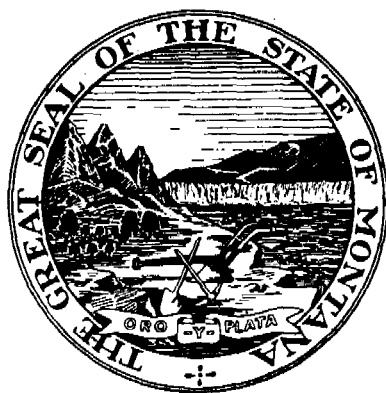


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RESERVE

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 16
PAGES 865-963



NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal a rule.

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

16-8/27/81

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1981. This table will include those rules adopted during the period July 1, 1981 through September 30, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1981, this table and the table of contents for this issue of the MAR.

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

ADMINISTRATION, Department of, Title 2

- 2.32.101 Uniform Building Code, p. 662
- 2.32.105 Uniform Mechanical Code, p. 664
- 2.32.202 Extent of Local Programs, p. 668
- 2.32.302 Uniform Plumbing Code, p. 670
- 2.32.407 Electrical Inspection Fees, p. 674
- 2.44.504 Eligibility for Disability Benefits, p. 480

AGRICULTURE, Department of, Title 4

- I-IX Emergency Rules Providing Procedures Authorizing Application of Pesticides with Less than Label Specified Diluents, p. 600

COMMERCE, Department of, Title 8

(Business Regulation)

- I Conditions of Investment (Bank Investment and Agriculture Credit Corporations), p. 700
- 8.6.301 Licensee Assessment, p. 209
- 8.6.302 Additional Producer Assessment, p. 583
- 8.7.301(6) (a) (6) (h) Regarding Milk Pricing Reflecting Butterfat Values and Minimum Jobber Prices, p. 585
- 8.7.301(9) Providing for Increased Freight Allowances for Inter-plant Transfers of Milk, p. 587
- 8.7.301(10) Regarding Rate Charged Producers for Hauling Milk from Farm to Plant and Providing Uniform System of Accounting, p. 589

16-8/27/81

(Professional and Occupational Licensing)

(Board of Dentistry)

40.14.602 Allowable Functions for Dental Auxiliaries, p. 500, 686

40.14.605 Examination, p. 500, 521, 686

(Board of Landscape Architects)

40.22.409 Fee Schedule, p. 535, 842

(Board of Morticians)

40.28.402 Applications, p. 702

(Board of Plumbers)

40.42.404 Examination, p. 677

40.42.405 Renewals, p. 677

(Board of Public Accountants)

40.52.416 Reciprocity - Other Nations, p. 504, 687

EDUCATION, Title 10

(Board of Public Education)

10.57.207 Correspondence, Extension and Inservice Credits,
p. 591, 843

10.57.208 Reinstatement, p. 593, 844

10.57.402 Class 2 Standard Teaching Certificate, p. 595, 845

(Montana Historical Society)

I Model Procedural Rules, p. 482, 765

I Grant Proposals, p. 483, 680

I General Guidelines, p. 486, 766

I Museum and Galleries Loans, p. 492, 767

II Submission of Proposals to the Legislature, p. 483, 680

II Museum and Galleries Acquisitions, p. 486, 766

II Library Loans, p. 492, 767

III Grant Conditions, p. 483, 680

III Library Acquisitions, p. 486, 766

III Archives Loans, p. 492, 767

IV Disbursement of Grant Funds, p. 483, 680

IV Archives Acquisitions, p. 486, 766

FISH, WILDLIFE & PARKS, Department of, Title 12

12.6.901 Water Safety Regulations, 792

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I-VII Pertaining to Variances from Solid Waste Management
Rules, p. 794

16.2.501 16.2.502, 503 Procedures for Public Comment on
Applications for Permits Under the Major Facility
Siting Act, p. 704, 797

16.2.704 Relating to Assessment of EIS Fees for Subdivision
Review, p. 597, 846

16.8.806 Fluoride in Forage Definitions, p. 335, 847

16.2.813 Fluoride in Forage, p. 338, 850

16.8.1405 Open Burning Restrictions, p. 708, 797

16.14.101 Definitions - Solid Waste Management Grants and
Loans to Local Governments, p. 715, 797

16-8/27/81

- 16.14.103 General Application Requirements - General Application Requirements for Solid Waste Management Grants and Loans to Local Governments, p. 717, 797
- 16.14.104 Front-End Planning Funds - Grant Application and Criteria for Review, p. 719, 797
- 16.14.105 Front-End Implementation Funds - Grant Application, p. 721, 797
- 16.14.109 Order of Funding Grants, p. 723, 797
- 16.14.111 Noncompliance (Grants to Front-End Implementation Funds, p. 724, 797
- 16.28.1005 Employee - Schools - Day Care Facility (Tuberculin Testing), p. 712

HIGHWAYS, Department of, Title 18

- 18.8.601 Overweight Single Trip Permits, p. 798
- 18.8.1202 through 18.8.1215 Various Special Vehicle Movement Conditions, p. 798

INSTITUTIONS, Department of, Title 20

- 20.3.101 through 20.3.216 Approval of Alcohol Program, p. 726

JUSTICE, Department of, Title 23

- 1.3.101 through 1.3.234 Model Rules, p. 802

LABOR AND INDUSTRY, Department of, Title 24

(Human Rights Division)

- 24.9.217 Complaint: Notice to Commission, p. 805
- 24.9.252 Declaratory Rulings: Filing and Notification of Disposition of Petition, p. 803
- 24.9.255 Declaratory Ruling: Effect of Ruling, p. 806
- 24.9.261 Dismissal of Complaints also Pending in Court, p. 809
- 24.9.802 Commission Meetings: Quorum: Decision Making Authority, p. 807

STATE LANDS, Department of, Title 26

- I Minimum Restrictions on Surface Activity, p. 497
- II Additional Restrictions - Stipulations, p. 497
- III Compliance with Lease Stipulations and Restrictions, p. 497
- 26.3.108 Renewal of Lease, p. 760
- 26.3.121 Transfer of Leases: Assignments and Subleases, p. 761

LIVESTOCK, Department of, Title 32

- I Market Responsibility, p. 346, 688

16-8/27/81

REVENUE, Department of, Title 42

42.12.104 Use of Census Data, p. 506, 689

SECRETARY OF STATE, Title 44

I-VII Pertaining to Advisory Opinions, p. 508
I-III Pertaining to Fees for Filing Documents and Issuing
Certificates, p. 814
1.2.210 Adoption of an Agency Rule by Incorporation by
Reference, p. 811
1.2.211 Model Rules: Location and Incorporation by Reference,
p. 811
1.2.419 Filing, Compiling, Printer Pickup and Publication
Schedule for the MAR, p. 812

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

I Medically Needy Income Standards, p. 544, 769
46.2.209 Hearing Procedure, p. 817
46.4.201 46:4.202, 203,204 Relating to Project Funds,
Child and Youth Development Bureau, p. 552, 768
46.5.114 46.5.115, 116 Pertaining to Eligibility for Child
and Family Protective Services, Legal Termination
of Parental Rights and Central Registry Operation,
p. 820
46.5.802 46.5.803 Pertaining to the Licensing of Community
Homes for the Developmentally Disabled, p. 826
46.5.1001 Services Provided by Contract, Community Services
Division, p. 553, 768
46.9.101 46.9.102 Pertaining to Organization of Economic
Assistance Division, p. 554, 768
46.9.205 Standards of Assistance (Supplemental Security
Income), p. 763
46.9.302 46.9.304,305 Pertaining to Emergency Grants-in-Aid
to Counties, p. 838
46.9.501 46.9.504,505 Pertaining to County Medical Program,
p. 158
46.10.403 Table of Assistance Standards, p. 537, 769
46.12.102 Medical Assistance, Definitions, p. 544, 769
46.12.201 Medical Assistance, Eligibility Requirements, p. 161,
544, 769
46.12.203 Personal Needs, p. 164
46.12.303 Billing, Reimbursement, Claims, Processing, and Pay-
ment, p. 541, 771
46.12.501 Services Provided, p. 165
46.12.514 Early Periodic Screening Diagnosis and Treatment,
Definition, p. 166
46.12.550 Home Health Services, Definition, p. 166, 512, 690
46.12.552 Home Health Services, Reimbursement, p. 167
46.12.912 Eyeglasses, Requirements, p. 167
46.12.2002 Physician Services, Requirements, p. 683
46.12.2003 Physician Services, Reimbursement/General Require-
ments and Modifiers, p. 412, 559

16-8/27/81

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

TABLE OF CONTENTS

NOTICE SECTION

	Page Number
<u>AUDITOR, Title 6</u>	
6-1 Notice of Public Hearing on the Proposed Adoption of Rules for Medicare Supplement Insurance and the Repeal of 6.6.501	865-879
<u>COMMERCE, Department of, Title 8</u>	
8-37-1 Notice of Public Hearing on the Amendment of 8.7.301(6)(g) Relating to Retail Minimum Price of Milk.	880
40-102-8 (Board of Veterinarians) Notice of Repeal 40.62.601 through 40.62.611 Veterinary Technicians. No Public Hearing Contemplated.	881
<u>FISH, WILDLIFE & PARKS, Department of, Title 12</u>	
12-2-103 Notice of Proposed Amendment of 12.6.901 Water Safety Regulations. No Public Hearing Contemplated.	882-884
<u>HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16</u>	
16-2-189 Notice of Proposed Adoption of 16.6.101 Registrars-General; 16.6.105 Preservation of Old Records; 16.6.106 Correction Affidavits; 16.6.310 Certificate of Adoption; 16.6.602 Report of Dissolution or Invalidity of Marriage; 16.6.902 Fetal Death Certificate No Public Hearing Contemplated.	885-892
16-2-190 Notice of Proposed Repeal of 16.6.801 Definitions; 16.6.802 Report of Induced Abortion. No Public Hearing Contemplated.	893
16-2-191 Notice of Proposed Amendment of 16.6.103 Preservation of Copies of Record; 16.6.104 Certificates, Unfading, Permanent and Legible; 16.6.109 Monthly Statement of	

Returns; 16.6.110 Payment of Fees to Local Registrars; 16.6.116 Fees for Copies and Research; 16.6.301 Certificate of Birth; 16.6.302 Parent to Review Birth Certificate; 16.6.303 Delayed Birth Records; 16.6.309 Children Born Out of Wedlock, Certificate for; 16.6.601 Marriage Applications; 16.6.901 Death Certificate; 16.6.903 Health Officers Notified by Registrar, When; 16.6.906 Burial Transit Permit; Repeal - 16.6.907 Burial Transit Permits; 16.6.916 Disinterment Permits; 16.6.1601 Information Recorded; Repeal - 16.6.1801 Regarding Records of Institutions and Communal Colonies; 16.24.803 Facility Report No Public Hearing Contemplated. 894-918

LABOR AND INDUSTRY, Department of, Title 24

24-19-1 Notice of Proposed Amendment 24.19.501 Rebate of Service Charges Interest and/or Placement Fees; Repeal 24.19.503 Providing for Termination after 30 Days. No Public Hearing Contemplated. 919-920

STATE LANDS, Department of, Title 26

26-2-38 Notice of Public Hearing on Adoption of Rules Governing State Leases for Metalliferous Minerals and Gems. 921-931

26-2-39 Notice of Public Hearing on Proposed Adoption of Rules Governing State Leases for Uranium and Other Fissionable Material. 932-942

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-52 Notice of Proposed Adoption of New Rules for Radio Common Carriers. No Public Hearing Contemplated. 943-944

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-303 Notice of Public Hearing on Proposed Amendment of 46.5.901, 902, 903, 907, 908, 909, 910 and Repeal of Rule 46.5.911 Pertaining to Day Care Homes, Group Day Care Homes and Centers. 945-956

RULE SECTION

COMMERCE, Department of, Title 8

AMD (Board of Plumbers) 40.42.404 Examinations; 40.42.405 Renewals 957

INTERPRETATION SECTION

Opinions of the Attorney General

- | | | |
|----|--|---------|
| 29 | County Budget and Taxation - County
Commissioners - Legislative Bills -
Statutory Construction - Road Tax Levy | 958-963 |
|----|--|---------|

NOTICE: The July 1977 through June 1981 Montana Administrative Registers have been placed on microfiche. For information, please contact Jim Waltermire, Secretary of State, Room 202, Capitol Building, Helena, Montana, 59620.

BEFORE THE STATE AUDITOR
AND EX-OFFICIO COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING ON
of rules relating to medicare)	THE PROPOSED ADOPTION OF
supplement insurance and the)	RULES FOR MEDICARE SUPPLEMENT
repeal of rule 6.6.501)	INSURANCE AND THE REPEAL OF
)	RULE 6.6.501

TO: All Interested Persons:

1. On September 29, 1981, at 10:00 a.m., a public hearing will be held in the first floor auditorium of the Social and Rehabilitation Services Building, Helena, Montana to consider the proposed action of the Commissioner of Insurance to adopt new rules relating to medicare supplement insurance and to repeal rule 6.6.501, requiring disclosure statements in the sale of medicare supplement insurance.
2. The proposed new rules replace rule 6.6.501, which is proposed to be repealed.
3. The proposed rules provide as follows:

Rule I PURPOSE The purpose of this subchapter is to provide for the reasonable standardization of coverage and simplification of terms and benefits of medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies that may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare by reason of age.

Rule II AUTHORITY This subchapter is adopted pursuant to the authority vested in the commissioner under Sections 33-22-904, 33-22-905, and 33-22-907, MCA (enacted by Chapter 298, Laws of 1981) and implement Sections 33-22-901 through 33-22-909, MCA.

Rule III APPLICABILITY AND SCOPE

(1) Except as otherwise specifically provided, this subchapter applies to:

(a) All medicare supplement policies and subscriber contracts delivered or issued for delivery in this state on or after the effective date hereof, and

(b) All certificates issued under group medicare supplement policies or subscriber contracts, which policies or contracts have been delivered or issued for delivery in this state.

(2) This subchapter does not apply to:

(a) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this regulation, or

(b) Medicare supplement policies issued to employees or members as additions to franchise plans in existence on the effective date of this regulation.

Rule IV DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) in the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) "Certificate" means a certificate issued under a group medicare supplement policy that has been delivered or issued for delivery in this state.

(3) "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) a policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members;

(c) individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are inconsistent with the requirements of this subchapter or policies issued to employees or members as additions to franchise plans in existence on the effective date of this subchapter.

Rule V POLICY DEFINITIONS AND TERMS No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy unless such policy or subscriber contract contains definitions or terms which conform to the requirements of this section.

(1) "Accident", "Accidental Injury", or "Accidental Means" must be defined to employ "result" language and may not include

words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition may not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person that is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may provide that injuries may not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, motor vehicle no-fault plan, unless prohibited by law, or injuries occurring while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

(2) "Benefit Period" or "Medicare Benefit Period" may not be defined more restrictively than as defined in the Medicare program.

(3) "Convalescent Nursing Home", "Extended Care Facility", or "Skilled Nursing Facility" must be defined in relation to its status, facilities, and available services.

(a) A definition of the home or facility may not be more restrictive than one requiring that it:

(i) be operated pursuant to law;

(ii) be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;

(iii) be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

(iv) provide continuous 24 hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and

(v) maintain a daily medical record of each patient.

(b) The definition of such home or facility may exclude:

(i) a home, facility, or part thereof used primarily for rest;

(ii) a home or facility for the aged or for the care of drug addicts or alcoholics; or

(iii) a home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial, or educational care.

(4) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

(a) The definition of the term "hospital" must not be more restrictive than one requiring that the hospital:

(i) be an institution operated pursuant to law; and

(ii) be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of

sick or injured persons on an inpatient basis for which charge is made; and

(iii) provide 24 hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

(b) The definition of the term "hospital" may exclude:

(i) convalescent homes, convalescent, rest, or nursing facilities; or

(ii) facilities primarily affording custodial, educational, or rehabilitatory care; or

(iii) facilities for the aged, drug addicts, or alcoholics; or

(iv) any military or veterans' hospital or soldiers' home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis when a legal liability exists for charges made to the individual for such services.

(5) "Medicare" must be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 39-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act", "as then constituted and any later amendments or substitutes thereof", or words of similar import.

(6) "Medicare Eligible Expenses" means health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims;

(7) "Mental or Nervous Disorders" must be defined to include at least neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder of any kind.

(8) "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

(9) "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician". The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(10) "Sickness" must not be defined more restrictively than the following: "Sickness means sickness or disease of an insured

person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Rule VI PROHIBITED POLICY PROVISIONS

(1) (a) No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy if such policy or subscriber contract limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:

(i) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(ii) mental or emotional disorders, alcoholism, and drug addiction;

(iii) illness, treatment, or medical condition arising out of:

(A) war or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxilliary thereto,

(B) suicide (sane or insane), attempted suicide or intentionally self-inflicted injury,

(C) aviation,

(iv) cosmetic surgery, except that "cosmetic surgery" may not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved part;

(v) care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, if such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column;

(vi) treatment provided in a governmental hospital except as required in Sections 33-22-112 and 33-30-1002, MCA; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(vii) dental care or treatment;

(viii) eye glasses, hearing aids, and examination for the prescription or fitting thereof;

(ix) rest cures, custodial care, transportation, and routine physical examinations;

(x) territorial limitations.

(b) Supplement policies may not contain, when issued, limitations or exclusions of the type enumerated in subsections (i), (v), (ix), or (x) above that are more restrictive than

those of Medicare. Medicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

(2) No medicare supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

Rule VII MINIMUM BENEFIT STANDARDS

(1) An insurance policy or subscriber contract may not be advertised, solicited, or issued for delivery in this state as a medicare supplement policy unless it meets the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(2) The following general standards apply to medicare supplement policies and are in addition to all other requirements of this regulation:

(a) A medicare supplement policy may not deny a claim for losses incurred more than 6 months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage;

(b) A medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(c) A medicare supplement policy must provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes;

(d) A "noncancellable", "guaranteed renewable", or "non-cancellable and guaranteed renewable" medicare supplement policy may not:

(i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium, or

(ii) be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health; and

(e) Termination of a medicare supplement policy must be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(3) A medicare supplement policy must provide the following minimum benefits:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the

61st day through 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(c) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage of 20% of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of \$200 of such expenses and to a maximum benefit of at least \$5,000 per calendar year.

Rule VIII LOSS RATIO STANDARDS

(1) Medicare supplement policies must be expected to return to policyholders in the form of aggregate benefits under the policy, as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices:

(a) At least 75% of the aggregate amount of premiums collected in the case of group policies, and

(b) At least 60% of the aggregate amount of premium collected in the case of individual policies.

(2) For purposes of this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as individual policies.

Rule IX REQUIRED DISCLOSURE PROVISIONS

(1) Medicare supplement policies must include a renewal, continuation, or nonrenewal provision. The language or specifications of the provision must be consistent with the type of contract to be issued. The provision must be appropriately captioned, must appear on the first page of the policy, and must clearly state the duration of renewability, if limited, and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement policy, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy must require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing and signed by the insured, unless the increased benefits or coverage is required by law. If a separate additional premium is charged for bene-

fits provided in connection with riders or endorsements, the premium charge must be set forth in the policy.

(3) A medicare supplement policy that provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import must include a definition and an explanation of the terms in its accompanying outline of coverage.

(4) If a medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".

(5) Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, must have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 10 days of its delivery and to have the premium refunded if after examination of the policy or certificate the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age must have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(6) Insurers issuing accident and sickness policies, certificates, or subscriber contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age must provide to all applicants a medicare supplement "buyer's guide". The "buyer's guide" required to be provided is the pamphlet "Guide to Health Insurance for People with Medicare", developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration of the U.S. Department of Health and Human Services, or any reproduction or official revision of that pamphlet. Specimen copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., or subject to availability of supplies, from the Montana Department of Insurance. The guide is identified as Department of Health and Human Services/Health Care Financing Administration Form Number HCFA-02110. Delivery of the "buyer's guide" must be made whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as medicare supplement policies as defined in this subchapter. Except in the case of direct response insurers, delivery of the "buyer's guide" must be made to the applicant at the time of application and acknowledgement of receipt of the "buyer's guide" must be obtained by the insurer. Direct response insurers must deliver the "buyer's guide" to the applicant upon request but not later than at the time the policy is delivered.

(7) Except as otherwise provided in Rule IX(9), the terms "Medicare Supplement", "Medigap", and words of similar import must not be used unless the policy is issued in compliance with Rule VII.

(8) Insurers must provide an outline of coverage for medicare supplement policies, as provided below:

(a) Insurers issuing medicare supplement policies for delivery in this state must provide an outline of coverage to each applicant at the time application is made and, except for direct response policies, must obtain an acknowledgement of receipt of such outline from the applicant;

(b) If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."; and

(c) The outline of coverage provided to applicants pursuant to subsection (a) must be in the form prescribed in Rule XI, sample form A.

(9) Any accident and sickness insurance policy or subscriber contract, other than a medicare supplement policy; disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in Rule III(2) issued for delivery in this state to persons eligible for Medicare by reason of age must notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a medicare supplement policy. The notice must either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate, or subscriber contract delivered to insureds. The notice must be in no less than 12 point type and must contain the following language: "THIS (POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare review the Medicare Supplement Buyers Guide available from the company."

Rule X REQUIREMENTS FOR REPLACEMENT

(1) Application forms must include a question designed to elicit information as to whether a medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

(2) Upon determining that a sale will involve replacement and prior to issuance or delivery of the medicare supplement policy or certificate, an insurer, other than a direct response

insurer, or its agent must furnish the applicant a notice regarding replacement of accident and sickness coverage. One copy of the notice must be provided to the applicant and an additional copy signed by the applicant must be retained by the insurer. A direct response insurer must deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage. In no event, however, will such notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.

(3) The notice required by subsection (2) for an insurer, other than a direct response insurer, must be provided in substantially the form prescribed in Rule XI, sample form B.

(4) The notice required by subsection (2) for a direct response insurer must be in substantially the form prescribed in Rule XI, sample form C.

Rule XI SAMPLE FORMS The following are sample forms of the outline of coverage and notices regarding replacement of medicare supplement policies:

(1) Sample form A - outline of coverage:

(COMPANY NAME)
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE

(1) Read Your Policy* Carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

* The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate.

(2) Medicare Supplement Coverage - Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (delete if such coverage is provided).

(3) (a) (for agents:)

Neither (insert company's name) nor its agents are connected with Medicare.

(b) (for direct responses:)

(insert company's name) is not connected with Medicare.

- (4) (A brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts, provided by the medicare supplement coverage in the following order:)

SERVICE	BENEFIT	MEDICARE PAYS	THIS POLICY PAYS	YOU PAY
HOSPITALIZATION				
semiprivate room and board, general nursing and miscellaneous hospital services and supplies.	First 60 days	All but \$(180)		
	61st to 90th day	All but \$(45) a day		
Includes meals, special care units, drugs, lab tests, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia, and rehabilitation services.	91st to 150th day	All but \$(90) a day		
	Beyond 150 days	Nothing		
POSTHOSPITAL SKILLED NURSING CARE. . .				
In a facility approved by Medicare, you must have been in a hospital for at least three days and enter the facility within 14 days after hospital discharge.	First 20 days	100% of costs		
	Additional 80 days	All but \$(22.50) a day		
	Beyond 100 days	Nothing		
MEDICAL EXPENSE				
	Physician's services, inpatient	80% of reasonable charge		

and out- (after
patient \$(60) de-
medical ductible)
services
and supplies
at a hospital,
physical and
speech therapy,
and ambulance.

-
- (5) (Statement that the policy does or does not cover the following:)
- (a) Private duty nursing,
 - (b) Skilled nursing home care costs (beyond what is covered by Medicare),
 - (c) Custodial nursing home care costs,
 - (d) Intermediate nursing home care costs,
 - (e) Home health care above number of visits covered by Medicare,
 - (f) Physician charges (above Medicare's reasonable charge),
 - (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay),
 - (h) Care received outside of U.S.A.,
 - (i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (6) (A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in (4) above, including conspicuous statements;)
- (a) (That the chart summarizing Medicare benefits only briefly describes such benefits.)
 - (b) (That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)
- (7) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.)

(6) (The amount of premium for this policy.)

(2) Sample form B - Notice Regarding Replacement:
(To be used by an insurer other than a direct response insurer.)

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy provides 10 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

- (1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)

(3) Sample form C - Notice Regarding Replacement,
(To be used by a direct response insurer.)

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished) you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (Company Name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

- (1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within 10 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company name)

Rule XII SEVERABILITY If any part of this subchapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this subchapter is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Rule XIII EFFECTIVE DATE This subchapter is effective on December 31, 1981.

4. The Commissioner of Insurance is proposing these rules to comply with the rule-making requirements of Sections 33-22-901 through 33-22-909, MCA, enacted by Chapter 298, Laws of 1981, and to implement a regulatory program for medicare supplement insurance policies, as required by Chapter 298, that will meet the minimum standards of Public Law 96-265, the Social Security Disability Amendments of 1980 (the Baucus Amendment).

5. The authority of the Commissioner of Insurance to adopt the proposed rules is based on sections 33-1-313, 33-22-904, 33-22-905, and 33-22-907, MCA, and the rules implement sections 33-22-901 through 33-22-909, MCA.


6. The rule proposed to be repealed, Rule 6.6.501, can be found on page 6-119 of the Administrative Rules of Montana.

7. The rule is proposed to be repealed because the new rules proposed for adoption contain similar disclosure requirements.

8. The authority of the Commissioner of Insurance to repeal the rule is based upon Section 33-1-313, MCA.

9. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mr. Bruce A. Larson, State Auditor's Office, Securities Division, P. O. Box 4009, Helena, MT 59604, no later than September 25, 1981.

10. Mr. Bruce A. Larson has been designated to preside over and conduct the hearing.


Norma E. Seiffert, CPIW
Chief Deputy Commissioner of Insurance

Certified to the Secretary of State August 14, 1981.

BEFORE THE MILK CONTROL BOARD
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC
of Rule 8.7.301(6)(g) relating to) HEARING ON THE
minimum retail pricing of milk) AMENDMENT OF RULE
8.7.301(6)(g)
Relating to the
Retail Minimum Price
of Milk

TO: All Interested Persons

1. On Friday, October 9, 1981, a hearing will be convened for the purpose of considering the amendment of Rule 8.7.301(6)(g) relating to the retail pricing of milk. The hearing will be held in the lower Conference Room of the Offices of the Montana Department of Commerce, 1430 Ninth Avenue, Helena, Montana, 59620 at 9:30 a.m. or as soon thereafter as parties can be heard.

2. The rule proposed to be amended can be found on page 8-143 of the Administrative Rules of Montana.

3. The rule as proposed to be amended would read as follows:

"(g) The wholesale price of half (1/2) gallon of whole milk will be marked up ~~eleven cents~~ ~~(\$0.11)~~ fifteen per cent (15%) to arrive at the retail prices and all other products priced accordingly."

4. The hearing is being held at the request of the Montana State Food Distributors' Association, and upon the petition of that Association for the above rule amendment. The Association is proposing the amendment to provide a more equitable basis for the retail minimum pricing of milk.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mr. William E. Ross, 1424 9th Avenue, Helena, Montana, 59620, no later than October 7, 1981.

6. Robert J. Wood has been designated to preside over and conduct the hearing.

7. The authority of the agency to repeal the rule is based on section 81-23-302, MCA, and the rule implements the same.

CURTIS C. COOK, Chairman
Milk Control Board

By William E. Ross
WILLIAM E. ROSS, Secretary
Milk Control Board

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF VETERINARIANS

IN THE MATTER of the Repeal)	NOTICE OF REPEAL OF ARM
of Sub-Chapter 6, rules ARM)	40.62.601 through 40.62.611
40.62.601 through 40.62.611)	Sub-Chapter 6, VETERINARY
concerning veterinary)	TECHNICIANS
technicians)	

TO: All Interested Persons:

1. On September 26, 1981, the Board of Veterinarians will repeal rules ARM 40.62.601 through 40.62.611, Sub-Chapter 6, concerning veterinary technicians.

2. The rules to be repealed are located on pages 40-991 through 40-994 of the Administrative Rules of Montana.

3. The board is repealing these rules as directed by Senate Bill 395, Chapter 96, 1981 Session Laws, the text of which sets forth the reasons for repeal of the rules.

4. The authority of the board to make the repeals is based on section 37-18-202, MCA.

BOARD OF VETERINARIANS
WILLIAM A. ROGERS, D.V.M.
PRESIDENT

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 17, 1981.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMEND-
of Rule 12.6.901 relating to) MENT OF A RULE RELATING TO
water safety regulations) WATER SAFETY REGULATIONS
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons.

1. At its first meeting after September 27, 1981, the Montana Fish and Game Commission proposes to amend Rule 12.6.901 relating to water safety regulations.

2. The rule as proposed to be amended provides as follows: (The interlined and underlined portions are the only affected portions of the rule.)

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) The following waters are closed to use of any motor-propelled water craft except in case of use for official patrol, search and rescue craft, or for scientific purposes:

Beaverhead County:	Big Hole River
Big Horn County:	Arapoosh access area
Cascade County:	Smith River
Custer County:	Branum Pond
Deer Lodge County:	Big Hole River
Granite County:	Bear Mouth rest area pond
Hill County:	Bearpaw Lake
Jefferson County:	Park Lake
Lewis & Clark County:	Wood Lake
Madison County:	Big Hole River
Meagher County:	Forest Lake - Smith River
Missoula County:	Frenchtown Pond - Harpers Lake
Ravalli County:	Twin Lakes
Richland County:	Gartside Reservoir
Silver Bow County:	Big Hole River
Toole County:	Axtman, Feys, and Henry Reservoirs - Fitzpatrick Lake

(b)(i)(ii) remains the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Broadwater County (A) on Canyon Ferry Reservoir;
White Earth and Goose Bay,
within 300 feet of dock or

- as buoyed;
- Carbon County: (A) on Cooney Reservoir: all of Willow Creek arm as buoyed;
- Fergus County: (A) upper & lower Carter Ponds;
(B) Crystal Lake 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
- Flathead County: (A) on Flathead Lake: Bigfork Bay and Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
- Lewis & Clark Co: (A) on Canyon Ferry Reservoir: Yacht Basin, Cave Bay, Little Hellgate, Maggie Bay & Carp Bay within 300 feet of dock or as buoyed;
(B) on Hauser Reservoir: Lakeside marina and Black Sandy beach within 300 feet of the docks or as buoyed;
(C) on upper Holter Lake: Gates of Mountains marina within 300 feet of docks or as buoyed;
(D) on Holter Lake: bureau of land management boat landing as buoyed, Juniper Bay, Log Gulch, Departure Point, Merriweather Camp, and Holter Lake lodge docks.
- Lincoln County: (A) Savage Lake during the hours of 5:00 a.m. to 10:00 a.m. and from 7:00 p.m. to 11:00 p.m. each day;
- Missoula County: (A) Clearwater River from ~~Camp-Paxson swim-deck-downstream-to-first bridge~~ the outlet of Seeley Lake to the first bridge downstream from Camp Paxson swim dock;
(B) on Holland Lake: Holland Lake lodge and the Bay Loop campground within 300 feet or as buoyed.

(d) and (e) remain the same.

3. The proposed amendments are to provide increased recreational opportunity to the general public, clarify wording of the rule as it applies to the Clearwater River, and correct an organizational error performed during recodification.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Stan Bradshaw, Staff Attorney, Department of Fish, Wildlife,

& Parks, 1420 E. 6 Avenue, Helena, MT 59620, no later than October 7, 1981.

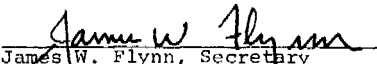
5. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments to Mr. Bradshaw at the above address no later than October 7, 1981.

6. If the commission receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons directly affected; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the commission to make the proposed amendments is based upon 87-1-303 and 23-1-106(1), MCA, and implements sections 87-1-303 and 23-1-106(1), MCA.


Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

Attest:


James W. Flynn, Secretary
Montana Fish & Game Commission

Certified to Secretary of State August 17, 1981.

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

In the matter of the)
adoption of a rule concerning) NOTICE OF PROPOSED
duties of local registrars) ADOPTION OF RULE
ARM 16.6.101
(Records & Statistics)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to adopt rule 16.6.101 concerning duties of local registrars.
2. The proposed rule provides as follows:

16.6.101 REGISTRARS--GENERAL (1) The department shall provide to every county clerk and recorder the name, address and phone number of the local registrars in that county.

(2) Every local registrar shall designate a deputy registrar to act when the registrar is unavailable. The registrar shall report the name, address and phone number of his deputy to the department and to the county clerk and recorder. Registrars shall report changes in such information to the department and to the county clerk and recorder.

(3) On the fifth day of every month, the local registrar shall mail all original birth, death, and fetal death certificates which were filed with him during the previous month to the department.

3. This rule is proposed to clarify certain of the duties of local registrars, and to assure that the names and addresses of local registrars are easily accessible to the public.

4. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts,

morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to adopt the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-104 and 50-15-105, MCA.

In the matter of the	)	NOTICE OF PROPOSED
adoption of a rule concerning	)	ADOPTION OF RULE
preservation of records	)	ARM 16.6.105
		(Records & Statistics)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to adopt rule 16.6.105 concerning preservation of old records.

2. The proposed rule provides as follows:

16.6.105 PRESERVATION OF OLD RECORDS (1) Employees of the department, for purposes of making old or faded records suitable for microfilming, may:

(a) trace those parts of the record which are too dim to be microfilmed; or

(b) retype the record on a separate form and microfilm the retyped copy. The original record must be maintained for purposes of reference.

(c) In no case may the department or any of its employees change the substance or contents of any record. If, because the original record is illegible, the substance or content cannot definitely be determined, such illegible portions must not be retraced, and if a copy is retyped, the retyped copy shall indicate those portions of the original which were illegible.

3. This rule is proposed to enable the department to preserve old or faded records by tracing, retyping, or other appropriate means. In no case may the substantive content of such records be changed.

4. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to adopt the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-103, MCA.

In the matter of the	)	NOTICE OF PROPOSED
adoption of a rule concerning	)	ADOPTION OF RULE
affidavits for correction of	)	ARM 16.6.106
birth or death certificates	)	(Records & Statistics)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to adopt rule 16.6.106 concerning affidavits for correction of birth or death certificates.

2. The proposed rule provides as follows:

16.6.106 CORRECTION AFFIDAVITS (1) An affidavit for correction of a birth or death certificate must include the following information:

- (a) the file number of the record to be amended and the name of the person appearing on the record;
- (b) the date and place of birth or death;
- (c) the specific items on the record which are to be changed, including both the information as presently shown, and the true information.
- (d) relationship of affiant to the child or deceased;
- (e) certification by affiant that all affected parties concur in the amendments, and that the affiant assumes the responsibility of furnishing proof of the corrected items.

3. When corrections must be made in birth or death certificates, the department accepts affidavits from appropriate parties who provide the new or corrected information. This rule codifies existing department practices.

4. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to adopt the rule is based on section 50-15-102, MCA, and the rule implements section 50-15-103, MCA.

In the matter of the	)	NOTICE OF PROPOSED
adoption of a rule concerning	)	ADOPTION OF RULE
information to be included in	)	ARM 16.6.310
certificates of adoption	)	(Records & Statistics)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to adopt rule 16.6.310 concerning information to be included in certificates of adoption.

2. The proposed rule provides as follows:

16.6.310 CERTIFICATE OF ADOPTION A certificate of adoption must include the following information:

(a) the child's name (before adoption), sex, date and place of birth, and names of natural parents;

(b) name, race, date and place of birth and residence of adoptive parents at the time of the child's birth;

- (c) the name of the child as set forth in the adoption decree;
- (d) name and address of attorney or agency handling the adoption;
- (e) certification by clerk of district court.

3. The proposed rule codifies the information which is required on the department's current certificate of adoption forms.

4. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to adopt the rule is based on sections 50-15-102 and 50-15-303, MCA, and the rule implements section 50-15-303, MCA.

In the matter of the	)	NOTICE OF PROPOSED
adoption of a rule concerning	)	ADOPTION OF RULE
reports of dissolution or	)	ARM 16.6.602
invalidity of marriage	)	(Records & Statistics)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to adopt rule 16.6.602 concerning reports of dissolution or invalidity of marriage.

2. The proposed rule provides as follows:

16.6.602 REPORT OF DISSOLUTION OR INVALIDITY OF MARRIAGE

A report of dissolution or invalidity of marriage must contain the following information:

(1) name, age, birthplace, residence, race, occupation, and education of each party;

(2) number, date, place and cause of termination of previous marriages of either party;

(3) number of children under 18 years of age in the custody of and residing with each party;

(4) number of children born alive of the marriage;

(5) date and place of the marriage being terminated, date of separation, grounds for the action, and which party is the petitioner;

(6) name and address of the petitioner's attorney, number of the cause of action, county and judicial district where the action is filed, date of entry of judgment and certification by a court official.

3. This rule is proposed in order to expressly set forth the information which is required on a report of dissolution or invalidity of marriage.

4. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to adopt the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-103, 50-15-302, and 50-15-303, MCA.

In the matter of the) NOTICE OF PROPOSED
adoption of a rule concerning) ADOPTION OF RULE
fetal death certificates) ARM 16.6.902
(Records & Statistics)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to adopt rule 16.6.902 concerning fetal death certificates.
2. The proposed rule provides as follows:

16.6.902 FETAL DEATH CERTIFICATE (1) Every fetal death certificate must state the following information:

- (a) the name and location of the hospital, date and hour of delivery, and sex of fetus;
- (b) name, address and signature of person certifying the above information;
- (c) name, address and age of mother, and name and age of father;
- (d) cause of fetal death, specifying significant conditions of fetus and mother, physician's estimate of gestation, whether fetus died before or during labor or delivery, and whether an autopsy was performed;
- (e) name and address of mortuary and name of person in charge of disposition;
- (f) confidential information for medical and health use only, including race and education of parents, date of last normal menses, month of pregnancy in which prenatal care began, number of prenatal visits, whether it was a multiple birth, weight of fetus, complications of pregnancy, labor and delivery, concurrent illnesses or conditions, congenital anomalies of fetus, and prior pregnancy history of the mother.

(2) Fetal death certificate forms may be obtained from the department.

(3) The fetal death certificate shall comprise 4 copies. The original must be filed with the department, and copies must be filed with the county clerk and recorder and local registrar. The final copy constitutes the burial-transit permit which is to be filed in accordance with ARM 16.6.906.

3. This rule is proposed to expressly set forth the information which is required on a fetal death certificate, and to specify the manner in which the various copies of a certificate are processed.


4. Interested persons may submit their data, views, or arguments concerning the proposed rule in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally

or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to adopt the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-109 and 50-15-405, MCA.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 17, 1981

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

In the matter of the	)	NOTICE OF PROPOSED
repeal of rule 16.6.801,	)	REPEAL OF RULES
Definitions, and rule	)	ARM 16.6.801
16.6.802, Report of Induced	)	and ARM 16.6.802
Abortion	)	(Records & Statistics)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to repeal rules 16.6.801, Definitions, and 16.6.802, Report of Induced Abortion.

2. The rules proposed to be repealed can be found on page 16-111 of the Administrative Rules of Montana.


3. Rule 16.6.801 is proposed to be repealed because it unnecessarily repeats statutory language (50-20-104). Rule 16.6.802 is proposed to be repealed because it unnecessarily repeats and adds nothing to statutory language (50-20-110).

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to repeal the rules is based on sections 50-15-102 and 50-20-105, MCA, and the rules implement sections 50-20-110, MCA.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 17, 1981

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.103	)	AMENDMENT OF RULE
regarding preservation of	)	ARM 16.6.103
copies of record	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.103 regarding preservation of copies of records.
2. The rule as proposed to be amended provides as follows:

16.6.103 PRESERVATION OF COPIES OF RECORD (1) Having After a local registrar has received, numbered and signed a death, birth, or fetal death certificate, and filed the original and one copy with the department and county as required by 50-15-109 MCA, the local registrar shall make an-accurate retain a triplicate copy of each certificate, upon-forms-which-are-identical-with-the-legal-portion-of-the original-certificates-but-printed-upon-yellow-paper. Such copies which shall be filed in-such-manner so as to be easily accessible for reference.

(2) After two {2} years from the date filed, the local registrar may request from the department written permission to destroy the triplicate {local-registrar}-copy of the certificates. At the termination of his office, the local registrar shall deliver his records to his successor, or to such person as the department may designate.

3. The proposed amendments delete an obsolete reference to the format of certificate forms, and make other minor changes to clarify style and language.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-103 and 50-15-109, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.104	)	AMENDMENT OF RULE
regarding birth, death, and	)	ARM 16.6.104
fetal death certificates	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.104 regarding birth, death, and fetal death certificates.

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

16.6.104 CERTIFICATES UNFADING, PERMANENT AND LEGIBLE

(1) All birth, death, and fetal death certificates must be typed or plainly written in unfading black ink. ~~and provide false, that original typewritten certificates of deaths, births, and fetal deaths may be submitted if all~~ All required signatures ~~required thereto are~~ must be written in unfading black ink. If the writing is so poor as to be unintelligible to the local registrar or if the entries are not dark enough to photograph satisfactorily, ~~it is deemed not legible and is not in compliance with the laws of this state, therefore, the person making the report should be notified in the same manner as though the report were incomplete and the same action taken in case a proper report is not made the registrar shall notify the person making the report that it is unacceptable, and shall take the same action taken when a proper report is not made.~~

3. The proposed amendments make changes in style and language for the purpose of clarification.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

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5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements section 50-15-103, MCA.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.109	)	AMENDMENT OF RULE
regarding monthly statement	)	ARM 16.6.109
of returns	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.109 regarding monthly statement of returns.
2. The rule as proposed to be amended provides as follows:

16.6.109 MONTHLY STATEMENT OF RETURNS (1) To facilitate and to insure proper accounting, local registrars shall make a monthly statement of returns on or before the fifth day of each month on blanks supplied by the department and shall retain a carbon copy for their own files. The statement must indicate the number of births, deaths, and fetal deaths reported for that month. If none were reported, the statement must so indicate.

3. The proposed amendment clarifies the information to be included on the monthly statements submitted to the department by local registrars.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements section 50-15-107, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.110	)	AMENDMENT OF RULE
regarding payment of fees	)	ARM 16.6.110
to local registrars	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.110 regarding payment of fees to local registrars.

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

16.6.110 ~~CERTIFICATE-OF-ACCOUNTS~~ PAYMENT OF FEES TO LOCAL REGISTRARS (1) The department shall certify to the treasurer of each county the number of births, deaths, and fetal deaths registered in such county, with the names of

the local registrars, and the amounts due them ~~at the rates specified in the regulations of the department.~~ such Such certifications ~~to~~ must be made annually unless in the opinion of the department it ~~shall be~~ is desirable to make them more often.

(2) Effective January 1, 1982, registrars will be entitled to a payment of \$1 per certificate filed. The first such payment must be made following the department's certification to the counties in February, 1983.

3. The proposed amendment establishes the rate of reimbursement due to local registrars for birth, death, and fetal death registrations. The rate will be \$1 per certificate filed, effective January 1, 1982. The first such payment by the counties to the registrars will be made following the department's annual certification to the counties in February, 1983.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on sections 50-15-102 and 50-15-107, MCA, and the rule implements section 50-15-107, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.116	)	AMENDMENT OF RULE
regarding fees for copies	)	ARM 16.6.116
and research	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.116 regarding fees for copies and research.
2. The rule as proposed to be amended provides as follows:

16.6.116 FEES FOR COPIES AND RESEARCH (1) ~~There shall be a charge~~ Prior to October 1, 1981, the department shall charge a fee of ~~two dollars (\$2)~~ for each certified copy of a birth, death, or fetal death certificate issued by the Bureau of Records and Statistics of the department. ~~Effective~~ October 1, 1981, this fee will be \$3.

(2) ~~Exceptions--A birth notification shall be issued free of charge from the birth record of any child whose birth occurred less than one year prior to the date of request for said notification.~~ The department shall charge a fee of \$5 for each hour or fraction thereof spent by bureau personnel, for file searches made at the request of any person.

3. The proposed amendments reflect the new minimum fee for certified copies, adopted by the 1981 legislature (Sec. 5, Ch. 228, L. 1981), which will become effective October 1, 1981. The amendments also establish an hourly fee for research done by the department at the request of any person. The reference to free birth notices is deleted because such a notice is now provided automatically upon completion of the birth certificate.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-111, MCA, and the rule implements section 50-15-111, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.301	)	AMENDMENT OF RULE
regarding certificates	)	ARM 16.6.301
of birth	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend 16.6.301 regarding certificates of birth.
2. The rule as proposed to be amended provides as follows:

16.6.301 CERTIFICATE OF BIRTH (1) A certificate of birth for every child born in Montana ~~shall~~ should be made and filed ~~by the attending physician or midwife~~ within ten (10) days after the date of birth. The certificate must be filed by the attending physician or midwife, or if there is no attending physician or midwife, it shall be the duty of the father by a parent of the child, or other person in attendance at the birth householder or owner of the premises, or the head of the hospital or institution in which the birth occurred to make and file the certificate within ten (10) days after birth. If no one who was in attendance at the birth is available, the local registrar may complete the certificate if he is able to ascertain with reasonable certainty the relevant information. A copy of the form to be used may be obtained from the department. It should be noted that the lower half of the form contains confidential information primarily for statistical purposes, and is never certified as part of the birth certificate except upon request by a person or agency meeting the standards of sections 50-15-112 and 50-15-113(1) and (2), MCA.

(2) A certificate of live birth must include the following information:

- (a) name, date and hour of birth and sex of child, and name and location of hospital or other place of birth;
- (b) name, address, age and place of birth of parents;

(c) certification by parent and person in attendance at birth of the foregoing information.

(3) The certificate must also include the following confidential information, which shall appear only on the department's copy of the certificate:

(a) race and educational background of parents;

(b) whether the mother's blood was tested and her pregnancy history, including date of last normal menses, month of pregnancy in which prenatal care began, number of prenatal visits, whether this was a multiple birth, complications of pregnancy or labor, concurrent illnesses or conditions affecting pregnancy, whether an operation was required for delivery;

(c) history of past pregnancies of mother;

(d) Apgar score, congenital malformations of child, weight at birth, type of prophylactic used in eyes.

3. The proposed amendment generalizes the requirements as to who may fill out a birth certificate. If no physician or midwife was present, then either parent or any other person who was present may fill out the certificate. If no one who was present is available (as where the mother dies after an unattended birth), the registrar may fill in the information, but only if he is able to ascertain the facts with reasonable certainty.

The amendments also set out the information to be included on a birth certificate, to bring the rule into conformity with the form.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-103, 50-15-109, 50-15-112, 50-15-113(1) and (2), 50-15-201, and 50-15-202, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.302	)	AMENDMENT OF RULE
regarding review of birth	)	ARM 16.6.302
certificate by parent	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.302 regarding review of birth certificate by parent.
2. The rule as proposed to be amended provides as follows:

16.6.302 PARENT TO REVIEW BIRTH CERTIFICATE (1) Before the mother leaves a hospital in which a birth has occurred, ~~the administrator of the hospital shall it shall be the duty of the superintendent of any hospital wherein a birth occurs~~ to present a completed birth certificate to a parent of each baby born therein before the mother leaves the institution the child for review as to the correctness of the information contained in the birth certificate. The parent must shall sign ~~item 9a the certificate after the words "I have reviewed this my child's birth certificate, and find the information correct."~~ "I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief."

(2) A parent's informational copy (not a certified copy) of the birth certificate will be given to the parent at the time he or she signs the certificate.

3. The proposed amendments reflect new language and format of birth certificates, and make minor changes in language.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-103, 50-15-108 and 50-15-109, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.303	)	AMENDMENT OF RULE
regarding delayed birth	)	ARM 16.6.303
records	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.303 regarding delayed birth records.
2. The rule as proposed to be amended provides as follows:

16.6.303 DELAYED BIRTH RECORDS (1) Any person born in the state of Montana whose birth was not properly recorded at the time of birth may file a certificate of delayed birth registration.

(2) A delayed birth record is one registered ~~six~~ 6 months or more after the birth occurred.

(3) A child ~~six~~ 6 months to ~~twelve~~ 12 years old may have his birth registered on sworn statement of ~~attendant~~ the mother or other person who was in attendance at the birth, or as a delayed birth registration outlined in paragraph (4) below. If no one who was present at the birth is available, the local registrar may complete the certificate if he is able to ascertain with reasonable certainty the relevant information.

(4) (a) To register a birth ~~twelve~~ 12 years or older, at least ~~three~~ 3 documents, no two of which ~~shall~~ may be of the same type, will be required which prove date and place of birth and ~~parentage~~ names of parents. First consideration ~~should~~ will be given to older documents, preferably 5 years or older.

No more than one affidavit will be accepted, unless it is for a child and it would be unreasonably difficult to obtain 3 documents. In this case, 2 affidavits based on personal knowledge will be accepted.

(b) A certificate of delayed birth registration establishes proof of the date of birth, place of birth and parentage by documentary evidence. The face of the certificate ~~shall~~ must include name of person being registered; date and place of birth; sex; father's name, ~~color~~ race, birthyear and birthplace; mother's maiden name, ~~color~~ race, birthyear and birthplace.

(c) Photostatic copies of documents will be accepted. Affidavits from notary publics that they have examined documents will not be accepted in lieu of the documents or photostatic copies thereof. Altered documents will not be accepted.

(5) The certificate of delayed birth registration, with abstracted proofs, will not be valid and cannot be filed until final approval is made by the department or its designated agents. Prior to October 1, 1981, a fee of two-dollars (\$2) shall will be charged for registering a delayed birth record; except that when a certified copy is requested at time of registering a delayed record, then no charge for the registration will be made. Effective October 1, 1981, the fee for registering a delayed birth record will be \$3.

3. The proposed amendments clarify and set out with more specificity the procedures and requirements for filing a delayed birth record, indicating the kinds of documentation which will be accepted. The amendments also increase the fee for filing a delayed birth record from \$2 to \$3, effective October 1, 1981.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

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

to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-103 and 50-15-204, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.309	)	AMENDMENT OF RULE
regarding certificate for	)	ARM 16.6.309
children born out of wedlock	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.309 regarding certificate for children born out of wedlock.

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

16.6.309 CHILDREN BORN OUT OF WEDLOCK, CERTIFICATE FOR

(1) If the mother ~~be was~~ married at the time of birth, the name of her then husband ~~shall~~ must be entered on the certificate of birth as the father. If the mother ~~be was~~ not married at the time of birth, but had been married within ~~ten~~ 10 months of the birth, the name of her latest husband at a time within ~~ten~~ 10 months prior to the birth ~~shall~~ must be entered on the certificate as the father. If the mother ~~be was~~ not married at the time of birth, and ~~has had~~ not been married within ~~ten~~ 10 months of the birth, the name of the father ~~shall~~ must not be entered on the certificate of birth unless accompanied by the written consent of both the mother and the father.

3. The proposed amendments make minor changes in language and style.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-103 and 50-15-109, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.601	)	AMENDMENT OF RULE
regarding marriage	)	ARM 16.6.601
application forms	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 14, 1981, the department proposes to amend rule 16.6.601 regarding information to be included on marriage application forms.

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

16.6.601 MARRIAGE FORMS--(1)--information-to-be-included on-the-prescribed-form-for-application-and-record-of-marriage-and-consent-for-minor-is-shown-on-the-following-form; copy-of-which-follows-this-rule-and-by-this-reference-is-made-a-part-of-this-rule.

(2)--items-one-(1)-through-thirty-one-(31)-shall-constitute-the-marriage-record-which-shall-be-submitted-to-the department-

(3)--Forms-for-the-marriage-license-and-marriage-certificate-used-by-the-clerks-of-the-district-courts-shall-be-adequate-for-the-purposes-of-this-rule-and-section-40-1-107, MCA; MARRIAGE APPLICATIONS (1) The marriage application form must contain the following information, which must be reported to the department:

(a) name, age, sex, address, date and place of birth, race and education of each party;

(b) number of previous marriages of either party, the name of the former spouse, and the date and place of termination of such marriages;

(c) the names and places of birth of the parents of each party;

(d) the date and place of the present marriage, the name of the officiant, and whether it was a religious or civil ceremony.

(2) The marriage application form must contain the following information, which is not reported to the department:

(a) names and birth dates of children of whom both parties are the parents, born prior to the making of the application, unless the parent-child relationship has been terminated;

(b) whether the parties are related to each other, and if so, the relationship.

(3) The marriage form also contains the following information, for the benefit of local officials:

(a) whether prior applications were rejected, and if so, why;

(b) whether either party is under the influence of intoxicating liquor or narcotic drugs;

(c) the future address of the parties;

(d) the signature of the parties;

(e) signature of the judge where required, and notarization by the clerk of court.

3. This rule is substantially amended in order to expressly set forth the information which is required on a marriage application form, and to indicate which information is reported to the department and which is retained by the local authorities.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements sections 40-1-107, 50-15-103, and 50-15-301, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.901	)	AMENDMENT OF RULE
regarding death	)	ARM 16.6.901
certificates	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.901 regarding information required on death certificates:

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

16.6.901 DEATH CERTIFICATE (1) Every death certificate shall state must include the following information: ~~specific items of information as to the disease, manner and cause of death,-----~~
~~and if from external causes or violence, it shall state--~~
~~whether accidental, suicidal or homicidal,--and the manner in~~
~~which the accident happened or the suicide or homicide was--~~
~~committed.--The death certificate form may be obtained from~~
~~the department--~~

(a) decedent's name, sex, age, date of birth, race, state or country of birth, citizenship, marital status, social security number, usual occupation, history of military service, residence, date and location of death, and hospital or other institution in which death occurred;

(b) names of decedent's parents and surviving spouse;

(c) name and address of person supplying information;

(d) location, manner and date of disposition of body and name of person in charge of disposition;

(e) certifications by attending physician and coronor indicating hour of death and time of pronouncement of death;

(f) details of manner and cause of death, including illness, accident, homicide or suicide, date and place and type of injury.

(2) Death certificate forms may be obtained from the department.

(3) The death certificate shall comprise four copies. The original must be filed with the department, and copies must be filed with the county clerk and recorder and local registrar. The final copy constitutes the burial-transit permit which is to be filed in accordance with ARM 16.6.906.

3. The proposed amendments set forth more explicitly the information which is required on a death certificate, and specify the manner in which the various copies of the certificate are processed.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24,

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-102, MCA, and the rule implements sections 50-15-109 and 50-15-405, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.6.903	)	AMENDMENT OF RULE
regarding notification of	)	ARM 16.6.903
health officers by registrar)	
of death from a dangerous,)	
communicable disease	)	(Records & Statistics)
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.903 regarding notification of health officers by local registrar in cases of death from a dangerous, communicable disease.

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

16.6.903 HEALTH OFFICERS NOTIFIED BY REGISTRAR, WHEN

(1) In the case of death from a dangerous, communicable disease occurring in a registration district ~~wherein~~ in which the local registrar has no jurisdiction as health officer, ~~said~~ ~~that~~ the registrar shall immediately notify the health officer having jurisdiction of the name and address of the deceased person and the name of the physician who attended the same, so that all precautions regarding quarantine, isolation, conduct of public funerals and disinfection of premises as required by the public health law and regulations of the department may be properly observed.

(2) The provisions of subsection (1) shall apply in the case of deaths from the ~~following diseases:--Anthrax, Cholera, Asiatic, diphtheria, emphysema, meningococci, meningitis, plague, smallpox, typhoid fever and typhus fever.~~ diseases listed in ARM 16.28.202.

(3) ~~Undertakers~~ Persons in charge of interment are held responsible for the strict observance of the regulations of the department relative to the burial of bodies dead of communicable diseases.

3. The proposed amendment makes minor changes in language, and replaces the list of communicable diseases with a reference to ARM 16.28.202, which lists reportable communicable diseases.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-1-202, MCA, and the rule implements section 50-1-202, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of rule 16.6.906	)	AMENDMENT OF RULE
and the repeal of rule	)	ARM 16.6.906
16.6.907 regarding burial	)	AND REPEAL OF RULE
transit permits	)	ARM 16.6.907
		(Records & Statistics)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.906 and to repeal rule 16.6.907 regarding issuance of burial-transit permits and information to be included on burial-transit permits.

2. The rule proposed to be repealed can be found on page 16-114 of the Administrative Rules of Montana.

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

16.6.906 BURIAL OR-REMOVAL-PERMIT-REFUSED--WHEN-TRANSIT PERMIT (1) if upon examination of a death or fetal death certificate by the local registrar the answers to any questions are found to be indefinite and or unsatisfactory and the circumstances of the case would make it appear that the questions can be more fully and or definitely answered, no burial-transit ~~or-removal~~ permit ~~shall~~ may be issued until such information has been properly and fully supplied.

(2) The burial-transit permit must include the following information:

(a) decedent's name, sex, date of death, race, age, date of birth, location of death, state or county of birth, citizenship, marital status, hospital in which death occurred, and name of surviving spouse;

(b) name and location of place of disposition of body, manner of disposition, name of person in charge of disposition;

(c) endorsements by local registrar and sexton or person in charge of place of disposition.

(3) If the death certificate has been completed to the satisfaction of the local registrar, he shall endorse the death certificate and the burial-transit permit, and issue the burial-transit permit to the person in charge of disposition of the body.

(4) The sexton or other person in charge of the cemetery or crematory, or if there is no such person then the person in charge of disposition shall endorse the required facts on the burial-transit permit and shall deliver it to the local registrar of the district in which the disposition occurred within 10 days after the date of disposition.

(5) The registrar shall assure that the provisions of ARM Title 16, Chapter 29 are complied with before a burial-transit permit is issued.

4. The proposed amendments to ARM 16.6.906 expressly set forth the information to be included on a burial-transit permit, and specify the procedures for processing such permits. Subsection (4) incorporates the provisions of ARM 16.6.907, which is proposed to be repealed.

5. Rule 16.6.907 is proposed to be repealed, as the provisions of that rule are proposed to be incorporated into rule 16.6.906, as amended.

6. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

7. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

9. The authority of the department to make the proposed amendments to rule 16.6.906 and to repeal rule 16.6.907 is based on section 50-15-102, MCA, and the rule implements sections 50-15-103 and 50-15-405, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of rule 16.6.916	)	AMENDMENT OF RULE
regarding disinterment	)	ARM 16.6.916
permits	)	(Records & Statistics)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.916 regarding information required on disinterment permits.

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

~~16.6.916 DISINTERMENT PERMITS (1)--A disinterment permit is required before a body, after burial, is to be disinterred for reinterment or transport.~~

~~(a)--The permit is to be obtained from the local registrar of the jurisdiction where the body is interred.~~

~~(b)--The permit is to be issued only to duly licensed morticians of this state.~~

~~(c)--As a right to the permit the applicant must make a showing of reasonable cause for disinterment.~~

~~(d)--For each permit issued, the local registrar shall collect a fee of five dollars (\$5), two dollars (\$2) of which is to be remitted to the department of health and environmental sciences.~~

(1) A disinterment permit must include the following information:

(a) decedent's name, sex, date of death, age at death, and place of death;

(b) cause of death, whether the body was embalmed, and the means of transportation of the body;

(c) present and proposed places of interment;

(d) name and address of person in charge of disinterment;

(e) reason for disinterment, name, address, relationship and signature of person requesting disinterment;

(f) endorsement by local registrar;

(g) date, place and manner of reinterment or other final disposition of body.

(2) The disinterment request must be made by the next of kin of the deceased, by court order, or by a public official authorized by law to make such a request. The endorsement on the permit must indicate the source of authority for the request.

~~(2) (3) The permit consists of five parts 5 copies:~~

~~(a) The procedure for use is: The original copy is to must accompany the body for use by the receiving cemetery or crematory;~~

~~(b) a copy is to must be retained by the cemetery where the disinterment occurs, by the mortician applicant to whom the permit is issued, and by the local registrar; and~~

(c) ~~a copy is to~~ must be sent to the department of health and environmental sciences together with the department portion of the fee.

(4) For each permit issued, the local registrar shall collect a fee of \$5, \$2 of which must be remitted to the department.

~~(b) (5) To facilitate and assure proper accounting, the department may issue prenumbered permit forms are to be furnished to local registrars as required. by the department. Additional supply of forms will be furnished only when all department copies of previously furnished permit forms, together with the department fee portion, have been returned to the department.~~

3. The proposed amendments do the following:

(a) set forth more explicitly the information required on a disinterment permit;

(b) specify who may request a disinterment permit; and

(c) make minor changes in language and style.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on section 50-15-407, MCA, and the rule implements section 50-15-407, MCA.

In the matter of the)
amendment of rule 16.6.1601)
and the repeal of rule)
16.6.1801 regarding records)
of institutions and communal)
colonies)
NOTICE OF PROPOSED
AMENDMENT OF RULE
ARM 16.6.1601
(Records & Statistics)
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.6.1601 and to repeal rule 16.6.1801 regarding information required on records of communal colonies, hospitals, and other institutions.

2. The rule proposed to be repealed can be found on page 16-115 of the Administrative Rules of Montana.

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

16.6.1601 INFORMATION RECORDED (1) The records of all hospitals, ~~almshouses, lying-in~~ or other facilities or institutions for the care of persons ~~shall~~ must contain the following information: Full name of patient; address; sex; ~~color~~ race; ~~single, married, widowed or divorced~~; marital status; date of birth; age; occupation; birthplace; name of father; birthplace of father; maiden name of mother; birthplace of mother; disease at entrance; ~~and~~ dates of entrance, discharge, removal, or death; ~~and other information required for the completion of birth, death and fetal death certificates.~~

(2) The requirements of ~~the Uniform Vital Statistics Act~~ Title 50, Chapter 15 MCA shall be literally enforced; ~~Hospitals, almshouses, lying-in or~~ other institutions, ~~doctors offices, morticians, communal colonies and all other persons responsible for the generation or recording of vital statistics shall furnish such information or reports as the department may from time to time require~~ required by Title 50, Chapter 15 MCA or the rules of the department.

4. The proposed amendments to rule 16.6.1601 do the following:

(a) delete obsolete references to almshouses and lying-in facilities, and instead, generalize the reference to "facilities for the care of persons";

(b) broaden the reporting requirement to include such information as is needed for birth, death and fetal death certificates;

(c) broaden the reporting requirements to include morticians, doctor's offices, communal colonies, and other persons responsible for the generation of vital statistics.

5. Rule 16.6.1801 is proposed to be repealed, as the provisions of that rule are proposed to be incorporated into rule 16.6.1601, as amended.

6. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

7. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

9. The authority of the department to make the proposed amendments to rule 16.6.1601 and to repeal rule 16.6.1801 is based on section 50-15-102, MCA, and the rule implements sections 50-15-103, 50-15-108, and 50-15-109, MCA.

In the matter of the	)	NOTICE OF PROPOSED
amendment of 16.24.803	)	AMENDMENT OF RULE
regarding abortion	)	ARM 16.24.803
reporting forms	)	(Documentation and Studies
		of Abortions)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 5, 1981, the department proposes to amend rule 16.24.803 regarding information required on the department's abortion reporting forms.

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

16.24.803 FACILITY REPORT (1) Every facility, as defined herein, shall keep on file a statement dated and certified by the physician who performed the abortion setting forth the following information:

(1) (a) Name, address, state and county of residence, date of birth, marital status, race, educational background, and patient identification number of the woman upon whom the abortion was performed.

(2) ~~--If married, the name and address of her husband, unless voluntarily separated from her.~~

(3) (b) If a minor and unmarried, name and address of her living parents, or her custodian or legal guardian.

(4) (c) Statement whether or not husband, parent or legal guardian has been notified of the abortion.

(5) (d) The information as to the first day of the last normal menses as provided by the woman and the number of her prior pregnancies, live births, miscarriages, induced abortions and living children.

(6) ~~--Name and address of the public or private agency, other than a medical facility, if any, referring the woman to the physician in connection with the abortion, but the name of the individual so referring shall not be stated.~~

(7) ~~--Name and address of the public or private counseling agency, if any, to whom the physician has referred the woman for counseling, but the name of any individual consulted with such agency shall not be stated.~~

(8) (e) The date, and the name and address location of the facility in which the abortion was performed, and the name and address of the physician performing the abortion.

(9) (f) Information upon which the physician concluded the patient was pregnant.

(10) ~~--The reason for the abortion, if given.~~

(11) (g) The medical procedure or procedures employed to administer the abortion.

(12) (h) The approximate gestational age, ~~length and weight~~ of the fetus.

(13) (i) The vital signs of the fetus, after abortion, if any.

(14) (j) If viable, the medical procedures employed to preserve the life and health of the fetus.

(15) (k) If a premature infant was born alive and viable and the infant did not survive, the apparent cause of death.

(16) (l) If the fetus was viable, but was endangered or destroyed during the abortion procedure prior to birth, the reason therefor.

(17) (m) Complications in the woman resulting directly or indirectly from the abortion.

(2) The names and addresses of the patient, her parents or guardians, and the physician who performed the abortion will be kept confidential and will not be reported to the department.


3. The proposed amendments will more accurately reflect the information which is required on the department's current abortion reporting forms, and will specify which information is to be kept confidential.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than September 24, 1981.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based on the number of local registrars, county clerk and recorders, clerks of district courts, morticians, physicians, undertakers, hospital administrators and other affected persons.

7. The authority of the department to amend the rule is based on sections 50-20-105 and 50-20-110, MCA, and the rule implements section 50-20-110, MCA.


JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State August 17, 1981

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of rule)	NOTICE OF PROPOSED
24.19.501, providing for rebate of)	AMENDMENT OF ARM RULE
service charges, interest, and/or)	24.19.501 AND THE REPEAL
placement fees and the repeal of rule)	RULE 24.19.503
24.19.503, providing for termination)	NO PUBLIC HEARING
after thirty days.)	CONTEMPLATED

TO: All Interested Persons.

1. On October 30, 1981, the Commissioner of the Department of Labor and Industry, State of Montana proposes to amend ARM Rule 24.19.501 REBATE OF SERVICE CHARGES, INTEREST AND/OR PLACEMENT FEES and repeal ARM Rule 24.19.503 TERMINATION AFTER AMENDED AND REPEALED.

2. The rules which are proposed to be amended and repealed are on page 24-1291 of the Administrative Rules of Montana.

3. Rule 24.19.501 as proposed to be amended would read as follows:

24.19.501 REBATE OF SERVICE CHARGES INTEREST AND/OR PLACEMENT FEES. (1) In all cases where employment lasts less than ~~ninety~~ ~~(90)~~one hundred (100) full calendar days, all interest, paid or required to be paid by an applicant to any private employment agency shall be allowed as a credit against any fees charged by the agency. (History: Sec. 39-5-103, MCA; IMP, 39-5-301, et. seq. MCA; NEW, 1978 MAR p. 1623, Eff. 12/15/78.)

4. The Commissioner proposes to amend and repeal these rules because the 1981 session of Legislature of the State of Montana amended portions of the Montana Employment Agency Act, Section 39-5-301, et. seq. MCA. Specifically, Sections 39-5-309 MCA, was repealed and Section 39-5-311 MCA was amended. Rule 24.19.501 is proposed to be amended to make it conform to the time period which is set forth in Section 39-5-311 MCA as amended. Rule 24.19.503 which is proposed for repeal conflicts with the Montana Employment Agency Act as amended. The amended act provides for the circumstances under which an employment agency must refund a fee with sufficient specificity to make other and further rules on refunds by the Commissioner unnecessary.

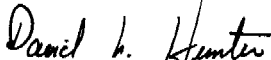
5. Interested parties may submit their data, views or arguments which concern the proposed repeal in writing to the Labor Standards Division, Department of Labor and Industry, State of Montana, 35 South Last Chance Gulch, Helena, Montana 59620, no later than October 13, 1981.

6. If a person who is directly affected by the proposed amendment of rule 24.19.501 and repeal of rule 24.19.503 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any written comments which he has to the Labor Standards Division, Department of Labor and Industry, 35 South Last Chance Gulch, no later than October 13, 1981.

7. If the Commissioner receives requests for a public

hearing on the proposed amendment and repeal from either 10% or 25, whichever is less, of the persons who are directly affected, from the Administrative Code Committee of the Legislature, from a governmental subdivision or agency, or from an association which has not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected by the proposed repeal has been determined by the Commissioner to be greater than 25 persons.

8. The authority for the Commissioner to make the proposed amendment of rule 24.19.501 and repeal of rule 24.19.503 is found in Section 39-5-103, Montana Code Annotated.


DAVID HUNTER, Commissioner
Department of Labor and
Industry

Certified to the Secretary of State this 14th day of August 1981,
1981.

BEFORE THE DEPARTMENT OF STATE LANDS AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the ADOPTION)	NOTICE OF PROPOSED ADOPTION
OF RULES governing state)	OF RULES GOVERNING STATE
leases for metalliferous)	LEASES FOR METALLIFEROUS
minerals and gems)	MINERALS AND GEMS

TO: All Interested Persons:

1. On September 21, 1981 at 7 p.m. in the auditorium of the social and rehabilitation services building at 111 sanders, Helena, Mt., public hearings will be held to consider new rules pertaining to leases for metalliferous minerals and gems. The department of state lands will conduct the public hearings.

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

3. The proposed rules provide as follows:

Rule I. DEFINITIONS When used herein, unless a different meaning clearly appears from the context:

(1) "Assignee" means the person or persons to whom a lessee has transferred all or part of the unexpired term of his lease and who appears as such on record in the offices of the department;

(2) "Assignment" means any approved transfer of interest between a lessee and a second party whereby the second party is accorded the use of all or part of the lessee's leasehold interest;

(3) "Board" means the board of land commissioners of the state of Montana;

(4) "Commissioner" means commissioner of state lands;

(5) "Department" means department of state lands as provided in section 2-15-3201 MCA;

(6) "Gems" means sapphires, rubies, and other stones commonly known as "precious or semi-precious stones" but does not mean stones or other earth materials commonly used in building or construction work;

(7) "Lease" means unless the context indicates otherwise, a metalliferous mineral and gem lease issued pursuant to Part 1, Chapter 3, Title 77 MCA and this subchapter;

(8) "Lessee" means the person or persons in whose name a metalliferous mineral and gem mining lease appears on record in the offices of the department, whether such person or persons be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a metalliferous mineral and gem lease but with whom a formal metalliferous and gem lease agreement has not been completed and finalized;

(9) "Metalliferous minerals" means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals, except uranium or other fissionable materials;

(10) "Mining" means operations for the purpose of extracting from the earth ore and other material containing metalliferous minerals or gems, and commences at such time as commercial quantities of ore or other material are removed for sale, beneficiation, refining or other processing or disposition.

(11) "Person" means any individual, firm, association, corporation, governmental agency or other legal entity;

(12) "Qualified applicant" means any person, who may become a qualified lessee as set forth under Rule V hereof.

(13) "Standard lease form" means the lease form currently in use and approved by the board;

(14) "State" means the state of Montana;

(15) "State lands" means all lands the leasing of which for metalliferous minerals and gems are under the jurisdiction of the board.

AUTH: 77-1-103 MCA; IMP: 77-1-101 MCA

Rule II ADMINISTRATIVE DETAILS AND INFORMATION The offices and records of the department are maintained at 1625 East Eleventh Avenue, Helena, Montana, under the direction and administration of the commissioner. Requests for information, application for leases and other matters should be addressed to the department, at its mailing address: capitol station, Helena, Montana 59620. Payment of all monies required or permitted under these rules or pursuant to the provisions of any metalliferous mineral and gem lease shall be made to the department. All checks, drafts and money orders must be made payable to "department of state lands," and mailed to the department of state lands, capitol station, Helena, Montana 59620. Sight drafts will not be accepted.

AUTH: 77-1-103 MCA IMP: 77-1-103 MCA

Rule III LANDS AVAILABLE FOR LEASING (1) Lands available for leasing under these rules include any state lands in which mineral rights are not reserved by the United States or other grantor or predecessor in title. Such state lands include those which have been sold but in which mineral rights have been reserved, in whole or in part, by the state of Montana.

(2) Unsurveyed lands, including those under navigable lakes and streams, are available for leasing, provided that any applicant for a lease on such lands shall supply the department with as accurate an estimate of the number of

acres to be included under such lease as can be derived from the latest survey, or an aerial photograph, and such other information as is available to the applicant. Further provided, that if and when such lands are leased and metalliferous metals or gems in commercial quantities are produced from the lands, the lessee shall supply the department with a legal description of the lands by courses and distances (metes and bounds). The department assumes no liability or responsibility for the correctness, completeness or validity of such description and does not warrant title to such lands.

(3) No lease may embrace more than one governmental section. The land shall be leased in as compact bodies as possible. No lease may embrace noncontiguous subdivisions of lands unless such subdivisions are within an area comprising not more than one square mile.

(4) No lease on lands covered by lease for the mining of coal, oil, or gas may be issued to any person, association or corporation other than the holder of such coal, oil, or gas lease while that lease is in force except with the written consent of the holder of the coal, oil, or gas lease.

AUTH: 77-1-103 MCA IMP: 77-3-102 MCA

Rule IV WHO MAY LEASE - QUALIFIED LESSEES (1) Any person, association, partnership, corporation, domestic or foreign, or municipality qualified under the Constitution and the laws of the state of Montana may lease state lands for metalliferous minerals and gem purposes; however all corporations not incorporated in Montana must obtain a certificate of authority to transact business in this state from the secretary of state.

(2) No officer or employee of any agency of the executive department of state government who is required to inspect or examine metalliferous mineral or gem mines or otherwise to gather field information in regard to prospecting for metalliferous minerals or gems or the production thereof, may take or hold such a lease, nor shall such person become interested in any manner in any lease on state lands.

(3) Any person qualified to hold a lease on state lands may acquire, receive and hold more than one lease.

AUTH: 77-1-103 MCA IMP: 77-1-113

Rule V APPLICATION FOR LEASE (1) Any person who desires that any tract of state lands be considered for metalliferous mineral and gem leasing shall make application for a lease on the form prescribed by the department and then in current use. Blank forms for such applications may be secured from the department at no cost. Such application

must be accompanied by an application fee and shall contain an adequate and sufficient description of the land sought to be leased and shall be deemed and considered for all purposes an offer to lease the lands described therein at the minimum rental and royalty rates as provided in this subchapter.

(2) If the board has adopted competitive bidding as a policy, the application shall constitute an undertaking to pay within ten days after the lease sale, the required first year's rental for the lease. In order to allow processing, applications must be filed with the department at least 40 days prior to the date fixed for the competitive bid sale. Any application may be withdrawn by the applicant if request for such withdrawal is received by the department at least ten days prior to said sale, but the application fee will not be refunded.

AUTH: 77-1-103 MCA IMP: 77-3-111

Rule VI PROCEDURES FOR ISSUANCE OF LEASE (1) Unless the board has adopted a competitive bid policy under subsection (2) below, if the department has received one application to lease a particular tract, the board may grant the lease at a rental rate not less than the minimum provided in this subchapter.

(2)(a) The board may offer leases on an open oral competitive bidding system by adopting competitive bidding as a formal policy. The effective date of such a policy shall be set by the board and may be retroactive to include tracts on which an application has been received but a lease has not been issued.

(b) If the board adopts competitive bidding as a formal policy the following procedures shall be followed:

(i) The department shall publish a notice for competitive bidding of each tract for which an application is received. Where more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to the receipt of the first qualified application that there is a prior application for that tract and shall return the application fee. If the first qualified applicant for the tract withdraws his application, the tract shall be offered for leasing regardless of the withdrawal. In such case, the opening bid must not be less than the minimum rental required by this subchapter.

(ii) Lease sales normally will be held once each quarter on the first Tuesday, of February, May, August and November. Notice of each sale shall be given in a publication or publications of general circulation in Montana. Publication of notice shall be within 15 days after the previous lease sale and shall contain only the date and place of sale since

its purpose is to allow applicants to submit their applications prior to the 40 day deadline. Other publications of the sale, the first of which shall not be more than 40 days prior to the date of the lease sale shall describe each tract that will be offered for lease separately, shall state the time and place of the sale, and shall state that all sales shall be by competitive bid. These publications shall be published for two successive weeks prior to the sale.

(iii) The department may postpone or cancel any sale if insufficient tracts have been applied for or if other circumstances warrant. In such event a notice of "no sale" shall be published as provided for in this subchapter.

(iv) The department shall maintain a mailing list of prospective lessees who request in writing that their names be placed on the list. At least two weeks before each sale, the department shall mail to each person on the list a copy of the notice of sale.

(v) The board may at its discretion withhold any tracts from leasing.

AUTH: 77-1-103 MCA IMP: 77-3-101 thru 77-3-132

Rule VII TERM OF LEASE (1) The lease shall be granted on the standard lease form for a primary term or period of ten years, and as long thereafter as metalliferous minerals or gems in paying quantities are produced, on condition that all royalties, rents, and other obligations are fully kept and performed by the lessee. The board shall extend the term of the lease if it determines that a failure to produce in paying quantities is a result of factors beyond the control of the lessee such as but not limited to a national emergency or a temporary decrease in the price at which the particular metalliferous mineral or gem can be sold.

AUTH: 77-1-103 MCA IMP: 77-3-115

Rule VIII RENTALS (1) The lessee shall pay an annual rental to the state. The rental for the first year shall be at least \$1.00 per acre and may include an additional amount per acre as a bonus determined by the board or if the board has adopted a competitive bidding policy, a bonus as determined by bidding.

(2) The rental for the second and third year shall be \$1.00 per acre. The rental for the fourth and fifth year shall be \$2.50 per acre and the rental thereafter, until the lease terminates, shall be \$3.00 per acre. In no case shall the total rental for one lease be less than \$100.00 per year.

AUTH: 77-1-103 MCA IMP: 77-3-115

Rule IX ROYALTIES (1) The lessee shall pay a royalty to the state on all metalliferous minerals or gems produced,

which shall be in cash unless the board at its option requires that the royalty be delivered in kind.

(2) The royalty for all ores bearing metalliferous minerals or gems which are mined, saved and removed from the leased premises shall be eight percent (8%) of the returns from the metalliferous minerals or gems, but in no case shall be less than five percent (5%) of the fair market value of the metalliferous minerals or gems recovered. The returns are defined as the net amount received by the shipper after deducting reasonable transportation costs to the closest feasible point of sale, smelting charges and deductions and other treatment costs, not including as a deduction any cost of producing or treating at the mine. The fair market value is the value of the minerals or gems in raw crude form as recovered at the mine site.

AUTH: 77-1-103 MCA IMP: 77-3-116 MCA

Rule X RECORDS AND REPORTS (1) The lessee shall maintain adequate records to determine the amount of royalty owed.

(2) The lessee shall furnish upon request, but not more than once each calendar year, an exploration and development report which describes the work completed by the lessee. The report shall include a plat showing the location of any work completed on the lease property and shall include a complete geologic log and electric log (if done) of any test holes.

(3) Upon commencement of mining, the lessee shall make on or before the last day of each month, a report to the department concerning the operations for the latest month for which records are available but not more than 3 months preceding the report. The report shall be on the form prescribed by the department and shall provide sufficient information to determine the royalty as well as any other pertinent information requested by the department. The royalty for the month reported shall accompany the report.

AUTH: 77-1-103 MCA IMP: 77-3-119

- Rule XI ASSIGNMENTS AND TRANSFERS (1) The lessee may assign any lease, either in whole or as to subdivisions of land embracing not less than 40 acres, to any person qualified as provided under the law and this subchapter. Such assignment is not, however, binding upon the state until filed in duplicate executed copies on the form prescribed by the department, accompanied by a fee together with proof of qualifications of the assignee as a lessee, and until the assignment is approved by the department. For the purposes of this rule, any lot, platted according to the governmental

survey, is deemed to be a legal subdivision of land embracing 40 acres. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interests of the state in the premises assigned will not, in the judgment of the department, be prejudiced thereby. Until such an assignment is approved the lessee of record continues to be fully liable and responsible for all of the requirements and obligations of the lease.

(2) In the case of a partial assignment, i.e. assignment of a full interest in only a portion of the leased premises, a new lease shall be issued for the assigned acreage, with the same expiration date as the original lease.

(3) The assignment of a lease, either in whole or in part, to more than one assignee will be permitted if the proposed assignment is otherwise in compliance with the foregoing requirements. However, no such assignment may be approved until one of the assignees is designated to act as agent for the purpose of receiving any and all notices from the department given in connection with the lease and meeting all requirements and obligations under the lease.

(4) Assignment of undivided, fractional interests in any lease, either as to the whole of the leased premises, or to any portion may be arranged by having the lessee assign title to the acreage in question to himself and the assignee. The assignment may show the respective shares of interest but the transaction is approved as a transfer of title only and without recognition of the respective interests.

(5) Assignments involving overriding royalties or containing certain reservations by the assignee are approved as transfers of title only and without recognition of such overriding royalties or special terms and conditions.

(6) Evidence of transfers by operation of law should be in the form of a certified copy of the appropriate court order or decree or similar document. A transfer by operation of law to an unqualified person may be recognized by the department for a period of time sufficient to transfer the interest to a qualified person.

AUTH: 77-1-103 MCA IMP: 77-3-105 MCA

Rule XII SURRENDER OF LEASE (1) The lessee may at the termination of any rental year, surrender and relinquish to the state any legal subdivision of the lands leased, and be discharged from any obligations not yet accrued as to the lands so surrendered and relinquished, without prejudice to the continuance of the lease as to the lands not surrendered or relinquished.

(2) Although no particular form of surrender is re-

quired, such surrender must be in writing, must sufficiently identify the lease sought to be surrendered, and must specifically describe the lands to be surrendered.

(3) Such written instrument of surrender and relinquishment must be signed by the owner of the lease as shown by the records of the department. If more than one person owns the working interest in a lease, all such owners must join in a joint surrender of the lease or each must submit a separate, written surrender.

(4) The lease bond shall not be released until any land disturbed by the lessee has been restored as provided in this subchapter or a subsequent lessee assumes responsibility for the disturbance.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA; 77-3-132 MCA

Rule XIII CANCELLATION OR TERMINATION (1) The lease is subject to cancellation for failure to comply with the terms of the lease or this subchapter. The lessee shall be notified of any failure to comply and allowed a reasonable time to comply. If the lessee fails to comply within a reasonable time the lease shall be canceled.

(2) Upon termination of the lease for any cause the lessee shall immediately surrender the premises and shall remove all personal property within 60 days after termination of the lease.

(3) The lessee shall remain responsible for restoring the disturbed land until it has been restored as provided in this subchapter or in the lease itself. The former lessee may be relieved of this responsibility if the land is re-leased.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA; 77-3-132 MCA

Rule XIV PREVENTION OF WASTE AND POLLUTION (1) The lessee shall conduct all operations in such manner as to prevent waste and preserve property and resources. The lessee shall carry out at its expense all reasonable orders and requirements of the department relative to the prevention of waste and preservation of property and resources. On the failure of the lessee to do so, the department may in addition to other recourse enter on the property to repair damages or prevent waste at the lessee's expense.

(2) In all operations on lands leased pursuant to these rules and regulations, the lessee shall use the highest degree of care and all proper safeguards to prevent pollution of earth, air or water. In the event of pollution directly or indirectly caused by lessee's operation on state land the lessee shall use all reasonable means to recapture escaped pollutants and is responsible for all damage to

public and private properties, including bodies of water of any sort, whether above or below the surface of the earth.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA

Rule XV MINIMIZATION ON DISTURBANCE (1) The lessee shall prospect and explore for metalliferous minerals or gems with the minimum disturbance to the surface of the land which is required to adequately explore the property. All drill holes shall be securely capped or plugged when not in use. In any drilling operations, lessee shall comply with all of the provisions of law governing ground water.

(2) The lessee shall enclose and maintain all shafts, tunnels and other openings in order to protect livestock and humans from dangerous conditions.

(3) When any drilling or mining operation is commenced on land leased pursuant to these rules, any topsoil on lands to be disturbed shall be removed and stockpiled on the site. The lessee shall take all reasonable, necessary steps to insure the preservation of the stockpiled topsoil including a temporary vegetation cover to prevent erosion. At the completion of recovery operations, and upon the final abandonment or completion of any drillings or mining, the lessee, shall restore the surface of the location to its original contours as far as reasonably possible, redistribute the topsoil, and reseed the land with native grasses and native plants prescribed by the department.

(4) The lessee shall not cut any timber on leased land for use in its operations without the written consent of the department. The lessee shall pay the customary charges for such timber if consent is obtained.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA

Rule XVI MINERAL LESSEE'S SURFACE RIGHTS (1) The mineral lessee has the right to use the land surface as necessary in order to explore, develop and mine the leased lands.

(2) Any sale, contract for sale or lease of state land which has been leased for minerals pursuant to this subchapter shall be made subject to such mineral lease and the surface owner, purchaser or lessee shall not be entitled to surface damages.

(3) If the surface of the land leased for minerals pursuant to this subchapter has been previously sold or contracted for sale or leased, the rights of the prior purchaser, contractee or lessee shall be protected as required by law and the board.

AUTH: 77-1-103 MCA IMP: 77-3-132 MCA

Rule XVII BONDING Prior to issuance of the lease, the lessee shall file with the department a bond in the penal sum of at least \$1,000.00 conditioned upon payment of rentals and royalties, upon compliance with all lease terms and in order to protect the rights of any prior purchasers or lessees. The board may require an additional bond or bonds, at any time during the period of the lease. Lessee may furnish one bond covering all metalliferous minerals and gem leases in which any interest is held or acquired by lessee. If such a blanket bond is furnished by lessee, separate bonds relating to individual leases shall not be required. Such blanket bond shall be in an amount to be fixed by department. Payment of a sum under the terms of said bond or bonds do not release lessee from liability for damages in excess of the amount paid under the terms of said bond or bonds.

AUTH: 77-1-103 MCA IMP: 77-3-119 MCA; 77-3-120 MCA

Rule XVIII SPECIAL CONDITIONS AND STIPULATIONS The board may attach special conditions and stipulations to any lease prior to issuance in order to protect the interests of the state. An applicant or bidder shall be notified of any special condition or stipulation prior to lease sale or issuance and may withdraw his application and elect not to enter into a lease as a result of the special condition or stipulation.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA

Rule XIX NOTICE OF DISCOVERY OF OTHER MINERALS The mineral lessee shall promptly notify the department of the discovery of any valuable minerals other than those covered by the mining lease.

AUTH: 77-1-103 MCA IMP: 77-3-114 MCA; 77-3-118 MCA

Rule XX HEARINGS AND APPEALS It is the desire and intent of the board that any lessee, or prospective lessee, be given full and adequate opportunity to be heard with respect to any matter affecting the interests of the lessee in any particular lease. Any hearing will be conducted informally, without adherence to the strict rules of evidence of a court of law. Any action by the department shall be stayed pending the outcome of the hearing.

AUTH: 77-1-103 MCA IMP: 77-1-302 MCA

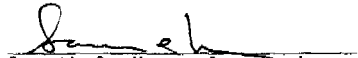
4. The rules are proposed to clarify the policies concerning the issuance of leases, the terms and provisions of leases and the obligations of the lessee.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written

data, views or arguments may also be submitted in writing to Gareth C. Moon, commissioner, department of state lands, capitol station, Helena, Montana 59620 no later than October 5, 1981.

6. David W. Woodgerd has been designated to preside over and conduct the hearings.

7. The authority of the board to make the proposed rule is based upon section 77-1-202 MCA and implements Title 77, Chapter 3, Part 1 MCA.


Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE August 17, 1981.

BEFORE THE DEPARTMENT OF STATE LANDS AND
THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the ADOPTION)	NOTICE OF PROPOSED ADOPTION
OF RULES governing state)	OF RULES GOVERNING STATE
leases for uranium and other)	LEASES FOR URANIUM AND
fissionable material)	OTHER FISSIONABLE MATERIAL

TO: All Interested Persons:

1. On September 21, 1981 at 7 p.m. in the auditorium of the social and rehabilitation services building at 111 sanders, Helena, Mt., public hearings will be held to consider new rules pertaining to leases for uranium and other fissionable material. The department of state lands will conduct the public hearings.

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

3. The proposed rules provide as follows:

Rule I DEFINITIONS When used herein, unless a different meaning clearly appears from the context:

(1) "Assignee" means the person or persons to whom a lessee has transferred all or part of the unexpired term of his lease and who appears as such on record in the offices of the department;

(2) "Assignment" means any approved transfer of interest between a lessee and a second party whereby the second party is accorded the use of all or part of the lessee's leasehold interest;

(3) "Board" means the board of land commissioners of the state of Montana;

(4) "Commissioner" means commissioner of state lands;

(5) "Department" means department of state lands as provided in section 2-15-3201 MCA;

(6) "Fissionable material" means material capable of undergoing fission.

(7) "In situ leach or solution mining" means any mining technique wherein the uranium or other fissionable material contained in the ore is extracted by means of dissolving the uranium or other fissionable material within a liquid medium.

(8) "Lease" means unless the context indicates otherwise, a uranium or other fissionable material lease issued pursuant to Part 1, Chapter 3, Title 77 MCA and this subchapter;

(9) "Lessee" means the person in whose name a uranium or other fissionable material lease appears on record in the offices of the department, whether such person or persons be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder

for a uranium or other fissionable material lease but with whom a formal uranium or other fissionable material lease agreement has not been completed and finalized;

(10) "Mining" means operations for the purpose of extracting from the earth ore or other material containing uranium or other fissionable material and commences at such time as commercial quantities of ore or other material is removed for sale, beneficiation, refining or other processing or disposition. The term includes in situ or solution operations.

(11) "Person" means any individual, firm, association, corporation, governmental agency or other legal entity;

(12) "Qualified applicant" means any person, who may become a qualified lessee as set forth under Rule V hereof;

(13) "Standard lease form" means the lease form for uranium and other fissionable material currently in use and approved by the board;

(14) "State" means the state of Montana;

(15) "State lands" means all lands the leasing of which for uranium or other fissionable material is under the jurisdiction of the board;

(16) "Uranium" means a silvery heavy radioactive polyvalent metallic element that is found especially in pitchblende or uraninite and exists naturally as a mixture of three isotopes of mass number 234, 235, and 238.

AUTH: 77-1-103 MCA IMP: 77-3-101 MCA

Rule II ADMINISTRATIVE DETAILS AND INFORMATION The offices and records of the department are maintained at 1625 East Eleventh Avenue, Helena, Montana, under the direction and administration of the commissioner. Requests for information, application for leases and other matters should be addressed to the department at its mailing address, capitol station, Helena, Montana 59620. Payment of all monies required or permitted under these rules or pursuant to the provisions of any uranium or other fissionable material lease shall be made to the department. All checks, drafts and money orders must be made payable to "department of state lands and mailed to the department, capitol station, Helena, Montana 59620." Sight drafts will not be accepted.

AUTH: 77-1-103 MCA IMP: 77-1-301 MCA

Rule III LANDS AVAILABLE FOR LEASING (1) Lands available for leasing under these rules include any state lands in which mineral rights are not reserved by the United States or other grantor or predecessor in title. Such state lands include those which have been sold but in which mineral rights have been reserved, in whole or in part, by the state of Montana.

(2) Unsurveyed lands, including those under navigable lakes and streams, are available for leasing, provided that any applicant for a lease on such lands shall supply the department with as accurate an estimate of the number of acres to be included under such lease as can be derived from the latest survey, or aerial photograph, and such other information as is available to the applicant. Further provided, that if and when such lands are leased and uranium or other fissionable material in commercial quantities are produced from the lands, the lessee shall supply the department with a legal description of the lands by courses and distances (metes and bounds). The department assumes no liability or responsibility for the correctness, completeness or validity of such description and does not warrant title to such lands.

(3) No lease may embrace more than one governmental section. The land shall be leased in as compact bodies as possible. No lease may embrace noncontiguous subdivisions of lands unless such subdivisions are within an area comprising not more than one square mile.

(4) No lease for mining on lands covered by lease for the mining of coal, oil, or gas may be issued to any person, association or corporation other than the holder of such coal, oil, or gas lease while that lease is in force except with the written consent of the holder of the coal, oil, or gas lease.

AUTH: 77-1-103 MCA IMP: 77-1-102 MCA

Rule IV. WHO MAY LEASE - QUALIFIED LESSEES (1) Any person, association, partnership, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana may lease state lands for uranium or other fissionable material purposes; however all corporations not incorporated in Montana must obtain a certificate of authority to transact business in this state from the secretary of state.

(2) No officer or employee of any agency of the executive department of state government who is required to inspect or examine mines or otherwise to gather field information in regard to prospecting for uranium or other fissionable material or the production thereof, may take or hold such a lease, nor shall such person become interested in any manner in any lease on state lands.

(3) Any person qualified to hold a lease on state lands may acquire, receive and hold more than one lease.

AUTH: 77-1-103 MCA IMP: 77-1-113 MCA

Rule V APPLICATION FOR LEASE (1) Any person who desires that any tract of state lands be considered for uranium and other fissionable material leasing shall make application for a lease on the form prescribed by the department and then in current use. Blank forms for such application may be secured from the department at no cost. Such application must be accompanied by an application fee and shall contain, an adequate and sufficient description of the land sought to be leased and shall be deemed and considered for all purposes an offer to lease the lands described therein at the minimum rental and royalty rates as provided in this subchapter.

(2) If the board has adopted competitive bidding as a policy, the application shall constitute an undertaking to pay, within ten days after the lease sale, the required first year's rental for the lease. In order to allow processing, applications must be filed with the department at least 40 days prior to the date fixed for the competitive bid sale. The applicant may withdraw by notifying the department in writing at least ten days prior to said sale, but the application fee will not be refunded.

AUTH: 77-1-103 MCA IMP: 77-3-111 MCA

Rule VI PROCEDURES FOR ISSUANCE OF LEASE (1) Unless the board has adopted a competitive bid policy under subsection (2) below, if the department has received an application to lease a particular tract, the board may grant the lease to the first qualified applicant at a rental not less than the minimum provided in this subchapter.

(2)(a) The board may offer leases on an open oral competitive bidding system by adopting competitive bidding as a formal policy. The effective date of such a policy shall be set by the board and may be retroactive to include tracts on which an application has been received but a lease has not been issued.

(b) If the board adopts competitive bidding as a formal policy the following procedures shall be followed:

(i) The department shall publish a notice for competitive bidding each tract for which an application is received. Where more than one application is filed on any one tract, the department shall notify each person submitting an application subsequent to the receipt of the first qualified application that there is a prior application for that tract and shall return the application fee. If the first qualified applicant for the tract withdraws his application, the tract shall be offered for leasing regardless of withdrawal. In such case, the opening bid must not be less than the minimum rental required by this subchapter.

(ii) Lease sales normally will be held once each quarter on the first Tuesday, of February, May, August and November. Notice of each sale shall be given in a publication or publications of general circulation in Montana. Publication of notice shall be within 15 days after the previous lease sale and shall contain only the date and place of sale since its purpose is to allow applicants to submit their applications prior to the 40 day deadline. Other publications of the sale, the first of which shall not be more than 40 days prior to the date of the lease sale shall describe each tract that will be offered for lease separately, shall state the time and place of the sale, and shall state that all sales shall be by competitive bid. These publications shall be published for two successive weeks prior to the sale.

(iii) The department may postpone or cancel any sale if insufficient tracts have been applied for or if other circumstances warrant. In such event a notice of "no sale" shall be published as provided for in this subchapter.

(iv) The department shall maintain a mailing list of prospective lessees who request in writing that their names be placed on the list. At least two weeks before each sale, the department shall mail to each person on the list a copy of the notice of sale.

(v) The board may at its discretion withhold any tracts from leasing.

AUTH: 77-1-103 MCA IMP: 77-3-101 thru 77-3-132 MCA

Rule VII TERM OF LEASE The lease shall be granted on the standard lease form for a primary term or period of ten years, and as long thereafter as uranium or other fissionable material in paying quantities is produced, on the condition that all royalties, rents, and other obligations are fully kept and performed by the lessee. The board shall extend the term of the lease if it determines that a failure to produce in paying quantities is a result of factors beyond the control of the lessee such as but not limited to a national emergency or a temporary decrease in the price at which uranium or other fissionable materials can be sold.

AUTH: 77-1-103 MCA IMP: 77-3-115

Rule VIII RENTALS (1) The lessee shall pay an annual rental to the state. The rental for the first year shall be at least \$1.00 per acre and may include an additional amount per acre as a bonus determined by the board or if the board has adopted a competitive bidding policy, a bonus as determined by bidding.

(2) The rental for the second and third year shall be \$1.00 per acre. The rental thereafter, until the lease terminates shall be \$3.00 per acre. In no case shall the total rental for one lease be less than \$100.00 per year.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA

Rule IX ROYALTIES (1) The lessee shall pay a royalty to the state on all uranium or other fissionable material produced, which shall be in cash unless the board at its option requires that the royalty be delivered in kind.

(2) The royalty rates shall be as follows:

(a) For all ores bearing uranium or other fissionable materials (i.e., mineral-bearing materials that are mined primarily for their content of uranium or other fissionable material) which are mined, saved and removed from the leased premises and sold in its crude state, shall be ten percent (10%) of the mine value of such ores in raw, crude form. The mine value of mineral-bearing ores sold by lessee in raw, crude form shall be the actual proceeds received for such ores by lessee after deducting the reasonable cost, if any, of transporting such ore from the mine to the point of sale. Such reasonable cost shall not exceed the cost of transporting the ore from the mine to the closest available and feasible point of sale.

(b) The royalty, or ores which are not sold in their raw form but which are processed in a mill owned or controlled, wholly or partially, by lessee or which are processed in a custom mill for lessee, shall be equal to ten percent (10%) of the mineral-bearing ores or five percent (5%) of the plant returns of the "end product" whichever is greater based on the fair market value at the time said "end product" is recovered.

(c) In the event uranium or other fissionable minerals are recovered from the leased premises by lessee through in-situ, leach or solution mining, lessee shall pay lessor a royalty equal to ten percent (10%) of the sales price of mineral-bearing material disposed of as ore or solution, less fifty percent (50%) of the plant returns of the "end product" whichever is greater based on the Fair Market Value at the time said "end product" is recovered.

(d) Fair Market Value is the "Average Base Price of Market Price Contracts" published at such date by the U.S. Department of Energy (DOE), or, if unavailable, such alternative published by representative market price contracts for concentrates as may be available. End product is defined as the normal usable product or concentrate produced after final processing. In the case of uranium, this product

will be U₂O₃ (yellow cake) unless a major change occurs in current technology. The lessor shall have the right to review all books, records and papers of the lessee at any reasonable times in order to determine whether the proper royalty payment has been made.

AUTH: 77-1-103 MCA IMP: 77-3-116 MCA

Rule X RECORDS AND REPORTS (1) The lessee shall maintain adequate records to determine the amount of royalty owed.

(2) The lessee shall furnish upon request, but not more than once each calendar year, an exploration and development report which describes the work completed by the lessee. The report shall include a plat showing the location of any work completed on the lease property and shall include a complete geologic log and electric log (if done) of any test holes.

(3) Upon commencement of mining, the lessee shall make on or before the last day of each month, a report to the department concerning the operations for the latest month for which records are available, but not more than 3 months preceding the report. The report shall be on the form prescribed by the department and shall provide sufficient information to determine the royalty as well as any other pertinent information requested by the department. The royalty for the month reported shall accompany the report.

AUTH: 77-1-103 MCA IMP: 77-3-119 MCA

Rule XI ASSIGNMENTS AND TRANSFERS (1) The lessee may assign any lease, either in whole or as to subdivisions of land embracing not less than 40 acres, to any person qualified as provided under the law and this subchapter. Such assignment is not, however, binding upon the state until filed in duplicate executed copies on the form prescribed by the department, accompanied by a fee, together with proof of qualifications of the assignee as a lessee, and until the assignment is approved by the department. For the purposes of this rule, any lot platted, according to the governmental survey, is deemed to be a legal subdivision of land embracing 40 acres. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interests of the state in the premises assigned will not, in the judgement of the department, be prejudiced thereby. Until such an assignment is approved, the lessee of record continues to be fully liable and responsible for all of the requirements and obligations of the lease.

(2) In the case of a partial assignment, i.e. assignment of a full interest in only a portion of the leased premises, a

new lease shall be issued for the assigned acreage, with the same expiration date as the original lease.

(3) The assignment of a lease, either in whole or in part, to more than one assignee is permitted if the proposed assignment is otherwise in compliance with the foregoing requirements. However, no such assignment may be approved until one of the assignees is designated to act as agent for the purpose of receiving any and all notices from the department given in connection with the lease and meeting all requirements and obligations under the lease.

(4) Assignment of undivided fractional interests in any lease, either as to the whole of the leased premises or to any portion thereof, may be arranged by having the lessee assign title to the acreage in question to himself and the assignee. The assignment may show the respective shares of interest but the transaction is approved as a transfer of title only and without recognition of the respective interests.

(5) Assignments involving overriding royalties or containing reservations by the assignee may be approved as transfers of title only without recognition of such overriding royalties or reservations.

(6) Evidence of transfers by operation of law should be in the form of a certified copy of the appropriate court order or decree or similar document. A transfer by operation of law to an unqualified person may be recognized by the department for a period of time sufficient to transfer the interest to a qualified person.

AUTH: 77-1-103 MCA IMP: 77-3-105 MCA

Rule XII SURRENDER OF LEASE (1) The lessee may at the termination of any rental year, surrender and relinquish to the state any legal subdivision of the lands leased and be discharged from any obligations not yet accrued as to the lands so surrendered and relinquished, without prejudice to the continuance of the lease as to the lands not surrendered or relinquished.

(2) Although no particular form of surrender is required, such surrender must be in writing, must sufficiently identify the lease sought to be surrendered, and must specifically describe the lands to be surrendered.

(3) Such written instrument of surrender and relinquishment must be signed by the owner of the lease as shown by the records of the department. If more than one person owns the working interest in a lease, all such owners must join in a joint surrender of the lease or each must submit a separate, written surrender.

(4) The lease bond shall not be released until any land disturbed by the lessee has been restored as provided

in this subchapter or a subsequent lessee assumes responsibility for the disturbance.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA; 77-3-132 MCA

Rule XIII CANCELLATION OR TERMINATION (1) The lease is subject to cancellation for failure to comply with the terms of the lease or this subchapter. The lessee shall be notified of any failure to comply and allowed a reasonable time to comply. If the lessee fails to comply within a reasonable time the lease shall be canceled.

(2) Upon termination of the lease for any cause, the lessee shall immediately surrender the premises and shall remove all personal property within 60 days after termination of the lease.

(3) The lessee shall remain responsible for restoring the disturbed land until it has been restored as provided in this subchapter or in the lease itself. The former lessee may be relieved of this responsibility if the land is re-leased.

AUTH: 77-1-102 MCA IMP: 77-3-115 MCA; 77-3-132 MCA

Rule XIV PREVENTION OF WASTE AND POLLUTION (1) The lessee shall conduct all operations in such a manner as to prevent waste and preserve property and resources. The lessee shall carry out at its expense all reasonable orders and requirements of the department relative to the prevention of waste and preservation of property and resources. On the failure of the lessee to carry out such orders, the department may, in addition to other recourse enter on the property to repair damages or prevent waste at the lessee's expense.

(2) In all operations on lands leased pursuant to these rules, the lessee shall use the highest degree of care and all proper safeguards to prevent pollution of earth, air or water. In the event of pollution, directly or indirectly caused by lessee's operation on state land the lessee shall use all reasonable means to recapture escaped pollutants and is responsible for all damage to public and private properties, including bodies of water of any sort, whether above or below the surface of the earth.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA

Rule XV MINIMIZATION OF DISTURBANCE (1) The lessee shall prospect and explore for uranium or other fissionable materials with the minimum disturbance to the surface of the land which is required to adequately explore the property. All drill holes shall be securely capped or plugged when not in use. In any drilling operations, lessee shall comply with all of the provisions of law governing ground water.

(2) The lessee shall enclose and maintain all shafts, tunnels and other openings in order to protect livestock and humans from dangerous conditions.

(3) When any drilling or mining operation is commenced on land leased pursuant to these rules, any topsoil on lands to be disturbed shall be removed and stockpiled on the site. The lessee shall take all reasonable, necessary steps to insure the preservation of the stockpiled topsoil including a temporary vegetation cover to prevent erosion. At the completion of recovery operations, and upon the final abandonment or completion of any drilling or mining, the lessee, shall restore the surface of the location to its original contours as far as reasonably possible, redistribute the topsoil, and reseed the land with native grasses or native plants prescribed by the department.

(4) The lessee shall not cut any timber on leased land for use in its operation without the written consent of the department. The lessee shall pay the customary charges for such timber if consent is obtained.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA

Rule XVI MINERAL LESSEE'S SURFACE RIGHTS (1) The mineral lessee has the right to use the land surface as necessary in order to explore, develop, and mine the leased lands.

(2) Any sale, contract for sale or lease of state land which has been leased for minerals pursuant to this subchapter shall be made subject to such mineral lease.

(3) If the surface of land leased for minerals pursuant to this subchapter has been previously sold or contracted for sale or leased, the rights of the prior purchaser, contractee or lessee shall be protected as required by law and the board.

AUTH: 77-1-103 MCA IMP: 77-3-132 MCA

Rule XVII BONDING Prior to issuance of the lease the lessee shall file with the department a bond in the penal sum of at least \$1,000.00, conditioned upon payment of rentals and royalties, upon compliance with all lease obligations and in order to protect the rights of any prior purchasers or lessees. The department may require an additional bond or bonds at any time during the period of the lease. Lessee may furnish one bond covering all uranium or other fissionable material leases in which any interest is held or acquired by lessee. If a blanket bond is furnished by lessee, separate bonds relating to individual leases are not required. The blanket bond shall be in the amount to be fixed by the department. Payment of a sum

under the terms of said bond or bonds does not release lessee from liability for damages in excess of the amount paid under the terms of said bond or bonds.

AUTH: 77-1-103 MCA IMP: 77-3-119 MCA; 77-3-120 MCA

Rule XVIII SPECIAL CONDITIONS AND STIPULATIONS

The board may attach special conditions and stipulations to any lease prior to issue in order to protect the interests of the state. An applicant or bidder shall be notified of any special condition or stipulation prior to lease sale or issuance and may withdraw his application and elect not to enter into a lease as a result of the special condition or stipulation.

AUTH: 77-1-103 MCA IMP: 77-3-115 MCA

Rule XIX NOTICE OF DISCOVERY OF OTHER MINERALS The mineral lessee shall promptly notify the department of the discovery of any valuable minerals other than those covered by the mining lease.

AUTH: 77-1-103 MCA IMP: 77-3-114 MCA; 77-3-118 MCA

Rule XX HEARINGS AND APPEALS It is the desire and intent of the board that any lessee, or prospective lessee, be given full and adequate opportunity to be heard with respect to any matter affecting the interests of the lessee in any particular lease. Any hearing will be conducted informally, without adherence to the strict rules of evidence of a court of law. Any action by the department or board shall be stayed pending the outcome of the hearing.

AUTH: 77-1-103 MCA IMP: 77-1-202 MCA

4. The rules are proposed to clarify the policies concerning the issuance of leases, the terms and provisions of leases and the obligations of the lessee.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted in writing to Gareth C. Moon, commissioner, department of state lands, capitol station, Helena, Montana 59620 no later than October 5, 1981.

6. David W. Woodgerd has been designated to preside over and conduct the hearings.

7. The authority of the board to make the proposed rule is based upon section 77-1-202 MCA and implements Title 77, Chapter 3, Part 1 MCA.


Gareth C. Moon, Commissioner
Department of State Lands

CERTIFIED TO THE SECRETARY OF STATE August 17, 1981.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of Proposed)	NOTICE OF PROPOSED ADOPTION
Adoption of rules for handling)	OF NEW RULES FOR RADIO
cases involving Radio Common)	COMMON CARRIERS
Carriers.)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons

1. On October 1, 1981, the Department of Public Service Regulation proposes to adopt new rules covering the procedure to be used in all cases involving radio common carriers.

2. The proposed rules provide as follows:

Rule I. PROCEDURE GOVERNED (1) These rules (as well as the Commission's Procedural Rules ARM Title 38, Chapter 2) govern practice and procedure in rate cases involving radio common carriers before the Public Service Commission of the state of Montana, in accordance with applicable laws of the state of Montana.

AUTH: Sec. 69-3-103(2), MCA, IMP: Sec. 69-3-103(2), MCA

Rule II. LETTER OF TRANSMITTAL (1) The letter of a Radio Common Carrier transmitting a rate schedule to the Commission for filing to alter the provisions of a rate schedule shall:

(a) Include a brief description of the proposed changes in service, rate, or charge; and

(b) Name an employee of the carrier who shall be responsible for answering questions concerning the application.

AUTH: Sec. 69-3-103(2), MCA, IMP: Sec. 69-3-103(2), MCA

Rule III. NOTICE (1) Upon receipt of a properly completed application and letter of transmittal, the Commission will publish this information in a Notice of Opportunity for Public Hearing.

(2) This Notice shall also contain the following language: As the Commission believes that competitive conditions prevail in this industry, your request for a hearing must contain a preliminary showing either that competitive conditions do not prevail with respect to this Radio Common Carrier or that this application represents some other type of abuse by the applicant.

(3) If a request for a hearing is made that does not meet the requirements of paragraph (2) of this rule, the Commission staff will contact the person requesting the hearing to determine if either of the showings required by paragraph (2) of this rule can be made. If the showings cannot be made, no hearing will be held.

(4) The Commission shall liberally construe its rules of discovery (ARM 38.2.3301-38.2.3305) in order to effectuate the goals of this rule.

AUTH: Sec. 69-3-103(2), MCA, IMP: Sec. 69-3-103(2), MCA

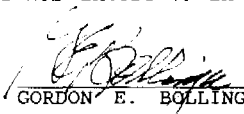
3. These rules are being adopted in recognition of the competition in the radio common carrier industry, and in the belief that regulation should be minimized where competitive market forces support a presumption of adequate service at reasonable rates.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Eileen Shore, 1227 11th Avenue, Helena, Montana 59620 no later than October 1, 1981.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Eileen Shore, 1227 11th Avenue, Helena, Montana 59620, no later than October 1, 1981.

6. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules, 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 Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 449-2771) is available and may be contacted to represent consumer interests in this matter.



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE August 17, 1981.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
Rules 46.5.901, 46.5.902, 46.5.903	)	ON PROPOSED AMENDMENT OF
46.5.907, 46.5.908, 46.5.909	)	RULES 46.5.901, 46.5.902,
46.5.910, and the repeal of	)	46.5.903, 46.5.907,
46.5.911 pertaining to day care	)	46.5.908, 46.5.909,
homes, and centers; definitions,	)	46.5.910 AND PROPOSED
standards, services, licensing and	)	REPEAL OF 46.5.911
terminology	)	PERTAINING TO DAY CARE
	)	HOMES, GROUP DAY CARE
	)	HOMES, AND CENTERS

TO: All Interested Persons

1. On September 16, 1981, at 9:00 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rules 46.5.901, 46.5.902, 46.5.903, 46.5.907, 46.5.908, 46.5.909, 46.5.910 pertaining to the purpose of day care as a supplemental service; definitions; the procedure and general eligibility requirements for licensing or registering; termination of services; registering and licensing services provided by the department to applicants. Repeal of 46.5.911, which specifies the general requirements for licensing, will be considered.

2. Rule 46.5.911 proposed to be repealed is on page 46-280 of the Administrative Rules of Montana.

3. The authority of the agency to repeal the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-507, MCA, C. 606, L. 1981.

4. Rule 46.5.901 as proposed to be amended provides as follows:

46.5.901 SUPPLEMENTAL CARE SERVICES, PURPOSES AND LICENSING (i) The purpose of day care is to provide an organized service for the care of children away from their own homes during some part of the day when circumstances call for normal care in the home to be supplemented.

(a) (1) Day care is a supplemental form of care which provides parental care to a child by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for part of a day but daily periods of less than 24 hours. The primary purpose of day care is to enable the child to continue his development in all areas, i.e. physical, intellectual, and emotional, and in a supplemental atmosphere to his natural environment.

(b) (2) A day care home, center or facility may not

provide care for more than the number of children permitted at any one time by its day care license- or registration certificate.

(e) (3) Licensing, registration and reevaluation of family day care homes, group day care homes and centers is the responsibility of the department. Licensing and issuing certificates of registration is delegated to the district office social worker supervisor III.

(e) (4) The evaluation and determination of the need and eligibility for day care of a child and his family is the responsibility of the social worker located at the county welfare office or with the work incentive (WIN) program.

(e) (5) The final authority for approval of a day care placement remains the responsibility of the social worker supervisor III. Ultimate responsibility for the day care program rests with the community services division.

5. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-503, MCA, C. 606, L. 1981 and Section 53-2-201, MCA, C. 511, L. 1981.

6. Rule 46.5.902 as proposed to be amended provides as follows:

46.5.902 DEFINITIONS AND STANDARDS (1) "Day care facility" means a person, association or place, incorporated or unincorporated, that receives care during the day or part of the day, 3 or more children of separate families and continues this type of care for 5 or more consecutive weeks, provides supplemental parental care on a regular basis. It includes a family day care home, a day care center, or a group day care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, and all or any group facilities facility established chiefly for educational purposes.

(2) "Family day care home" means a home that provides care for no more than 6 children at a time and for private residence in which supplemental parental care is provided to three to six children, no more than 2 children under 2 years of age from separate families on a regular basis -- including the provider's own children who are less than 6 years of age.

(3) "Day care center" means a day care facility that receives 7 or more children for care for 5 or more hours of the day for 5 or more consecutive weeks, place in which supplemental parental care is provided to 13 or more children on a regular basis. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded.

(4) "Group day care home" means a private residence in

which supplemental parental care is provided to 7 to 12 children on a regular basis.

(5) "Supplemental parental child care" means the provision of food, shelter, and learning experiences commensurate with a child's age and capabilities so as to safeguard the child's growth and development on a supplemental basis outside of the child's home by an adult other than a parent, guardian, person in loco parentis, or relative on a regular basis for daily periods of less than 24 hours.

(6) "Day care" means supplemental parental child care.

(7) "Regular basis" means providing supplemental parental care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(8) "Registration" means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or a group day care home to certify that he has complied with the prescribed standards and promulgated rules.

(9) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(10) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day care homes and group day care homes.

(11) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day care centers.

(12) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(13) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

~~(4)~~ (14) "Back-up care" or "substitute care" means care provided by a person in their home by a person not designated as the primary care person; and for the purpose of substituting during the primary care person's illness, temporary absence, emergency absence, or for the purpose of isolating an ill child from other children receiving care in the same facility. This person should be licensed.

~~(5)~~ (15) "Secondary child care" means care provided in exceptional cases to provide additional care to a child beyond that care provided by a primary care person (day care operator who provides majority of care or is determined to be the basic child care person), i.e., the mother is employed or in training for an extensive period of time each day, resulting in the need for care during day and part of the night. A secondary child care situation may be appropriate and could be approved to provide evening care.

~~(6)~~ (16) "Full day care" means care given to a child (ren) in a center, group day care home or family day care home licensed or registered by the agency for such, and provided for a continuous period of not less than 5 hours per day to 10 hours per day. This care includes one main meal, which may be breakfast, lunch, or dinner/supper, and two snacks during the period of care.

~~(7)~~ (17) "Part-time care" means care given to a child in a center or home licensed or registered by the agency, whether day or night care, and provided for a period of less than 5 hours per day paid on an hourly basis.

(18) Drop-in care program - a family day care program providing care to any child for less than 5 consecutive hours, on an intermittent basis. The drop-in care requirements shall apply for each child receiving care for less than 5 consecutive hours on an intermittent basis.

(19) Night care program - a family day care home program providing care for a child between the hours of 7 p.m. and 7 a.m. in which the parent(s) desires a child to sleep. If the parent(s) desires the child to sleep, the night care program requirements as specified shall apply for that child during these hours. If the parent(s) desires the child to nap only, no night care program requirement shall apply for that child.

(20) Infant - a child 6 weeks to 24 months of age.

(21) Preschooler - a child 24 months of age to approximately the age the child initially enters the first grade of a public or private school system.

(22) School age child - a child from the date the child initially enters the first grade of a public or private school system to 12 years of age.

7. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-501, MCA, C. 606, L. 1981 and Section 53-4-503, MCA, C. 606, L. 1981.

8. Rule 46.5.903 as proposed to be amended provides as follows:

46.5.903 REQUIREMENTS (1) General Requirements:

(a) The child must be between 6 weeks and 14 12 years of age except in those special situations discussed in this section.

(b) The day care facility must be licensed or registered prior to day care placement.

(c) The care being paid for may not be more than 60 days in arrears from the last day of care provided for the period covered or being billed for.

(d) The placement of the child(ren) may not violate the current licensed or registered capacity of the day care facility.

(e) Necessary copies of a child day care plan certification form, CS-1a, must be properly completed and approved by the department.

(f) The parent and the day care operator shall receive written confirmation from the social service worker of the approval of day care, for the opening of day care, for the termination of day care (10 days prior to date closure is effective), and the approval of special rates, etc.

(g) Day care services (appropriateness of plan/arrangement and the financial eligibility for day care services) shall be redetermined every 6 months or sooner whenever information indicates eligibility may have changed or the adequacy of the day care plan needs to be reevaluated.

(h) Quality day care dictates as part of its eligibility that a preplacement visit of the child and parent(s) to the day care facility prior to placement for day care be encouraged. ~~is essential. It is the responsibility of the service worker to ensure this pre-placement visit occurs.~~

(2) Specific requirements:

(a) Protective day care requires:

(i) The family can be a single or two-parent family.

(ii) The family is not able to pay for day care, which and the situation is documented in the case record.

(iii) ~~That the~~ child is in need of day care because of danger of neglect or abuse, for physical or emotional reasons that are documented.

(iv) Foster children in exceptional and documented situations, and, after all other requirements for protective day care that are appropriate have been met, and upon written approval of the ~~SW6~~ social worker supervisor III.

(v) Day care is not approved for foster children for the purpose of enabling the foster parent to work.

(b) WIN related day care requires:

(i) The family is registered for WIN.

(ii) If the certified registrant is placed in employment, but is no longer receiving an ADC subsistence grant and meets the other day care eligibility requirements stated in this section, day care services will continue for 30 days from the date of entry into employment.

(c) Special-need-related or extra meal day care requires:

(i) That the extra meal is not and should not be part of the full day care or full night care services.

(ii) That the parents' situation is such as to require the provision of the extra meal (i.e., parent is employed from 7:00 a.m. to 5:30 p.m., thus requires provision of the breakfast meal in addition to lunch; or the provision of lunch only during the school lunch break). This must be documented in the case record.

(iii) That the day care facility is in agreement to provide this extra service.

(iv) That the child's needs and best interest are being met through the service provided.

(v) That this rate has been approved in writing by the district office social worker supervisor III upon receiving a written evaluation for the need from the social service worker.

(d) Special child or exceptional child day care requires:

(i) That the child be between the ages of 0 through 17 years of age and the case record contain written verification of the physical handicaps or retardation from the appropriate authority, and between the ages of 0 through 17 years of age, but not 18 years of age-

(ii) That a written evaluation on the appropriateness of the day care being given the child in the facility has been submitted to and approved by the district office social worker supervisor III, which evaluation shall include:

(A) the long range goal for the family, particularly the child, and how day care is incorporated into this plan;

(B) the positives as well as the negatives of this placement;

(C) the steps that would be taken to ensure appropriate adjustments of the parent and child to the placement; and

(D) the plan for follow-up evaluations of the placement.

9. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-502, MCA, C. 606, L. 1981 and Section 53-4-504, MCA, C. 606, L. 1981.

10. Rule 46.5.907 proposed to be amended provides as follows:

46.5.907 TERMINATION OF DAY CARE SERVICES (1) Payments for child care will be terminated in the following situations and upon written notification to the recipient and the day care facility 10 days prior to the effective date of ~~closure~~. ~~the action: The 10-day prior notice period will be waived as provided for herein. The day care facility shall also receive written notice of termination of care in the following situations:~~

(a) when the district office disapproves the initial day care plan ~~(10 day notice is not needed)~~, or the reevaluation plan at 6 months;

(b) when the working parent terminates employment or training; ~~(10 day notice is not needed)~~;

(c) when the parent misuses day care or abuses day care services;

(d) when the parent voluntarily requests by clear written notice to the social worker that day care services be closed; ~~(10 day notice is not needed, but written notice of request for closure is necessary)~~;

(e) when the day care operator no longer meets licensing standards;

(f) when the WIN registrant is found to be inappropriate for work assignment following orientation and/or training or deregistration;

(g) when the WIN registrant has been deregistered for such reasons as refusal to accept job placement; or refusal to participate in the WIN program; or failure to complete training; ~~the 10 day notice period is not necessary in these situations;~~

(h) when the client has been terminated from the ADC grant; and ~~completed the WIN employability plan,~~ and no longer meets eligibility for day care services; ~~successfully terminated from WIN, the 10 day notice period is not necessary;~~

~~(i) when the parent has been accepted for job placement and actively employed and sufficient income is derived to terminate eligibility for day care services; or when the ADC grant is closed and the client does not meet Title XX of the W-6, Social Security Act eligibility for day care; or client is determined to no longer be eligible for Title XX day care services; the 10 day notice period is not necessary in these situations;~~

~~(j) (i) when the child is no longer within the age limit (10 day notice is not necessary); and~~

~~(k) (j) when the child no longer is using the day care facility and a review of the day care situation indicates there is no intent to use the facility in the near future. (10 day notice is not necessary)~~

(2) Where the district office disapproves the initial day care plan, written notice of termination is required in all cases although the 10 day notice period may is not be required. Such notice shall include reasons for termination and inform the client of their right to a fair hearing and the procedure of requesting said hearing.

(a) (3) Written notice to the day care facility shall preserve confidentiality of client information, but shall include the date of termination, child's name, and parent's name.

(4) All notices of termination shall include reasons for termination and inform the client of their right to a fair hearing and the procedure for requesting said hearing.

11. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-513, MCA, C. 606, L. 1981.

12. Rule 46.5.908 proposed to be amended provides as follows:

46.5.908 FAMILY DAY CARE HOME AND GROUP DAY CARE HOME LICENSING- REGISTRATION SERVICES, DAY CARE CENTER LICENSING SERVICES, PROCEDURES FOR OBTAINING SERVICES (1) Any individual may apply for a license registration certificate to operate a family day care home or group day care home by filling out an application for license, which can be obtained at any SRS office- or any individual, agency or group may apply for a license to operate a day care center. Applications may be obtained from any department, county, or district office in the county in which the applicant lives.

(2) Refer to 53-4-507, MCA for applications for a license or registration certificate by Indians residing on Indian reservations.

(3) Within 30 days of receipt of the application, the department shall investigate to determine whether a license or registration certificate should be issued.

(4) Any individual, group or other agency may request that the agency determine whether or not a home should be licensed or registered according to law. Referral may be either in writing or by telephone.

(5) An individual must be a minimum of 18 years of age to apply for a registration certificate or license.

(6) An individual must be a minimum of 16 years of age to be employed as an assistant caregiver or helper in a family day care home, group day care home or day care center.

13. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-507, MCA, C. 606, L. 1981.

14. Rule 46.5.909 proposed to be amended provides as follows:

46.5.909 FAMILY DAY CARE HOME, GROUP DAY CARE HOME LICENSING SERVICES, REGISTRATION, GENERAL ELIGIBILITY REQUIREMENTS, AND PROGRAM REQUIREMENTS (1) General eligibility requirements.

(a) A family day care home or group day care home must be licensed registered. which receives from 3 to 6 children of separate families for 5 or more consecutive weeks for care for more than 4 hours during any 24 hour period.

(2) A home must be licensed when the children cared for are not related by blood or marriage or under the legal guardianship of the operator.

(3) A day care home may not provide care for more than 6 children (no more than 2 children under 2 years of age including the day care mother's children under 6 years of age).

(4) The day care operator must provide the department with a physician's report-child care personnel, which can be obtained from any SRS office.

(b) No registrant shall discriminate in child admissions or demissions, or employment of staff on the basis of race, sex, religion, creed, color or national origin. No registrant shall discriminate on the basis of physical and/or mental handicap when the handicap does not prevent fulfillment of normal job responsibilities.

(c) Upon receipt of signed and completed application forms, the social worker will evaluate the prospective family day care home or group day care home based upon the standards found in these rules. A prospective family day care home or group day care home that meets minimum standards shall be recommended to the social worker supervisor for issuance of a registration certificate. This certificate may be either provisional or regular.

(i) A provisional registration certificate shall be issued for a period of up to three months when the family day care home or group day care home does not fully comply with the standards. A second three month provisional certificate may be issued in special circumstances, at the discretion of the social worker supervisor III, the total not to exceed six months.

(ii) A plan for full compliance with standards must be submitted by the family day care home or group day care home to the department before issuance of a provisional certificate.

(iii) Written notification of the granting of a provisional certificate by the department must be made to the child care operator specifying the reason, duration and conditions for continuing and/or terminating the provisional certificate.

(5) A department social worker does a study and evaluation of the day care home and makes a recommendation as to licensing.

(6) The social service supervisor reviews the study and has the final licensing decision.

(7) (d) Licenses Registration certificates are issued from an SRS district or regional office, for periods not to exceed one year.

(e) Revocation of registration:

(i) a provider receiving 3 warnings of noncompliance shall be subject to revocation of their registration certificate;

(ii) should any one noncompliance place a child in danger, revocation will be immediate;

(iii) 30 days will be given to correct the noncompliance issue. This will be monitored by the social worker.

(f) The provider shall maintain all policies, records, and reports that are required by the department. These policies, records, and reports must be reviewed and updated annually.

(g) The provider shall report immediately any child suspected of being abused or neglected to their local county welfare department or the child abuse hotline, 1-800-332-6100.

(h) The provider shall submit a report to the appropriate regional/district office for the department within 24 hours after occurrence of an accident, such as the death or serious injury of a child while at the facility or when a fire occurs which requires the services of a fire department. A serious injury is defined as one requiring inpatient hospitalization.

(i) The registration certificate is not transferable to another operator or site.

(j) The department must be notified of any changes that would affect the terms of the registration.

(k) Separate registration certificates shall be required for programs maintained on separate premises even when operated under the same auspices.

(l) Public support will not be provided to children of compulsory school age during regular school hours as established by the local education agency.

(8) Duration of the license is the decision of the social service supervisor, not to exceed one year.

(9) (m) Family day care home and group day care home operators must have a signed medical request, on file if the child is receiving any medication. This form can be obtained from any SRS office.

(10) (n) Family day care and group day care homes must have fire and public liability insurance coverage. This requirement may not be waived.

(11) At any time a facility is found out of conformity with licensing standards the license may be revoked by written notification from the social service supervisor. The notification will include the reasons for revocation and advice to the operator of the right to appeal.

15. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-502, MCA, C. 606, L. 1981, Section 53-4-504, MCA, C. 606, L. 1981, Section 53-4-508, MCA, C. 606, L. 1981 and Section 53-4-509, MCA, C. 606, L. 1981.

16. Rule 46.5.910 proposed to be amended provides as follows:

46.5.910 FAMILY DAY CARE HOME AND GROUP DAY CARE HOME LICENSING REGISTRATION SERVICES PROVIDED The department will provide the following:

(1) assistance to the applicant to meet ~~licensing~~ registration standards;

(2) counseling services concerning children's problems;

(3) assistance to the day care ~~mother~~ operator in providing enrichment experiences for the children, proper environment and nutrition; and

(4) suppling the operator with the proper forms to obtain agency payment.

(i) Each month the operator must submit a voucher for child care services, to an SRS district office before deadline date, as established by the SRS district office.

(5) The department may investigate and inspect the conditions and qualifications of any family day care home and group day care homes seeking or holding a registration certificate.

(6) The department must visit and inspect at least 15% of all registered family day care homes and group day care homes in each of the governor's planning regions annually.

(7) Upon request of the department, the state department of health or the state fire marshal or his designee shall inspect any day care home or group day care home for which a registration certificate is applied for or is issued and shall report its findings to the department.

(8) Upon request, the department shall give consultation to every registrant who desires to upgrade the services of his program.

17. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, C. 606, L. 1981 and the rule implements Section 53-4-508, MCA, C. 606, L. 1981 and Section 53-4-511, MCA, C. 606, L. 1981.

18. The rules are proposed to be amended due to the passage of HB 646 (C. 606, L. 1981) passed by the 47th Legislature which provided for the elimination of licensure for family day care homes and the implementation of registration for such facilities. HB 646 also provides for the establishment of group day care facilities and the rule specifies the purpose of day care, the procedure for obtaining registration certificates and the requirements an applicant must meet in order to be registered as a family day care home or group day care home. The guidelines for termination of day care services are included in these rules in order to conform to the department's fair hearing requirements and to give a recipient/parent of day care services appropriate timely notification of termination or changes in the benefits or services provided. The proposed rules also clarify the requirements, procedure and general eligibility requirements for licensure of day care centers. The services the department staff must provide to an applicant or holder of a license or registration certificate are included.


The proposed amendments to 46.5.902 are necessary since HB 646 created additional definitions for the implementation of registration, as well as specifying the type of facility, and number of children that may be cared for in each facility.

The proposed repeal of 46.5.911, which specified the procedure for obtaining a day care license, is recommended because of incorporation in Rule 46.5.908, which as proposed, specifies the procedure for obtaining registration certificates and licenses to operate all types of day care facilities.

All other changes in the rules are in wording for clarification purposes only.

19. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than September 24, 1981.

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



Director, Social & Rehabilitation Services

Certified to the Secretary of State August 10 , 1981

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS


In the matter of the amendments) NOTICE OF AMENDMENTS OF ARM
of ARM 40.42.404 examinations) 40.42.404 EXAMINATIONS
and 40.42.405 concerning renew-) and 40.42.405 RENEWALS
als.)

TO: All Interested Persons:

1. On July 16, 1981, the Board of Plumbers published a notice of proposed amendments of ARM 40.42.404 concerning examinations and 40.42.405 concerning renewals at pages 677 through 679, Montana Administrative Register, issue number 13.

2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF PLUMBERS
WALTER E. TYNES, CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 17, 1981.

VOLUME NO. 39

OPINION NO. 29

COUNTY BUDGET AND TAXATION - County road fund;
COUNTY BUDGET AND TAXATION - Schedule for assessment, budget,
levy, collection;
COUNTY BUDGET AND TAXATION - Increase in road tax levy
prorated;
COUNTY COMMISSIONERS, BOARD OF - Authority to fix prorated
road tax levy;
COUNTY COMMISSIONERS, BOARD OF - Date of exercising taxation
authority;
COUNTIES - County road fund, increase in permissive mill
levy prorated;
COUNTIES - County road fund, date of fixing levy;
LEGISLATIVE BILLS - Effective date passed at same time,
impact on same subject;
STATUTORY CONSTRUCTION - Amendments given effect;
MONTANA CODE ANNOTATED - Title 7, Chapter 6, Part 23;
Sections 7-14-2501, 1-2-201;
SESSION LAWS OF MONTANA, 1981 - Chapter 351 (House Bill
622); Chapter 466 (Senate Bill 305);

HELD: On the second Monday of August, 1981, the board of
 county commissioners may apply the increased road

tax levy authorized by Ch. 351, Laws of Montana, 1981, at a rate of 12 mills for the three months of the current fiscal year which fall before October 1, 1981, and at a rate of 15 mills for the nine months of the current fiscal year which fall after October 1, 1981.

29 July 1981

Allin H. Cheetham, Esq.
Choteau County Attorney
County Courthouse Building
Fort Benton, Montana 59442

Dear Mr. Cheetham:

You have asked my opinion regarding the practical application of the recent increase allowed by the legislature for the permissive county road levy.

The question arises because of two amendatory acts passed by the 1981 legislature, Ch. 351 (HB 622) and Ch. 466 (SB 305), Laws of Montana, 1981. Ch. 351 amends section 7-14-2501, MCA, to authorize the board of county commissioners of first, second, and third class counties to levy 15 mills rather than 12 mills for the county road fund. Fourth, fifth, sixth and seventh class counties may levy up to 18 mills. Ch. 466 amends section 1-2-201, MCA by changing the effective date of all non-appropriation legislation from July 1 to October 1 following its adoption. As the counties' budget year begins July 1, 1981 (§7-6-2201, MCA), your question is when may the county apply the increased levy authorized by Ch. 351?

To determine the impact of the October 1st effective date on the implementation of the increased road tax levy, it is necessary to examine the county budget and taxation procedures. The general powers of the board of county commissioners relating to roads are derived from section 7-14-2101, MCA, which authorizes the board of county commissioners to maintain and control county bridges and roads, and to levy taxes for those purposes. The procedure to levy road taxes, as well as other taxes, is prescribed in Part 23 of Chapter 6, Title 7, MCA. The procedure may be summarized as follows:

1. The county commissioners must prepare a preliminary budget based on a tabulation of estimated county expenditures and revenue sources by the second Monday in July of each year. Sections 7-6-2315 and 7-6-2313, MCA.

2. The board of county commissioners must hold public hearings on the preliminary budget beginning on the Wednesday before the second Monday in August. Section 7-5-2317, MCA.

3. On the second Monday in August the board of county commissioners must approve and adopt by resolution its final budget. Section 7-6-2320, MCA.

4. On the second Monday in August, after adoption of the budget, the board of county commissioners must fix the tax levy for each fund of the budget. It must do so at a rate which is sufficient to raise the amount set out in the budget, and it must base the rate on the taxable valuation of the county for the current fiscal year. Section 7-6-2321, MCA. In determining the fund requirements to be met by tax levy, the board may not exceed the maximum levy permitted by law for each fund. Section 7-6-2319(3), MCA.

The actual collection of county taxes, including the tax for the county road fund, takes place on a schedule described in Title 15, MCA. Reduced to the bare bones, that schedule is as follows:

1. The department of revenue or its agent must assess all property subject to taxation in the county between January 1 and the second Monday in July. Section 15-8-201, MCA.

2. On or before the third Monday in October the county clerk and recorder must deliver the county assessment book to the county treasurer and charge the treasurer with the full amount of taxes levied. Section 15-10-307, MCA.

3. Within ten days of receipt of the assessment book, the county treasurer must send tax notices to taxpayers of the county. Section 15-16-101(2), MCA.

4. Taxpayers must then pay one half of their taxes on or before November 30 of each year and the remaining half on or before May 31 of each year. Section 15-16-102(1), MCA.

This year, boards of county commissioners must fix the tax levies for each fund in their county budgets on Monday, August 10, 1981. Fifty-one days later, on October 1, 1981, non-appropriation legislation passed by the 1981 legislature, including Ch. 351, takes effect. Some 30 days after the effective date of Ch. 351, the taxpayers will receive their tax notices.

Neither the amendment of section 7-14-2501 nor the amendment of section 1-2-201 dislodged 7-14-2501 from its place in the scheme of county taxation or removed it from the time strictures imposed by law on county taxation procedures. The increased levy must be governed by the existing county budget and taxation provisions. Thus the board of county commissioners must adopt the current fiscal year tax levy for its county road fund on August 10, 1981, pursuant to section 7-6-2321, MCA.

Read together, the language of both amendments makes it clear that as of October 1, 1981, the board of county commissioners is authorized to levy a tax of up to 15 mills for its county road fund. What is not clear is whether the board may implement that authority on August 10, 1981, the single day within the relevant fiscal year on which the law commands the board of county commissioners to exercise its taxing authority.

It is my opinion that on August 10, 1981, the board of county commissioners of first, second, and third class counties may fix a tax levy for the county road fund at a rate of 12 mills for the three months of the current fiscal year which fall before October 1, and at a rate of 15 mills for the nine months of the current fiscal year which fall after October 1, 1981. Prorating the permissive road tax levy in this fashion will not exceed the maximum levy permitted by law to be raised for the fund.

In resolving this question of statutory construction, it is important to give effect to the legislative intent in enacting both provisions without defeating the object of either piece of legislation. Dover Ranch v. County of Yellowstone, 121 St.Rptr. 727, 609 P.2d 711, 715 (1980).

Statutes passed at the same time and having an impact on the same subject are to be construed together if possible. Belote v. Bakken, 139 Mont. 43, 46, 359 P.2d 372 (1961). Legislative intent is to be sought in the language employed and the apparent purpose to be served. State ex rel. Federal Land Bank v. Hays, 86 Mont. 58, 63, 282 P. 32 (1929).

Obviously the legislature intended to allow counties to increase the maximum levy for county roads this year. By virtue of Ch. 466 that authorization does not become law until October 1st, three months after the county fiscal year has commenced, and after the budget has been adopted. Nevertheless, for three fourths of the fiscal year the county will be authorized to impose greater mill levies.

The only way to give effect to both amended section 7-14-2501 and amended section 1-2-201 is to allow the board to prorate its road tax levy to comply with the maximum rate in effect before October 1, 1981, and the maximum rate in effect after that date. In State Highway Commission v. Marsh, 175 Mont. 460, 575 P.2d 38 (1978), the Montana Supreme Court used the device of prorating a condemnation award interest rate, according to the rates in effect before and after amendment of the relevant statute, to determine the amount of interest due the defendant. In that case, the legislature had amended section 93-9913, R.C.M. 1947, to increase the interest allowed on condemnation awards from six percent to ten percent. The State had brought its condemnation suit before the effective date of the amendment, but the award was not finally adjudicated until after that date. The court concluded that "it is more equitable to apply the six percent interest rate up to the effective date of the amendment and to apply the ten percent interest rate from the effective date thereafter." 575 P.2d at 43. The same logic applies here.

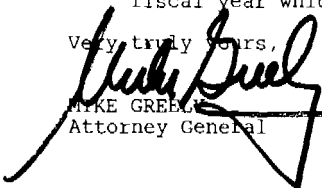
Construing the amendments of sections 7-14-2501 and 1-2-201 to allow the board to prorate its road tax levy on August 10, 1981, is the reasonable way to give effect to both amendments. A construction which would restrict the board to fixing a levy at the old 12 mill rate for the entire current fiscal year would negate the legislative object in amending section 7-14-2501, while advancing no purpose discernible in amended section 1-2-201. Statutory construction should not lead to absurd results where reasonable construction will avoid it. McClanathan v. Smith, 37

St.Rptr. 113, 606 P.2d 507, 510 (1980). A statute will not be interpreted to defeat its object or purpose and the objects sought to be achieved by the legislature are of prime consideration in interpreting it. Dover Ranch v. County of Yellowstone, 37 St.Rptr. 727, 609 P.2d 711, 715 (1980).

THEREFORE, IT IS MY OPINION:

On the second Monday of August, 1981, the board of county commissioners may apply the increased road tax levy authorized by Ch. 351, Laws of Montana, 1981, at a rate of 12 mills for the three months of the current fiscal year which fall before October 1, 1981, and at a rate of 15 mills for the nine months of the current fiscal year which fall after October 1, 1981.

Very truly yours,



MIKE GREBOW
Attorney General