments or underpayments unless the overpayment or underpayment results from erroneous or unallowable cost data submitted by the provider or computation errors by the Department in determining the facility rate. The applicable statewide average group operating costs will not be changed, as a result of overpayments or underpayments.

(13) In order to provide interested members of the public the opportunity to review and comment on the

proposed rates before they become effective, a preliminary schedule of initial prospective rates or the rates as they have been adjusted quarterly for inflation will be available upon request to the Department prior to the effective date of such rates.

46-2.10(18)-S11450C REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PARTICIPATION REQUIREMENTS (1) The skilled nursing and intermediate care facilities participating in the Montana Medicaid program shall meet the following basic requirements to receive payments for services:

(a) Maintain a current license under the rules of the State Department of Health and Environmental Sciences for category of care being provided.

(b) Maintain a current certification for Montana Medicaid under the rules of the Department for the category of care being provided.

(c) Maintain a current agreement with the Department to provide the care for which payment is being made.

(d) Have a licensed Nursing Home Administrator or such other qualified supervisor for the facility as statutes or regulations may require.

(e) Accept, as payment in full for operating and property costs, the amounts cacalculated and paid in accordance with the reimbursement method set forth in these rules.

46-2.10(18)-S11450D REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, RATE DETERMINATION (1) Prospective rates for each facility are established on the basis of operating costs for the period ending March 31, 1978, adjusted for inflation and projected property costs reported by each facility, both adjusted for non-allowable costs as defined in Rule 46-2.10(18)-S11450E. A management incentive shall be determined by reference to the statewide average of provider operating costs for the group in which the provider is classified, and added to or deducted from the reported costs. Reimbursement shall not, however, exceed the average of customary charges to private patients in the facility receiving similar nursing services calculated for the quarter in which a rate is set or adjusted, except that a state or county facility charging nominally may be reimbursed for its actual, allowable costs.

Payment rates shall not be set lower than the level which the Department reasonably finds to be adequate to reimburse in full allowable costs of a provider this is operating economically and efficiently and has no deficiencies.

(2) Grouping of facilities: For purposes of calculating a statewide average operating costs, facilities shall be grouped as follows:

(a) Combined hospital and nursing homes and

(b) Free-standing nursing home facilities; and

(c) Facilities serving the Mentally ill or retarded.

(3) Reimbursement Formula: Base per diem operating costs allowable pursuant to Rule 46-2.10(18)-S11450E as adjusted for inflation plus per diem property cost equals reimbursement rate.

(a) Base per diem operating cost is the operating cost for the period ending March 31, 1978 adjusted for inflation plus a management incentive.

(i) Adjusted Operating Costs - Historical operating costs for use in setting a provider's Base Per Diem Operating Cost will be determined from cost reports for the period ending March 31, 1978. These costs will be adjusted based on the definitions of allowable cost contained in Rule 46-2.10(18)-S11450E.

(aa) The total allowable operating cost for the period ending March 31, 1978 will be divided by the total days of care for all patients provided during the period covered by the cost report to determine a per diem rate.

(ab) The per diem rate will be adjusted for inflation occurring between March 31, 1978 and June 1978 using the CPI and MPI. The adjustment shall be made by increasing the deemed historical personal services cost (wages, salaries and related benefits) by a percentage equal to the percentage change in the monthly CPI from December 1977 through March 1978, and increasing the deemed other historical operating cost by a percentage equal to the percentage change in the monthly MPI over the same time period. For purposes of this subsection 67% of total historical operating costs shall be deemed personal service cost, and 33% of total historical operating costs shall be deemed other operating cost.

(ii) Management Incentive

(aa) The Statewide Average Group Operating Cost is the mean of per diem operating costs for all participating providers in each group defined in Rule 46-2.10(18)-S11450D(2). The averaging will be based on a combination of audited and unaudited cost report for the period ending March 31, 1978. Such costs are adjusted through June 1977 using the CPI and MPI adjustment described in Rule 46-2.10(18)-S11450D(3)(a)(i)(ab) and converted to a per diem figure using actual occupancy during the reporting period. The Department has determined the Statewide Average Group

Operating Cost to be:

(1) For combined facilities, $ ____.

(2) For free-standing facilities, $ _____.

(3) For facilities serving the mentally ill or retarded, $ _____.

These averages will not be recalculated based on subsequent audits of these costs reports.

(ab) If the Adjusted Operating Cost incurred by the provider is less than the applicable Statewide Average Group Operating Cost, then an incentive factor equal to 25% of the difference between the individual provider's adjusted operating cost and the applicable Statewide Group Average Cost will be added to the individual provider's adjusted operating cost.

Example: Statewide average group operating cost = $20/day;
Provider's adjusted operating cost = $16/day;
Incentive factor = $1.00 (($20 - $16) x .25);
Base per diem operating cost = $17 ($16 + $1)

If the actual cost of the facility remains at $16/day, then the $1 difference between this $16 cost and the $17 prospective operating cost rate shall constitute a profit to the provider.

(ac) If the Adjusted Operating Cost incurred by the provider exceeds the applicable Statewide Average Group Operating Cost, but is less than 120% of the Statewide Average Group Operating Cost, then 25% of the difference between the Adjusted Operating Cost and the applicable Statewide Average Group Operating Cost will be deducted from the provider's Adjusted Operating Cost. If the Adjusted Operating Cost incurred by the provider exceeds 120% of the applicable Statewide Average Group Operating Cost, then that provider's base per diem operating cost shall be set at 115% of the applicable Statewide Average Group Operating Cost.

(ad) No provider whose ratio of nursing staff per occupied bed is below the statewide group average and who reduces nursing staff shall receive the management incentive.

(iii) Minimum Wage Adjustment -- An adjustment for the minimum wage increase which became effective January 1, 1978, is included in the provider's Adjusted Operating Cost. A further adjustment will be made for future increases in the minimum wage to the extent such increases exceed the CPI adjustments.

(b) Property Costs -- Property Costs reimbursement will be calculated using projected property costs for the July 1, 1978 through June 30, 1979 period as reported by each provider and as allowed in Rule 46-2.10(18)-S11450E.

(i) Property costs for owner operated facilities

will be divided into two classes -- capital costs items and property expense items -- and defined as follows:

(aa) Capital costs items are depreciation, interest (except for working capital loans), mortgage guarantee insurance (except mortgage life insurance that pays off the loan principal) amortization of points or other mortgage discount, and a return on owners' net equity for proprietary facilities as applied and at the rate specified in Chapter 12 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

(ab) Property expense items are property taxes, comprehensive property damage and property liability insurance (except malpractice, workmen's compensation, and automobile insurance), and utility costs.

The sum of items in (aa) and (ab) will be converted to a per diem amount using actual occupancy in the base reporting period.

(ii) Leased Facilities -- The property costs used for providers operating under a lease or rental agreement entered into prior to the effective date of this rule shall be the lesser of:

(aa) The sum of the capital costs items determined using the owner's original cost at the time of purchase, adjusted for inflation to the time of the lease agreement using the Department of Commerce Composite Construction Cost Index and property expense items defined in D(3)(b)(i), or

(ab) The sum of the lease or rental agreement amount and any property expense items not included in the lease or rental agreement.

The amount so determined will be converted to a per diem amount using actual occupancy in the base reporting period.

(iii) New Providers -- When ownership or control of a skilled nursing and intermediate care facility is to change hands (whether by purchase, lease, rental agreement, or in any other way), for purposes of determining the imputed rent the parties involved are encouraged to present the terms of the proposed transaction to the Director of the Department. The Director of the Department will then if sufficient documentation is presented render a binding determination of the revised capital cost items in accordance with the provisions of Rule 46-2.10(18)-S11450E(3) within 30 days. Adjustments for allowable capital cost items increases shall be made at the beginning of the first quarter following the transaction or upon satisfactory completion of an imputed rent determination.

(iv) The prospective rate shall be adjusted quarterly for property costs associated with new equipment acquisition and capital improvements after July 1, 1978.

(v) No adjustment will be made for increased costs as a result of a sale and leaseback. No adjustment will be made for a transfer between related parties as defined in Chapter 10 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

(c) Inflation Admustments:

(i) An inflation adjustment shall be determined by reference to the CPI and MPI and calculated as follows:

(aa) The CPI component of change is calculated by taking the percentage change in the monthly CPI between the seventh month prior to the quarter for which the adjustment is to be made and the fourth month prior. The adjustment for the October through December, 1978 quarter would be based on the percentage change in the CPI between March, 1978 and June, 1978. The adjustment for the January through March, 1979 quarter would be based on the percentage change in the CPI between June, 1978 and September, 1978.

(ab) A similar calculation is made to determine the MPI component of change.

(ac) The inflation adjustment percentage is calculated by multiplying the CPI component of change determined in (aa) by 2/3 and adding this result to 1/3 of the MPI component of change determined in (ab).

(ad) The inflation adjustment percentage is multiplied by the applicable average group operating cost to determine the dollar amount of the quarterly inflation adjustment.

(ad.1) For the first quarterly adjustment the applicable average group aperating cost will be the applicable Statewide Average Group Operating Cost amount in D(3)(a)(ii)(aa).

(ad.2) For subsequent quarters the applicable average group operating cost will be the sum of the applicable Statwide Average Group Operating Cost and all previous quarterly inflation adjustment amounts.

(ae) The applicable quarterly inflation adjustment amount is added to each provider's previous base per diem operating cost to determine the base per diem operating cost for the next quarter.

Example: 1. $\frac{\text{CPI component of change}}{\text{CPI March, 1978}}$ 189.0

CPI June, 1978	192.0	
Percent change	1.587%	
2. MPI component of change		
MPI March, 1978		213.0
MPI June, 1978		217.0
Percent change		1.878%
3. Inflation adjustment percentage		
2/3(1.587) + 1/3(1.878) = 1.7%		
4. Quarterly inflation adjustment for October through December, 1978		
Statewide Average Group Operating Cost		$ 20.00
Inflation adjustment percentage		x .017
Dollar amount of quarterly inflation adjustment		$ .34
5. Providers new rate (operating costs only)		
Rate for Provider X, July through September, 1978		$ 17.00
Dollar amount of quarterly inflation adjustment		.34
Rate for Provider X, October through December, 1978		$ 17.34

(af) The initial adjustment shall be made for rates payable in the quarter beginning October 1, 1978, using the CPI and MPI for June 1978, and March, 1978.

(ag) The provider shall be notified of the prospective rate adjusted for inflation 45 days prior to the quarter in which it becomes effective. A schedule of rates for all providers shall be available prior to the effective date of the rates upon request to the Chief, Medical Assistance Bureau, Montana Department of Social and Rehabilitation Services, Helena, Montana.

(ii) The prospective operating cost rate in the new or revised reimbursement system beginning July 1, 1979, will include an adjustment for any difference between actual allowable operating cost increases for participating facilities as determined from reported actual allowable cost and the CPI and MPI inflation adjustments and minimum wage adjustments that have been provided.

(d) Occupancy Adjustment -- Actual occupancy for the reporting period ending March 31, 1978 will be used to set prospective rates. Adjustments to the prospective rate will be made quarterly if actual occupancy during any quarter changes by more than 3 percentage

points (i.e. from 90% to 93%). The new rate will be effective in the second quarter following the change in occupancy.

(e) The prospective rate shall be limited to the average per diem charges to private patients receiving similar services. Within 30 days after rate notification, the provider shall notify the Department of its anticipated schedule of charges to private patients. The prospective rate shall then be adjusted to reflect the private pay limitation where applicable. For purposes of comparison, the provider shall classify private patients according to the Department's criteria found in ARM 46-2.10(18)-S11441, S11442 and S11443. If, it is determined that the provider's projected charges to private patients were erroneous, recovery or payment proceedings will be undertaken immediately in accordance with the provisions of Rule 46-2.10(18)-S11450H.

(f) Prospective Rate Formula -- The above prospective rate determination principles can be expressed in the following formula: $R = (C + .25(T - C) + P$, where R = prospective per diem rate effective July 1, 1978; C = individual provider adjusted per diem operating costs determined from cost reports for the period ending March 31, 1978 based upon allowable costs as defined in Rule 46-2.10(18)-S11450E and adjusted for inflation June, 1978, T = target operating cost set at average of individual facility per diem cost for each group determined by reference to previously allowed costs; P = per diem property costs;
(NOTE: The applicable Statewide Average Group Operating Costs shall be adusted quarterly for CPI and MPI change on October 1, 1978 and in subsequent quarters.)

46-2.10(18)-S11450E REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, ALLOWABLE COSTS (1) For purposes of determining the Statewide Average Group Operating Cost defined in Rule 46-2.10(18)-S11450D(3)(a) (ii)(aa), the Department shall utilize a combination of audited and unaudited cost reports for the period ending March 31, 1978.

(2) For purposes of determining allowable costs for individual facilities to be utilized in setting the individual facility's prospective rate, the principles governing allowable cost contained herein shall be applied.

(a) As a prerequisite to allowability, all items of cost must be supported by source documentation which clearly identifies the item or service purchased and

the cost incurred.

(b) The general principles of reasonableness, necessity and prudent buyer as set forth in paragraphs 2100, 2102 and 2103 of HIM 15, which are hereby incorporated and made a part of this rule by reference, are applicable in making the determination of allowable costs.

(c) Costs of meeting certification standards as outlined in 42 C.F.R. 450.30(a)(3)(iii)(A) are allowable.

(d) Costs to related organizations shall be governed by the provisions of Chapter 10 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(e) Costs of routine services: Allowable costs shall include standard items of expense included in the per diem rate which providers incur in the provision of routine services to the extent such expenses are reasonable and necessary. Routine services means the regular room, dietary and nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of expenses that are allowable costs for routine services are:

(i) All general services including but not limited to administration of oxygen and related medications, hand-feeding, incontinency 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 re-usable and expected to be available, such as ice bags, bed rails, 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, even if written as a prescription item by a physician (because these supplements have been classified by the Food and Drug Administration as a food rather than a drug);

(vi) Laundry services other than for personal clothing which is not laundered at the facility will be allowed. Nominal cost of items laundered for patients

at the facility will be allowed.

(f) Owners' Compensation:

(i) Owners' compensation is limited to the fair market value of services rendered by the owner in connection with patient care. The fair market value of services shall be determined by reference to Sections 2120 et seq. of HIM-13-2, Audits and Reimbursement Manual for Part A of Title XVIII and Chapter 9 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(ii) Owners compensation shall include:

(aa) Salary amounts paid for managerial, administrative, professional and other services.

(ab) Amounts paid by the institution for the personal benefit of the owner.

(ac) The costs of assets and services which the owner receives from the institution.

(ad) Deferred compensation either accrued or paid.

(ae) Supplies and services for the personal use of the owner.

(af) Special merchandise for the owner's personal use or benefit.

(ag) Wages of a domestic or other employee who works in the home of the owner.

(ah) Personal use of a car owned by business.

(ai) Personal insurance premium paid for the owner.

(aj) A portion of the physical plant occupied by the owner as a personal residence.

(ak) Other types of remuneration, compensation fringe benefits or other benefits whether paid, accrued, or contingent.

(g) Costs of telephone, television and radio services are governed by paragraphs 2106 through 2106.2 of HIM 15, Part I, which are hereby incorporated and made a part of this rule by reference.

(h) Life insurance premiums are governed by paragraph 2130 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

(i) Franchise fees are governed by paragraphs 2133 through 2133.10 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(j) Organization costs are governed by paragraphs 2134 through 2134.11 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(k) Advertising costs are governed by paragraphs 2136 through 2136.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(l) Home office costs are governed by paragraphs 2150 through 2153 of HIM 15, which are hereby incorporated

and made a part of this rule by reference.

(m) Losses are governed by paragraphs 2160 through 2160.5 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(n) Malpractice and Workers' Compensation insurance costs are governed by paragraphs 2161 through 2162.13 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(o) Post-termination costs are governed by paragraphs 2176 through 2176.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference except as otherwise provided in these rules.

(p) Purchase discount allowances and refunds are governed by paragraphs 800 through 8.0.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(q) Grants, gifts and endowments are governed by paragraphs 600 through 614 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(r) Bad debts, charity and courtesy allowances are deductions from revenue and shall not be allowable as costs.

(s) Revenues received for services or items provided to employees and guests are recoveries of cost and shall be deducted from the related cost.

(t) Dues, membership fees or subscriptions to organizations unrelated to the provider's professional or business activities are not related to patient care and are not allowable costs.

(u) Charges for services of a chaplain are not an allowable expense.

(v) 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.

(w) Attorney fees will be allowed for all public hearings or meetings called by the Department. Attorney fees for fair hearings are allowable only when awarded by a hearings officer or Board of Social and Rehabilitation Appeals. Attorney fees for judicial proceedings involving the Department or the federal government are not allowed as provided in 45 C.F.R. 74, Appendix C, Part II(B)(16).

(x) Entertainment expenses for non-employees are not allowable. (Examples of entertainment expenses are business luncheons, bar bills, etc.)

(y) 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, PERS and contributions to a State insurance plan are allowable employee benefits. In addition, employee benefits which are uniformly applicable to all employees and do not exceed 6% of the gross salary or wages actually paid to the employee 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. Cash bonuses and state parties are considered employee benefits, and are therefore subject to the 6% limitation.

(iv) For purposes of this subsection, an employee is one from whose salary or wages the employer is required to withhold FICA. Notwithstanding the above, stockholders or officers of a corporate provider, and partners owning a facility are not employees.

(z) Paid vacation and sick leave shall not be considered employee benefits, but shall be allowable only to the extent that the facility has in effect a written policy which is uniformly applicable to all employees, and paid vacation and sick leave are reasonable in amount. Any paid vacation or sick leave policy not exceeding the standards applied to State employees is reasonable. The 6% limitation stated in (y)(ii) shall not apply to paid vacation and sick leave.

(aa) Transportation costs for travel related to patient care (as defined by paragraphs 2102.2 and 2102.3 of HIM-15, which are hereby incorporated and made part of this rule by reference) are allowable in accordance with Internal Revenue guidelines pertaining to business mileage. If mileage rate is claimed, a mileage log must be maintained. If actual costs (such as, depreciation, interest, insurance, gasoline, etc.) are claimed, the costs may not exceed $3000 per year.

(3) For purposes of determining allowable property

costs for individual facilities to be utilized in setting the individual facility's prospective rate, the principles governing allowable cost contained herein shall be applied.

(a) As a prerequisite to allowability, all items of cost must be supported by source documentation which clearly identifies the item or service purchased and the cost incurred.

(b) The general principles of reasonableness, necessity and prudent buyer as set forth in paragraphs 2100, 2102 and 2103 of HIM 15, which are hereby incorporated and made a part of this rule by reference, are applicable in making the determination of allowable costs.

(c) Costs of meeting certification standards as outlined in 42 C.F.R. 450.30(a)(3)(iii)(A) are allowable.

(d) Costs to related organizations shall be governed by the provisions of Chapter 10 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(e) Costs of taxes are governed by paragraphs 2122 through 2122.5 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(f) Start-up costs are governed by paragraphs 2132 through 2132.6 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(g) Property insurance costs are governed by paragraphs 2161 through 2162.13 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(h) Interest expense shall be governed by paragraphs 200 through 232 of HIM 15, which are hereby incorporated and made part of this rule by reference.

(i) Items of cost shall be expensed, capitalized and depreciated in accordance with paragraphs 100 through 108.2 and 118 of HIM 15, which are hereby incorporated and made a part of this rule by reference. Depreciation shall be calculated using the straight line method, as defined in paragraph 116.1 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

The disposal of assets on which there is a gain or loss on sale which must be allocated to the period from July 1, 1974, to March 31, 1978, shall be governed by the provisions of Chapter 1, HIM 15, which are hereby incorporated and made a part of this rule by reference. July 1, 1974, is the starting date of the program for purposes of applying the above provisions. Notwithstanding the above there shall be no recovery by a provider of any loss incurred after termination from the program, or as a result of termination.

(j) Depreciation paid by the Department from April 1, 1978, shall be recoverable by the Department upon sale of the facility and/or equpment at a price in excess of

the provider's cost less accumulated depreciation at the time of sale. The amount of depreciation recoverable under this subparagraph is the amount, allocated to periods beginning April 1, 1978, by which the sale price exceeds the seller's original cost plus capital improvements less depreciation allowed by the Department, or the amount of depreciation actually paid, whichever is the lesser. Such amount constitutes a debt due the State as of the date of sale and may, at the option of the Department be recovered from the seller or any transferee or fiduciary who has benefited from a transfer of assets on which depreciation was paid, or by means of a reduction in asset basis for purposes of future rate determinations.

(k) When a skilled nursing and/or intermediate care facility is built, purchased, leased, rented, or in any other way acquired, the facility will have a new provider for Medicaid reimbursement purposes the amount of payment for capital costs items will be based on an imputed rent payment as determined below:

(i) The reasonable cost basis for a facility (unless the Department and the provider agree in writing to a different method) land, construction, interim financing, capital equipment, start-up, and closing costs will be limited for imputed rent calculations to the lesser of:

(aa) Purchase price, or,

(ab) Fair Market Value (based upon the lesser of "cost-approach," "market-approach," or "income-approach" as determined by a MAI appraisal, contracted by the Department and paid for by the provider acquiring control of the facility), or,

(ac) Current Reproduction Cost (original cost, adjusted for inflation to the time of sale using the Department of Commerce Composite Construction Cost Index, less straight-line depreciation over the holding period of the assets since their construction).

(ii) In no case will the facility cost basis as determined by the Department exceed 120% of the average construction cost per bed for skilled nursing and intermediate care facilities located within the state of Montana, adjusted to current dollars using the Department of Commerce Composite Construction Cost Index, multiplied by the total number of beds in the subject facility.

(iii) Imputed rent formula -- Property costs for new facilities will include an "imputed rent" instead of the capital cost items defined in D(3)(b)(i). The imputed rent will be derived by multiplying the facility cost basis by an annual percentage computed using the "Ellwood Formula" (as promulgated in the Ellwood Tables for Real Estate Appraising and Financing; Part I and Part II,

Third Edition, Chicago AIREA 1970) to Arrive at an annual imputed rent payment. The equity yield rate used in the formula will be the Medicare Rate (as defined in Sec. 1206 of HIM-15 and published in the Table of Interest Rates for Proprietary Providers' Return on Equity Capital, Medicaid Guide, Commerce Clearinghouse, Annual) for private facilities and 2/3 of the Medicare Rate for public facilities. The holding period used in the formula will be five years. The appreciation/depreciation factor used in the formula, which is the percentage total gain or loss in property value at the end of holding period, will be chosen by the provider. At the end of the holding period the facility will be reappraised and the facility cost basis will be adjusted to the lesser of that appraisal or the initial facility cost basis plus or minus the appreciation/depreciation factor.

The sum of the annual rent factor as determined above and the property expense items as defined in D(3)(b)(ii) will be converted to a per diem amount using actual occupancy data, if available, or 90 percent occupancy.

46-2.10(18)-S11450F REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, CLOSE OUT COST REPORTS (1) A cost report detailing costs incurred by a provider from the close of the provider's last fiscal year to March 31, 1978, shall be filed with the Department no later than June 1, 1978.

(2) The close out cost report may, with the prior approval of the Department, detail costs incurred over a period not to exceed 15 months prior to March 31, 1978. Such an extended close out cost report shall be in lieu of the provider's normal year end cost report and the short period cost report for the period from year end to March 31, 1978.

(3) Audits shall be performed, adjustments made and final settlements reached in accordance with the provisions of the Manual of Reimbursement for Nursing Home Care, May, 1974, and HIM 15, except that the Department shall have 180 days from the receipt of the cost report to offer a final rate.

(4) The allowed costs shall be the basis for the prospective rate.

46-2.10(18)-S11450G REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

(1) Generally accepted accounting principles shall

be employed in all record keeping and cost finding by a provider except as otherwise required by these rules.

(2) The accrual method of accounting shall be employed except in government institutions operating on a cash method.

(3) 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 C.F.R. 405.453(d)(1) which is hereby incorporated and made a part of this rule by reference.

(4) Uniform Chart of Accounts. The American Health Care Association Chart of Accounts adopted July 1, 1975, as updated is the system to be used to maintain facility cost data for cost reporting and auditverification purposes. The use of the uniform chart of accounts becomes mandatory for participating facilities for facility fiscal years beginning on or after April 1, 1978.

(5) 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. 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 fiscal year.

(b) Rate Period -- Rates are promulgated quarterly beginning July 1, 1978.

(c) 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 20% of the provider's total reimbursement for that month shall be withheld by the Department. For each succeeding month the report is overdue or incomplete an amount equal to 40% of the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete 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.

(d) Cost reports shall be signed by the individual proprietor, 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.

(e) The preparer of such cost reports shall also sign the reports stating that the report has been prepared based on all information of which he has knowledge.

(6) Payroll and Census Reports. Current provider statistics on payroll and census are necessary to evaluate economic trends and cost implications for prospective rate setting. Payroll and census reports for each month individually are to be submitted within 30 days after the close of each calendar quarter on forms provided by the Department. In addition to data related to Medicaid patients, the patient census reports shall include data related to private patients, including but not limited to the classification and actual charges to private pay patients. Failure to submit these reports on a timely basis will be cause for reduction or suspension of payment. Reports are to be submitted to the Chief, Medical Assistance Bureau, Department of Social and Rehabilitation Services, Helena, Montana.

(7) Maintenance of Records. Records of financial and statistical information submitted to support and verify cost reports must be maintained by the provider at the facility for five years after the date a cost report is filed, or the date the cost report is due, whichever is later.

The Department shall maintain on file the cost reports submitted by the providers for a period of five years. These reports shall be available to authorized representatives of the Department of Health, Education, and Welfare.

(a) Each provider facility will maintain, as a minimum, a general ledger and the following supporting ledgers and journals: revenue, accounts receivable, cash receipts, accounts payable, cash disbursements, and payroll, patient census records identifying the level of care of all patients individually, all records pertaining to private pay patients and patient trust funds.

(b) All business records of any related organization, as defined in Chapter 10 of HIM 15, 1977, or parent or subsidiary corporation which relate to a provider under audit shall be available at the facility for audit by the Department or its designated representative upon reasonable notice to the provider. Personal financial records of the owner of a facility or related organization shall also be made available at the facility for audit by the Department or its designated representative upon reasonable notice given by the Department.

(c) Cost information as developed by the provider

must be current, accurate and in sufficient detail to support payments made for services rendered to beneficiaries and recorded in such a manner to provide a record which is auditable through the application of reasonable audit procedure. This includes all ledgers, books, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, invoices, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.) which pertain to the determination of reasonable cost.

(d) All of the above records and documents shall be available at the facility, subject at all reasonable times to inspection, review or audit by the Department and the U.S. Department of Health, Education and Welfare personnel, or any designated representative of the Department. The provider will make all records available as may be necessary for purposes of Legislative post-audit or analysis in accordance with the provisions of Section 9 of HB145 the General Appropriations Act of 1977. Upon refusal of the provider to allow access to the above records and documents, the costs which are based upon the withheld data will be deemed unsupported and not allowable for reimbursement purposes. If payments have been made based upon interim information the applicable amounts shall be recovered by the Department. In addition, the Department may at its option terminate any contracts between the Department and provider if the above records and documents are withheld (after proper notice).

46-2.10(18)-S11450H REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, OVERPAYMENT AND UNDERPAYMENT (1) Overpayment and Underpayment on Initial Prospective Rate.

(a) For most providers the prospective rate will be based on a cost report that has received only a desk review. In situations where the Department finds during field audit that the prospective rate was based on an erroneous cost report resulting in an overpayment, the Department will notify the provider of the 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 prospective rate and arrange to recover the overpayment by set-off against amounts paid under the adjusted prospective 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 prospective rate payments with full recovery to be completed with 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, unless a formal request for a hearing is filed by the provider within 30 days of notification.

(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 within 30 days of the Department's determintion of error and adjust the prospective rate accordingly.

(f) All overpayments or underpayments will be accounted for on the OA-41.

46-2.10(18)-S11450I REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, NEW FACILITIES

(1) New facilities participating for the first time in the program will be given an interim prospective rate based upon the average prospective rate of facilities currently in the program. This interim rate may be adjusted upon submission by the new facility of an income and expense summary (profit and loss statement) for six months or more and census data.

(2) After a minimum of six months of operation, but prior to the earlier of the end of the fiscal year or the completion of a twelve-month period of operation, a cost report shall be submitted by the facility. A new prospective rate based on the audited cost report will be determined within 90 days. The new prospective rate shall be effective retroactively to the date of entry into the program.

(3) This rule shall not apply to an individual who is a new provider by reason of his purchase or lease of a facility which is currently participating in the program. Such a new provider will receive the prospective rate set for the previous provider.

46-2.10(18)-S11450J REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, AUDITS, RATE REVIEW

(1) Department audit staff will perform a desk audit of cost statements prior to rate setting and will conduct on-site audits of facility records. Where appropriate, audit procedures defined in the HIM 18 shall be adopted by the Department but the Department shall not be confined to these guidelines and may utilize other methods.

(a) Desk Review. Desk review of cost statements

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 statement to the facility for correction and will result in a withholding of payment as specified in Rule S11450G(5)(c).

(b) Field Audits. On-site audits of facility detail records will be made to assure validity of reports costs and statistical information. A schedule of on-site audits will be developed so that each participating provider is audited over a three-year period beginning April 1, 1978 (the scheduled receipt date of cost reports for providers whose fiscal reporting periods began on January 1, 1977), and no less than one-third of participating providers are audited each year. After the end of the above three-year period, on-site audits shall be conducted for minimum of 15% of the participating providers yearly. Five percent of the providers shall be selected on a random sample with the remainder being selected on a basis of exceptional profiles.

(c) Exit Conferences. On conclusion of on-site audit, the auditor shall write a summary of his findings and recommendations. This summary shall be mailed to the provider no later than 10 days after the completion of the on-site audit. Within 10 days of receipt of the written findings or recommendations the provider may request an exit conference. Such conference shall be held no later than 30 days after receipt of request.

(d) Prospective Rate Review Conferences. Prospective rate review conferences with agency staff may be requested by the provider within 30 days after rate notification. The request for prospective rate review shall identify all items for consideration at the administrative conference by specific reference to the appropriate section of the cost statement. The request for review shall identify the provider representatives who will be present.

The rate review conference, if timely requested, shall be held no later than 30 days from the receipt of request.

46-2.10(18)-S11450K REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, FAIR HEARING PROCEDURES (1) In the event the provider does not agree with the rates recommended by the Department, the following fair hearing procedures will apply:

(a) The written request for a fair hearing shall be addressed to the Department of Social and Rehabilitation Services, Hearings Officer, Helena, Montana.

(b) The request shall be signed by the provider or

his designee.

(c) The fair hearing request must be received not later than the 60th calendar day following the date of the rate notification, or within 30 days of the rate review conference. If it is filed later, justification for the delay must be given to the hearings officer who, for good cause, may waive the time limit.

(d) The fair hearing request shall identify the individual settlement items and amount in disagreement, give the reasons for the disagreement, and furnish substantiating materials and information.

(e) The hearings officer will fix a time and place for the prehearing conference, and will mail notices thereof to the provider and other parties not less than ten days prior to the conference date. The notice will state the purpose of the prehearing conference and the issues to be resolved, stipulated to, or excluded. The hearings officer may waive the prehearing conference.

(f) The hearings officer will fix a time and place for the hearing, and will mail notices thereof to the provider and other parties not less than ten days prior to the hearing date.

(g) The hearings officer will reduce his decision to writing based upon evidence and other material presented at the hearing.

(h) In the event the provider or Department disagrees with the hearings officer's decision, a Notice of Appeals may be submitted to the Board of Social and Rehabilitation Appeals with ten days of the hearings officer's decision. The Notice of Appeals shall set forth the specific grounds for appeal.

(i) All evidence in the record and offers of proof shall be transmitted to the Board by the hearings officer. The decision of the Board shall be based solely on the record transmitted by the hearings officer. A legal brief or a legal argument may be presented personally or through a representative of the provider to the Board.

(j) The Board shall reduce its decision to writing and mail copies to the providers within ten days of completion of the hearing. The provider shall be notified of its right to judicial review under the provisions of Section 82-4216, R.C.M. 1947.

(k) Requests for hearing or appeals to the Board of Social and Rehabilitation Appeals without a basis in law or fact, or which are otherwise frivolous as determined by the hearings officer or Board, are an abuse of the Medicaid program and may result in termination of the provider from participation in the Medicaid program.

4. The purpose of the proposed rules is to meet the requirements of Section 249 of Public Law 92-603 and 45 C.F.R. 250 while treating the eligible recipient, the provider of services and the taxpayers of the State of Montana fairly and equitably. The rules are intended to prescribe rates of payment reasonably adequate to reimburse in full the actual allowable cost of skilled and intermediate care facilities that are economically and efficiently operated. In addition, the rules are intended to facilitate a transition from the current method of reimbursement to a more comprehensive system of reimbursement by providing the data required to implement such a system. A more comprehensive system is currently being developed by the Department in cooperation with an advisory committee representing the nursing home industry.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be submitted to Richard A. Weber, P.O. Box 4210, Helena, Montana 59601, any time before April 20, 1978.

6. Richard A. Weber has been designated to preside over and conduct the hearings.

7. The authority of the Department to make the proposed rules is based on section 71-1511, R.C.M. 1947. The implementing authority for the proposed rules is based on section 71-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State March 15, 1978.

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

In the matter of the adoption of eleven rules pertaining to reimbursement for skilled nursing and intermediate care services.	))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES

1. On April 17, 1978, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, Helena, Montana, to consider the adoption of the rules which pertain to reimbursement for skilled nursing and intermediate care services.

2. The proposed rules provide as follows:
The text of the eleven rules pertaining to reimbursement for skilled nursing and intermediate care services can be found in the notice of adoption published in the 1978 Montana Register, Issue No. 3.

3. The purpose of the proposed rules is to meet the requirements of Section 249 of Public Law 92-603 and 45 C.F.R. 250 while treating the eligible recipient, the provider of services and the taxpayers of the State of Montana fairly and equitably. The rules are intended to prescribe rates of payment reasonably adequate to reimburse in full the actual allowable cost of skilled and intermediate care facilities that are economically and efficiently operated. In addition, the rules are intended to facilitate a transition from the current method of reimbursement to a more comprehensive system of reimbursement by providing the data required to implement such a system. A more comprehensive system is currently being developed by the Department in cooperation with an advisory committee representing the nursing home industry.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

5. Richard A. Weber, P.O. Box 4210, Helena, Montana, has been designated to preside over and conduct the hearing.

6. The authority of the agency to make the proposed rules are based on section 71-1511, R.C.M. 1947. The implementing authority for the proposed rules is based on section 71-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State March 15, 1978, 1978.

BEFORE THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Amendment emergency rule A.R.M. 42-2.18(34)-S1850, Requiring Speech Pathologists to File Professional License Numbers with the Superintendent of Public Instruction and Allowing Public Schools to Hire Unlicensed Speech Pathologists and Audiologists when Necessary until the end of School Year 1978-1979, and the Adoption of Said Rule as a Permanent Rule	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF EMERGENCY RULE A.R.M. EMERG: 48-2.18(34)-S18540 SPEECH PATHOLOGISTS AND AUDIOLOGISTS, AND THE PROPOSED ADOPTION OF THE AMENDMENT AS A PERMANENT RULE

TO: All Interested Persons:

1. On the 24th day of April, 1978, at 8:00 a.m., a public hearing will be held in the House Chambers of the State Capitol Helena, Montana, to consider the amendment of emergency rule A.R.M.: 48-2.18(34)-S18540 and the adoption of said amendment as a permanent rule.

2. The proposed amendment replaces emergency rule presently found in MAR, 1978 Issue No. 1, page 106. The proposed amendment would require Licensed speech pathologists to file the number of their license with the Superintendent of Public Instruction and would further establish minimum standards under which the Superintendent of Public Instruction may approve the hiring of unlicensed speech pathologists in the public schools of Montana.

3. The rule proposed is:

48-2.18(34)-18540 SPEECH PATHOLOGISTS AND AUDIOLOGISTS (As found in ARM, Page 48-400.)

~~(1)--All-public-school-personnel-employed-as-speech pathologists-and-audiologists-must-have-their-license-number on-file-with-the-Special-Education-program-in-the-Office-of-the Superintendent-of-Public-Instruction.--Supervision-shall-be-in accord-with-the-provisions-of-the-individual's-license.~~

Emergency Rule 48-2.18(34)-18540 SPEECH PATHOLOGISTS AND AUDIOLOGISTS (As found in MAR, 1978, Issue No. 1, Page 106)

(1) Except as provided in subsections (2) and (3), all public school personnel employed as speech pathologists and audiologists must have their license number on file with the Special Education program in the Office of the Superintendent of Public Instruction. Supervision shall be in accordance with the provisions of ~~the individual's~~ each speech pathologist's or audiologist's license.

~~(2)--Approval-of-an-individual-who-does-not-meet-full-requirements-for-licensure-in-speech-pathology-under-Sections 66-3901-through-66-3913-RCM-1947-may-be-given-if-the-individual meets-the-criteria-which-follow-and-applies-to-the-Superintendent of-Public-Instruction-for-approval-to-deliver-speech-therapy service.~~

~~(a)--Bachelor's-degree-with-a-major-in-speech-and hearing-verified-by-official-transcripts.~~

~~(b)--175-approved-supervised-clock-hours-in-speech and-hearing-verified-by-a-training-institution.~~

~~(3)--(a)--Approval-of-an-individual-who-does-not-meet-full requirements-for-licensure-to-deliver-speech-services-in Montana-schools-will-not-be-continued-after-the-1978-79-school term.~~

~~(b)--Approval-will-be-given-only-to-an-applicant-who has-an-offer-of-employment-from-a-school-which-can-document an-inability,-after-a-comprehensive-recruitment-procedure,-to employ-a-licensed-speech-therapist.--Documentation-of-comprehensive-recruitment-efforts-should-include:~~

~~(i)--Copies-of-correspondence-with-a-minimum-of 20-institutions-of-higher-education-offering-graduate-level training-in-speech-pathology,-and-~~

~~(ii)--Evidence-of-advertising-in-appropriate professional-journals-and-recruitment-through-professional associations.~~

~~(c)--Individuals-approved-to-deliver-speech-services must-be-supervised-by-a-licensed-speech-pathologist-with-a minimum-of-four-on-site-supervisory-contacts-per-month-of-no less-than-three-hours-per-contact.--All-supervisory-contacts shall-be-recorded.~~

~~(d)--The-supervisor-shall-be-responsible-only-for appropriate-supervision-of-the-applicant's-therapeutic-plan and-proposed-procedures.--The-school-district-shall-be-responsible-for-assuring-implementation-of-the-approved-plan and-procedures.~~

(2) HIRING OF UNLICENSED SPEECH THERAPISTS: When a district school superintendent wishes to hire an individual to deliver speech therapy services, and that individual does not meet full requirements for licensure in speech pathology under Sections 66-3901 through 66-3913, RCM 1947, (as amended), the district school superintendent shall write the Superintendent of Public Instruction for approval. In order to be considered for such approval, the following conditions must be met:

(a) The individual to be hired must have a Bachelor's degree from an accredited school with a major in speech and hearing. Completion of the degree must be evidenced by an official transcript.

(b) The individual to be hired must have completed one hundred and seventy-five supervised and approved clock hours in speech pathology and audiology. Such completed supervised clock hours must be verified in writing by director of training program;

(c) The school at which the individual has an offer of employment to deliver speech therapy must document an inability, after comprehensive recruitment efforts, to employ a licensed speech therapist. Documentation of comprehensive recruitment efforts should include:

(i) Copies of correspondence with a minimum of twenty institutions of higher education offering graduate level training in speech pathology,

(ii) Evidence of advertising in appropriate professional journals and recruitment through professional associations.

(3) SUPERVISION OF UNLICENSED SPEECH THERAPIST APPROVED FOR EMPLOYMENT BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION: (a) Individuals approved to deliver speech therapy services must be supervised by a licensed speech pathologist. Such supervision shall consist of a minimum of four on-site supervisory contacts per month. Each contact shall be a minimum of three hours in duration and shall be recorded by the supervisor;

(b) The supervising licensed speech pathologist shall supervise only therapeutic plans and proposed procedures. The school district in which the unlicensed speech therapist works shall be responsible for the administration of the approved plan and procedures.

(4) Subsections (2) and (3) above shall be in effect only through the 1978-1979 school term. After the end of that term no approval will be given to individuals not meeting full requirements for licensure in speech pathology within the State of Montana and so licensed.

(5) The Office of Public Instruction is proposing this rule so as to replace the present emergency rule with a permanent rule and to clarify procedures and terms discussed in the present rule.

(6) Interested persons may present their data, views or arguments either orally or in writing at the hearing.

(7) Macon Richardson, Attorney, Office of Public Instruction, has been designated to preside over and conduct the hearing.

(8) The authority of the agency to make the proposed rule is based on Sections 75-7802(2) and 75-7813.1, RCM 1947, (as amended).

APPROVED AND ADOPTED 3/2/78

CERTIFIED TO THE
SECRETARY OF STATE 3/2/78

By Georgia Rice

Title Superintendent of Public Instruction

BEFORE THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Adoption of a Rule Providing a Model Form for Application for Absentee Ballot in School District Elections	))))	NOTICE OF PROPOSED ADOPTION OF A RULE PROVIDING A MODEL FORM FOR APPLICATION FOR ABSENTEE BALLOT IN SCHOOL DISTRICT ELECTIONS

TO: All Interested Persons:

1. On April 28, 1978, the Superintendent of Public Instruction proposes to adopt a rule providing a model form for application for absentee ballot in school district elections.

2. The proposed rule provides as follows:

Application for Absentee Ballot: Model Form

The form of the application of an elector for an absentee ballot, required under Section 23-3704, RCM, shall be substantially as follows:

This application must be signed as an affirmation by the applicant elector. Notorization is not required. If a person willfully makes false statements in an affirmation he is guilty of perjury (sec. 23-3717, RCM 1947).

I, the undersigned, do hereby affirm that I am, duly qualified elector of School District No. ___ in the County of _____, State of Montana; that I am, to the best of my knowledge and belief, entitled to vote in such School District in the next election. I expect to be absent from said School District or to be physically incapacitated from going to my School District poll on the day for holding such election and hereby make application for an official ballot to be voted by me at the said election. The Post Office address to which my ballot is to be mailed is _____ _____.

_____
(Signature of applicant elector)

3. The rule is proposed to comply with Section 23-3702, RCM 1947.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Office of Public Instruction, Legal Services, State Capitol, Helena MT 59601.

5. The authority of the Superintendent of Public Instruction to make the proposed rule is based on Section 23-3702, RCM 1947.

APPROVED AND ADOPTED 3/2/78

CERTIFIED TO THE
SECRETARY OF STATE _____

By Georgia Rice

Title Superintendent of Public Instruction

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule establishing the state aid distribution schedule for public school districts.	NOTICE OF PROPOSED ADOPTION OF A RULE establishing the state aid distribution schedule for public school districts. NO PUBLIC HEARING CONTEMPLATED.

TO: All interested persons

1. On April 24, 1978, the Board of Public Education proposes to adopt a rule establishing the state aid distribution schedule for public school districts.

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

3. The proposed rule reads as follows:

It is the policy of the Board of Public Education that state equalization aid will be distributed on a schedule of five equal payments of 20 percent each on the approximate dates of September 30, January 30, February 28, March 30 and June 20 if sufficient funds are available.

The distribution of these funds shall be ordered annually at the September meeting of the Board of Public Education.

4. The rule is proposed to respond to a need of public school districts for a firm schedule of state equalization aid distribution.

5. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601 at any time prior to April 21, 1978.

6. If a person who is directly affected by the proposed rule 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 Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than April 13, 1978.

7. If the agency receives requests for a public hearing on the proposed rule from more than 10 percent or 25 or more persons who are directly affected by the proposed rule, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the agency to make the proposed rule is based on section 75-6917, R.C.M. 1947.

Earl J. Barlow
CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State March 15, 1978.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM rules 48-2.10 (1)-S1040, 48-2.10(2)-S10060 and 48-2.10(10)-S10140 relating to a Class 5 teaching certificate.	)))))	NOTICE OF PROPOSED AMENDMENT OF ARM RULES 48-2.10(1)-S1040, 48-2.10(2)-S10060 and 48-2.10 (10)-S10140 relating to Class 5 teaching certificate. NO PUBLIC HEARING CONTEMPLATED.

To: All interested persons

1. On April 24, 1978, the Board of Public Education proposes to amend ARM Rules 48-2.10(1)-S1040, 48-2.10(2)-S10060 and 48-2.10(10)-S10140 relating to a Class 5 teaching certificate.

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

48-2.10(1)-S1040 CERTIFICATION OF NON-CITIZENS

(1) Remains the same.

(2) ~~Renewal~~ Credit Requirements and Limitations:

~~(a) Renewal Requests: Request for renewal and verification of successful experience: a board of trustees wishing to employ a non-citizen teacher must request the renewal; the teacher must present verification of at least one year of successful teaching experience during the term of the previous certificate.~~

~~(b)~~ (a) Specific Credit Requirements: ~~Credits: renewal credit~~ Credit requirements for recertification of non-citizens holding Class 5 certification shall be the approximate equivalent of renewal requirements for the class of certificate for which the candidate is academically eligible, as follows: Class 1 level -- no renewal credit required; Class 2 level -- 3 quarter credits each two years; Class 5 level -- as specified in the Plan of Professional Intent - up to 16 quarter credits each two years.

~~(c)~~ (b) Limitations:

~~(i) Not more than three renewals will be granted.~~

~~(ii)~~ (1) Candidates who, on the expiration date of the Class 5 certificates, have not become United States citizens will not be eligible for further Montana certification until such time as they are granted citizenship.

48-2.10(2)-S10060 REINSTATEMENT

(1) Remains the same.

(2) Reinstatement Requirements (underlined in original text) If the period of lapse is 15 years or more, the reinstatement requirements may be obtained from the Superintendent of Public Instruction. If the period of lapse is less than 15 years, the teacher may apply for a non-renewable Class 5 certificate ~~which allows the two year term of this certificate to meet recency or reinstatement requirements~~.

(3) Recent Training Requirements for Reinstatement (underlined in original text) The recent training requirement for any person desiring reinstatement of Class 1 or Class 3 certification shall be six quarter (four semester) credits ~~or~~ of college work earned within the five-year period prior to making application for the certificate. In cases where this requirement has not been met, a non-renewable Class 5 certificate may be issued ~~to the applicant to allow two years for an individual to meet the recent training requirement~~.

(4) Remains the same.

48-2.10(10)-S10140 CLASS 5 PROVISIONAL CERTIFICATE

(1) Eligibility for Class 5 (underlined in original text) This certificate may be issued to applicants working on a planned program leading to Class 1, Class 2 or Class 3 certification. It also may be issued to applicants eligible for Class 1, Class 2 or Class 3 certification except for United States citizenship or recency of credits. This certificate is issued for a term of ~~2~~ 5 years~~,~~ and is non-renewable ~~renewable three times (for a total of eight years). If less than 16 quarter (11 semester) credits are required to qualify for regular certification, the Class 5 is not renewable.~~

An individual on a plan of intent or completing recency requirements will satisfy the college and the state that educational progress of at least 16 quarter hours to resolve the deficiencies are completed each two years during the 5-year term of the Class 5 certificate. If fewer than 16 quarter credits are required to resolve the deficiencies, the individual may request adjustment to the Class 1, Class 2 or Class 3 certificate as appropriate.

(Individuals holding a Class 5 certificate before the effective date of this change will have their Class 5 renewed on the same basis and with the same requirements that existed when it was initially issued.)

~~(a) Recommendation to Issue Certificate: Issuance of the Class 5 certificate usually depends on the written recommendation of the appropriate official(s) of an approved institution with whom the applicant has outlined a Plan of Professional Intent which commits the applicant to a program leading to regular certification.~~

~~(b) Recency Requirements: Class 5 certification also may be granted to an applicant who does not qualify for Class 1, Class 2 or Class 3 certification because of lack of recency. Recency requirements are the same as the requirements for reinstatement of certificates that have been allowed to lapse.~~

(2) Remains the same.

(3) Remains the same.

(4) Remains the same.

(5) Remains the same.

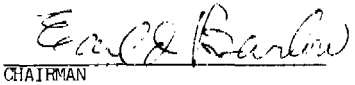
3. The rule is proposed to be amended to bring Board of Public Education certification procedures into line with statutory change and to reduce confusion for applicants by bringing the rule into line with other periods of time for certification.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601 at any time prior to April 21, 1978.

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 Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than April 13, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10 percent or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, 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 amendment is based on sections 75-6002, 75-6003, 75-6005, 75-6006, 75-6008, R.C.M. 1947.



CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State March 15, 1978.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM rule 48-2.18(1)-S1800 Board of Public Education policy statement on special education.	NOTICE OF PROPOSED AMENDMENT OF ARM RULE 48-2.18(1)-S1800 Board of Public Education policy statement on special education. NO PUBLIC HEARING CONTEMPLATED.

TO: All interested persons

1. On April 24, 1978, the Board of Public Education proposes to amend ARM Rule 48-2.18(1)-S1800, Board of Public Education policy statement on special education.

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

48-2.18(1)-S1800 BOARD OF PUBLIC EDUCATION POLICY STATEMENT. (1) The Board's policy statement regarding special education services is cited below:

~~(a) "In accordance with the provisions of Chapter 78 of Title 75, R.C.M. 1947, and in keeping with the federal Education of All Handicapped Children Act, P.L. 94-142, this policy, as recommended by the Superintendent of Public Instruction, and adopted by the Board of Public Education, requires a planned and coordinated program of special education in the state.~~

~~(b) The special education program operating in Montana shall provide opportunities for comprehensive services to handicapped children and youth. The program, supervised and coordinated by the Superintendent of Public Instruction, shall be developed in cooperation with school district personnel and others from the educational community. The program shall incorporate the many educational arrangements which can be designed to integrate young handicapped persons, whenever possible, into the regular educational program and eventually into the mainstream of society. The program shall assure that careful and systematic procedures are used to identify and diagnose young handicapped persons. Finally, the special education program shall include measures to assure fiscal accountability of funds provided for the operation of special education.~~

~~(c) Consistent with Section 1 of Article X of the Montana Constitution adopted in 1972, the Board of Public Education maintains that the special education program shall assist all handicapped children and youth in developing their maximum education and social potential. In addition, the Board of Public Education encourages special education programs that enable handicapped youth to become partially or completely self-sufficient in our increasingly complex society. It is the intent of the Board of Public Education in adopting this policy that young handicapped persons will be given opportunities to become contributing, confident, dignified and self-reliant human beings. This Board of Public Education policy is based on the premise that the right of a young handicapped person to the special education he or she needs is as basic as the right of any other young citizen to an appropriate education in the schools of Montana."~~

(a) It shall be the policy of the Board of Public Education to foster the development of special education services for all handicapped children with the opportunity to become confident, dignified, and self-sufficient members of society. To accomplish this goal, handicapped children are to be educated with non-handicapped children in the district in which they live. A child may be removed from the regular education program only when

documentation shows that the child cannot be educated in the regular program. The regional services program is to provide special education services to handicapped children who cannot efficiently be served by a program operated by an individual school district or by several cooperating school districts. Regardless of where a child receives educational services, the district where the child lives is responsible for the educational program of the child.

(b) Special education services shall include the provision of due process to ensure the rights of handicapped children. The goal of due process is to prevent harm to children, parents and society. Due process shall include protections regarding the following:

(i) identification of handicap,

(ii) development of education program,

(iii) placement with the education program and

(iv) annual review of education program and placement.

(c) In order that a free, appropriate, public education be provided all children, all persons who can assist in identifying the handicap and determine services to meet the needs of a child shall participate in the placement process.

Child study teams shall be used to identify handicapped children, and instructional teams shall be used to plan individual education programs. Parents shall be involved in the child study team process and shall be included in the development of the individual education plan.

To assure correct identification of handicaps and proper educational placement, children shall have the opportunity for a comprehensive evaluation. This evaluation shall include educational, psychological, medical and other relevant testing which is tailored to assess specific areas of educational need for all referred children. Tests are to be selected and administered so as best to ensure the results reflect accurately the child's true educational status. If any question exists that an evaluation is inaccurate, a child is entitled to an outside independent evaluation.

(d) The Superintendent of Public Instruction will report to the Board of Public Education each December the number of special education programs in the state, number of students enrolled in the programs, and the total budget costs anticipated for the programs for the current school year.

3. The rule is proposed to be amended to bring the special education rules into conformity with changes made by the 1977 legislature in special education statutes, Title 75, Chapter 78.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601 at any time prior to April 21, 1978.

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 Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than April 13, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10 percent or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, 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 amendment is based on section 75-7802, R.C.M. 1947.

Emily Bach
CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State March 15, 1978.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules outlining Board of Public Education policies and Office of Public Instruction administrative procedures for vocational education in Montana.	NOTICE OF PROPOSED ADOPTION OF RULES outlining Board of Public Education policies and Office of Public Instruction administrative procedures for vocational education in Montana. NO PUBLIC HEARING CONTEMPLATED.

TO: All interested persons

1. On April 24, 1978, the Board of Public Education and the Office of Public Instruction propose to adopt rules outlining Board of Public Education policies and Office of Public Instruction administrative procedures for vocational education in Montana.

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

3. The proposed rules provide in summary general information and definitions, governance and administration, vocational education personnel, vocational education programs, vocational education funding and vocational education program evaluation. A copy of the entire proposed rule may be obtained by contacting Dr. Larry C. Key, Administrator, Vocational and Occupational Services Department, Office of Public Instruction, Helena, Montana 59601.

4. The rules are proposed to provide policies and procedures for the governance and administration of vocational education in Montana's public schools.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Dr. Larry C. Key, Administrator, Vocational and Occupational Services Department, Office of Public Instruction, Helena, Montana 59601 at any time prior to April 21, 1978.

6. 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 Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than April 13, 1978.

7. If the agency receives requests for a public hearing on the proposed rule from more than 10 percent or 25 or more persons who are directly affected by the proposed rule, or from the Administrative Code Committee of the legislature, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the agencies to make the proposed rules is based on Title 75, Chapter 77, R.C.M. 1947.

Georgia Rice
SUPERINTENDENT OF
PUBLIC INSTRUCTION

Earl J. Barlow
CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State March 15, 1978.

MAR Notice No. 48-3-5
MAR Notice No. 48-2-8

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM rule 48-2.26 (34)-S26500 relating to student fees and nonresident fees at postsecondary centers.	NOTICE OF PROPOSED AMENDMENT OF ARM RULE 48-2.26(34)-S26500 relating to student fees and nonresident fees at postsecondary centers. NO PUBLIC HEARING CONTEMPLATED.

TO: All interested persons

1. On April 24, 1978, the Board of Public Education proposes to amend ARM Rule 48-2.26(34)-S26500 relating to student fees and nonresident fees at postsecondary centers.

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

48-2.26(34)-S26500 STUDENT FEES AND NONRESIDENT ~~FEES~~ TUITION

(1) Remains the same.

(2) The following quarterly student fees have been approved by the Board of Education.

Student application fee	$ 10.00
~~Legislative student fee . . . . . ~~	~~17.50~~
Board of Public Education ~~student~~ fee	~~17.50~~ 40.00
Nonresident ~~fee~~ tuition	150.00
~~Miscellaneous individual student fee for supplies and materials . . . . . ~~	~~5.00~~
	~~$ 550.00~~

(3) Nonresident ~~Fees~~ Tuition Students who have not resided in the State of Montana for at least twelve (12) months immediately prior to entering a state vocational-technical center and whose parents are not residents of the state are required to pay nonresident ~~fees~~ tuition.

3. The rule is proposed to be amended because the Board of Public Education eliminated miscellaneous individual student fees and, upon the recommendation of the Legislative Fiscal Analyst and the Office of Budget and Program Planning, acted to consolidate the legislative fee and the board fee into one fee called the Board of Public Education fee.

4. Interested parties may submit their data, views or arguments concerning the amended rule in writing to Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601 at any time prior to April 21, 1978.

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 Earl J. Barlow, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than April 13, 1978.

6. If the agency receives requests for a public hearing on the proposed amendment from more than 10 percent or 25 or more persons who are directly affected by the proposed amendment, or from the Administrative Code Committee of the legislature, 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 amendment is based on section 75-7714, R.C.M. 1947.

Earl L. Barlow
CHAIRMAN
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State March 15, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule ARM 2-2.11(1)-S11000, Subsection (9)(i) and (9)(ii) concerning the insignia fees for factory-built buildings.	NOTICE OF AMENDMENT to Insignia Fees for Factory-Built Buildings.

TO: All Interested Persons:

1. On December 22, 1977, the Department of Administration published notice of proposed amendments to the rules concerning insignia fees for factory-built buildings. The purpose of these rules is to simplify the present system of having one fee that covers construction, electrical, and plumbing inspections rather than charging for each inspection separately. Notice of the proposed amendment was published on pages 1075-1076 of the Montana Administrative Register, issue number 12.

2. A formal hearing was held on January 25, 1978 and following receipt of comments by various interested persons, the Department has amended Rule ARM 2-2.11(1)-S11000, Subsection (9)(i) and (9)(ii) as proposed.

3. This rule is being amended by the Department of Administration in order to simplify its operation and improve service to the public. The authority for the change is found in Sections 69-2124 and 69-2125, R.C.M. 1947.

4. No objections were received from persons attending the hearing nor by mail.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules ARM 2-2.11(2)-S11100, 2-2.11(2)-S11110, 2-2.11(2)-S11120, 2-2.11(2)-S11130, 2-2.11(2)-S11140, 2-2.11(2)-S11150, 2-2.11(2)-S11160 concerning the State electrical code enforcement program.	NOTICE OF THE ADOPTION OF RULES ARM 2-2.11(2)-S11100 through 2-2.11(2)-S11160 pertaining to the State Electrical Code.

TO: All Interested Persons:

1. On December 22, 1977, the Department of Administration published notice of proposed adoption of new rules concerning the adoption by reference of the National Electrical Code, 1978 Edition, along with amendments thereto to be known as the State electrical code. The purpose of this adoption is to provide minimum requirements and standards for the installation, alteration, addition, repair, relocation, replacement, maintenance or use of electrical systems so as to protect the public health, safety, and welfare. The code is written and published by the National Fire Protection Association. Notice of the adoption was published on pages 1077-1078 of the Montana Administrative Register, issue number 12.

2. A formal hearing was held on January 25, 1978, and following receipt of comments by various interested persons, the Department has adopted the proposed State electrical rules with the following change:

2-2.11(2)-S11110 ELECTRICAL PERMIT (1) An electrical permit is required for any installation in any new construction or remodeling or repair. EXCEPTION: Maintenance of electrical wiring, circuits, apparatus or equipment by any corporation, partnership or association, as a part of its plant or operations. ~~and done under the direct supervision of a regularly employed master electrician.~~

The remainder of this section will stay the same.

3. This code and rules are being adopted by the Department of Administration in order to comply with the legislative mandate of Chapter 504, Montana Session Laws, 1977, Sections 66-2802, 66-2805.1, 69-2111, 82A-1607 and 69-2111.

4. Several objections were received from persons attending the hearing and by mail. One of the objections received resulted in the change covered in item 2 above.

(a) Charles Powell, Vice President of C. Powell Electric and member of the State Electrical Board, asked that a sentence be added to the rules stating, "All work shall be done under a licensed electrician according to Section (_____) of the Montana Safety Law." First, the rules proposed for adoption are only for code enforcement and have nothing to do with the licensing law. Second, the existing law covering licensing does not require all work to be done by a licensed electrician and therefore, such a rule would be exceeding the legislative intent.

(b) Mr. Ron Callantine, MIECA, Bozeman, Montana, opposed the requirement of GFI breakers in garages. The Department feels that the model code has given adequate consideration to its contents and that GFIs in garages are necessary to protect the public's health and welfare.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of Rules ARM 2-2.11(6)-S11400, 2-2.11(6)-S11410, 2-2.11(6)-S11420 concerning the State plumbing code enforcement program.	NOTICE OF THE ADOPTION OF RULES ARM 2-2.11(6)-S11400 through 2-2.11(6)-S11420 pertaining to the State Plumbing Code.

TO: All Interested Persons:

1. On December 22, 1977, the Department of Administration published notice of the proposed adoption of new rules concerning the adoption of the Uniform Plumbing Code, 1976 Edition, along with amendments thereto to be known as the State plumbing code. The purpose of this adoption is to provide minimum requirements and standards for the erection, installation, alteration, addition, repair, relocation, replacement, maintenance or use of plumbing systems so as to protect the public health, safety and welfare. The code is written and published by the International Association of Plumbing and Mechanical Officials. Notice of the adoption was published on pages 1073-1074 of the Montana Administrative Register, issue number 12.

2. A formal hearing was held on January 25, 1978, and following receipt of comments by various interested persons, the Department has adopted the proposed rules with the following addition to Rule ARM 2-2.11(6)-S11410 (1)(b):

(xvii) Appendix C, Minimum Plumbing Facilities, pages 140-141. Delete.

(xviii) Appendix I, Private Sewage Disposal Systems, pages 161-172. Delete.

3. This code is being adopted by the Department of Administration in order to comply with the legislative mandate of Chapter 504, Montana Session Laws, 1977, Sections 66-2416, 66-2427, 69-2119, 29-2124 and 69-2111.

4. Numerous objections were received from persons attending the hearing as well as by mail regarding the approval of ABS pipe as contained in Section 401 of the Uniform Plumbing Code. Another item receiving objection, from several individuals, was to the wording in the Uniform Plumbing Code regarding the allowable height of plastic pipe installations. The Uniform Plumbing Code states that plastic pipe may be used in buildings two stories in height while those objecting wanted Section 401 to be amended to read, "not to exceed 36 feet in vertical height from the invert of the sanitary sewer, where it leaves the building to the top of the stack." The following explanation is offered so as to explain the Department's reasoning for not changing the Uniform Plumbing Code in light

of these objections:

(a) Although numerous persons objected to the adoption of the use of ABS pipe, the number of persons wanting the incorporation of ABS was greater.

(b) Presently, the majority of the states are accepting ABS pipe. The information we are able to gather shows that 41 to 47 states presently accept ABS pipe. By Montana not accepting ABS, interstate trade is hampered in regard to modular construction.

(c) Those objecting to the use of ABS pipe furnished no scientific based data in support of their objections. Mentioned was the fire hazard of ABS, problems with expansion and the inability of ABS to handle household chemicals.

(i) Fire Hazard - The Department is in receipt of fire tests performed at Ohio State University and the University of California which show that plastic pipe did not affect the fire resistance of walls and in fact might improve the fire resistance of walls due to its low heat transmission and the fact that its melting seals openings. It is important to note that wood has an ignition point of 450 degrees F while ABS has an ignition point of 871 degrees F.

(ii) Problems With Expansion - The Uniform Plumbing Code contains installation standards for ABS pipe (IAPMO IS 5-74) which in Section 5.8 addresses thermal expansion and how it should be handled. All materials do undergo changes due to temperature variations; however, the stresses developed in plastic pipe are generally less than those developed in metal.

(iii) Inability of ABS to Handle Household Chemicals - Since 1959, more than 1½ million dwellings have had ABS pipe in use successfully. ABS when highly stressed is susceptible to certain chemicals; however, metal under stress will react similarly. The concentrations of chemicals normally entering drains will not affect ABS. The Department is in receipt of a report by R & G Sloane Mfg. Div., Atlantic Research, which addresses the corrosion of ABS.

(d) Another objection was made by several material supply companies who objected to the need to stock both ABS and PVC pipe. The inclusion of ABS pipe in the code in no way mandates the stocking of the material by supply houses; such an argument has no merit as to ABS's acceptability as a plumbing material.

(e) Concern was expressed about the confusion that could be caused in the binding agents for PVC and ABS and the possibility of using the wrong agent on the wrong material. No more inspection difficulties are caused by this problem than is caused by making sure proper fluxes and solder are used in joining copper pipe.

(f) Reference was made to comparative costs between ABS and PVC. This is not a safety consideration and therefore is not addressed.

(g) ABS is accepted by FHA, International Association of Plumbing and Mechanical Officials, Southern Standard Plumbing Code of the Southern Building Code Congress, and the Building Officials Conference of America. In addition, the Montana Bui Building Codes Advisory Council approved the inclusion of ABS into the code.

(h) Regarding the objection to using Section 401 of the Uniform Plumbing Code which states that ABS or PVC installations are limited to buildings two stories in height rather than a 36 feet stack height, the Department has experienced difficulty with the 36 feet rule and feels that the standard code language is being utilized successfully in other jurisdictions. Therefore, the Department proposes to use the code unamended. The Uniform Building Code, which is used in conjunction with the Uniform Plumbing Code, is very clear on story height and the definitions contained therein have been used successfully for many years.

(i) Evidence used in making the decision regarding ABS pipe is as follows:

(i) "Stress Corrosion--So What's New?", R & G Sloane Mfg. Div., Atlantic Research.

(ii) A Special Report to the Members of IAPMO, Performance of ABS and PVC DWV Assemblies in Simulated Fire Conditions, Plastics Pipe Institute in conjunction with the University of California.

(iii) Fire Testing Plastics, DWV Systems, Plastics Pipe Institute in conjunction with Ohio State University.

(iv) Thermal Expansion and Contraction of Plastic Pipe, Plastics Pipe Institute.

(v) Acrylonitrile-Butadiene-Styrene (ABS) Plastic Piping Design and Installation, Plastics Pipe Institute.

(vi) Thermoplastic Drainage Systems for Residential Applications, Plastics Pipe Institute.

(vii) Uniform Plumbing Code, 1976 Edition, IAPMO Installation Standards.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule ARM 2-2.11(6)-S11440 concerning the enforcement of the elevator code.	NOTICE OF THE AMENDMENT OF RULE ARM 2-2.11(6)-S11440 pertaining to the Elevator Code Enforcement Program.

TO: All Interested Persons:

1. On December 22, 1977, the Department of Administration published notice of proposed amendment of a rule concerning the elevator code enforcement program. The rule changes the inspection of hydraulic cylinders for elevators from 12 months to 36 months, covers accident reports, covers reinspections, covers certificates, and covers appeals, variances and violations. Notice of the proposed amendment was published on pages 1071-1072 of the Montana Administrative Register, issue number 12.

2. A formal hearing was held on January 25, 1978, and following receipt of comments by various interested persons, the Department has amended the proposed rule changing subsection (4)(b)(iii) as follows:

(iii) Temporary Certificate--~~After the annual inspection by the Division reveals a unit has deficiencies needing immediate attention, a temporary certificate will be issued for a specified period of time by which time corrections must be made. Before the temporary certificate is issued, the annual certificate of inspection fee must be paid. At the end of the specified period, the unit will be reinspected and a reinspection fee will be charged, as covered above.~~ Prior to issuance of a final certificate where location of a new elevator is such that a final inspection cannot be performed within a reasonable time, a temporary certificate may be issued upon payment of the annual certificate inspection fee. A temporary certificate may be withdrawn at any time, for cause, by the Building Codes Division.

3. This rule is being amended by the Department of Administration to clarify areas in the existing elevator code enforcement program as provided for in Section 69-2111, R.C.M. 1947.

4. Mr. R. J. Kargel, National Elevator Services, submitted some suggested changes to the proposed rules, one of which prompted the change listed in item 2 above. Mr. Kargel suggested changing the definition of subsection (4)(b)(iv) Unsafe Certificate, and adding a definition for sealed elevators. The Department feels the proposed rules governing unsafe certificates were better since Mr. Kargel's suggested changes actually allows the use of an elevator after it has been determined to be an imminent hazard.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State March 20, 1978.

DEPARTMENT OF AGRICULTURE

Amendment of Rules 4-2.2(1)-P200, Model Procedural Rules; 4-2.2(1)-P210, Exceptions and Additions for Pesticide Division; 4-2.2(1)-P240, Exceptions and Additions for Feed and Fertilizer Division; and 4-2.2(1)-P250, Exceptions and Additions for Grain Laboratory Division.

1. Department of Agriculture published Notice 4-2-45 of a proposed Amendment to ARM 4-2.2(1)-P200, 4-2.2(1)-P210, 4-2.2(1)-P240 and 4-2.2(1)-P250 on November 26, 1977 at page 610 and 611, Montana Administrative Register; 1977 issue number 10.

2. Statement of reasons in support of the amendments is that it is necessary to correct the cites in the above mentioned rules becuase of repeal or transfer of specific sections of the Revised Codes of Montana.

No testimony or comments were received.

3. These rules have been amended as proposed with no language changes and become effective on March 25, 1978.

BEFORE THE STATE AUDITOR
OF THE STATE OF MONTANA

In the matter of the adoption of a rule pertaining to wage assignments	))))	NOTICE OF ADOPTION OF RULE 6.14.100 ON PAYROLL DEDUCTION ASSIGNMENTS

TO: All Interested Persons

1. On January 25, 1978, the State Auditor published notice No. 6-2-8 proposing the adoption of a new rule on assignment of payroll deductions to financial institutions, at page 3 of the 1978 Montana Administrative Register.

2. No comments of any kind were received and the State Auditor has adopted the rule as proposed, and will number it ARM 6.14.100.

3. The reason for adopting the rule is to cut down unnecessary paperwork by dispensing with the execution of forms 513 and 514 in situations where the payroll status form can be modified to satisfy statutory requirements for assigning a portion of one's wages to a financial institution by means of payroll deduction.

E. V. "SONNY" OMHOLT
State Auditor

CERTIFIED TO THE SECRETARY OF STATE March 6th, 1978.

Amendment of Rule 12-2.26(1)-S2600 PUBLIC USE REGULATION

1. The Fish and Game Commission published Notice No. 12-2-51 of a proposed amendment to ARM 12-2.26(1)-S2600 regarding public use regulations on January 25, 1978, at page 6, Montana Administrative Register; 1978 issue Number 1.

2. The commission has implemented this amendment to correct the color designation of buoys to conform with the present standards and to incorporate Montana State Golden Years Pass along with other camping permits.

3. No testimony or public comments were received.

4. The commission has adopted the foregoing amendment as proposed with no changes in the text as it appears in the published notice.

Adoption of Rule 12-2.10(1)-S1032 GENERAL ICE FISHING REGULATIONS

1. The Fish and Game Commission published Notice No. 12-2-53 of a proposed new rule ARM 12-2.10(1)-S1032 relating to general ice fishing regulations on January 25, 1978, at page 10, Montana Administrative Register; 1978 issue Number 1.

2. The commission has implemented this rule in order to replace numerous repetitious sections with one comprehensive rule, adding additional waters to be regulated by inclusion in paragraph (1) and, when necessary, in paragraph (6).

3. Public comment was received regarding the removal of shelters from Georgetown Lake on a daily basis. Commentors felt there is possibility of abuse of this requirement when fishing is allowed on a 24-hour basis. The 24-hour fishing rule has been in effect for three years without enforcement difficulties; therefore no changes were made.

4. The commission has adopted the foregoing rule as proposed with no changes in the text as it appears in the published notice.

Repeal of Rules 12-2.10(1)-S1000 through 12-2.10(1)-S1031 RELATING TO ICE FISHING and Rules 12-2.10(14)-S10140 through 12-2.10(14)-S10170 RELATING TO SANITARY AND PUBLIC HEALTH REGULATIONS.

1. The Fish and Game Commission published Notice No. 12-2-52 of the proposed repeal of rules ARM 12-2.10(1)-S1000 through 12-2.10(1)-S1031 relating to ice fishing and rules ARM 12-2.10(14)-S10140 through 12-2.10(14)-S10170 relating to sanitary and public health regulations on January 25, 1978, at page 8, Montana Administrative Register; 1978 issue Number 1.

2. The commission has repealed these rules to omit repetitious statement of penalty provisions pursuant to HB44, enacted in 1977, amending Section 26-324, R.C.M. 1947; proscription of littering activity by administrative rule

is unnecessary since Section 32-4410, R.C.M. 1947, is enforceable by game wardens (see 3rd paragraph of that section); furthermore, the present rules appear to be ineffective as to public health and sanitation since they were never reviewed and approved pursuant to Section 26-104.9(2), R.C.M. 1947. The rules relating to ice fishing are repealed to dispense with repetitious language which is being implemented, instead, in one comprehensive rule.

3. No testimony or public comments were received.

4. The commission duly repealed the foregoing rules in accordance with the Montana Administrative Procedures Act.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(10)-S10030 relating to effective dates of initial, additional and continued claims.	))))	NOTICE OF THE AMENDMENT OF RULE (Initial, Additional, and Continued Claims)

TO: All Interested Persons

1. On November 25, 1977, the Employment Security Division published notice of the proposed amendment to Rule 24-3.10(10)-S10030 on the definition of effective date of initial, additional and continued claims at pages 856 and 857 of the Montana Administrative Register; 1977 Issue No. 11.

2. The division heretofore amended this rule as the same appeared to be in conflict with Section 87-148(d), Revised Codes of Montana, 1947, which describes the benefit year.

No testimony or comments were received.

3. The amendment of this rule has been adopted as proposed and becomes effective March 25, 1978.

FRED BARRETT, Administrator
Employment Security Division

By _____
MOODY BRICKETT, Attorney
Employment Security Division
Department of Labor and Industry

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF ABSTRACTERS

Adoption of Rule 40-3.6(2)-P615 CITIZEN PARTICIPATION RULES-INCORPORATION BY REFERENCE

1. The Board of Abstracters published Notice No. 40-3-6-2 of a proposed adoption of new rules relating to public participation in board decision making on January 25, 1978, at page 48, MAR 1978, Issue No. 1.

2. The adoption incorporates, as rules of the board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless other wise specified.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF HORSE RACING

Adoption of Rule 40-3.46(2)-P4615 CITIZEN PARTICIPATION RULES-INCORPORATION BY REFERENCE

1. The Board of Horse Racing published Notice No. 40-3-46-13of a proposed adoption of new rules relating to public participation in board decision making on January 25, 1978, at page 54, MAR 1978, Issue No. 1.

2. The adoption incorporates, as rules of the board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF MEDICAL EXAMINERS

Adoption of Rule 40-3.54(2)-P5415 CITIZEN PARTICIPATION RULES-INCORPORATION BY REFERENCE

1. The Board of Medical Examiners published Notice No. 40-3-54-13 of a proposed adoption of new rules relating to public participation in board decision making on January 25, 1978, at page 56, MAR 1978, Issue No. 1.

2. The adoption incorporates, as rules of the board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-Chapter 14, of the Administrative Rules of Montana.

Wherever the word 'department' is used refers specifically to the Department of Professional and Occupational Licensing unless otherwise specified.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF NURSING

Adoption of A Rule Implementing Sections
66-1228 and 66-1232 R.C.M. 1947

1. The Board of Nursing published Notice No. 40-3-62-4 of a proposed adoption of a rule implementing sections 66-1228 and 66-1232 R.C.M. 1947 on January 25, 1978, at Page 58, MAR 1978, Issue No. 1.

2. The rule as proposed was designed to require that applicants for licensure by endorsement file affidavits verifying current licensure in another state and indicating that license number. The affidavit is required where the applicant seeks employment pending licensure as provided for in Section 66-1228 and 66-1232 R.C.M. 1947. This rule simply implements the above cited statutory provisions which require licensure in another state for application by endorsement.

Since having proposed that rule the Board has determined that the foregoing stated purpose can adequately be implemented through amendment of existing rule No. 40-3.62(6)-S62035 Licensing by Endorsement, Registered, Professional and Licensed Practical Nurses. Sub-section (2)(a) thereof authorizes the Board Secretary to issue temporary permits. Therefore, the above mentioned proposed new rule may be adequately stated by amendment of Sub-section (3)(a) deleting such in its entirety and replacing it with the exact same language proposed as a new rule. The Board has thus made its rule change in this fashion.

3. No requests for hearing were made or comments received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF PHARMACISTS

Amendment of ARM 40-3.78(6)-S78020 SET AND APPROVE REQUIREMENTS-LABELING

1. The Board of Pharmacists published Notice No. 40-3-78-17 of a proposed amendment to ARM on January 25, 1978 at page 60, MAR 1978, Issue No. 1.

2. The amendment imposed a labeling requirement which was inadvertently eliminated when the 1977 Legislature amended Section 66-1523 R.C.M. 1947 regarding substitution. The full text of the amendment is set out in the notice.

3. No requests for hearing were made or comments received.

4. The amendment of the rule has been made exactly as proposed.

Amendment of ARM 40-3.78(6)-S78030 STATUTORY RULES AND REGULATIONS-DANGEROUS DRUGS

1. The Board of Pharmacists published Notice No. 40-3-78-17 of a proposed amendment to ARM on January 25, 1978 at page 60, MAR 1978, Issue No. 1.

2. The amendment added the drugs prazepan and dextropropoxyphene as Schedule IV Drugs and Loperamide as a Schedule V Drug.

3. Such drugs were so controlled by the Federal Government and the Board has likewise controlled them as required by Section 54-302 R.C.M. 1947.

3. No requests for hearing were made or comments received.

4. The amendment of the rule has been made exactly as proposed.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 42-2.12(6)-S12110 relating to combined populations of municipalities.	))))	NOTICE OF PROPOSED REPEAL OF RULE 42-2.12(6)-S12110 RELATING TO THE REGULATION CONCERNING COMBINED POPULATIONS OF MUNICIPALITIES.

TO: All Interested Persons:

1. On January 25, 1978, the Department of Revenue published notice of a proposed repeal of a rule concerning combined populations of municipalities at pages 62-63 of the 1978 Montana Administrative Register, Issue 1.

2. The agency has repealed Section (4) of 42-2.12(6)-S12110 as proposed.

3. The comments and testimony were in favor of the proposed agency action. Further, the Montana Administrative Code Committee recommended on 11-26-77 that sub-section 4 be deleted as not being in conformance with the statutory language found in Section 4-4-202, R.C.M. 1947.

The repeal of this rule is to become effective on March 25, 1978.

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State March 15, 1978.

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

In the matter of the adoption of rules MAC 46-2.10(46)-S103000, 46-2.10(46)-S103010, 46-2.10(46)-S103020, 46-2.10(46)-S103030, 46-2.10(46)-S103040 and 46-2.10(46)-S103050 pertaining to emergency situations in counties.	NOTICE OF PUBLIC HEARING ON ADOPTION OF RULES PERTAINING TO PROVISIONS FOR EMERGENCY SITUATIONS IN COUNTIES.

TO: All Interested Persons

1. On November 25, 1977, the State Department of Social and Rehabilitation Services published notice of a proposed adoption of rules concerning provisions for emergency situations in counties at page 929 of the Montana Administrative Register, issue number 11.

2. The agency has adopted the rule with the following minor change:

46-2.10(46)-S103000 EFFECT AND DURATION OF EMERGENCY PROVISIONS (1) The emergency provisions of this sub-chapter shall take precedence over and govern any other rule or rules of the Department which are directly or indirectly in conflict with the emergency provisions.

(2) The emergency provisions of this sub-chapter shall have effect in a county during the pendency of an emergency situation which impairs the effective functioning of that County's Department of Public Welfare. Upon the termination or cessation of an emergency situation, the emergency provisions shall be suspended and shall have no force and effect.

(3) The Director of the Montana Department of Social and Rehabilitation Services may declare that an emergency situation exists in a county when he has reason to believe that the effective functioning of that County's Department of Public Welfare has been impaired due to ~~strike~~, labor dispute, or other labor activity, fire, flood, earthquake, or any other natural or man-made disaster.

(History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103010 APPLICATIONS GENERALLY (1) The County Department of Public Welfare will only accept and process applications for public assistance of persons in emergency need. The County Department of Public Welfare may determine who is in emergency need.

(2) The County Department of Public Welfare may determine the date of application for public assistance from evidence presented by reasonable sources indicating

the date upon which the applicant expressed a desire to apply. The date upon which the applicant expressed a desire to apply but was prevented from doing so by the emergency shall be deemed to be the date of application.

(3) The County Department of Public Welfare shall not be required to accept or process new applications for food stamps. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103020 PUBLIC ASSISTANCE PAYMENTS GENERALLY (1) The County Welfare office shall not be required to modify any existing public assistance grant. The grant amount may remain at the payment level in effect immediately prior to the emergency.

(2) Any excess payment issued to a public assistance recipient by reason of the emergency shall not be treated as an overpayment, nor shall it be subject to recovery. An under-payment issued during the emergency shall not be subject to correction. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103030 FOOD STAMPS (1) The County Welfare office may continue to issue Food Stamps to persons already participating in the program. The bonus value shall remain at the certification level in effect immediately prior to the emergency.

(2) The County Welfare office is required to issue Food Stamps only on the basis of need during the emergency. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103040 AID TO DEPENDENT CHILDREN (1) When new ADC applications are approved, advance payments may be issued by the County Department of Public Welfare.

(2) Advance payments shall be issued at the following monthly standard:

One Person	$ 4.00/day	$126.00/month
Two Persons	$ 5.00/day	$163.00/month
Three Persons	$ 7.00/day	$222.00/month
Four Persons	$ 9.00/day	$284.00/month
Five Persons	$10.00/day	$323.00/month
Six Persons	$11.00/day	$342.00/month

$1.00 per day for each additional person. (History: Sections 71-210 and 71-509, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

SOCIAL AND
REHABILITATION SERVICES

46-2.10(46)-S103050 WIN REQUIREMENTS (1) The requirements of registration and participation in the WIN Program shall not be imposed upon any applicant during the pendency of the emergency. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

3. No comments or testimony were received. The agency has adopted the rule to assure that a County in an emergency situation may utilize its manpower and resources effectively in order to provide a minimum level of all welfare benefits and services to the needy of that County.

Director, Social and Rehabilitation Services

Certified to the Secretary of State March 14, 1978.

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

In the matter of the adoption of eleven rules pertaining to reimbursement for skilled nursing and intermediate care services.	) NOTICE OF THE ADOPTION OF) RULE 46-2.10(18)-S11450A,) RULE 46-2.10(18)-S11450B,) RULE 46-2.10(18)-S11450C,) RULE 46-2.10(18)-S11450D,) RULE 46-2.10(18)-S11450E,) RULE 46-2.10(18)-S11450F,) RULE 46-2.10(18)-S11450G,) RULE 46-2.10(18)-S11450H,) RULE 46-2.10(18)-S11450I,) RULE 46-2.10(18)-S11450J AND) RULE 46-2.10(18)-S11450K.

TO: All Interested Persons

1. On December 23, 1977, the State Department of Social and Rehabilitation Services published notice of a proposed adoption of eleven rules concerning skilled nursing and intermediate care services at page 1121 of the 1977 Montana Administrative Register, issue number 12.

2. The agency hereby adopts the portion of the rules that are necessary to meet minimum federal requirements. The adopted material will change the existing retrospective cost system for reimbursement of skilled nursing and intermediate care services into a prospective system with only minor changes in the methods used to determine allowable costs. These rules shall supercede the Manual of Reimbursement for Nursing Home Cost, May, 1974, to the extent it conflicts with the adopted rules.

3. The agency is also issuing a notice of public hearing for adoption of the remaining portions of the prospective system for reimbursement of skilled nursing and intermediate care service. This notice is published in the 1978 Montana Administrative Register, issue number 3.

4. The rules as adopted read as follows:

46-2.10(18)-S11450A REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE 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.

(a) The purpose of the following rules is to meet the requirements of Title XIX of the Social Security Act including Section 249 of Public Law 92-603 and ~~45~~ 42 C.F.R. ~~250~~ 450, while treating the eligible recipient, the provider of services, and the Department fairly and equitably. The rules prescribe rates of payment reasonably adequate to reimburse in full the actual allowable costs of skilled

care and intermediate care facilities that are economically and efficiently operated.

(b) In addition, the system of reimbursement described in these rules is intended to facilitate a transition from the current method of reimbursement to a more comprehensive system of reimbursement ~~by providing the data required to implement such a system.~~ A and to minimize the impact on providers from implementation of the new system. This more comprehensive system is currently being developed by the Department in cooperation with an advisory committee representing the nursing home industry.

(1) The following method of reimbursement shall be effective from ~~March~~ April 1, 1978, to July 1, 1978, for all skilled nursing and intermediate care facilities ~~electing to~~ participateing in the Montana Medicaid Program.

46-2.10(18)-S11450B REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PROSPECTIVE RATES

(1) Reimbursement of the costs of skilled nursing and intermediate care services shall be by means of a prospective rate. The difference between the prospective rate for a rate period and the provider's actual cost for the same period shall constitute a profit or loss to that provider for that period.

(2) The initial prospective rate shall be effective from ~~March~~ April 1, 1978 to July 1, 1979~~8; but shall be adjusted quarterly for inflation and occupancy changes during that period~~.

(3) The prospective rate of reimbursement for a provider shall be based upon the ~~historic~~ operating costs and ~~the historic~~ property costs of the provider, reported in cost reports filed ~~prior to November 1, 1977,~~ for the period ending March 31, 1978, to the extent those costs are allowable under ~~Rule 46-2.10(18)-S11450E and the applicable provisions of Provider Reimbursement Manual, Health Insurance Manual 15, Part I, 1967, as updated, published by the U.S. DHEW, SSA, hereinafter referred to as HIM 15,~~ the Manual of Reimbursement for Nursing Home Cost, May 1974.

(4) The reported allowable ~~historic~~ operating costs of each provider shall be adjusted for inflation ~~to December 31, 1977,~~ by reference to the Consumer Price Index ~~for All Items~~ (CPI) published monthly by the Bureau of Labor Statistics, U.S. Department of Labor in accordance with the provisions of Rule 46-2.10(18)-S11450D(2)(a)(i).

(5) The allowable ~~historic~~ operating cost of the provider shall also be adjusted for the actual effect of increases in the minimum wage on the salaries and benefits paid by the provider in accordance with the provisions of Rule 46-2.10(18)-S11450D(2)(a)(iii).

(6) Subsection (6) deleted.

(7) Subsection (7) deleted.
(8) Subsection (8) deleted.
(9) Subsection (9) deleted.

~~(10)~~(6) The provider's ~~historic~~ allowable per diem property cost shall be added to the above per diem operating costs in accordance with the provisions of Rule 46-2.10(18)-S11450D(2)(b) to reach a prospective per diem rate.

~~(11)~~(7) In no case will the prospective rate exceed the ~~upper~~ private pay limits prescribed in 452 C.F.R. ~~250.30~~ 450.30(b)(6)(iii) which are hereby incorporated and made a part of this rule by reference.

(8) Interim Rates - The interim prospective rate for each provider for the period commencing April 1, 1978 shall be the rate in effect on March 31, 1978. Requests for new interim rates will be processed in accordance with Part II, A, 1 and 2 of the Manual of Reimbursement for Nursing Home Care, May, 1974.

~~(12)~~ Subsection (12) deleted.

(9) The difference between the prospective rate calculated according to subsections 1-7 above, and the interim rates paid according to subsection 8 above shall be recovered or paid as an overpayment or underpayment in accordance with S11450H.

(13) Subsection (13) deleted.

46-2.10(18)-S11450C REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PARTICIPATION REQUIREMENTS (1) The skilled nursing and intermediate care facilities ~~electing to~~ participateing in the Montana Medicaid program ~~must~~ shall meet the following basic requirements to receive payments for services:

(a) Maintain a current license under the rules of the State Department of Health and Environmental Sciences for category of care being provided.

(b) Maintain a current certification for Montana Medicaid under the rules of the Department ~~of Social and Rehabilitation Services~~ for the category of care being provided.

(c) Maintain a current agreement with the Department ~~of Social and Rehabilitation Services~~ to provide the care for which payment is being made.

(d) Have a licensed Nursing Home Administrator or such other qualified supervisor for the facility as statutes or regulations may require.

(e) Accept, as payment in full for operating and property costs, the amounts calculated and paid in accordance with the reimbursement method set forth in these rules.

46-2.10(18)-S11450D REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, RATE DETERMINATION

(1) Prospective rates for each facility are established on the basis of costs reported by each facility for the period ending March 31, 1978, adjusted for non-allowable costs ~~as defined in Rule 46-2.10(18)-S11450E~~, and adjusted for inflation. ~~A management incentive shall be determined by reference to the statewide average of all provider costs, and added to or deducted from the reported costs.~~ Reimbursement shall not, however, exceed the average of customary charges to private patients receiving similar nursing services calculated for the quarter in which a rate is set or adjusted, except that a state or county facility charging nominally may be reimbursed at its ~~actual, reasonable costs~~ rate. Payment rates shall not be set lower than the level which the Department reasonably finds to be adequate to reimburse in full allowable costs of a provider operating economically and efficiently and having no deficiencies.

(2) Reimbursement Formula: Base per diem operating costs allowable ~~pursuant to Rule 46-2.10(18)-S11450E~~ as adjusted for inflation plus per diem property cost equals reimbursement rate.

(a) Base per diem operating cost is the adjusted ~~historical~~ operating cost for the period ending March 31, 1978 with an annual inflation adjustment ~~plus a management incentive~~ plus a minimum wage adjustment.

(i) Adjusted ~~Historical~~ Operating Costs - ~~Historical~~ operating costs for use in setting a provider's Base Per Diem Operating Cost will be determined from cost reports ~~on file at the Montana Department of Social and Rehabilitation Services on November 1, 1977, for the last period in which a final rate was offered by the Department and accepted by the provider.~~ for the period ending March 31, 1978. These costs will be adjusted based on the definitions of allowable cost contained in ~~Rule 46-2.10(18)-S11450E,~~ the Manual of Reimbursement for Nursing Home Cost, May, 1974, and to remove increased wage, salary and benefit expenses in the January 1, 1978, through March 31, 1978, period due to minimum wage adjustment.

(aa) The total allowable ~~historical~~ operating cost less the increased wage, salary and benefit expenses in the January 1, 1978, through March 31, 1978, period due to minimum wage adjustment will be divided by the total days of care for all patients provided during the period covered by the cost report to determine a ~~combined~~ per diem rate.

(ab) The per diem rate will be adjusted for inflation ~~occuring between the end of the cost reporting period and January, 1978,~~ using the ~~All Items~~ Consumer Price Index (CPI) data (published monthly by the Bureau of Labor Statistics, 911 Walnut Street, Kansas City, Missouri

64106). The adjustment percentage shall be based 2/3 on the 1977 change in CPI for All Items (derived by comparing the December, 1976, and December, 1977, figures) and 1/3 by the change in the CPI Medical Component, and has been determined to be 7.5 per cent. This percentage will be multiplied by the average of per diem costs as determined in D(2)(a)(i)(aa) to determine the amount of the inflation adjustment. This amount will be added to each provider's rate as determined in D(2)(a)(i)(aa) to obtain the provider's adjusted historical operating cost. ~~made by increasing the historical operating cost by a percentage equal to the percentage change in the monthly Consumer Price Index for All Items from the final month of the last reporting period in which a final rate was accepted to January, 1978.~~

~~(iii) Management Incentive~~

(aa) Subsection (aa) deleted.

(ab) Subsection (ab) deleted.

(ac) Subsection (ac) deleted.

(ad) Subsection (ad) deleted.

~~(iii)~~(ii) Minimum Wage Adjustment -- An adjustment for inflation shall be made to the ~~historical~~ operating cost of ~~facilities~~ providers affected by the minimum wage increase which ~~becomes~~ became effective January 1, 1978. The adjustment shall reflect the individual ~~facility's~~ providers ~~anticipated percentage~~ increase in salaries, ~~and~~ wages and benefits of employees necessary to bring those employees subject to the minimum wage requirement up to the minimum wage and necessary to maintain a reasonable differential in all employee's salaries. ~~to the extent the required increase exceeds the inflation adjustment provided for in Rule 46-2.10(18)-S11450B(2)(a)(i)(ab).~~ The amount of such costs for the January 1, 1978, through March 31, 1978, period will be divided by the total days of care provided during this period to determine a per diem minimum wage increase.

(b) Property Costs -- Property costs reimbursement will be calculated using historical property costs reported in cost reports ~~on file with the Montana Department of Social and Rehabilitation Services on November 1, 1977, as allowed in Rule 46-2.10(18)-S11450E.~~ for the period ending March 31, 1978.

(i) Property costs are interest, depreciation, property taxes, comprehensive property insurance, utility cost and lease costs to the extent allowable under ~~Rule 46-2.10(18)-S11450E~~ the Manual of Reimbursement for Nursing Home Cost, May, 1974. These costs will be converted to a per diem figure using actual occupancy in the base reporting period. Adjustments to the prospective rate will be made for equipment acquisitions or capital improvements put into service subsequent to ~~the historical cost reporting period but prior to~~ March 31, 1978. ~~A return on owners' net equity for proprietary facilities as~~

~~defined-and-applied-in-Chapter-12-of-HIM-15,-which-is hereby-incorporated-and-made-a-part-of-this-rule-by reference,-will-be-added-to-this-amount. These-costs-will be-converted-to-a-per-diem-figure-using-actual-occupancy in-the-base-reporting-period.~~

(ii) Subsection (ii) deleted.

(iii) Subsection (iii) deleted.

(iv) Subsection (iv) deleted.

~~(c) Inflation-Adjustments.~~

(i) Subsection (1) deleted in its entirety.

(ii) Subsection (ii) deleted in its entirety.

(d) Subsection (d) deleted in its entirety.

(ii) Depreciation recovery under the Manual of Reimbursement for Nursing Home Cost, May, 1974, shall not be modified by this rule.

(c) The prospective rate shall be limited to the average per diem charges to private patients receiving similar services. ~~Within-30-days-after-rate-notification, the-provider-shall-notify-the-Department-of-its-anticipated-schedule-of-charges-to-private-patients.~~ The prospective rate shall ~~then~~ be adjusted to reflect the private pay limitation where applicable. For purposes of comparison, the provider shall classify private patients according to the Department's criteria found in ARM 46-2.10(18)-S11441, S11442, and S11443. If, ~~upon-review of-the-patient-census-reports-for-the-quarter-or-upon~~ it is determined that the provider's projected charges to private patients were erroneous, recovery or payment proceedings will be undertaken immediately in accordance with the provisions of Rule 46-2.10(18)-S11450H.

(f) Subsection (f) deleted.

Rule 46-2.10(18)-S11450E was deleted in its entirety with the following new language substituted:

46-2.10(18)-S11450E REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, ALLOWABLE COSTS

(1) For purposes of determining allowable costs for individual facilities to be utilized in setting the individual facility's prospective rate, the principles governing allowable cost contained in the Manual of Nursing Home Reimbursement May, 1974, shall be applied.

(2) Costs of meeting federal or state certification standards including those outlined in 42 C.F.R. 450.30(a)(3)(iii)(A) are allowable. Cost of meeting new certification standards implemented subsequent to March 31, 1978, shall be added to existing prospective rates.

46-2.10(18)-S11450F REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, CLOSE OUT COST REPORTS

(1) A cost report detailing costs incurred by a provider from the close of the provider's last fiscal year

to ~~February 28,~~ March 31, 1978, shall be filed with the Department no later than June 1, 1978.

(2) A special cost report detailing increased wage, salary and benefit expense in the January 1, 1978, through March 31, 1978, period due to minimum wage adjustments shall also be completed on forms provided by the Department.

(3) ~~(2)~~ The close out cost report may, with the prior approval of the Department, detail costs incurred over a period not to exceed ~~14~~ 15 months prior to ~~February 28,~~ March 31, 1978. Such an extended close out cost report shall be in lieu of the provider's normal year end cost report and the short period cost report for the period from year end to ~~February 28,~~ March 31, 1978.

(4) ~~(3)~~ Audits shall be performed, adjustments made and final settlements reached in accordance with the Manual of Reimbursement for Nursing Home Care, May, 1974, ~~and HIM 15 (1967)~~, except that the Department shall have 180 days from the receipt of the cost report to offer a final rate.

(5) ~~(4)~~ The ~~costs~~ allowed costs shall ~~have no effect on~~ be the basis for the prospective rate.

46-2.10(18)-S11450G REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

(1) Generally accepted accounting ~~methods~~ principles shall be employed in all record keeping and cost finding by a provider.

(2) The accrual method of accounting shall be employed except in government institutions operating on a cash method.

(3) Cost finding means the process of ~~recasting the~~ allocating and prorating the data derived from the accounts ordinarily kept by a provider to ascertain its costs of the various ~~types of~~ services provided. ~~rendered. It is the determination of these costs by the allocation of direct costs and proration of indirect costs.~~ In preparing cost reports, all providers shall utilize the step down method of cost finding described at ~~20~~ 42 C.F.R. 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 Chart of Accounts. The American Health Care Association Chart of Accounts adopted July 1, 1975, as updated is the system to be used to maintain ~~facility~~ provider cost data for cost reporting and auditing verification purposes. The use of the uniform chart of accounts becomes mandatory for participating ~~facilities~~ provider for provider fiscal years beginning on or after

April 1, 1978. ~~the cost report period beginning January 1, 1978.~~

(5) Uniform Financial and Statistical Report. ~~Facility~~ Provider costs are to be reported ~~on an annual basis~~ on the Financial and Statistical Report Form provided by the Department. These reports shall be complete and accurate; incomplete reports or reports containing inconsistent data will be returned to the ~~facility~~ provider for correction.

(a) Subsection (a) deleted in its entirety.

(a)~~(b)~~ Filing Period -- Cost reports must be filed within 90 days after the ~~closing date of the reporting period.~~ end of the provider's fiscal year.

(b)~~(c)~~ Rate Period -- Rates are promulgated ~~annually for the period of July 1 through June 30.~~ quarterly starting with the period April 1, 1978, through June 30, 1978.

(d) Subsection (d) deleted.

(6) Subsection (6) deleted.

(6)(7) Maintenance of Records. Records of financial and statistical information submitted to support and verify cost reports must be maintained by the provider at the facility for ~~four~~ five years after the date a cost report is filed~~.~~, or due whichever is later. The Department shall maintain on file the cost reports submitted by the providers for a period of five years. These reports shall be available to authorized representatives of the Department of Health, Education, and Welfare.

(a) Each ~~facility~~ provider will maintain, as a minimum, a ~~G~~general ~~L~~ledger and the following supporting ledgers and journals: revenue, accounts receivable, cash receipts, accounts payable, cash disbursements, and payroll, patient census records ~~identifying the level of care of all patients individually, all~~ and records pertaining to private pay patients and patient trust funds.

(b) Subsection (b) deleted.

(c) Subsection (c) deleted.

(b)~~(d)~~ All of the above records and documents shall be available at the facility or at a location within Montana where these records are ordinarily kept, subject at all reasonable times to inspection, review or audit by the Department and the U.S. Department of Health, Education and Welfare personnel, or any designated representative of the Department. The ~~facility~~ provider will make all records available as may be necessary for purposes of Legislative post-audit or analysis in accordance with the provisions of Section 9 of HB145 the General Appropriations Act of 1977. Upon refusal of the ~~facility~~ provider to allow access to the above materials costs reimbursed on the basis of unsupported data shall be recovered by the Department.

46-2.10(18)-S11450H REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, OVERPAYMENT AND UNDERPAYMENT (1) Overpayment and Underpayment on ~~initial~~ Prospective Rate.

(a) For most ~~facilities~~ providers the ~~initial~~ prospective rate will be based on a cost report that has received only a desk review. In situations where the Department finds during field audit that the ~~initial~~ prospective rate was based on an erroneous cost report resulting in an overpayment, the Department will notify the provider of the 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 prospective rate and arrange to recover the overpayment by set-off against amounts paid under the adjusted prosptective 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 prospective rate payments with full recovery to be completed with 120 days from date of the initial ~~contact.~~ request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the Department's determination of the overpayment, unless a formal request for a hearing is filed by the provider within 30 days ~~of~~ after notification.

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 within 30 days of the Department's determination of error and adjust the prospective rate accordingly.

(f) All overpayments or underpayments will be accounted for by the Department on the Federal report OA-41.

46-2.10(18)-S11450I REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, NEW FACILITIES (1) New facilities participating for the first time in the program will be given an interim prospective rate based upon the average prospective rate of facilities currently in the program. ~~This interim rate may be increased upon submission by the new facility of an income and expense summary (profit and loss statement) for six months or more and census data consisting of total patient days by level of care.~~

(2) ~~After a minimum of six months of operation, but prior to the earlier of the end of the fiscal year or the completion of a twelve month period of operation, a cost~~

~~report shall be submitted by the facility.~~ A new prospective rate based on the audited cost report will be subsequently determined. ~~within 90 days.~~

(3) Subsection (3) deleted.

46-2.10(18)-S11450J REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, AUDITS, RATE REVIEW

(1) Department audit staff will perform a desk audit of cost statements prior to rate setting and will conduct on-site audits of ~~facility~~ provider records. Where appropriate, audit procedures defined in the Provider Reimbursement Manual, Health Insurance Manual 18 shall be adopted by the Department but the Department shall not be confined to these guidelines and may utilize other methods.

(a) Desk Review. Desk review of cost statements 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 statement to the ~~facility~~ provider for correction.

(b) Field Audits. On-site audits of ~~facility~~ provider detail records will be made to assure validity of reports costs and statistical information. A schedule of on-site audits will be developed so that each participating provider is audited over a three-year period beginning April 1, 1978, (the scheduled receipt date of cost reports for providers whose fiscal reporting periods which began January 1, 1977), and no less than one-third of participating providers are audited each year. After the end of the above three-year period, on-site audits shall be conducted for a minimum of 15% of the participating providers yearly. Five percent of the providers shall be selected on a random sample with the remainder being selected on a basis of exceptional profiles.

(c) Exit Conferences. On conclusion of on-site audit, the auditor shall write a summary of his findings and recommendations. This summary shall be mailed to the provider no later than 10 days after the completion of the on-site audit. Within 10 days of receipt of the written findings or recommendations the provider may request an exit conference. Such conference shall be held no later than 30 days after receipt of request~~. and in all cases shall be held prior to the effective date of a new prospective rate based on the audit.~~

(d) Prospective Rate Review Conferences. Prospective rate review conferences with agency staff may be requested by the provider within 30 days after rate notification. The request for prospective rate review shall identify all items for consideration at the administrative conference by specific reference to the appropriate section of the cost statement. The request for review shall identify the provider representatives who will be present.

The rate review conference, if timely requested,

shall be held no later than 30 days from the receipt of request.

46-2.10(18)-S11450K REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, FAIR HEARING PROCEDURES (1) In the event the provider does not agree with the rates recommended by the Department, the following fair hearing procedures will apply:

(a) The written request for a fair hearing shall be addressed to the Department of Social and Rehabilitation Services, Hearings Officer, ~~Box 4210,~~ Helena, Montana ~~59601~~.

(b) The request shall be signed by the provider or his designee.

(c) The fair hearing request ~~shall be filed~~ must be received not later than the 60th calendar day following the date of the rate notification, or within 30 days of the rate review conference. If it is filed later, justification for the delay must be given to the hearings officer who, for good cause, may waive the time limit.

(d) The fair hearing request shall identify the individual settlement items and amount in disagreement, give the reasons for the disagreement, and furnish substantiating materials and information.

(e) The hearings officer will fix a time and place for the prehearing conference, and will mail notices thereof to the provider and other parties not less than ten days prior to the conference date. The notice will state the purpose of the prehearing conference and the issues to be resolved, stipulated to, or excluded. The hearings officer may waive the prehearing conference.

(f) The hearings officer will fix a time and place for the hearing, and will mail notices thereof to the provider and other parties not less than ten days prior to the hearing date.

(g) The hearings officer will reduce his decision to writing within ten days of complettion of the hearing based upon evidence and other material presented at the hearing.

(h) In the event the provider or Department disagrees with the hearings officer's decision, a Notice of Appeals may be submitted to the Board of Social and Rehabilitation Appeals with ten days of the hearings officer's decision. The Notice of Appeals shall set forth the specific grounds for appeal.

(i) All evidence in the record and offers of proof shall be transmitted to the ~~Appeals~~ Board by the hearings officer. The decision of the Board shall be based solely on the record transmitted by the hearings officer. A legal brief or a legal argument may be presented personally or through a representative of the provider to the Board.

(j) The Board shall reduce its decision to writing

and mail copies to the providers within ten days of completion of the hearing. The provider shall be notified of its right to judicial review under the provisions of Section 82-4216, R.C.M. 1947.
(k) Subsection (k) is deleted in its entirety.

5. On December 23, 1977, the Department gave notice of a hearing to be held on eleven rules governing reimbursement for skilled nursing and intermediate care. On January 20, 1978, a public hearing was held at which time comment was received on the eleven rules proposed by the Department.

On February 25, 1978, the Director of SRS appointed an advisory committee, representative of the nursing home industry, to assist the Department in formulating rules. As a result of comments received at the hearing and the suggestions of the advisory committee, the Department has agreed to postpone implementation of the comprehensive reimbursement system contemplated in the eleven rules on which hearing was held.

A portion of the rules which are necessary to implement a prospective system of reimbursement and necessary to satisfy minimum federal requirements upon which hearing was held have been adopted by the Department. The applicable portions of the May, 1974, Manual of Reimbursement for Nursing Care governing allowability of costs rate setting and retroactive adjustments based upon audit have been continued in effect.

At the hearing on January 20, 1978, numerous comments were received upon the proposed rules. The Department has fully considered those comments which have application to the rules upon which hearing was held and which have been adopted and responds to those comments as follows:

Comment was received that the historical cost data to be utilized in rate setting was derived from cost reports which could be as much as one year old. This unfairly penalized certain facilities due to the particular fiscal year used by those facilities. In addition, the adjustment of historical costs using the Consumer Price Index did not fairly reflect the actual inflation rate experienced in the nursing home industry.

Response: The rule as adopted provides that the prospective rate will be based on the current interim rate paid to individual providers and will be adjusted retroactively upon the basis of cost data submitted for the period ending March 31, 1978. The cost data utilized will thus acurately represent the current costs of providing services to Medicaid patients.

Comment was received that certain elements of property costs were not included in the provisions governing property costs, and that the overall treatment of property costs discouraged investment in and transfer of nursing care facilities.

Response: The rule as adopted treats property costs in the same manner in which they have been treated in the past under the May, 1974, Manual of Reimbursement for Nursing Home Care. In addition, costs such as utility costs, which have not previously been considered property

costs, will now be treated as property costs.

Comment was received that the minimum wage adjustment provided in the proposed rules did not adequately reflect the increased costs to providers as a result of increased benefits and increased salary costs of employees not governed by the minimum wage requirements.

Response: The rules as adopted provide that increases in salary costs as a direct result of the minimum wage increase and as a result of an increase in benefits and a "ripple effect" will be compensated to the extent such increases are necessary and reasonable in amount. The cost data provided for the period ending March 31, 1978, will provide the basis for the adjustment to rates.

Comment was received that the inflation adjustment provided for in the proposed rules did not accurately reflect the cost increases experienced by providers.

Response: The rules as adopted provide an inflation adjustment based on the Consumer Price Index For All Items and the Medical Cost Component of the Consumer Price Index. The inflation adjustment so provided will apply from April 1, 1978, the initial effective date of the prospective rates. The inflation adjustment so applied will thus compensate providers for cost increases experienced during the effective period of these rules.

Numerous comments were received regarding the provisions of the proposed rules governing allowability of specific items of cost.

Response: The Department has continued the principles governing allowability of costs found in the May, 1974, Manual of Reimbursement for Nursing Home Care.

Numerous comments were received regarding the management incentive portion of the proposed rules.

Response: The Department has agreed not to implement the management incentive portion of the rules at this time.

Numerous comments were received supporting the transition from a retrospective to a prospective system of reimbursement.

Response: The rules as adopted provide for prospective reimbursement based on historical costs reported for the period ending March 31, 1978.

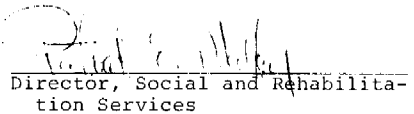
Comments were received concerning the necessity and advisability of adopting a uniform cost reporting system and a uniform chart of accounts.

Response: A uniform cost reporting system is required by federal regulation. A uniform cost reporting system and uniform chart of accounts is essential to provide the accurate and complete data necessary to administer any reimbursement system fairly and equitably.

Comments were received that an undue hardship would be worked upon all providers if they were required to simultaneously commence fiscal years as of the effective date of the new reimbursement system.

SOCIAL AND
REHABILITATION SERVICES

Response: The rules as adopted do not require providers to change fiscal years. Rather, the system will allow the providers to report the costs based on their fiscal year, with a short term, close-out cost report for the period ending March 31, 1978.



Director, Social and Rehabilitation Services

Certified to the Secretary of State March 15, 1978.

OFFICE OF PUBLIC INSTRUCTION

SPECIAL EDUCATION

EMERGENCY RULES TO REPEAL

Statement of reasons for emergency.

The Superintendent of Public Instruction has determined that the regulations adopted in Sub-Chapter 42, Chapter 18, Title 48, ARM, dealing with resolution of controversies for special education students are in conflict with federal law as it applies to the administration of federal funds available for special education students in Montana. As a result of this conflict, the state of Montana is in danger of losing $720,000 for fiscal year 1977-1978. Loss of this money would jeopardize provision of services for certain special education programs and would prejudice future federal funding for this program.

The Superintendent of Public Instruction has further determined that there exist special education children in the state of Montana who are being denied due process of law because of the existing conflict between Sub-Chapter 42 and federal regulations. Through acceptance of federal funds for special education the State of Montana has agreed to accept due process standards set forth in P.L. 94-142 (The Education of the Handicapped Act) and in the federal administrative regulations for that act. Yet individuals are compelled to adhere to hearing and appeals procedures under the regulations set forth in Sub-Chapter 42 since these are the duly adopted procedures in Montana. The process due under Sub-Chapter 42 is not as comprehensive as that due under P.L. 94142, nor are safeguards against bias as rigorous under Sub-Chapter 42 as they are under P.L. 94-142. Thus Montana special education students, their guardians and Montana educational agencies must follow a hearing procedure that does not meet due process standards the state has agreed to provide. As a result of the conflict, special education students, their parents and attorneys are unable to determine an appropriate forum for controversies, and local school officials and county school officials are unsure what procedures to follow. Important substantive rights of these students may be in jeopardy unless a standardized hearing and appeals procedure can be instituted through which controversies concerning these rights may be resolved.

Therefore, the Superintendent of Public Instruction, having determined that the welfare of special education students in Montana is immediately imperiled through the loss of $720,000 in federal funds and that important legal rights of special education students in Montana may be imperiled through a faulty procedure for resolving controversy, invokes the right under Section 82-4204, R.C.M.1947, to make emergency rules

concerning Sub-Chapter 42, Title 48, ARM. Sub-Chapter 42, Title 48, ARM, is repealed and shall so remain during the 120 days that this emergency rule is in effect. Controversies concerning special education are to be resolved using the existing statutes and regulations of Montana and using also the federal regulations to which Montana has become bound by accepting federal funds. These statutes and regulations are specifically Sections 75-5811, R.C.M., Sections 82-4201 through 82-4229, R.C.M., Title 1, Chapter 6, ARM, P.L. 94-142, and C.F.R. 121a.500 through 121a.593 (Federal Register, Tuesday, August 23, 1977, Part II).

During the 120 days that this emergency rule is in effect the Superintendent of Public Instruction will make available general guidelines for hearing procedures and will propose a set of formal regulations which, after notice and hearing, will be modified and adopted as permanent regulations. This set of regulations will integrate the requirements set forth in the statutes and regulations mentioned above. (These rules can be located in ARM pages 48-406 through 48-420.)

48-2.18(42)-P18720 HEARINGS BEFORE THE TRUSTEES OF A SCHOOL DISTRICT (IS HEREBY REPEALED)

48-2.18(42)-P18730 HEARINGS BEFORE THE COUNTY SUPERINTENDENT (IS HEREBY REPEALED)

48-2.18(42)-P18740 SAMPLE FORMS (IS HEREBY REPEALED)

VOLUME 37 OPINION NO. 116

COUNTY COMMISSIONERS - Authority to temporarily close a county road due to hazardous conditions;
HIGHWAYS - Authority to temporarily close a state highway due to hazardous conditions;
SECTIONS - 16-1004, 32-2134, 32-2135, 32-2203(25), 32-2406, 32-2801, 32-2803 and 32-3002, R.C.M. 1947;
MONTANA ADMINISTRATIVE CODE - §23-2.6AVI(2)-S6090(1).

HELD: The authority to temporarily close a state highway or county road, due to hazardous conditions, belongs to the Department of Highways and each Board of County Commissioners, respectively. The designation of a particular individual having this authority is left to the discretion of the Department of Highways and each Board of County Commissioners. The latter may appoint a county road supervisor or superintendent capable of making this decision. Only in cases of extreme emergency may the Highway Patrol block traffic, and, then, only temporarily.

24 February 1978

Harold F. Hanser
County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion concerning temporary closures of state highways and county roads due to adverse weather conditions or other natural disasters creating a hazardous condition. The specific questions you have asked are:

1. What individual has the authority to make this decision?

2. How is the decision actually executed?

3. Who has the responsibility for making the actual physical closure of the road?

The Legislature has not set forth every incidental power related to the regulation of state highways and county

roads. It has, however, placed the general authority to construct, alter, improve, repair and maintain the state highways in the State Department of Highways. Section 32-2406, R.C.M. 1947. The same general powers are held by each Board of County Commissioners with respect to county roads. Sections 16-1004 and 32-2801, R.C.M. 1947. "Maintenance", as used in the Highway Code, is defined as "preservation of the entire highway, including surface, shoulders, roadsides and structures, and such traffic control devices as are necessary for its safe and efficient utilization." Section 32-2203(25), R.C.M. 1947.

Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. 2A Sutherland, Statutory Construction, §55.04 (4th ed. 1973). The authority to order temporary closures of highways in order to remedy hazardous conditions is incidental and necessary to the general duty to repair and maintain the highways. The Montana Supreme Court has recently recognized that the Highway Department, having the duty of building and maintaining state highways safely, is answerable if it fails to do so. State ex rel. Byroth v. District Court, 34 St. Rptr. 1447 (1977). Since it is potentially liable for failure to maintain the state highways in a safe condition, the Department has implied power to protect itself from liability by ordering temporary closures of state highways until hazardous conditions are remedied. This rationale applies to each Board of County Commissioners with respect to county roads.

The procedure and practice requirements of the Montana Highway Patrol coincide with this result. MAC §23-2.6AVI(2) - S6090(1) provides:

> BLOCKING HIGHWAYS, WEATHER CONDITIONS. So that the motoring public will be better informed as to actual winter driving conditions, and to coordinate our activities with the Montana Highway Department, the following policies will be in effect:
>
> 1. Under no circumstances, except in case of extreme emergency are any roads to be arbitrarily blocked to traffic unless authorized by the Highway Commission. If adverse conditions prevail and you feel that it would be in the interest of the public safety to close a section of highway,

inform the District Engineer or the local maintenance man and request proper authority.

2. Highways blocked as the result of an accident or stalled motorists would be of a temporary nature, and your authority to block the highway temporarily will be recognized as it will in other cases of emergency or when District or Division Engineers or Maintenance Foremen cannot be reached. If possible, such conditions should be brought to the attention of the Highway Department so that hazardous conditions may be eliminated. The Highway Department has developed a state-wide road report which is being released to the public daily. It is suggested that before releasing information of a general nature, you confirm highway conditions with that department.

Which individual makes the decision and the procedure followed lies within the discretion of the Highway Department and each Board of County Commissioners, respectively. Prior to 1974, the responsibility for maintenance and repair of state highways belonged to the Highway Commission. The Montana Supreme Court held that this responsibility encompassed the formulation of plans for the construction, maintenance, and repair of state highways, but due to physical necessity, the details of the work rested in the hands of subordinates, not the members of the Commission. Coldwater v. State Highway Commission, 118 Mont. 65, 162 P.2d 772 (1945). By an amendment of Section 32-2406, R.C.M. 1947, Department of Highways now has the responsibility to formulate general plans of maintenance and repair. However, physical necessity and the exigent nature of the decision involved in temporary closures of highways may require that the initial decision be in the hands of delegated subordinates. The designation of a particular individual to make this decision lies within the discretion of the Highway Department.

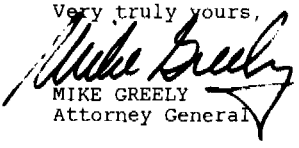
In the case of county roads, the Board of County Commissioners may, in their discretion, appoint a county road supervisor or a county road superintendent. Section 32-2803, R.C.M. 1947. The county road supervisor or superintendent, if appointed, serves at the pleasure of and under the control and direction of the board, and supervises all work to be performed on the county roads. Sections 32-2803(2)(a) and 32-3002(1), R.C.M. 1947. The county road supervisor or superintendent, if appointed, would be capable of making this decision.

The responsibility for effective actual physical closure also is placed in the Department of Highways and the Board of County Commissioners. Section 32-2134, R.C.M. 1947, requires the Department of Highways to place and maintain traffic control devices necessary to regulate, warn or guide traffic. This same responsibility is placed in the hands of local authorities for highways under their jurisdiction, i.e., the Board of County Commissioners for county roads. Section 32-2135, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

The authority to temporarily close a state highway or county road, due to hazardous conditions, belongs to the Department of Highways and each Board of County Commissioners, respectively. The designation of a particular individual having this authority is left to the discretion of the Department of Highways and each Board of County Commissioners. The latter may appoint a county road supervisor or superintendent capable of making this decision. Only in cases of extreme emergency may the Highway Patrol block traffic, and, then, only temporarily.

Very truly yours,



MIKE GREELY
Attorney General

MG/RA/br

VOLUME 37 OPINION NO. 117

MUNICIPAL GOVERNMENT - Training and retirement of peace officers - state funds;
INTERGOVERNMENTAL COOPERATION - Police;
PEACE OFFICERS - Training and retirement;
PUBLIC FUNDS - Use for training and pensions of peace officers;
COUNTIES - Intergovernmental cooperation;
SECTIONS - 11-1834, 11-1837, §§11-1860-1892, 11-1814, 11-1856, 16-2726, and 16-3705;
35 OP. ATT'Y GEN. NO. 72 (1974).

HELD: 1. Third class cities or towns that have consolidated their police departments with county law enforcement offices may not use the funds received from the State Auditor under §11-1834, R.C.M. 1947 to pay the county for their share of the consolidated law enforcement expense, unless those funds are used exclusively for pensions and/or training.

2. Such cities or towns may use the funds provided under §11-1834 to contribute to the pension fund, or to pay for training expenses of peace officers under the consolidated law enforcement agency. Those expenditures may be all or part of the cities' share of the expense for the consolidated department of public safety.

6 March 1978

E. V. "Sonny" Omholt
State Auditor
Ex-Officio Commissioner of Insurance
State Capitol
Helena, Montana 59601

Dear Mr. Omholt:

Your department has requested my opinion on the following questions:

1. Can third class cities or towns that have consolidated their police departments with county law enforcement offices use the funds received from

the state under §11-1834, R.C.M. 1947 to pay the county for their share of the consolidated law enforcement expense?

2. Can such city or town contribute to a pension fund for the benefit of the consolidated law enforcement office as part of or all of the monthly charge for contracted services?

3. Can such city or town contract with the county to buy training equipment or provide training expenses for the benefit of the consolidated law enforcement office as part of or all of the monthly charge for the contracted services?

It is my understanding that several third class cities and towns have recently consolidated their police departments with the county sheriffs' department pursuant to §16-2726, R.C.M. 1947, forming a department of public safety. In 35 OP. ATT'Y GEN. NO. 72 (1974) it was held that any regular organization providing police services to a municipality would qualify as a police department within the meaning of §11-1834. That opinion further held that a municipality not governed by the provisions of the police retirement system law may expend state funds received under §11-1834 for training and pensions for members of a police department providing law enforcement services pursuant to an interlocal agreement.

Section 11-1834 requires the State Auditor to make a payment to each city and town having a police department which is not a participant in the Municipal Police Officers Retirement Act. Section 11-1834 provides as follows:

> At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana which has a police department and which is not a participant in the municipal police officers' retirement system his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to section 11-1919, R.C.M. 1947.

The funds provided in that section are restricted and must be used either for training or for the purchase of pensions for members of the police department. Section 11-1837 provides:

> Any city or town not governed by the provisions of the police retirement system law, shall only expend said payment for police training or to purchase pensions for members of their police department. The city or town treasurer of such cities or towns shall on or before the first day of April of each year report to the state auditor as to the expenditures of all funds received pursuant to this act.

Your first question concerns whether these cities or towns can use the funds received under §11-1834 to pay the county for their obligation for the consolidated services. As mentioned above, §§11-1834 and 11-1837 restrict the use of these yearly payments. As the city or town is not under the Municipal Police Officers' Retirement Act these funds can only be used for training or for pensions. The restrictions of §11-1837 are clear and must be followed. State ex rel. Huffman v. District Court, 154 Mont. 201, 461 P.2d 847 (1969). There is no authority which will allow these funds to be used to pay for the cities' share of the law enforcement expense, unless those funds are used for pensions or training.

Your other questions concern whether those cities or towns can use the funds provided under §11-1834 to pay all of the cities' share for the consolidated law enforcement office if the funds are used only for training and pensions.

35 OP. ATT'Y GEN. NO. 72 (1974) holds that the funds may be used to contribute to the pension fund of the consolidated department of public safety. That fund is governed by the provisions of Chapter 26, Title 68, R.C.M. 1947.

It is a general rule that statutory provisions regarding pensions should be construed liberally in favor of the pensioner. Adams v. City of Modesto, 53 Cal.2d 833, 350 P.2d 529 (1960). Section 11-1837 clearly was intended by the legislature to strengthen the police pension system. The objects sought to be achieved by legislation are of prime consideration and a statute must not be interpreted to defeat its evident purpose. See Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963).

It is also evident that §11-1837 was intended to encourage police training. Training is mandatory for most peace officers within the State of Montana. Section 11-1814 of the Metropolitan Police Act requires training; the minimum

standards are set by the Peace Officers' Standards and Training Bureau of the Board of Crime Control. Rules 23-3.14(10) - S14040 M.A.C.. Deputy sheriffs are required to attend the Montana Law Enforcement Academy, §16-3705(4), and training standards are also established for reserve peace officers, §11-1856(2).

Peace officer training is a responsibility given high priority by the legislature. The objects sought to be achieved by the legislation should be given full effect. Doull v. Wohlschlager, supra.

Local governments are encouraged to enter into interlocal agreements and thus share the expenses common to each by the provisions of Chapter 49, Title 16, R.C.M. 1947. The consolidation of law enforcement services is to the mutual advantage of the governments involved as well as the public, and should receive state support. There are no statutory provisions prohibiting the use of §11-1834 funds for all of the cities' share of a consolidated department of public safety, as long as those funds are used exclusively for pensions and training.

THEREFORE, IT IS MY OPINION:

1. Third class cities or towns that have consolidated their police departments with county law enforcement offices may not use the funds received from the State Auditor under §11-1834, R.C.M. 1947 to pay the county for their share of the consolidated law enforcement expense, unless those funds are used exclusively for pensions and/or training.

2. Such cities or towns may use the funds provided under §11-1834 to contribute to the pension fund, or to pay for training expenses of peace officers under the consolidated law enforcement agency. Those expenditures may be all or part of the cities' share of the expense for the consolidated department of public safety.

Very truly yours,

MIKE GREELY
Attorney General
MMcG/so

VOLUME 37 OPINION NO. 118

COUNTIES - Eligibility for disaster relief under Section 79-2501, R.C.M. 1947;
DISASTERS - Eligibility of Counties for disaster relief under Section 79-2501, R.C.M. 1947;
RULES AND REGULATIONS - Validity of Department of Administration rule governing eligibility for disaster relief;
STATE AGENCIES:
DEPARTMENT OF ADMINISTRATION - Validity of Department of Administration rule governing eligibility for disaster relief.
SECTIONS: 16-1904(3); 79-2001, 79-2501, et seq.; 82-4204.1(2); 84-406, and 84-4103, R.C.M. 1947.

HELD: 1. A county road reserve established pursuant to Section 16-1904(3) to pay costs of county road operations during the first four months of the next fiscal year is not a financial resource available to meet emergencies and disasters.

2. The Department of Adminstration's formula for determining eligibility of counties for disaster and emergency relief under Section 79-2501, R.C.M. 1947, is inconsistent with statutory standards and void insofar as it requires counties to expend their entire road "reserves" for emergency snow removal operations as a prerequisite to receiving state aid. The Department must adopt a new regulation.

28 February 1978

Mr. Gordon T. White
Valley County Attorney
Glasgow, Montana 59230

Dear Mr. White:

You have requested my opinion concerning the validity of certain regulations adopted by the Department of Administration to implement the State's Emergency And Disaster Fund Act, Section 79-2501, et seq., R.C.M. 1947. Those regulations set standards for determining eligibility of political subdivisions and entities of the State for emergency disaster relief under the act. Specifically, you question

the method by which the Department of Administration determines the financial resources available to applicants to meet the emergency or disaster at hand.

The State emergency and disaster fund is established in Title 79, Chapter 25, R.C.M. 1947. The Governor is authorized to expend up to $750,000 in any one biennium for emergency and disaster relief. As a result of recent prolonged winter blizzard conditions, several eastern Montana counties have applied to the Governor for emergency aid. The aid is needed for snow removal operations.

Specific statutory standards for emergency and disaster relief are prescribed in Section 79-2501, which provides:

> GOVERNOR MAY AUTHORIZE EXPENDITURE IN CASE OF EMERGENCY OR DISASTER. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies that expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics or disease, plagues of insects, fires, floods, energy emergencies or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws. (Emphasis added.)

Although the Governor is delegated the power to grant emergency aid, the Department of Administration is given rule making powers to implement the act. Section 79-2503 provides:

> IMPLEMENTATION AND ADMINISTRATION. The governor shall be charged with the implementation of the program, and the administration and development of rules and regulations for implementation of this act will be promulgated by the department of administration. (Emphasis added.)

The Department has adopted regulations which govern determination of eligibility for disaster aid and has established application procedures and forms. Briefly summarized, the regulations describe the types of emergencies and disasters for which aid is available and require governmental entities applying for aid to estimate the total expenditures necessary to respond to the emergency. The regulations establish a formula for computing the applicant's available financial resources for meeting the emergency. It is this formula which is the subject of your opinion request.

The formula in question applies to municipalities and counties, and provides as follows:

> The board or council shall estimate the financial capability of the entity by completing the following calculations for each fund or account involved. The financial resources available to the entity shall include the maximum permissive levy for the fund or account financing the governmental function that is obligated to respond to the emergency. The estimated funds available for the emergency shall be calculated as follows:
>
> Cash balance including reserves as of June 30, 19___ $_____
>
> Receipts from two mill emergency levy _____
>
> Receipts from maximum permissive levy and other anticipated revenues _____
>
> SUB TOTAL $_____
>
> Less regular operating budget for current year $_____
>
> BALANCE AVAILABLE TO RESPOND TO EMERGENCY $_____

If the total estimated expenditures necessary to respond to the emergency are greater than the estimated resources available for the emergency, the board or council may request the Governor to declare an emergency and to initiate action to provide State financial assistance in accordance with such deceleration. The application should be made on the forms attached hereto.

In the case of eastern Montana counties struck by blizzard conditions, there is a snow removal emergency and the county budget, accounting, and tax entity available for deferring snow removal charges is the county road fund. Thus, the above formula as applied by the Department to these requests for emergency aid, involves the following computation:

Cash balance of county road fund as of June 30, 1977	$_____
Add: Projected receipts from two mill emergency levy	_____
Add: 1977-1978 fiscal year tax receipts for county road fund from maximum permissive levy	_____
SUB TOTAL	$_____
Less, 1977-1978 fiscal year road fund operating budget	_____
TOTAL - Balance considered as available to meet emergency.	$_____

The net result of the Department's formula is to require counties to expend or commit their entire road "reserves" to snow removal emergencies before they become eligible for State aid. In counties where emergency snow removal costs equal or exceed the balance of the road reserve, there would be no operating funds for roads during the first four months of the 1978-1979 fiscal year.

The narrow question presented by your request is whether the requirement that counties must first use their "reserves" to meet emergencies and disasters is consistent with the statutory standard set forth in Section 79-2501. "It is a funda-

mental principle of law that for a rule or regulation adopted by a public administrative body to be valid it must be within the authority delegated to such body or officer." Montana Milk Control Board v. Community Creamery, 139 Mont. 523, 530, 366 P.2d 151 (1961). That rule has been codified in the Montana Administrative Procedure Act, Section 82-4204.1(2), R.C.M. 1947, which provides:

> Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Emphasis added.)

Section 79-2001 establishes statutory eligibility standards for emergency aid. Financial need is one of the criteria for aid; the important language is underlined in the text of Section 79-2501 quoted supra. The question presented in your opinion request is whether the Department formula comports with the statutory standard. More specifically, are reserves in a county road fund available to meet and pay for snow removal emergencies? I conclude they are not.

To describe the nature and function of a county road "reserve" it is first necessary to summarize county budget and tax levy procedures. Counties operate on a July 1 to June 1 fiscal year. Establishment of a budget and collection of taxes for the fiscal year does not coincide with the commencement of a new fiscal year. A county budget is not established until the second Monday in August following the beginning of the new fiscal year, Section 84-406, R.C.M. 1947, and county tax collections for the year do not begin until November 1 following the commencement of the new fiscal year, see Section 84-4103, R.C.M. 1947. As a result, counties incur continuing expenses during the first four months of each fiscal year without receiving offsetting tax revenue. To alleviate the hardship of running the county for the first four months of each new fiscal year on a debt basis, and registering warrants for expenses incurred during that period, the legislature has made specific provision for a "reserve" to be funded by tax levies during the prior fiscal year. Section 16-1904(3), R.C.M. 1947, provides:

> The board shall then determine the amount to be raised for each fund by tax levy by adding the

cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year. The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund, as the reserve may not exceed one-third (1/3) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund. (Emphasis added.)

The term "reserve" is in a sense a misnomer. The funds raised by levy for the reserve, in this case a road reserve, are nothing more than operating funds for the first four fiscal months. The reserve provision and its terminology are a direct result of the disjunction of dates provided for the establishment of county budgets, the commencement of tax collections and the commencement of the fiscal year. As a practical matter, the monies raised by the yearly tax levy, including levy for a reserve, generate revenue for a twelve month period running from November 1 to October 31, while also providing funds to pay for any deficit incurred by expenditures made during the first four fiscal months in excess of cash on hand at the end of the prior fiscal year as the result of the prior year's levy for a reserve. Since the reserve moneys are raised and made available expressly for county operations of the first four months of the fiscal

year, reserves created pursuant to Section 16-1904(3) are not financial resources available to meet emergencies and disasters.

In its present form, the Department's regulation requires counties to use their road reserves for emergency snow removal. Available county resources for snow removal emergencies are determined by adding the county's cash balance as of June 30, 1977, estimated receipts from the two mill emergency levy authorized by Section 11-4305, R.C.M. 1947, estimated receipts from a maximum permissive road levy, and other estimated, anticipated revenue, from which sum is subtracted only the 1977-78 fiscal year operating budget for county roads. No provision is made for leaving any reserve authorized by the County Commissioners pursuant to Section 16-1904 and funded by tax levy. Insofar as the formula fails to make provision for maintaining the integrity of the road reserve, the regulation is inconsistent with Section 79-2501 and void.

The Department must adopt a new regulation which does not require counties to expend their reserve to meet emergency and disaster situations. Given the emergency nature of requests for disaster relief by eastern Montana counties, and the immediate need for a new regulation, it is appropriate for the Department to establish an emergency regulation pursuant to the Montana Administrative Procedure Act, Section 82-4204(2), R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 119

ANNEXATION - Methods of annexation by municipal corporations - Planned Community Development Act;
LAND USE - Adoption of a comprehensive land use plan as a prerequisite to municipal annexation;
STATUTES - Repeal by implication;
STATUTORY CONSTRUCTION - Construction of Section 11-525, R.C.M. 1947;
STATUTORY REVISION - Need for revision of municipal annexation provisions;
SECTIONS - 11-201, 11-403, 11-403(2), 11-405, 11-511 through 11-526, 11-3801, 67-506 and 67-507, R.C.M. 1947.

HELD: 1. If a proposed annexation of land having no resident freeholders meets the annexation standards of Section 11-519, R.C.M. 1947, including the requirement that the area to be annexed is included in and consistent with a master community development plan previously adopted pursuant to Title 11, Chapter 38, R.C.M. 1947, and the city also complies with the PCDA planning and public hearing requirements of Sections 11-518 and 11-520, R.C.M. 1947, the city may proceed under annexation procedures of Section 11-403, R.C.M. 1947.

2. 36 OP. ATT'Y GEN. NO. 72 is overruled insofar as it held that the Planned Community Development Act of 1973, Sections 11-514 through 11-525, R.C.M. 1947, repealed Section 11-403, R.C.M. 1947.

7 March 1978

Leo Fisher
City Attorney
City of Whitefish
Whitefish, Montana 59937

Dear Mr. Fisher:

You have requested my opinion concerning the following question:

> Should the City of Whitefish, a third class city as defined in Section 11-201, R.C.M. 1947, annex contiguous land with no resident freeholders under

> annexation procedures set forth in Section 11-403, R.C.M. 1947, or those procedures in the Planned Community Development Act of 1973, Sections 11-514 to 11-526, R.C.M. 1947?

You have stated that the city council of Whitefish, following the procedures of Section 11-403(2), R.C.M. 1947, has conditionally approved the proposed annexation described in your request. The approval is subject to determination concerning the council's authority to proceed under Section 11-403(2). At the time of approval the City of Whitefish did not have a master plan for community development as authorized by Title 11, Chapter 38, R.C.M. 1947, but has subsequently adopted such a plan.

The Planned Community Development Act of 1973 (PCDA), Sections 11-514 through 11-526, R.C.M. 1947, established comprehensive annexation procedures applicable to all classes of cities and towns. The express purpose of PCDA is to provide a just, equitable and uniform method of extending municipal boundaries. Section 11-515, R.C.M. 1947.

When PCDA was enacted in 1973 there were several existing municipal annexation statutes found in Chapters 4 and 5 of Title 11. PCDA did not expressly repeal these laws. Rather, it provided in relevant part:

* * *

> In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

Section 11-525, R.C.M. 1947. A prior Attorney General Opinion concluded that the language of Section 11-525 repeals only those existing annexation provisions "which covered areas specifically addressed in PCDA." 37 OP. ATT'Y GEN. NO. 72 (April 14, 1976). That opinion considered Section 11-403, R.C.M. 1947, the provision in question here, holding:

> Section 11-403 was repealed with the passage of the Planned Community Development Act of 1973 and is no longer a proper procedure for annexation.

Opinion NO. 72 precludes the City of Whitefish from proceeding under Section 11-403.

Absent some change in the law, some clear oversight, or manifest error, prior Attorney General opinions will not be reconsidered. Cf. State v. Board of Examiners, 131 Mont. 188, 194, 309 P.2d 336 (1957), and State ex rel. Ebel v. Schye, 130 Mont. 537, 541-42, 305 P.2d 350 (1957). Two facts support a reconsideration of Opinion NO. 72. The first is action by the 1977 Legislature specifically amending Section 11-403. See Laws of Montana (1977), ch. 570, sec. 1. This, standing alone, is not sufficient for reconsideration since the legislature cannot resurrect a repealed statute by amending it, Department of Revenue v. Burlington Northern Inc., 169 Mont. 202, 209, 545 P.2d 1083 (1976); State v. Holt, 121 Mont. 459, 469, 194 P.2d 651 (1948). The second fact, however, supports reconsideration: Opinion NO. 72 fails to mention Missoula Rural Fire District v. City of Missoula, 168 Mont. 70, 540 P.2d 958 (1975), a case decided a year prior to the opinion. That case considered the effect of Section 11-525 upon pre-existing annexation laws.

While both Missoula Rural Fire District and Opinion NO. 72 reject the contention that PCDA was intended merely as an "alternative" to existing annexation statutes, the opinion's statutory construction of Section 11-525 differs in important respects from that of the Supreme Court. The opinion utilizes a "subject matter" approach, concluding that since both PCDA and Section 11-403 provided for annexation of "contiguous" areas, PCDA repealed the latter section. However, Opinion NO. 72 also held that Sections 11-511 through 11-513, R.C.M. 1947, were not repealed since those sections concern annexation of government property, a subject matter not specifically addressed in PCDA.

Missoula Rural Fire District adopts a more flexible approach:

> If a city can annex an area using existing annexation procedures which are not inconsistent with the 1973 Act, it may continue to do so. But the city must follow the procedures of the 1973 Act in all other instances, * * *.

168 Mont. at 75. The "inconsistent" test of Missoula Rural Fire District supplants that of Opinion NO. 72. State ex rel. Ebel v. Schye, supra; State ex rel Barr v. District Court, 108 Mont. 433, 435, 91 P.2d 399 (1939). While appli-

cations of either test may result in identical results in some cases, different conclusions may be reached in others.

The express language of Section 11-525, as well as its interpretation in Missoula Rural Fire District, does not repeal prior annexation statutes but merely makes PCDA provisions "controlling" where prior provisions are "inconsistant."

At issue in Missoula Rural Fire District was a provision of Section 11-519(2)(d) of PCDA prohibiting annexation of existing fire districts. The Supreme Court held that annexation of fire district land under any annexation statute would be inconsistant with the proscription of Section 11-519(2)(d). 168 Mont. at 75-76.

Section 11-519, R.C.M. 1947, prescribes other minimum standards for proposed annexations:

> (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.
>
> (2) The total area to be annexed must meet the following standards:
> (a) it must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun;
> (b) no part of the area may be included within the boundary of another incorporated municipality;
> (c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38, R.C.M. 1947; and
> (d) no part of the area may be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of chapter 20, Title 11, if the fire district was originally organized at least 10 years prior to the inception of such attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 11-2008(5).
>
> (3) In fixing new municipal boundaries, a municipal governing body shall, wherever

> practical, use natural topographic features such as ridgelines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street; and such outside boundary may not extend more than 200 feet beyond the right-of-way of the street.

Any attempted annexation which violates one of those standards is "inconsistent" with PCDA and void. See Missoula Rural Fire District; supra. Therefore, as a preliminary matter, the area to be annexed must be contiguous to present city boundaries; the area may not be included within any other incorporated municipality; the annexation must be consistent with a comprehensive master plan previously adopted under Title 11, Chapter 38, R.C.M. 1947; and no part of the area may be within a fire district organized under Title 11, Chapter 20, R.C.M. 1947, with specific exceptions. If the proposed annexation does not meet these standards, the proposed annexation cannot be accomplished under PCDA or any other annexation provision.

Since Whitefish did not have a master community plan at the time the annexation ordinance was conditionally approved, the approval is void.

Whitefish is by no means unique in its failure to adopt a master plan under Title 11, Chapter 38. Master plans are generated by "planning boards," which may be city, county, or city-county boards. The creation of a planning board is discretionary. Section 11-3801, R.C.M. 1947, provides that the governing bodies of cities and counties "may" create planning boards, and in practice many localities have not established boards. But while the creation of a planning board and the adoption of a master plan are discretionary under Title 11, Chapter 38, the plain words of Section 11-519(c) are mandatory, prohibiting annexation unless a plan has been adopted and the proposed annexation is consistent with the plan.

The planning requirement is consistent with the overall purpose of PCDA to put an end to "indiscriminate growth patterns" in cities, Section 11-516, R.C.M. 1947, and compel urban planning. Cities which do not now have planning boards or master plans should act now to establish them.

The failure of Whitefish to comply with Section 11-519(c) does not prevent it from initiating new annexation proceedings now that it has adopted a master plan. The question

remains whether it must follow PCDA procedures exclusively or whether it may follow the annexation procedures set forth in Section 11-403(2) provided it complies with minimum standards of Section 11-519. This question is answered by determining whether application of Section 11-403(2) would be inconsistant with the provisions of PCDA.

Briefly summarized, Section 11-403(2) provides for initiation of annexation proceedings by city council resolution. Written notice is then given to all property owners within the area to be annexed and general notice given by newspaper publication. Twenty days are allowed for expressions of disapproval by freeholders within the territory to be annexed, and the area cannot be annexed if written protests are filed by a majority of area freeholders. Freeholder has a statutory definition, being a person having an estate of inheritance or life. Sections 67-506 and 67-507, R.C.M. 1947.

While the right of protest under Section 11-403(2) extends to all freeholders of the area to be annexed, the right of protest under PCDA is limited to "resident freeholders." A "resident freeholder" is defined as:

> *** [A] person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder. (Emphasis added.)

Section 11-516(3), R.C.M. 1947. Annexation under PCDA may be initiated and disapproved only by the governing body of the municipality or by fifty-one percent (51%) of the "resident freeholders" of the territory to be annexed, Sections 11-517, 11-518(e) and 11-520(8), R.C.M. 1947. Since there are no "resident freeholders" in the areas under consideration in Whitefish, there is no inconsistency in granting non-resident "freeholders" a right of protest as provided in Section 11-403(2).

However, in other respects the application of Section 11-403 to the proposed Whitefish annexations is inconsistent with PCDA. Section 11-403 provides no planning requirements which correspond to those of Section 11-518, and makes no provision for participation of city or town residents similar to that provided in Section 11-520(4) and (5).

Section 11-518 requires that upon initiating annexation questions, the municipality must prepare a comprehensive plan for the area to be annexed. That plan must include maps detailing land use patterns and present services in the area, and a statement of plans for extending additional municipal services into the area. These requirements are consistent with PCDA's purposes of eliminating indiscriminate municipal growth and providing for planned, equitable development of new areas. The PCDA planning requirement is not limited to residential areas. Section 11-516(2) expressly provides:

> Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development and future annexation must consider these principles.

PCDA also provides for the input and participation of city or town residents in the annexation process although city residents have no right of protest. There is no similar role granted municipal residents under Section 11-403. The PCDA preamble of legislative purpose, Section 11-515, expressly finds that many areas are annexed without provision for adequate city services, to the detriment of owners of such areas, and that, similarly, many annexed areas do not pay their just and equal share for municipal services. "Therefore, it is the purpose of this act to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana ***." Participation of residents of the existing municipality is in line with that purpose. Section 11-520(4) provides, "*** all residents of the municipality shall be given an opportunity to be heard," and the municipal governing body must take all public comment into consideration in making a final determination concerning the proposed annexation, Section 11-520(5).

Any annexation accomplished without comprehensive planning similar to that required under Section 11-518 and without a public hearing providing for full public participation as provided in Section 11-520(4) and (5) is inconsistent with PCDA. The PCDA planning and hearing provisions are "controlling" and must be followed.

The result is a blending of PCDA with Section 11-403, and in the end little is left of Section 11-403. That section becomes merely a vehicle to give a voice to non-resident freeholders of areas which the city proposes to annex. The alternative to this amalgamation of annexation procedures is to void all annexation statutes which are inconsistent with PCDA in any respect. This all or nothing approach finds no support in the limited language of Section 11-525: "Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions in this act shall be controlling." (Emphasis supplied.)

The legislature's approach to existing annexation law in Section 11-525 is unfortunate. Testing annexation statutes enacted prior to PCDA for inconsistency is a burdensome task, ultimately producing unsatisfactory results. The annexation provisions existing at the time of PCDA enactment were enacted piecemeal during several legislative sessions. See 36 OP. ATT'Y GEN. NO. 72 (1976). While it is apparent that several of the existing provisions on their face present no inconsistency with PCDA and are intended to have continuing life, specifically those provisions for the excising of territory already included within the municipal boundaries, Section 11-501 through 11-505, and provisions for merger of contiguous cities and towns, Section 11-405, R.C.M. 1947, other sections such as 11-403 present difficult questions which are better resolved by clear and unambiguous legislation. There is urgent need for new annexation legislation bringing together all modes of annexation into a single, clear, simplified and comprehensive annexation statute.

THEREFORE, IT IS MY OPINION:

1. If a proposed annexation of land having no resident freeholders meets the annexation standards of Section 11-519, R.C.M. 1947, including the requirement that the area to be annexed is included in and consistent with a master community development plan previously adopted pursuant to Title 11, Chapter 38, R.C.M. 1947, and the city also complies with the PCDA planning and public hearing requirements of Sections 11-518 and 11-520, R.C.M. 1947, the city may proceed under annexation procedures of Section 11-403, R.C.M. 1947.

2. 36 OP. ATT'Y GEN. NO. 72 is overruled insofar as it held that the Planned Community Development Act of 1973, Sections 11-514 through 11-525, R.C.M. 1947, repealed Section 11-403, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 120

ALCOHOL - Elements of DWI;
MOTOR VEHICLES - DWI;
Sections 32-2142; 32-2142(a), (c); 32-2142(2)
Laws of Montana (1977), ch. 298, sec. 1;
Laws of Montana (1977), ch. 430, sec. 1.

HELD: In order to sustain a conviction for driving under the influence of alcohol, the State must prove actual physical control of a motor vehicle while under the influence of alcohol. Section 32-2142 does not require proof that a person was under the influence of alcohol to a degree which renders him incapable of safely driving a motor vehicle.

14 March 1978

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

> In order to sustain a conviction for driving under the influence of alcohol (DWI), does §32-2142, R.C.M. 1947, as amended by the 1977 legislature, require proof of intoxication to a degree which renders the person incapable of safely driving a motor vehicle, or only proof of actual physical control of an automobile while under the influence of alcohol?

Prior to amendment by Laws of Montana (1977), ch. 430, sec. 1, the offenses of driving under the influence of alcohol and driving under the influence of drugs were contained in separate subsections:

> It is unlawful...for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.

Section 32-2142(a), R.C.M. 1947.

> It is unlawful...for any person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state.

Section 32-2142(c), R.C.M. 1947.

Chapter 430 redesignated the subsections and combined the definition of the offenses into a single subsection:

> It is unlawful...for any person who is under the influence of alcohol or any narcotic drug or any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state. The fact that any person charged with a violation of this subsection is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any change of violating this subsection.

Section 32-2142(3), R.C.M. 1947 (1977 Supp.).

You question whether the qualifying language, "to a degree which renders him incapable of safely driving a motor vehicle," now applies to alcohol as well as "any other drug," thereby adding a new element to the offense of driving under the influence of alcohol.

The statute as amended is ambiguous because it is susceptible of more than one interpretation. The qualifying language may be construed as modifying only "any other drug" or as relating to all substances listed in the subsection. In resolving this ambiguity the intention of the legislature controls. Hammill v. Young, 168 Mont. 81, 84, 540 P.2d 971 (1975).

In this regard the title of the act is relevant because it is "indicative of the legislative intent in passing it." Nangle v. Northern Pac. Ry., 96 Mont. 513, 522, 32 P.2d 11 (1934). The title is also important because Article V, §11(2) of the 1972 Montana Constitution requires that the subject of a bill be "clearly expressed in its title." The title of Chapter 430 enumerates those things the legislature sought to accomplish in amending §§32-2142, 31-145, 146 and 149:

> AN ACT TO REVISE THE PENALTIES FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON EDUCATION OR TREATMENT; AMENDING SECTIONS 31-145, 31-146, 31-149, AND 32-2124, R.C.M. 1947.

Changing the elements of the offenses to require that a person be under the influence of alcohol or narcotic drugs "to a degree which renders him incapable of safely driving a motor vehicle" was not a stated purpose.

The legislature did not intend this result. This is made clear by comparing §31-2142(2) with §§31-146 and 149. Both sections were also amended by the act, and because they relate to the same general subject, must be construed together with §32-2142(2). See Aleksich v. Industrial Accident Fund, 116 Mont. 127, 137, 151 P.2d 1016 (1944). Section 31-146 provides for mandatory revocation of drivers licenses upon conviction of or forfeiture of bail for certain offenses, including the following:

> Driving a motor vehicle while under the influence of alcohol or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof....

Section 31-149(b) specifies the period of such revocation:

> [W]hen any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or narcotic drugs, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the division shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of such person for a period of 6 months.

The qualifying language in each case applies only to being under the influence of "any other drug," and is compelling evidence that the legislature intended to retain the same distinction in §31-2142(2).

THEREFORE, IT IS MY OPINION:

> In order to sustain a conviction for driving under the influence of alcohol, the State must prove actual physical control of a motor vehicle while under the influence of alcohol. Section 32-2142 does not require proof that a person was under the influence of alcohol to a degree which renders him incapable of safely driving a motor vehicle.

Very truly yours,

MIKE GREELY
Attorney General

BJG/so