RESERVE

MONTANA ADMINISTRATIVE REGISTER

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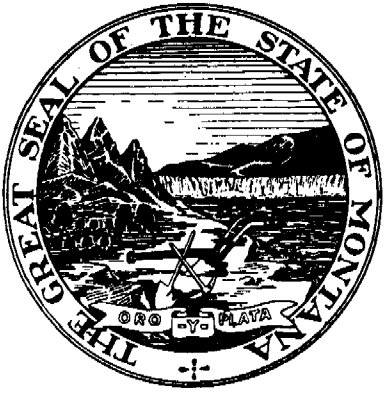

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

IN THE MATTER OF the Proposed Adoption of Rules Pertaining To Storage Contracts and Warehouse Receipts of Bean Warehousemen.	NOTICE OF PROPOSED ADOPTION OF RULES PERTAINING TO STORAGE CONTRACTS AND WAREHOUSE RECEIPTS OF BEAN WAREHOUSEMEN. NO HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 31, 1982, the Department of Agriculture proposes to adopt two new rules concerning bean warehouse storage contracts and receipts.

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

RULE I DATE OF TERMINATION OF STORAGE CONTRACTS EVIDENCED BY WAREHOUSE RECEIPTS All storage contracts on beans in store in public local bean warehouses, as evidenced by a warehouse receipt, shall terminate on June 30 of each year.

AUTH: 80-3-509 IMP: 80-3-509, 80-3-511

RULE II TERMINATION OF STORAGE CONTRACT - SALE OF GRAIN FOR CHARGES Storage on any or all beans may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the bean warehoue receipt, together with a demand for delivery of such beans or notice to bean warehouseman to sell the same.

In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the bean warehouseman shall upon the expiration of the storage contract, sell so much of the stored beans at the local market price on the close of business on that day as is sufficient to pay the accrued storage charges. He shall thereupon issue a new bean warehouse receipt, for the balance of the beans to the owner thereof upon surrender by him of the original bean warehouse receipts.

The bean warehouseman shall notify all bean warehouse receipt holders of the provisions of this section by June 1 of each year. **AUTH & IMP: 80-3-509 IMP: 80-3-511**

3. The rules are proposed to remedy a problem in the storage regulation which is not explicitly covered in the existing statute or rules. While Sec. 80-3-511 requires a warehouseman to deliver stored beans upon payment of storage charges, it does not allow him to convert such beans as are necessary to cover those charges where the receipt holder defaults.

While there may directly be civil remedies available to the warehousemen, the proposed rule would facilitate his business needs and those of the receipt holder in some instances and is a recognized procedure already established in the grain storage industry. (See Sec. 80-4-230 MCA.)

4. Interested parties may submit their data, views or arguments concerning the proposed adoption to Timothy J. Meloy,

Department Attorney, Department of Agriculture, Room 229, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 no later than July 29, 1982.

5. If a person who is directly affected by the proposed adoption of these rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Timothy J. Meloy, Department Attorney, Department of Agriculture, Room 229, Agriculture/ Livestock Building, Capitol Station, Helena, Montana 59620 no later than July 29, 1982.

6. If the agency receives requests for a public hearing on the proposed adoption from 25 or more persons directly affected; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the agency to make the proposed adoption is based on Section 80-3-509 MCA, and the rules implement Sections 80-3-509 and 80-3-511 MCA.

W. Gordon McOmber

W. Gordon McOmber, Director
Department of Agriculture

Certified to the Secretary of State June 21, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

IN THE MATTER of the proposed amendments of ARM 8.12.601 concerning applications and educational requirements, 8.12.603 concerning examinations, and 8.12.604 concerning temporary permits.	NOTICE OF PROPOSED AMENDMENT OF ARM 8.12.601 APPLICATIONS, EDUCATION REQUIREMENTS, 8.12.603 EXAMINATION, 8.12.604 TEMPORARY PERMIT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 30, 1982, the Board of Chiropractors proposes to amend the above stated rules.

2. The proposed amendment of 8.12.601 will read as follows: (new matter underlined, deleted matter interlined)

"8.12.601 APPLICATIONS, EDUCATION REQUIREMENTS (1) The admission to examination for licensure shall be based upon proof that the applicant has completed 2 years of college in addition to graduation from an approved chiropractic college that has status with the Council on Chiropractic Education (CCE). Transcripts from all colleges shall accompany the application. In addition, a certified copy of the National Board Scores shall be supplied to the board prior to examination.

(2) Applications will be reviewed on an individual basis with approval at the discretion of the board.

(3) An application fee of ~~$75~~ 125 shall be paid prior to the examination, $25 of which shall be non-refundable for board administrative costs.

(4) A ~~$25~~ 50 re-examination fee shall be paid for subsequent examination and application."

3. The board is proposing the amendment to set fees commensurate with costs as per section 37-1-134, MCA which allows the boards to set fees commensurate with program costs. The authority of the board to make the proposed change is based on section 37-12-201, MCA and implements section 37-12-302, MCA.

4. The proposed amendment of 8.12.603 adds a new subsection (4) and will read as follows: (new matter underlined, deleted matter interlined)(full text of rule is located at pages 8-357 and 8-358, Administrative Rules of Montana)

"8.12.603 EXAMINATION (1)...

(4) Minimum passing grade on each of the written and x-ray sections of the examination is 75%. Applicants failing two or less sections will only be required to retake the sections failed. The full examination will be required for failure to pass more than two sections."

5. The board is proposing the change to reflect a minimum passing score on the examination. The authority of the board to make the proposed change is based on section 37-12-201, MCA and implements section 37-12-304, MCA.

6. The proposed amendment of 8.12.604 will read as follows: (new matter underlined, deleted matter interlined)

"8.12.604 TEMPORARY PERMIT (1) Upon receipt of a completed application, ~~procedures in granting~~ a temporary permit ~~will~~ may be ~~on an individual basis~~ issued at the discretion of the board. All applicants for temporary permit must work under the direct supervision of a licensed chiropractor in the state of Montana and must furnish documentation of this supervision. Temporary permits will only be issued until the date of the next examination, and no more than two temporary permits may be issued to an applicant."

7. The board is proposing the change to set the specific lenght of time a temporary permit is valid and to outline the supervision required. The authority of the board to make the proposed amendment is based on section 37-12-201, MCA and implements section 37-12-303, MCA.

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

9. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620-0407 no later than July 28, 1982.

10. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the Legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 22 based on the 225 licensees.

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

BOARD OF CHIROPRACTORS
CARROL ALBERT, D.C., PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 21, 1982.

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

In the matter of the amendment of Rules 12.6.501 through 12.6.513 relating to outfitters and professional guides regulations	NOTICE OF AMENDMENT OF RULES 12.6.501 THROUGH 12.6.513 AND REPEAL OF RULE 12.6.510 -- OUTFITTERS AND PROFESSIONAL GUIDES REGULATIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On July 30, 1982, the Montana Department of Fish, Wildlife, & Parks proposes to amend rules 12.6.501 through 12.6.513 and repeal rule 12.6.510 relating to outfitters and professional guides regulations. These rules were proposed for amendment on October 28, 1981, in issue #20, page 1261 of the Montana Administrative Register. Extensive discussion was conducted with licensed outfitters at their regional meetings, through the Montana Outfitter's Council, public hearing on February 19, 1982, and written comment on the presiding officer's report subsequent to that hearing. While all objections were not met, the major concerns were addressed and proposed rules were ready for adoption with the exception of 12.6.509 - Experience Standards. For this rule there were major differing viewpoints that were not resolved. The director determined that a resolution of differences over amendment or repeal of this be made before adoption of any of the proposed amendments should be made. Thus, the amendments proposed on October 28, 1981 were not adopted within the six-month statutory time limit. A resolution of the differences over experience standards has been made as reflected in these proposed amendments.

2. The proposed rules provide as follows (new matter is underlined, deletions are interlined):

12.6.501 OUTFITTER LICENSES (1) No person, company, or corporation shall engage in the business of outfitting without first having obtained from the department an outfitter's license of one of the kinds or types hereinafter described as follows:

(a) A general license authorizing one to ~~be~~ engaged in the business of outfitting for hunting or fishing parties, ~~and~~ or to ~~providing~~ provide any saddle and pack animals, or ~~guide service, and related services for~~ personal services on back country or wilderness pack trips of more than one day duration, ~~and who may in addition provide other equipment or vehicles for the purpose of assisting any person in catching fish or locating and pursuing game animals or both~~ for hunting or fishing parties; or to also provide camping equipment, vehicles, or other con-

veyance, for any person to hunt, capture, take, or kill any game animal, upland game bird, migratory game bird, or to catch fish or attempt to take or catch fish and to accompany such a party or person on an expedition for any of these purposes.

(b) A special license authorizing the outfitter to perform only the function of outfitting listed on the license in accordance with the following classifications:

(i) Class I - special outfitter license for taking hunting parties out from a permanent base of operations for day trips only;

(ii) Class II - special outfitter license for taking fishing parties or river float fishing parties out from a permanent base of operations for ~~day trips only~~ trips by watercraft;

~~(iii) Class III - special outfitter license providing for a temporary camp for a specialized purpose for taking fishing parties out from a permanent base of operations for trips of more than one day.~~ AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.502 OUTFITTER STANDARDS (1) No outfitter ~~shall~~ may be issued a license unless ~~and until such standards and requirements shall be met and maintained at all times as set forth in rules 12.6.503 through 12.6.510~~:

(a) The applicant has passed the written outfitter examination with a minimum score of 75% in the category of license requested;

(b) When deemed necessary by the department, a field examination to demonstrate the applicant's ability to use all equipment or stock listed on the application is required;

(c) The applicant has provided proof of ownership or control of the equipment listed in his application.

(d) The applicant has furnished proof of liability insurance for the outfitting services he provides. Minimum insurance will be $10,000 for property damage, $100,000 for personal injury to one person, and a total of $300,000 for personal injury to more than one person. The verification of insurance certificate shall be submitted to the department by a new applicant prior to licensing and must accompany the renewal application. (Effective January 1, 1983).

(2) The written outfitter examination shall be given at each region (Kalispell, Missoula, Bozeman, Great Falls, Billings, Glasgow, Miles City and at the Helena Office) twice a year as announced. The written test shall be administered by enforcement personnel designated by the director. Applicants will be advised by mail of success or failure. The field examination when required shall be given at times and places as designated by the director. AUTH: Sec. 87-4-106 MCA; IMP: Sec. 87-4-106, MCA.

12.6.503 OUTFITTER EQUIPMENT AND SUPPLIES (1) ~~Equipment necessary~~ An outfitter shall own or control the following equipment:

(a) ~~First-aid-kit---up-to-date-and-suitable-for-size-and type-operation~~ A first aid kit sufficient to provide basic first aid to an injured person and to stabilize injuries; at base camps, a 24-unit kit (equivalent to MSA Type D - 24 unit kit); at spike camps, in vehicles and water craft a 10-unit kit - (equivalent to MSA Type D - 10 unit kit).

(b) Transportation, ~~equipment~~ shelter, equipment, and food ~~suitable~~ sufficient for the number of guests served and for the ~~type~~ kind of outfitting operation conducted.

(c) All outfitters operating on public or private lands during fire season shall be equipped with an axe and shovel in ~~serviceable~~ good condition, each of which shall be not less than 30 inches in length overall, and a bucket and/or a water-bag of not less than 2-gallon capacity. ~~Fires-discovered-shall be-quenched-whenever-possible-or-reported-to-the-proper authorities-at-the-first-opportunity.--All-campfires-shall-be completely-extinguished-before-leaving-them-unattended.~~ Campfires shall never be left unattended and shall be completely extinguished before leaving them.

(d) Every vessel ~~embarking-on-a-river-float-trip-shall have-a-minimum-of-one-extra-oar-or-paddle-aboard.~~ used in an outfitting business shall comply with all the requirements of Title 23, Chapter 2, Part 5, MCA, and its implementing rules. All such vessels will have at least one extra paddle or oar and a Coast Guard approved Type I, Type II, or Type III personal flotation device for each person aboard.

(2) All new applicants, resident and nonresident, must have their outfitting equipment available for inspection by Montana Department of Fish, Wildlife, & Parks law enforcement personnel at time and place designated by the department prior to issuance of license. Inspection shall be mandatory.

AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.504 SANITATION ~~REQUIREMENTS~~ AND LIVESTOCK (1) At all camps, ~~the outfitter shall construct necessary~~ facilities for handling stock and maintaining a sanitary camp where such facilities are allowed by special use permits of the particular forest or agency. Pit toilets shall be ~~limed~~ treated chemically as needed when in use and covered with earth when a camp is not ~~occupied~~ in use ~~for-several-months.~~ ~~Under-all-circumstances these-toilets-shall-be-located-not-less-than-100-feet-from-any surface-water-and-they-shall-not-be-constructed-in-a-manner that-is-likely-to-contaminate-ground-waters.--Pit-bottom-must be-at-least-4-feet-above-ground-water.~~ These toilets shall not be within 100 feet from any surface water and they shall not be constructed in a manner that would contaminate ground waters. The toilets shall be constructed to environmental requirements

of the appropriate agency.

(2) All livestock corrals must be at least 100 feet from any surface water or meet the standards required by the appropriate agency.

(3) When natural feed is not available, or when it is inadequate for the number of livestock in the camp, the outfitter shall have and supply supplemental feed adequate to maintain all livestock for the time spent at that campsite.

(4) No outfitter or his employee may subject any animal to abuse or to cruel and inhumane treatment.

~~(3)~~ (5) The outfitter shall not leave any litter and shall ~~carry or~~ pack out all unburnable refuse from his campsite. When permitted by state or federal law or regulation, garbage shall be burned daily. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.505 RATE SCHEDULE (1) Upon request ~~by~~ of a client, the outfitter shall furnish a schedule of rates charged for the services offered. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.506 CAMP RESTRICTION (1) Camps shall not ~~block trails or~~ interfere with ~~public~~ use of public roads, trails, and facilities. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.507 PROTECTION OF PRIVATE PROPERTY (1) Outfitters shall exercise diligence in protecting from damage all private lands and property ~~of others upon~~ which the outfitter or client ~~thereof may~~ enter upon, ~~or in proximity to such lands or property and such lands and property covered by and used in connection with the outfitter's operation~~ while engaged in outfitter activity. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.508 RECORDS (1) True, complete, and accurate outfitter records, as defined herein, will be filed with the department regional supervisor for the region in which the outfitter is licensed. Such records must be filed relating to the license year immediately preceding the expiration date of the outfitter's license. No outfitter's license ~~will~~ may be renewed unless ~~and until~~ such records are ~~filed as provided herein~~ those which contain:

(a) complete name and address of outfitter;

(b) outfitter's license number and year issued;

(c) dates of service to each client;

(d) complete name and address of each client as the same appears on the client's fishing or hunting license;

(e) number, sex, ~~age,~~ and species of big game and game birds taken;

(f) client's license number(s), by species;

(g) whether or not the client fished;

(h) ~~statement identifying each~~ identification of every

hunting district ~~in which~~ hunted by each client ~~hunted or fished, by drainage~~ and of every ~~stream or lake fished~~ by each client.

(2) Prior to the filing of records, as herein required, and at all reasonable times, each outfitter shall make available for inspection and inquiry by enforcement personnel of the department, all or any portion of his records or information required to be in such records as hereinabove provided. The said records shall at all times be maintained as confidential information and no part of same shall be released to persons or organizations outside the department unless such release is first approved by the director, or ~~except as may be otherwise~~ required by law. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.509 EXPERIENCE STANDARDS (1) A general outfitter is required to meet the following experience standards:

(a) a minimum of 5 years' hunting, ~~and related activities and a minimum of 2 years' work as a professional guide with a licensed general outfitter or 2 years as a licensed special outfitter~~ fishing, packing and camping, handling livestock and equipment experience or previous experience as a professional guide with a general outfitter or previous experience as a licensed Special Class I and II outfitter; and the director, when deemed necessary, may require a practical field examination to determine the applicant's ability to use all equipment required to provide service.

(2) A special outfitter is required to meet the following experience standards:

(a) a minimum of 5 years' hunting, ~~and related activities~~ fishing, floating and boating or previous experience as a professional guide with a general outfitter or as a professional guide for a special outfitter in category of license requested.

AUTH: Sec. ~~87-4-106~~ MCA IMP: Sec. 87-4-106 MCA.

12.6.510 RESIDENCY AND AGE REQUIREMENTS Repeal.

12.6.511 HUNTING AND FISHING LICENSES (1) ~~Current hunting or fishing licenses must be obtained by, and must at all times be in the possession of, every outfitter and guide during the times that he is engaging in outfitting or guiding, as hereinafter provided.~~

~~(a) While a resident outfitter or guide is outfitting or guiding for deer or antelope hunting parties in those areas or districts of the eastern portion of the state of Montana where there are only deer and antelope seasons available a class A-3, deer A tag.~~

~~(b) While a resident outfitter or guide is outfitting or guiding for deer, elk, or other big game hunting parties in those areas other than those specified in (a) above a class A-3, deer A tag, and a class A-5 elk tag.~~

~~(c)--Any nonresident person who is an outfitter or guide and is outfitting or guiding for deer or antelope hunting parties in these areas or districts of the eastern portion of the state of Montana where there are only deer and antelope seasons available ---a class B-7 (nonresident) deer license, and/or a special (nonresident) antelope license, or a B-10 (nonresident) big game combination license.~~

~~(2)--An outfitter shall sign the license of any client from whom he receives any form of compensation.~~

(1) Every outfitter and professional guide shall hold a wildlife conservation license valid for the license year in which he is outfitting or guiding and shall keep on his person such conservation license at all times that he is engaged in outfitting or guiding.

(2) Outfitters and their employees may not shoot, kill or take game animals for or in direct competition with those employing them. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106, MCA.

12.6.512 GUIDE'S ENDORSEMENT (1) ~~A professional guide's endorsement by an outfitter on his guide's license must also show the date of endorsement.~~ The employing outfitter shall endorse and date the guide's license. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.513 LICENSE REVOCATION ~~(1)--The wildlife conservation license of a resident guide may be suspended, revoked, or denied if the previous year's records are not submitted.~~ (2) (1) Any outfitter or professional guide's license is subject to revocation ~~under breach~~ for violation of any of these regulations or ~~upon breach of any of the laws of Montana relating to outfitting or guiding or upon the filing of a false application, report, or record shall be a breach of these regulations~~ for violation of any section of Title 87, Chapter 4, Part 1, MCA. Upon revocation or denial of any outfitter's license, said revocation shall include the privilege of holding a guide's license.

(2) The filing of a materially false application, report, or record shall be a violation of these regulations. AUTH: Sec. 87-4-106 MCA IMP: Sec. 87-4-106 MCA.

12.6.514 LICENSE RENEWAL (1) If an outfitter allows his license to lapse for more than one license year, he shall then be treated as a new applicant. AUTH: Sec. 87-4-106, MCA IMP: Sec. 87-4-106 MCA.

3. The rule proposed to be repealed can be found on page 12-317 of the Administrative rules of Montana.

4. The rule is proposed to be repealed because the Supreme Court of Montana, in Godfrey v. Montana State Fish & Game Commission, ___ Mont. ___, 38 St.Rep. 661 (1981), declared unconstitutional the department's statutory limitations on residency on which the rule is based.

5. The department is proposing these amendments on behalf

of the Montana Outfitters Council and on its own behalf to make changes required by 1981 legislative action, to clarify present wording, to make modifications to the regulations based upon current outfitting practice, and to support the outfitting profession's efforts to upgrade the services it provides the recreating public.

6. Interested persons may present their data, views or arguments, in writing, to Bill Maloit, Supervisor of Outfitters, Department of Fish, Wildlife, & Parks, 1420 E. 6 Ave., Helena, MT 59620, no later than July 29, 1982.

7. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Bill Maloit at the above address no later than July 29, 1982.

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

9. The authority of the agency to make the proposed amendments is based on Sec. 87-4-106 MCA, and the rules implement Sec. 87-4-106.

James W. Flynn, Director
Department of Fish, Wildlife, & Parks

Certified to Secretary of State June 11, 1982

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

In the matter of the adoption of an amendment to a federal agency rule pertaining to the food stamp program, Rule 46.11.101	)))))	NOTICE OF ADOPTION OF AN AMENDMENT TO A FEDERAL AGENCY RULE INCORPORATED BY REFERENCE IN RULE 46.11.101, FOOD STAMP PROGRAM. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 17977, Tuesday, April 27, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. The amendment allows the state to adjust the highest income which a household may have and still be eligible for food stamps. The Food Stamp Act of 1977 requires the Department of Agriculture to make adjustments in the monthly income eligibility standards each year in order to account for changes in the cost of living. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 17977, Tuesday, April 27, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is July 1, 1982. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment July 1, 1982.

3. If the department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5,253 persons based on 52,530 food stamp recipients.

4. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the adoption of an amendment to a federal agency rule pertaining to the food stamp program, Rule 46.11.101	)))))	NOTICE OF ADOPTION OF AN AMENDMENT TO A FEDERAL AGENCY RULE INCORPORATED BY REFERENCE IN RULE 46.11.101, FOOD STAMP PROGRAM. NO PUBLIC HEARING CONTEMPLATED

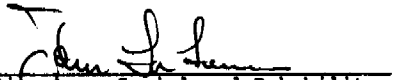
TO: All Interested Persons

1. The Department of Social and Rehabilitation Services hereby gives notice to the adoption and incorporation by reference of later amendments to 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 17756, Friday, April 23, 1982. 7 CFR 272, 273, and 274 are presently incorporated by reference in Rule 46.11.101, Food Stamp Program. The amendments implement certain parts of the 1980 Amendments to the Food Stamp Act of 1977. In particular, these provisions concern referring illegal aliens to the Immigration and Naturalization Service; prorating income and counting the resources of ineligible aliens; making administrative fraud determination hearings optional; and eliminating depreciation as a cost of doing business for self-employed households. A copy of 7 CFR 272, 273, and 274 published in 47 Fed. Reg. 17756, Friday, April 23, 1982, may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, Box 4210, 111 Sanders, Helena, Montana 59604.

2. The effective date for the adoption of the later amendment is July 1, 1982. This exception from the standard effective date of 30 days following publication is taken in order to comply with federal law requiring implementation of this amendment July 1, 1982.

3. If the department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5,253 persons based on 52,530 food stamp recipients.

4. The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements 53-2-306, MCA.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the amendment of Rules 46.5.905, 46.10.404 and 46.10.512 pertaining to day care rates and earned income disregards.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.5.905, 46.10.404 AND 46.10.512 PERTAINING TO DAY CARE RATES AND EARNED INCOME DISREGARDS

TO: All Interested Persons

1. On July 21, 1982, at 9:30 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 46.5.905, 46.10.404, and 46.10.512 pertaining to day care rates.

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

46.5.905 DAY CARE RATES (1) General:

(a) Day care rates in facilities must be at least equal for state-paid day care recipients and public day care consumers. This does not preclude facilities from charging higher rates to public day care consumers (those persons who are not receiving payment of their child care from the department).

(2) Specific:

(a) Full day care services are paid at a rate of ~~$6.00~~ $6.50 per day per child in care in day care homes. The maximum rate for group day care homes is ~~$6.50~~ $7.00 per child per day of care. The maximum rate for centers is ~~$7.00~~ $7.50 per child per day of care. These rate increases shall be paid retroactively beginning July 1, ~~1981~~ 1982.

(b) Part-time care is paid at a rate of ~~60¢~~ 65¢ per hour per child in day care homes, ~~65¢~~ 70¢ per hour per child in group day care homes, and ~~70¢~~ 75¢ per hour per child in all centers up to a maximum of a full day or night care rate.

Subsections (2)(c) through (2)(e) remain the same.

The authority of the department to amend this rule is based on Section 53-4-503, MCA and the rule implements Section 53-4-514, MCA.

46.10.404 SPECIAL NEEDS, TITLE IV-A DAY CARE FOR RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES

Subsections (1), (2), and (2)(a) through (2)(d) remain the same.

(e) Except as provided in (h) and (i) below, day care payments shall not exceed ~~$154~~ $165 month, or ~~$7~~ $7.50 per day, or ~~$3.50~~ $3.75 per half day per child for children in licensed day care centers.

(f) Except as provided in (h) and (i) below, day care payments shall not exceed ~~$143~~ $165 per month or ~~$6.50~~ $7.00 per day or ~~$3.25~~ $3.50 per half day per child in registered group day care homes.

(g) Except as provided in (h) and (i) below, day care payments shall not exceed ~~$132~~ $143 per month, or ~~$6~~ $6.50 per day, or ~~$3~~ $3.25 per half day per child in registered day care homes.

(h) Upon written approval of the district social services supervisor, the following services are also eligible for payment under Title IV-A day care:

(i) extra meals at a rate of 60¢ per meal per child; and

(ii) exceptional child care, as defined in ARM 46.5.903, at a maximum of $8 per day per child for full-time care or $1 per hour per child for part-time care.

(i) When extra meals and/or exceptional child care is provided, day care payment shall not exceed $160 per month per child.

Subsections (j) and (k) remain the same.

The authority of the department to amend this rule is based on Section 53-4-212, MCA and the rule implements Section 53-4-211 and 53-4-241, MCA.

46.10.512 EARNED INCOME DISREGARDS

Subsections (1) and (1)(a) remain the same.

~~(b) Expenses for the care of each working person's dependent child or incapacitated adult living in the same home and receiving assistance under ARM Title 46, Chapter 10, not to exceed the daily and monthly rates for day care provided in ARM 46.10.404.~~

(b) Expenses for the care of each working person's dependent child or incapacitated adult living in the same home and receiving assistance under ARM Title 46 are not to exceed $160 per month per child for full time employment of not less than 120 hours per month and not to exceed the daily rates for day care provided in ARM 46.10.404 or $160, whichever is less, for employment of less than 120 hours per month.

(i) The amount actually paid in the budget month will be deducted. This amount may include payment for charges incurred in the month immediately prior to the budget month; however, payments in the budget month will not be allowed as a deduction under this rule.

Subsections (1)(c), (2) and (2)(a) through (2)(d) remain the same.

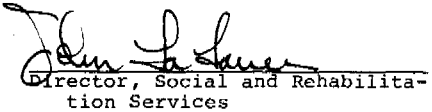
The authority of the department to amend this rule is based on Section 53-4-212, MCA and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

3. The 1981 Montana legislature approved a $.50 per day rate increase for payment of day care services for FY 83. The proposed rule implements the $.50 per day rate increase.

The proposed change in earned income disregards conforms to federal law which allows a disregard up to $160 per month for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC.

4. 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 59604, no later than July 29, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

BEFORE THE BOARD OF HAIL INSURANCE, DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of 4.4.303 Insured Crops	)))	NOTICE OF AMENDMENT OF 4.4.303 INSURED CROPS

TO: All Interested Persons.

1. On April 29, 1982, the Board of Hail Insurance published notice of proposed amendment of 4.4.303, Insured Crops, at p. 780, Issue No. 8, MAR 1982.

2. No comments, requests for hearing or testimony were received, and the rule was amended as proposed.

James W. Stephens

James Stephens, Chairman
Board of Hail Insurance

Certified to the Secretary of State 6/21/82.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the amendment of ARM 8.18.403 concerning general responsibilities	NOTICE OF AMENDMENT OF ARM 8.18.403 GENERAL RESPONSIBILITIES

TO: All Interested Persons:

1. On April 15, 1982, the State Electrical Board published a notice hearing on the proposed amendment of 8.18.403 concerning general responsibilities at pages 633-634, 1982 Montana Administrative Register, issue number 7.

The hearing was held at the request of the Administrative Code Committee in an attempt to provide expanded notice and opportunity for public participation. Only one member of the public appeared in addition to State Electrical Board members and the licensing inspectors for the department. That individual did not testify. Letters were submitted in support of the amendment by the Montana Chapter of National Electrical Contractors Association, Dale Loucks, William Barnhart of Electrical West, Inc., Charles Sweet of Kalispell Electric, Inc. and Tony Schmidt, manager of Reddi Electric in Billings. Several additional amendments were suggested in two of the letters. The board will consider those suggestions at a later date.

Two letters of protest were received after the deadline for comments from John S. Neel, Vice-president of NRG Electric Company of Great Falls and Don J. Morrison, president of Rainbow Electric Company of Great Falls. The board considered the letters as well as those received in favor of the amendment and determined that the amendment would greatly benefit the industry.

2. For the reasons stated in the proposed rule notice and in view of the letters submitted to the board, the board amends the rule exactly as proposed.

3. No other comments or testimony were received.

STATE ELECTRICAL BOARD
ALBERT BERSANTI, PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 21, 1982.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.6.901 relating to water safety regulations	))))	NOTICE OF AMENDMENT OF RULE 12.6.901 RELATING TO WATER SAFETY REGULATIONS

TO: All Interested Persons.

1. On April 15, 1982, the Montana Fish and Game Commission published notice of a proposed amendment to rule 12.6.901 concerning water safety regulations at page of the 1982 Montana Administrative Register, issue number 7.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

Certified to Secretary of State June 17, 1982

Reviewed & Approved:

Steven L. Pilcher
Water Quality Bureau
Environmental Sciences Div.
Dept. Health & Environmental Sciences

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

In the matter of the repeal of rule 16.20.241 specifying laboratory fees for analyses of public water supply systems)	NOTICE OF THE REPEAL OF RULE 16.20.241

TO: All Interested Persons

1. On May 13, 1982, the board published notice of a proposed repeal of rule 16.20.241 concerning laboratory fees for analyses of public water supply systems at page 889 of the 1982 Montana Administrative Register, issue number 9.

2. The board has repealed rule 16.20.241 found on page 16-910 of the Administrative Rules of Montana.

3. No comments or testimony were received.

In the matter of the adoption of a rule specifying fees for analyses of drinking water by the department of health and environmental sciences	NOTICE OF THE ADOPTION OF RULE 16.38.302 (Laboratory Fees -- Drinking Water)

TO: All Interested Persons

1. On May 13, 1982, the board published notice of a proposed adoption of rule 16.38.302 concerning fees for analyses of drinking water by the department of health and environmental sciences at pages 890 and 891 of the 1982 Montana Administrative Register, issue number 9.

2. The board has adopted the rule as proposed.

3. No comments or testimony were received.

JOHN F. McGREGOR, Chairman

By _____
JOHN W. BARTLETT, Deputy Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State June 21, 1982

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I (42.22.1301), II) (42.22.1302), III (42.22.1303) IV (42.22.1304), V) (42.22.1305), VI (42.22.1306)) VII (42.22.1307), VIII) (42.22.1308), IX (42.22.1309)) X (42.22.1310) relating to) the valuation and assessment) of industrial property and) the Amendment of Rule) 42.21.132, ARM, relating to) the assessment of mining) equipment.)	NOTICE OF ADOPTION of Rules I (42.22.1301), II 42.22.1302), III (42.22.1303), IV (42.22.1304), V (42.22.1305), VI (42.22.1306), VII (42.22.1307), VIII (42.22.1308), IX (42.22.1309), X (42.22.1310) relating to the valuation and assessment of industrial property and the Amendment of Rule 42.21.132, ARM, relating the assessment of mining equipment.

TO: All Interested Persons:

1. On February 11, 1982, the Department of Revenue published notice of the proposed adoption of rules relating to the valuation and assessment of industrial property; Rule I (42.22.1301), Rule II (42.22.1302), Rule III (42.22.1303), Rule IV (42.22.1304), Rule V (42.22.1305), Rule VI (42.22.1306), Rule VII (42.22.1307), Rule VIII (42.22.1308), Rule IX (42.22.1309), Rule X (42.22.1310); and the amendment of Rule 42.21.132, ARM, relating to the assessment of mining equipment.

2. The Department has adopted the rules relating to the assessment and valuation of industrial property as proposed.

3. The Department has adopted the amendments to Rule 42.21.132, ARM, in the manner which is set out below.

42.21.132 MINING EQUIPMENT. (1)(a) All machinery and equipment used in the mining process is classified in taxable classification 8, 15-6-138(b), MCA. Mining machinery and equipment included in taxable classification 8 shall be that equipment engaged in the extraction, excavation, burrowing or otherwise freeing raw material from the earth. (Coal and ore haulers are not considered to be mining equipment for purposes of taxable classification and valuation. They are classified in taxable class 10 (15-6-140(c), MCA)).

(b) Mining machinery and equipment, except that which is listed in the "Green Guide", is valued by trending the original installed cost to a current replacement cost, then depreciating on an age/life basis to compensate for ordinary physical wear and tear and obsolescence.

(2)(a) Equipment used in the mining operation for extraction will be valued by using the procedures established for heavy equipment (42.21.131, ARM).

(3) Mobile mining equipment as found in the "Green Guide", is equipment that moves freely about under its own power and/or on its own wheels and chassis, including any attachments used with or attached to such equipment. Mobile equipment does not include equipment that requires a foundation for the performance of the function for which it was designed and built. (History: Sec. 15-1-201 MCA; IMP, Sec. 15-6-135, 15-6-138, and 15-6-140 MCA; Eff. 12/31/72; AMD, 1980 MAR p. 1727, Eff. 6/27/80; AMD, 1981 MAR p. 316, Eff. 3/27/81.)

4. A public hearing was held to consider the adoption of new rules to the evaluation and assessment of industrial property and the amendment of rule 42.21.132, ARM, relating to the assessment of mining equipment. Appearing at the hearing in person was Minnesota Power & Light. Its comments and objections and the Department's responses were as follows:

Minnesota Power & Light Company

1. The "in-house" promulgation of trended depreciation schedules are violative of constitutional and legislative provisions.

(a) The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law. (1972 Mont. Const. Art. II, §8.)

(b) The legislature finds and declares pursuant to the mandate of Article II, Section 8, of the 1972 Montana Constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency. (Section 2-3-101, MCA.)

(c) A state agency is ". . . any board, bureau, commission, department, authority, or officer of a state or local government authorized by law to make rules, determine contested cases, or enter into contracts. . ." Section 2-3-102(1), MCA; see also Section 2-4-102(2), MCA.

(d) Under both the open meeting law and the Administrative Procedure Act, a "rule" is ". . . any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule. . ." Section 2-3-102(2); see also Section 2-4-102(10), MCA.

(e) "Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may

present their views thereon.

(2) The notice shall be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed within 3 days of publication to persons who have made timely requests to the agency for notice of its rulemaking proceedings. The notice shall be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case may the notice period be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing shall be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended action, the person designated by the agency to preside at the hearing shall read aloud the 'Notice of Function of Administrative Code Committee' appearing in the register. Section 2-4-302, MCA.

(f) Unless the rule is adopted pursuant to procedures set forth in the Administrative Procedure Act, it is invalid. Section 2-4-305(7), MCA.

Response:

Since counsel has quoted directly, and extensively, from the MCA, as well as the Montana Constitution, one cannot take issue with the language which he employs. The law specified therein applies in Montana unless and until the Montana Supreme Court should otherwise decide.

Minnesota Power and Light:

(g) "Setting or changing the debasement factor effects the

final tax bill in exactly the same way as does the setting of the rate, and to allow the debasement factor to be secretly established or changed would completely frustrate the purpose of being able to review the tax rate later when it is set each year." District of Columbia v. Green (1973), 310 A.2d 848. The court ruled that the debasement factor is a 'rule' within the meaning of the Administrative Procedure Act.

Response:

Counsel quotes from a case which was decided somewhere within the reporting authority of the Atlantic Reporter. It was not a case decided by the Montana Supreme Court. Accordingly, it could, at best, be styled as persuasive authority. However, the Montana Supreme Court has never enunciated a similar principle in one of its decisions. The principle, therefore, is not a statement of the present law in the State of Montana.

Minnesota Power and Light:

(h) Patterson v. Department of Revenue (1976), 171 Mont. 168, 557 P.2d 798.

Response:

Counsel has cited a Montana case which was decided in 1976. However, he does not specify the rule of law or legal principle which the case purportedly supports or enunciates. Thus, it is impossible to discern his legal theory or argument.

Minnesota Power and Light:

2. Under the proposed rules, assessments are not made on market value.

(a) Section 15-8-111 provides that "market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." Section 15-8-111(2)(a), MCA.

(b) Proposed Rules IV and VI use "reproduction cost" and "replacement cost" instead of market value as the determining factor of the assessed value.

Response:

(a) The proposed rule on industrial property valuation agrees in its entirety with 1-58-111(2)(a), MCA.

(b) In the effort to find market value of any property there are three universally accepted approaches. They are: 1) the sales comparison (market data) approach, 2) the income approach, and 3) the cost approach. Where insufficient data are available in any one of these approaches, the appraiser must use

the approach which uses the most reliable data. In the case of industrial property, most all income streams and sales are so confused with other properties owned by the taxpayer they cannot be used. As a result of this fact, the appraiser is limited to the cost approach. The foundation of the cost approach is to estimate current replacement or reproduction costs. To arrive at current replacement cost from original cost, consideration must be given to inflation; the increase in dollar cost for an identical item due to the erosion on purchasing power of the dollar over time. This rule in no way purports that replacement or reproductive cost is market value. They are only stepping stones on the way to find market value.

Minnesota Power & Light:

3. Certain portions of the proposed rules need clarification.

(a) Proposed Rule IV allows the appraiser to use his "best judgment" to establish the effective age of industrial improvements to real property. Query: Does this mean the appraiser may determine the actual age of the improvement or does it mean he may determine the effective life of the property?

(b) Rule IV requires the Marshall Valuation Service to be used to evaluate industrial improvements to real property. Query: Will these schedules be published?

(c) Section 42.21.132(2)(b), ARM, which is being repealed provides for a discount for extended use. Query: Do the trended depreciation schedules of the Department provide likewise?

Response:

(a) As part of the process of determining market value, the appraiser must apply depreciation to current replacement cost of the property. This means that the appraiser must determine the effective age of a structure as opposed to the chronological age. Effective age is defined by the American Society of Real Estate Appraisers as: "The number of years of age that is indicated by the condition of the building. If a building has had better than average maintenance, its effective age may be less than the actual age; if there has been inadequate maintenance, it may be greater. A 60-year old building may have an effective age of 20 years due to rehabilitation or modernization". With all appraisals, the amount of depreciation is subjective and is a product of the appraiser's ability and qualifications.

(b) Marshall Valuation Service is a copyrighted publication. It is available to anyone who tenders their price.

(c) Proposed amendments to Rule 42.21.132(2)(a) explain that "equipment used in the mining operation for extraction is valued by using procedures for heavy equipment (42.21.131, ARM)". Equipment used for the extraction of ore, coal, etc., performs the same function as heavy equipment on highway construction. Therefore, it should have the same method of

valuation. The old rules on mobile mining equipment and heavy equipment were identical. The amended rule does not suggest changing the method of valuing this property.

Burlington Northern sent comments within the comment period. The comments and Department's reponses are as follows:

Burlington Northern:

(1) The proposed amendment to Rule 42.21.132, (1)(b) is in violation and conflict of MCA 15-8-111 in that it attempts to implement current replacement costs in the appraisal process rather than market value as mandated by law. Current Replacement Costs have no relationship to Current Market Value as mandated by Montana statute. Current Market Value being defined as "the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion . . .".

Response:

The proposed amendments to Rule 42.21.132(1)(b) give sustenance to 15-8-111, MCA. There are three universally accepted approaches of valuing property to its market value. They are the income approach, the cost approach, and the sales comparison approach. When reliable data are available to give an indication of value from each approach, these three value indications are correlated into a single value estimate. Where reliable data are not available for each approach, the appraiser looks to the data in the approach where reliable information is available. Therefore, if an income stream cannot be isolated to a piece of equipment or if sufficient arms length transactions have not occurred to establish market data, the appraiser must turn to the cost approach. The cost approach is a method in which the value of a property is derived by estimating the replacement or reproduction cost, then deducting therefrom the estimated depreciation.

Burlington Northern:

(2) In addition, the proposed amendment continues the application of trending factors which further serves to separate the final determination of value from any realistic indicator of market value as was recognized by the 1981 Montana Legislature under Senate Joint Resolution No. 26 which states, in part "The Legislature has never mandated the use of a trending process in assessing".

Response:

The use of trend factors is recognized nationally as an accepted tool in the appraisal process as part of the cost approach to value. In the absence of better information, the

original cost can be determined from the owner's property records. Trend factors aid the appraiser in arriving at market value by determining the current replacement cost from original cost. Trending factors merely compensate for changes in price levels from the date of purchase to the date of the appraisal. From this indication of current replacement cost, an amount is deducted for depreciation. Section 15-8-111, MCA, clearly provides the Department the authority to assess property at market value. Senate Joint Resolution 26, recently determined to be unconstitutional, should not enter into consideration on this matter.

Burlington Northern:

The proposed new rules under Rule VII addressing trending factors imposes an undue burden and expense upon the taxpayer.

(1) The undue burden is encountered by placing the sole responsibility upon the taxpayer to demonstrate to the Department that another source of information can provide a more reliable indication of the replacement/production cost and thus the resulting market value for the industry as a whole.

(2) The undue expense being implemented in developing such information to indicate the result upon the industry as a whole.

Response:

Rule VII intends to give the taxpayer the information where the Department of Revenue is currently developing their trending tables. The Department of Revenue continually examines sales, cost trends and any other reliable information that could lead to a reasonable conclusion of value to any property. If a taxpayer can demonstrate that better market data are available, then the Department will use this information. This "better information" would not necessarily apply to the single taxpayer's facilities, but to the "industry as a whole". This rule is to maintain equalization within a particular industry.

Burlington Northern:

By the implementation of trending factors, in addition to depreciation, the Department of Revenue, in effect, is double accounting for inflationary trends which are already built into the scheduled valuation approach. Also, Hearing Officer Ross Cannon, in an opinion issued December 9, 1980, ruled "A trend factor exceeds the scope of the legislative grant of authority to the Department. . . .".

Further implementation of compelled approaches to valuation through the utilization of schedules, trending factors, valuation guides, etc., serve to erode the approach to valuation which is recognized as theory based upon cost, income, and debt.

Response:

As stated earlier, the trending factor adjusts the known cost of an item as of a certain period of time to the date of the appraisal by compensating for price change levels that have occurred during this time. Depreciation, on the other hand, lowers the current cost indication to compensate for any loss in the upper limit of value. Each have separate functions and will only act "in addition to" one another in economic periods of recession. In periods of declining prices, the "trend factor" will be something less than 100%. Depreciation is always a negative adjustment.

The Legislature did mandate "Market Value". It further defined Market Value as "the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts". The appraiser places himself in both positions, a willing buyer and a willing seller, then after reviewing all the "relevant facts" arrives at an opinion of value. These facts are examined under the guidelines of the universally accepted methods of the appraisal process in determining market value. The theory of valuation based upon the cost, income and debt is used only in the unit approach. The unit approach does not find market value as required by 15-8-111 for these properties.

The Hearing Examiner made the following report to the Director on the basis of the comments received.

Summary

The central issue addressed at hearing and by written submission is the propriety of the Department's use of trending factors to ultimately determine fair market value.

Section 15-8-111, MCA, requires all taxable property to be assessed at 100% of its market value. To determine fair market value of any property there are three accepted approaches, they include: (1) the sales comparison (market data approach); (2) the income approach; and (3) the cost approach. The Department has concluded that due to the nuances of industrial and mining property the cost approach is the most accurate method of determining market value. This conclusion is reached from the Department's finding that there is insufficient data to utilize the sales comparison or income approaches. The Department having the statutory duty to determine market value is charged with the duty to choose the methodology which best determines market value of the taxable property. In this matter they have concluded that the use of trending factors is essential to accurately assess fair market value of industrial property and mining equipment.

The Department contends the use of trend factors is a nationally recognized tool in the appraisal process as part of the cost approach. In response to concerns of replacement cost

being erroneously substituted for market value the Department contends replacement costs are only stepping stones on the way to finding market value through the cost approach.

With respect to the voiced contention that application of trend factors results in double accounting for inflationary trends the Department responds that trend factors and depreciation have separate functions and act only "in addition to" one another. Finally the Department contends Proposed Rule VII does not impose an undue burden on the taxpayer as that rule informs the taxpayer of the information from which the trending tables are established. The rule requires a demonstration by the taxpayer of more reliable information to apply to the "industry as a whole". The Department justifies this requirement by the necessity to maintain equalization within each particular industry.

CONCLUSION

The Legislature has required all taxable property to be assessed at 100% of its market value. § 15-8-111, MCA. The Department has concluded that market value is best determined with respect to industrial property and mining equipment by use of a cost approach with reference to trending factors to determine replacement cost. The proposed rules and amendment implement and identify the Department's selected method to arrive at fair market value.

The Department based on the objections and comments made has not made any changes in the rules as proposed. The change that is made to rule 42.21.132, ARM, is to correct an omission in the original notice as published.

5. Authority to adopt and promulgate these rules is found in §15-1-201, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 6/21/82

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

In the matter of the amendment of Rules 46.5.1102 and 46.5.1105 pertaining to the domestic violence advisory committee and grant applications.	)))))	NOTICE OF THE AMENDMENT OF RULES 46.5.1102 AND 46.5.1105 PERTAINING TO THE DOMESTIC VIOLENCE ADVISORY COMMITTEE AND GRANT APPLICATIONS

TO: All Interested Persons

1. On April 29, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.5.1102 and 46.5.1105, pertaining to the domestic violence advisory committee and grant applications on page 840 of the Montana Administrative Register, issue number 8.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

In the matter of the adoption of Rules 46.15.101, 46.15.102 and 46.15.103 pertaining to refugee assistance.	))))	NOTICE OF THE ADOPTION OF RULES 46.15.101, 46.15.102, AND 46.15.103 PERTAINING TO REFUGEE ASSISTANCE

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to refugee assistance at page 970 of the Montana Administrative Register, issue number 9.

2. The agency has adopted Rules 46.15.102, REFUGEE CASH ASSISTANCE, and 46.15.103, REFUGEE MEDICAL ASSISTANCE, as proposed.

3. The agency has adopted Rule 46.15.101 as proposed with the following changes:

46.15.101 DEFINITIONS (1) For the purpose of this chapter, the following definitions apply:

(a) Refugee means an individual who:

(i) is a national of Cambodia, Vietnam or Laos and entered the United States on or after April 8, 1975; or

(ii) is a national of Cuba or Haiti and is an entrant to the United States as verified by the immigration and naturalization service through INS form I-94~~.~~;

(iii) is a national of any country granted refugee status in the United States as verified by the immigration and naturalization service through INS form I-94.

(b) Assistance unit means all individuals who live in the same household and whose needs, income and resources are considered in determining the amount of assistance payments. Such individuals living together may consist of an individual, a couple, an intact family, or a combination of family members, such as aunt, uncle, niece and nephew.

4. No comments or testimony were received.

In the matter of the amendment of Rule 46.10.403 pertaining to the AFDC table of assistance standards.	)))	NOTICE OF THE AMENDMENT OF RULE 46.10.403 PERTAINING TO THE AFDC TABLE OF ASSISTANCE STANDARDS

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the amendment of Rule 46.10.403 pertaining to the AFDC table of assistance standards at page 976 of the Montana Administrative Register, issue number 9.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

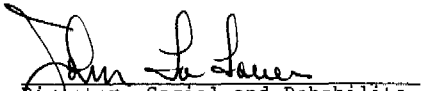
In the matter of the amendment of Rule 46.12.3803 pertaining to the medically needy income standards.	)))	NOTICE OF THE AMENDMENT OF RULE 46.12.3803 PERTAINING TO THE MEDICALLY NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the amendment of Rule 46.12.3803 pertaining to the medically needy income standards at page 973 of the Montana Administrative Register, issue number 9.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the adoption of Rules 46.5.1201, 46.5.1202, 46.5.1203 and 46.5.1204 and the repeal of Rules 46.9.201, 46.9.202, 46.9.203, 46.9.204 and 46.9.205 pertaining to supplemental payments to recipients of supplemental security income.	NOTICE OF THE ADOPTION OF RULES 46.5.1201, 46.5.1202, 46.5.1203 AND 46.5.1204 AND REPEAL OF RULES 46.9.201, 46.9.202, 46.9.203, 46.9.204 AND 46.9.205 PERTAINING TO SUPPLEMENTAL PAYMENTS TO RECIPIENTS OF SUPPLEMENTAL INCOME.

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption and repeal of rules pertaining to supplemental security income on page 966 of the Montana Administrative Register, issue number 9.

2. The agency has repealed Rules 46.9.201, 46.9.202, 46.9.203, 46.9.204 and 46.9.205 as proposed.

3. The agency has adopted Rules 46.5.1201, PURPOSE, and 46.5.1202, INDIVIDUAL ELIGIBILITY FOR STATE SUPPLEMENT, as proposed.

4. The agency has adopted Rule 46.5.1203 as proposed with the following changes:

46.5.1203 ELIGIBILITY BASED ON LIVING ARRANGEMENT

(1) In order for an individual to receive a state supplement, that individual must be a resident of one of the residential types of service facilities specified and defined in this rule.

(a) Residential care facilities licensed by the department of health and environmental sciences either as personal care facilities (50-5-101(20)(a)(iii), MCA) or as rooming houses or retirement homes (50-51-103(5), MCA) ~~and board facilities~~ and which for the purposes of this rule the department of social and rehabilitation services determines:

(i) provide residential care to 5 or more persons;

(ii) provide 24-hour on-duty personal care services that include all of the following:

(A) three nutritious meals daily served in a family setting or separate dining area;

(B) individual beds and sleeping areas available;

(C) washing and drying of personal clothes and linens with such frequency as to provide for proper hygiene;

(D) protective oversight of residents meaning enhancement of their ability to live in and be integrated into the

community and includes recreational activities, social activities, and assurance that individual needs are met;

(E) transportation to medical, social, therapeutic, church and other activities;

(F) preparation of special diets if required by the physician;

(G) assistance with personal daily living activities as needed, e.g., eating, dressing, shaving, hair care, bathing, and getting in and out of bed; and

(H) supervision of self-administered medication prescribed for the recipient by a physician or dentist. Supervision includes observing and recording that the medication was taken.

(iii) provide care only to residents who are ambulatory or ambulatory with assistance from a personal attendant or mechanical devices;

(~~iii~~iv) provide to the department of social and rehabilitation services information and documentation as requested to implement the supplemental payment.

(b) Community homes for the developmentally disabled defined in part 3 of Title 53, chapter 20, MCA and licensed in accordance with sub-chapter 8 of Title 46, chapter 5, ARM by the department of social and rehabilitation services.

(c) Group homes for the mentally disabled licensed by the department of health and environmental sciences as rooming houses or retirement homes ~~and--board--facilities~~, having services approved by the montana department of institutions ~~appropriate-regional-mental-health-center~~, and serving only mentally disabled individuals identified by a mental health professional.

(d) Foster care homes defined in part 3 of Title 53, chapter 5, MCA or part 3 of Title 41, chapter 5, MCA and licensed in accordance with sub-chapter 7 of Title 46, chapter 5, ARM or sub-chapter 5 of Title 46, chapter 5, ARM by the department of social and rehabilitation services.

(e) Semi-independent program facilities approved by the department of social and rehabilitation services and designed to enhance or maintain the independence of adults by providing individualized 24 hour on-call supervision, home and community life training, service coordination and support services to the residents. A semi-independent program facility is usually a cluster of apartments with one to three persons residing in each unit with each unit consisting of a kitchen, one or more bedrooms, a living room and a bathroom.

5. The agency has adopted Rule 46.5.1204 as proposed with the following changes:

46.5.1204 PAYMENT STANDARDS (1) The department of social and rehabilitation services has ~~will,--within--legislative appropriations,~~ set the following monthly payment standards of

state supplement per client for each of the five facilities listed in ~~Rule III~~ ARM 46.5.1203:

(a) residential care facilities - $104.00

(b) community homes for the developmentally disabled - $104.00

(c) group homes for the mentally disabled - $104.00

(d) foster care homes - $62.75

(e) semi-independent program facilities - $36.00

(2) The payments will be administered by the federal social security administration according to a state-federal agreement.

(~~2~~3) A recipient must receive for personal needs a minimum amount of forty dollars ($40) total from the state supplement and the federal supplemental security income per month.

6. The agency has thoroughly considered all verbal and written commentary received:

COMMENT: We, as personal care home operators, are interested in who will make the rules for licensing personal care facilities and whether we will have a chance to review and comment on them.

RESPONSE: The department of health and environmental sciences will develop proposed rules for licensing personal care facilities. Those proposed rules will be subject to public hearing and review.

COMMENT: Would a person whose income level is over $248.30 but under $388.30 be eligible for the state supplement if in one of the eligible facilities?

RESPONSE: This issue will be answered by the community services division of SRS in a response to an ADM-200 request and not through a rule change.

COMMENT: Will residential care providers have to provide all the services listed in Rule III, Part (i), A through H (46.5.1203), particularly transportation, which could raise the insurance rates of the provider?

RESPONSE: The provider must be able to provide all services listed or be able to arrange for those services to be provided. This issue will be covered in a residential care agreement between the agency and the provider, and not by rule change.

COMMENT: The rates of payment for each level of care should be included.

RESPONSE: The rates as presented in the information on the

rules when proposed are being included in the final rule revision.

COMMENT: Once the department of health and environmental sciences develops personal care rules, will the facilities still have to meet the criteria in Rule 3, subsection (i), A through H (46.5.1203)?

RESPONSE: If the health department rules contain similar service criteria, then that licensing will be satisfactory for the purpose of the state supplement program; if not, the criteria will continue to be applied based on a residential care agreement.

COMMENT: Will these rules result in a number of people not receiving payments or receiving lesser payment amounts?

RESPONSE: Some individual payments will be reduced though the majority of payments will remain the same or will be increased. The new semi-independent level of payment will bring additional persons into the program.

COMMENT: I, as a foster home operator, need more than $328 a month per client, if possible.

RESPONSE: The level of payment for foster care established by these rules will reduce the payment to this particular foster home operator to $347.30 with $40.00 of that amount going to the client for personal needs.

COMMENT: What were the payment levels for semi-independent care based on and did that basis include Section 8 rental subsidies? We feel the payment level is low if not presuming Section 8 rental subsidies.

RESPONSE: The basis for the payment levels were given in the SRS testimony and included client needs, cost of living and appropriations, but Section 8 rental subsidies were not considered.

COMMENT: The reference to room and board facilities, in the rule, should be to rooming house or retirement homes (50-51 103(5), MCA).

RESPONSE: This reference will be corrected in the final rules.

COMMENT: Light personal care and custodial care requirements in the Foster Family Care Homes Act 53-5-302, MCA, are very similar to the requirements in Rule III(1)(a)(i)(iii) (46.5.1203).

RESPONSE: We grant that there are similar requirements in both adult foster care and residential care in the areas of meal requirements, bed requirements, and assistance in personal daily living activities such as eating, dressing, sharing, hair care, bathing, getting in and out of bed, and medicine supervision. The rule also requires that additional services be provided to meet the residential care level of payment. Those services are community integration; recreational activities; social activities; special diets; transportation to medical, social, therapeutic, church, and other activities; and laundry services.

COMMENT: The department has not indicated in the rules what methodology is utilized in arriving at the payment standards, and as a consequence recipients will be unaware of how a determination of their individual state supplemental payments is made.

RESPONSE: The presentation within a rule of the methodology for determining payment standards is not necessary. The levels of payments are applicable to categories of residential service settings for recipients. Consequently, the methodology for arriving at the standards of payments does not incorporate factors based upon the individual other than their need for a certain service setting. The individual's state supplemental amount is determined for the state by the Social Security Administration in relation to the categorical status of service setting and individual resources.

COMMENT: The establishment of the category of "residential care facilities" with the imposition of standards upon those facilities constitutes a licensing action by the department for which there is no explicit statutory authority.

RESPONSE: The establishment of the category of "residential care facilities" is for the purposes of administering the state supplemental payments program and is not for the purposes of licensing any facilities. These rules for state supplemental payments are not mandatorily applicable to all licensed personal care homes and licensed rooming houses and retirement homes. The only such facilities to which these rules would be relevant would be those facilities which chose to provide the residential services appropriate for recipients of state supplemental payments. In order to be qualified for state supplemental payments, the rules provide that individuals must reside in certain categories of facilities providing residential service settings. The department is recognizing a category of "residential care facilities", constituting licensed rooming houses and retirement homes that provide certain additional services. The statutory authority for setting such criteria is provided by 53-20-204, MCA, which governs the state supplemental payment program. The department does not

have the authority to determine whether a facility included within the definition of residential care facilities by these rules will operate or not operate. The department may only in accordance with these rules and 53-20-204, MCA, determine whether a facility provides an appropriate residential service setting for recipients of state supplemental payments. The authority to determine whether personal care homes, rooming houses, or retirement homes, may operate or may not operate, in other words, be licensed or not be licensed, is with the department of health and environmental sciences in accordance with their authority under Part 1 of Title 53, Chapter 3, and related rules.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the adoption of Rules 46.6.102, 46.6.302, 46.6.303, 46.6.304, 46.6.305, 46.6.306, 46.6.307, 46.6.405, 46.6.406, 46.6.407, 46.6.408, 46.6.409, 46.6.410, 46.6.411, 46.6.516 and 46.6.517, the amendment of Rules 46.6.201, 46.6.501, 46.6.502, 46.6.503, 46.6.504, 46.6.505, 46.6.506, 46.6.507, 46.6.508, 46.6.509, 46.6.510, 46.6.511, 46.6.512, 46.6.513 and 46.6.515 and the repeal of Rules 46.6.101, 46.6.301, 46.6.401, 46.6.402, 46.6.403, 46.6.404 and 46.6.514 pertaining to the nature and scope of vocational rehabilitation services and eligibility for those services.	NOTICE OF THE ADOPTION OF RULES 46.6.102, 46.6.302, 46.6.303, 46.6.304, 46.6.305, 46.6.306, 46.6.307, 46.6.405, 46.6.406, 46.6.407, 46.6.408, 46.6.409, 46.6.410, 46.6.411, 46.6.516 AND 46.6.517, THE AMENDMENT OF RULES 46.6.201, 46.6.501, 46.6.502, 46.6.503, 46.6.504, 46.6.505, 46.6.506, 46.6.507, 46.6.508, 46.6.509, 46.6.510, 46.6.511, 46.6.512, 46.6.513 AND 46.6.515 AND THE REPEAL OF RULES 46.6.101, 46.6.301, 46.6.401, 46.6.402, 46.6.403, 46.6.404 AND 46.6.514 PERTAINING TO THE NATURE AND SCOPE OF VOCATIONAL REHABILITATION SERVICES AND ELIGIBILITY FOR THOSE SERVICES.

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules, the amendment of rules and the repeal of rules pertaining to the nature and scope of vocational rehabilitation services and eligibility for those services at page 1002 of the Montana Administrative Register, issue number 9.

2. The agency has repealed Rules 46.6.101, 46.6.301, 46.6.401, 46.6.402, 46.6.403, 46.6.404 and 46.6.514 as proposed.

3. The agency has amended Rules 46.6.201, 46.6.501, 46.6.502, 46.6.503, 46.6.504, 46.6.505, 46.6.506, 46.6.507, 46.6.508, 46.6.509, 46.6.510, 46.6.511, 46.6.512, 46.6.513 and 46.6.515 as proposed.

4. The agency has adopted Rules 46.6.102, DEFINITIONS; 46.6.302, PURPOSE; 46.6.303, APPLICATION; 46.6.304, DETERMINATION OF ELIGIBILITY; 46.6.305, CLIENT ELIGIBILITY CRITERIA; 46.6.306, SPECIFIC CRITERIA FOR RECEIPT OF CERTAIN SERVICES; 46.6.307, EXTENDED EVALUATIONS; 46.6.405, PURPOSE OF FINANCIAL NEED STANDARD; 46.6.407, DETERMINATION OF FINANCIAL NEED PRIOR TO SERVICE; 46.6.408, INFORMATION FOR DETERMINATION OF FINANCIAL NEED; 46.6.409, FINANCIAL NEED STANDARD; 46.6.411, CALCULATION OF FINANCIAL SUPPLEMENTATION; 46.6.516, GUIDELINES AND STANDARDS FOR SERVICES PROVIDED BY CLIENTS; 46.6.517, FINANCIAL LIMITATIONS as proposed.

5. The agency has adopted Rule 46.6.406 as proposed with the following changes:

46.6.406 ADAPTATIONS OF FINANCIAL NEED STANDARD

(1) The department may, within its discretion, use adaptations of the financial need standard where the situation of an individual is one of special circumstances which are subject to objective definition by documentation. These objectively defined circumstances include: variations in need due to special needs accompanying designated types of disabilities; variations in need based on the nature of living requirements in different localities; variations in need based on the nature of living requirements caused by particular rehabilitative services to be provided; and variations in need due to short periods of medical care for acute physical conditions arising during the course of vocational rehabilitation. The department will~~, by written policies,~~ direct the exercise of this discretion and determine the circumstances in which it may be utilized.

6. The agency has adopted Rule 46.6.410 as proposed with the following change:

46.6.410 RESOURCES

Subsections (1) through (3)(a) remain the same.

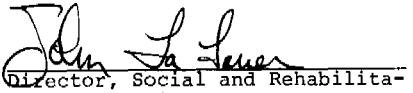
(b) capital assets, ~~as defined by departmental policy,~~ including both real and personal property;

Subsections (3)(c) through (4)(e) remain the same.

7. The department has thoroughly considered all verbal and written commentary received:

COMMENT: Rule 46.6.406 and Rule 46.6.410(3)(b) each refer the reader of the rules to "departmental policy". The matters involved are substantive provisions of general applicability. The implementation of departmental policy of general applicability requires rulemaking (2-4-102(10), MCA).

RESPONSE: The two references to "departmental policy" have been deleted.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the amendment of Rules 46.12.522, 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.552, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.805, 46.12.806, 46.12.905, 46.12.915, 46.12.1005, 46.12.1015, 46.12.1025 and 46.12.2003 pertaining to medical services, reimbursement	NOTICE OF THE AMENDMENT OF RULES 46.12.522, 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.552, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.805, 46.12.806, 46.12.905, 46.12.915, 46.12.1005, 46.12.1015, 46.12.1025 AND 46.12.2003 PERTAINING TO MEDICAL SERVICES

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.522, 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.552, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.805, 46.12.806, 46.12.905, 46.12.915, 46.12.1005, 46.12.1015, 46.12.1025 and 46.12.2003 at page 896 of the 1982 Montana Administrative Register, issue number 9.

2. The agency has amended Rules 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.552, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.805, 46.12.806, 46.12.905, 46.12.915, 46.12.1005, 46.12.1015 and 46.12.1025 as proposed.

3. The agency has amended Rules 46.12.522 and 46.12.2003 as proposed with the following changes:

46.12.522 PODIATRY SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The Department will pay the lowest of the following for podiatry services not also covered by medicare: the provider's actual (submitted) charge for the service; ~~the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule;~~ or the department's fee schedule found in Rule 46.12.523.

The Department will pay the lowest of the following for podiatry services which are also covered by medicare: The provider's actual (submitted) charge for the services; ~~the provider's medicaid median charge for the service;~~ the amount allowable for the same service under medicare; or the department's fee schedule found in Rule 46.12.523. Services paid by report (BR) will be paid at THE LOWER OF 70% of THE PROVIDER'S USUAL AND CUSTOMARY CHARGES, OR FEES WHICH ARE COMPARABLE TO

USUAL AND CUSTOMARY CHARGES ESTABLISHED BY THE PROVIDER IN 1980. ~~all--Montana--podiatrist's--1980--usual--and--customary charges-for-the-specified-service.~~

Subsection (2) remains the same.

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS The department will pay the lowest of the following for physician services not also covered by medicare: the provider's actual (submitted) charge for the service; ~~the-provider's-medicaid-median-charge-for-the service;-the-75th-percentile-of-the-range-of-weighted-medicaid median-charges-for-each-service-covered--by-this-rule;~~ or the department's fee schedule found in rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008; plus 21% for those services for which a dollar amount is specified.

The department will pay the lowest of the following for physician services which are also covered by medicare: the provider's actual (submitted) charge for the service; ~~the provider's-medicaid-median-charge-for-the-service;-the--amount~~ allowable for the same service under medicare; or the department's fee schedules found in rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008 plus ~~10~~ 21% for those services for which a dollar amount is specified. The following reimbursement fee schedule and modifiers ~~applies~~ apply to all rules in this sub-chapter.

(1) Services paid by report (BR) will be paid at THE LOWER OF 65.2% OF USUAL AND CUSTOMARY CHARGES WHICH ARE REASONABLE, OR ~~94.6000%-of--the~~ fees which are comparable to usual and customary charges established by the provider in ~~1976~~ 1980.

Subsection (2) remains the same.

4. The Department has modified the method for paying by report (BR) procedures for physicians to more accurately reflect the current administrative practices for determining fees for procedures paid by report (BR). The Department has determined that 65.2% of a provider's usual and customary charges in 1980 are comparable to 94.6000% of the provider's 1976 usual and customary charges. This determination was made using the Medical CPI-U. The Department also determined that 65.2% of a provider's 1982 usual and customary charges is comparable to granting the two 10% increases authorized by HB 500, which was passed by the 47th Montana Legislature. The use of 1980 usual and customary charges as an upper limit on payments for procedures paid by report (BR) will assure that increases in excess of those authorized will not be granted.

The Department has modified the methods of paying by report (BR) procedures for podiatrists' services to more accurately reflect the current administrative practices for determining fees for procedures paid by report (BR). The Depart-

ment has determined that 70% of a provider's 1982 usual and customary charges is comparable to the granting the two 10% increases authorized by HB 500, which was passed by the 47th Montana Legislature. The continued use of 1980 usual and customary charges as an upper limit on payments for procedures paid by report (BR) will assure that increases in excess of those authorized will not be granted.

5. The department has thoroughly considered all verbal and written commentary received:

COMMENT: Comments were made emphasizing that reimbursement for physicians' services is still substantially below billed charges.

RESPONSE: There has been substantial improvement in levels of reimbursement as authorized by the Legislature.

COMMENT: There is still concern with the timeliness of reimbursement.

RESPONSE: The Department realizes the importance of timely payments for continued provider participation, and is working with the fiscal agent to assure timely payment of claims.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the amendment of Rules 46.12.1201, 46.12.1202, 46.12.1203, 46.12.1204, 46.12.1205, and 46.12.1206 and the adoption of Rules 46.12.1207, 46.12.1208, 46.12.1209, and 46.12.1210 pertaining to nursing home reimbursement under the state medicaid program	)))))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.1201, 46.12.1202, 46.12.1203, 46.12.1204, 46.12.1205, AND 46.12.1206, AND THE ADOPTION OF RULES 46.12.1207, 46.12.1208, 46.12.1209, AND 46.12.1210 PERTAINING TO NURSING HOME REIMBURSEMENT

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.1201, 46.12.1202, 46.12.1203, 46.12.1204, 46.12.1205, and 46.12.1206 and the adoption of rules pertaining to nursing home reimbursement under the state medicaid program at page 1022 of the Montana Administrative Register, issue number 9.

2. The agency has adopted Rules 46.12.1207, INCLUDABLE COSTS; 46.12.1208, COST REPORTING; 46.12.1209, OVERPAYMENT AND UNDERPAYMENT; and 46.12.1210, ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES as proposed.

3. The agency has amended the following rules as proposed with the following changes:

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE ~~APRIL 1, 1979~~ JANUARY 1, 1981

Subsections (1), (2) and (3) remain the same as proposed.
(4) Operating and property rates determined in accordance with ARM 46.12.1204 shall be subject to a phase-in process to yield a payment rate. The payment rate is the result of computing the formula:

~~R=S+((A+M-S) divided by 3), if A+M-S is greater than zero, for the period July 1, 1982, through June 30, 1983, or~~

~~R=S+(2 times ((A+M-S divided by 3)), if A+M-S is greater than zero, for the period July 1, 1983 through June 30, 1984, or~~

~~R=A+M, if A+M-S is greater than zero, for the period July 1, 1984 through June 30, 1985, or~~

~~R=S, if A+M+S is equal to or less than zero, for the period July 1, 1982 through June 30, 1985~~

~~where:~~

~~R-is-the-payment-rate-for-the-respective-periods,~~
~~S-is-the-interim-rate-in-effect-on-June-30,-1982,~~
~~A-is-the-operating-rate-effective-July-1,-1984,--in-accordance-with-ARM-46.12.1204(2),-and-revised-annually-in accordance-with-ARM-46.12.1204(5),~~
~~M-is-the-property-rate-effective-July-1,-1984,-in-accordance-with-ARM-46.12.1204(3),-and-revised-annually-in-accordance-with-ARM-46.12.1204(5).~~

R=RO+RP
RO=T + ((A-T) DIVIDED BY 3), IF A-T IS GREATER THAN ZERO, FOR THE PERIOD JULY 1, 1982 THROUGH JUNE 30, 1983, OR
RO=T + (2 TIMES ((A-T) DIVIDED BY 3)), IF A-T IS GREATER THAN ZERO, FOR THE PERIOD JULY 1, 1983 THROUGH JUNE 30, 1984, OR
RO=A, IF A-T IS GREATER THAN ZERO, FOR THE PERIOD JULY 1, 1984 THROUGH JUNE 30, 1985, OR
RO=T, IF A-T IS EQUAL TO OR LESS THAN ZERO, FOR THE PERIOD JULY 1, 1982 THROUGH JUNE 30, 1985, AND
RP=S + ((M-S) DIVIDED BY 3), IF M-S IS GREATER THAN ZERO, FOR THE PERIOD JULY 1, 1982 THROUGH JUNE 30, 1983, OR
RP=S + (2 TIMES ((M-S) DIVIDED BY 3)), IF M-S IS GREATER THAN ZERO, FOR THE PERIOD JULY 1, 1983 THROUGH JUNE 30, 1984, OR
RP=S, IF M-S IS GREATER THAN ZERO, FOR THE PERIOD JULY 1, 1984 THROUGH JUNE 30, 1985, OR
RP=S, IF M-S IS EQUAL TO OR LESS THAN ZERO, FOR THE PERIOD JULY 1, 1982 THROUGH JUNE 30, 1985,
WHERE:
R IS THE PAYMENT RATE FOR THE RESPECTIVE RATE PERIODS,
S IS THE INTERIM PROPERTY RATE IN EFFECT ON JUNE 30, 1982,
T IS THE INTERIM OPERATING RATE PLUS ESTIMATED INCENTIVE FACTOR IN EFFECT ON JUNE 30, 1982,
A IS THE OPERATING RATE EFFECTIVE JULY 1, 1984, IN ACCORDANCE WITH ARM 46.12.1204(2), AND REVISED ANNUALLY IN ACCORDANCE WITH ARM 46.12.1204(5),
M IS THE PROPERTY RATE EFFECTIVE JULY 1, 1984, IN ACCORDANCE WITH ARM 46.12.1204(3), AND REVISED ANNUALLY IN ACCORDANCE WITH ARM 46.12.1204(5).

46.12.1202 PURPOSE AND DEFINITIONS

Subsections (1) through (2)(f) remain the same as proposed.

(g) ~~"ICF/MR" means a facility certified by the Montana department of health and environmental sciences to provide intermediate care for patients who are mentally retarded.~~ "Average nursing care time" means the sum of management hours of care for medicaid recipients identified by the department in its most recent patient assessment survey, divided by the total number of medicaid recipients surveyed. FOR FISCAL YEARS BEGINNING JULY 1, 1983, THE MOST RECENT SURVEY SHALL

INCLUDE A SURVEY PERIOD OF NOT LESS THAN THREE MONTHS NOR MORE THAN SIX MONTHS.

(h) "PROVIDER'S AVERAGE NURSING CARE TIME" MEANS THE SUM OF MANAGEMENT HOURS OF CARE FOR MEDICAID RECIPIENTS IN A SPECIFIC FACILITY AS IDENTIFIED BY THE DEPARTMENT IN ITS MOST RECENT PATIENT ASSESSMENT SURVEY. FOR FISCAL YEARS BEGINNING JULY 1, 1983, THE MOST RECENT SURVEY SHALL INCLUDE A SURVEY PERIOD OF NOT LESS THAN THREE MONTHS NOR MORE THAN SIX MONTHS.

~~(h)~~ (i) "Average wage" means 50% OF the sum of starting salaries for job openings in the 300-series in the dictionary of occupational titles identified by the department in its most recent survey of jobs opened in Montana's job service offices during a twelve-month-or-more period, divided by the number of job openings surveyed~~.~~, PLUS 50% OF THE SUM OF THE AVERAGE STARTING NURSING CARE SALARIES IDENTIFIED BY THE DEPARTMENT IN ITS MOST RECENT WAGE SURVEY, DIVIDED BY THE NUMBER OF FACILITIES SURVEYED.

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

~~(i)~~ (j) "Wage area" means the geographic area serviced by the Montana job service office in which a provider is located.

~~(j)~~ (k) "Extensive remodeling" means a renovation or refurbishing of all or part of a provider's physical facility, in accordance with certificate of need requirements, when the project's total cost depreciable under generally accepted accounting principles exceeds, in a twelve-month period, $2,400 times the number of licensed beds in the facility. "Extensive remodeling" does not include the construction of additional beds.

~~(k)~~ (l) "Age of facility" means the number of whole years from the year of construction to the rate year.

~~(l)~~ (m) "Wood frame construction" means the use of wood or steel studs in most bearing walls, with an exterior covering of wood siding, shingles, stucco, brick, or stone veneer, or other materials. "Wood frame construction" is defined to include all pre-engineered steel or aluminum buildings.

~~(m)~~ (n) "Non-wood frame construction" means all types of construction not included as wood-frame construction.

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

~~(o)~~ ~~(o)~~ (p) "Administrator" means the person, including an owner, salaried employee, or other provider, with day-to-day responsibility for the operation of the facility. In the case of a facility with a central management group, the administrator, for the purpose of these rules, may be some person

(other than the titled administrator of the facility), with day-to-day responsibility for the long-term care portion of the facility. In such cases, this other person must also be a licensed nursing home administrator.

~~(k)~~ ~~(r)~~ (q) "Related parties" for purposes of interpretation hereunder, shall include the following:

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

(ii) A substantial interest shall be deemed an interest directly or indirectly, in excess of ~~ten~~ five percent ~~(10%)~~ (5%) of the control, voting power, equity, or other beneficial interest of the entity concerned.

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

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

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

~~(l)~~ ~~(q)~~ (r) "Fiscal year" and "fiscal reporting period" both mean the ~~facility's~~ provider's internal revenue tax year.

~~(m)--"Property costs" are amounts allowable for facility or equipment depreciation, interest on loans for a facility or equipment, and leases or rental of a facility or equipment.~~

~~(n)--"Operating costs"--are the difference between total allowable cost and property costs.~~

~~(o)--"Certificate of Need" is the authorization to proceed with the making of capital expenditures under Section 1122, Title XI of the Social Security Act, and sections 50-5-101 through 50-5-307 MCA.~~

~~(p)--"New facility"--means an entirely newly constructed facility which has not provided nursing care services long enough to have a cost report with a complete audit as provided under ARM 46.12.1205(6) covering a twelve month fiscal reporting period.~~

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

~~(r)--"Rate year" means the provider's fiscal year for which an interim rate is being issued.~~

~~(s)--Nominal charge means a charge by a government facility to a private patient which amounts to less than half~~

~~of the actual allowable costs per day for the rate year.~~

~~(r)~~ (s) "Department audit staff" and "audit staff" mean personnel directly employed by the department or any of the department's contracted audit personnel or organizations.

~~(t)~~ ~~(s)~~ (t) "Estimated economic life" means the estimated remaining period during which the property is expected to be economically usable by one or more users, with normal repairs and maintenance, for the purpose for which it was intended when built.

~~(t)~~ (u) "Rate year" means a 12-month period beginning July 1.

~~(u)~~ (v) The laws and regulations and federal policies cited in this sub-chapter shall mean those laws and regulations which are in effect as of ~~October 22, 1980.~~ March 31, 1982.

46.12.1203 PARTICIPATION REQUIREMENTS The ~~skilled nursing and intermediate care facilities~~ providers participating in the Montana medicaid program shall meet the following basic requirements to receive payments for services:

Subsections (1) through (5) remain the same as proposed.

(6) a provider maintaining patient trust accounts must insure that any funds maintained in those accounts are used only for those purposes for which the patient, ~~or~~ LEGAL GUARDIAN, OR PERSONAL REPRESENTATIVE OF THE PATIENT has given written delegation. A provider may not borrow funds from these accounts for any purpose.

46.12.1204 ~~REIMBURSEMENT METHOD~~ PAYMENT RATE ~~AND PROCEDURES~~

Subsections 1 through 8 are deleted in their entirety.

(1) Except as provided under ARM 46.12.1204(4), a provider's payment rate is the sum of an operating rate and a property rate, adjusted by the phase-in procedure provided in ARM 46.12.1201(4).

(2) The operating rate is the result of computing the formula:

~~A=B times ((C times ((($27.43 + ($54,627 divided by D)) divided by .9)) + E),~~

~~where:~~

~~A is the operating rate per day of service,~~

~~B is the area wage adjustment for a provider,~~

~~C is 1.0 effective July 1, 1982, 1.09 effective July 1, 1983, and 1.1081 effective July 1, 1984,~~

~~D is the number of licensed beds for a provider times 366 days,~~

~~E is the patient care adjustment for a provider.~~

A(1)=B TIMES ((C TIMES (($30.17 + ($54,627 DIVIDED BY D)) DIVIDED BY .9)) + E), IF T IS EQUAL TO OR GREATER THAN THE RESULT OF COMPUTING A(1), OR

A(2)=B TIMES ((C TIMES (($24.69 + ($54,627 DIVIDED BY D))

DIVIDED BY .9)) + E), IF T IS EQUAL TO OR LESS THAN THE RESULT OF COMPUTING A(2), OR
A(3)=T, IF T IS LESS THAN A(1) AND GREATER THAN A(2), WHERE:
A(1), A(2), A(3) IS THE OPERATING RATE PER DAY OF SERVICE,
B IS THE AREA WAGE ADJUSTMENT FOR A PROVIDER,
C IS 1.0 EFFECTIVE JULY 1, 1982, 1.09 EFFECTIVE JULY 1, 1983, AND 1.1881 EFFECTIVE JULY 1, 1984,
D IS THE NUMBER OF LICENSED BEDS FOR A PROVIDER TIMES 366 DAYS,
E IS THE PATIENT CARE ADJUSTMENT FOR A PROVIDER,
T IS C TIMES THE INTERIM OPERATING RATE IN EFFECT ON JUNE 30, 1982, INDEXED TO DECEMBER 31, 1982.

(a) The area wage adjustment for a provider is the result of computing the following formula:

B=1 + (((F-G) divided by G) times .71) if F is equal to or greater than one standard deviation from the average wage, or

B=1.0 if F is less than one standard deviation from the average wage,

where:

B is the area wage adjustment for a provider,

F is the average wage for a provider's wage area,

G is the average wage for all wage areas plus one standard deviation, if F is more than one standard deviation above the average wage, or

G is the average wage for all wage areas minus one standard deviation, if F is more than one standard deviation below the average wage.

(b) The patient care adjustment for a provider is the result of computing the following formula:

E=((J divided by K) times L times K) - (L times K)

where:

E is the patient care adjustment for a provider.

J is the provider's average nursing care time,

K is the average nursing care time for all providers.

L is the average nursing care hourly wage including benefits.

(3) The property rate is the result of computing the formula:

(a) M = (((N divided by Z) times ~~$5.82~~ $6.09) times (O - (P times Q))) divided by .9

where:

M is the property rate per day of service,

N is 25 years minus the age of the facility (limited to 20 years) as of 1982 (or as of licensure, for entire facilities built after July 1, 1982), if the facility is of wood-frame construction, or, 30 years minus the age of the facility (limited to 22 years) as of 1982 (or as of licensure, for entire facilities built after July 1,

1982), if the facility is of non-wood-frame construction.
O is 1.0 effective July 1, 1982, 1.06 effective July 1, 1983 and 1.1236 effective July 1, 1984,
P is .0400 if facility is of wood-frame construction, or .0333 if facility is of non-wood-frame construction,
Q is the rate year minus 1983 (number of years the building has aged since 1983), or the rate year minus the year of licensure for facilities built after July 1, 1982.
Z is 25 years if the facility is of wood-frame construction, or 30 years if the facility is of non-wood-frame construction.

(b) For facilities with additions built subsequent to the initial construction, the age of the facility shall be determined by pro-rating on a square-foot basis.

(c) For facilities extensively remodeled after July 1, 1982, the actual age of the facility shall be reduced by one year for each $1,200 per bed of remodeling, to a maximum total reduction for remodeling of ten years. If the facility was at the maximum age of 20 years for wood-frame construction or 22 years for non-wood-frame construction at the time of remodeling, then the reduction for remodeling shall be made to that maximum age, rather than to actual age.

Subsections (4), (4)(a), (4)(b), and (5) remain the same as proposed.

46.12.1205 ~~COST-REPORTING~~ PAYMENT PROCEDURES

Subsections 1 through 8 are deleted in their entirety.

Subsections (1) through (2)(f) remain the same as proposed.

(3) If a provider has any deficiency as determined in ARM 42.12.1206(9), the department will conduct an audit of the provider's costs for the fiscal year in which the deficiency occurred and MAY collect any difference between the amount the department paid during the fiscal year and actual includable cost prorated for services to medicaid recipients as determined in ARM 46.12.1207. Recovery will be in accordance with ARM 46.12.1209. If there are no deficiencies as defined in ARM 46.12.1206(9), the provider retains the full amount the department pays during the fiscal year.

Subsections (4) through (6) remain the same as proposed.

46.12.1206 ~~ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES~~ PATIENT ASSESSMENTS, STAFFING REPORTS AND DEFICIENCIES

Subsections 1 through 3 are deleted in their entirety.

(1) Each provider will report to the department each month the care requirements for each medicaid patient in the facility on forms specified and provided by the department.

(2) Each provider will report to the department each

month the staffing provided at the facility on forms specified and provided by the department.

(3) Completed patient assessment forms and staffing report forms must be received by the department within ten days following the end of each calendar month. ~~and must be certified as accurate and complete by the administrator or his designee.~~ THE ADMINISTRATOR OR HIS DESIGNEE MUST CERTIFY THAT THESE REPORTS, TO THE BEST OF HIS KNOWLEDGE AND BELIEF, ARE COMPLETE, ACCURATE, AND PREPARED CONSISTENT WITH ALL APPLICABLE RULES AND DEPARTMENTAL INSTRUCTIONS. If the complete, accurate and certified forms are not received within the ten-day period, the first available payment for long term care facility services will be withheld until such time as the forms are received. The use of the department's forms is mandatory. The reports as submitted shall be complete and accurate. Incomplete reports or reports containing inconsistent data will be returned to the provider for completion or correction.

Subsections (4) through (7)(c) remain the same as proposed.

(8) In addition to the actions specified in ARM 46.12.1206(7), for any provider with an identified deficiency, the department will:

(a) Schedule and conduct an audit of the provider's cost report within 180 days of receipt of the cost report covering the fiscal year in which the deficiency occurred.

(b) Determine includable costs as specified in ARM 46.12.1207 through audit procedures and MAY recover, in accordance with ARM 46.12.1209, all amounts paid in excess of includable costs. Amounts recovered will be not less than 10% of amounts paid to the facility for the period for long-term care facility services.

Subsections (9) through (9)(d) remain the same as proposed.

4. The department has thoroughly consider all verbal and written commentary received:

COMMENT: The proposed system is simply a flat rate system. Cosmetic modifications are included in the proposal, but it is still basically a flat-rate methodology.

RESPONSE: Although flat-rate systems are clearly allowable under Federal Medicaid regulations, the proposed reimbursement is definitely not a flat-rate system. A flat-rate system would pay one rate to all facilities, or one rate to each class of facilities. The proposed rules determine rates based upon size of the facility, difficulty of patient mix, geographic area, type of building construction, and age of the facility. This, then, is not a flat-rate methodology.

COMMENT: Some facilities have uncontrollable costs which are not experienced equally by all other facilities. For example, combined facilities utilize the Medicare step-down process which generally results in higher nursing home costs; for-profit facilities must pay property taxes; county and state facilities are mandated by law to pay employee benefits that can exceed those paid by some other facilities. Therefore, it is unfair to establish basic operating rates based only on the size of the facility, even though that basic rate may be modified for patient assessment and geographic area.

RESPONSE: The statistical procedures used to determine base operating rates established that 89% of total operating costs can be explained by the size of the facility. However, the Department recognizes that the other 11% is, in fact, unexplained variations. Therefore, in the revisions made to the original proposal, the Department has used a range of rates available for each size of facility. Use of this principle increases the statistical confidence level to over 99% and, thus, these relatively uncontrollable differences are accounted for in an equitable manner.

COMMENT: Facilities which have recently been sold have property costs in excess of those allowed under the proposed rules. "Grandfathering" the interim rate as a whole will, as time goes by, force some facilities to use operating funds to pay fixed property costs.

RESPONSE: The Department agrees that, for some facilities, such a situation could occur. Therefore, operating and property costs will be treated separately for "grandfathering" purposes.

COMMENT: The proposed rules relative to deficiencies will force SRS to collect back all payments in excess of actual costs whenever even a minor deficiency occurs.

RESPONSE: The Department has modified its proposal to make collection of such payments optional at the discretion of the Department. This will still insure quality patient care but will eliminate the potential problems mentioned in this comment.

COMMENT: What recourse does a provider have if he objects to a deficiency determination?

RESPONSE: All Departmental actions are subject to administrative review and the fair hearings process upon timely application by the provider.

COMMENT: Since the Department will require a short-period 6/30/82 cost report of the 42 facilities with fiscal year ending dates other than June 30, it should be willing to pay those costs.

RESPONSE: Since the Department generally requires an accrual basis of accounting, those costs should be reported in the period ending 6/30/82. Thus the Department will pay its appropriate share of those costs provided the total rate does not exceed reimbursement limits established in the rules in effect on June 30, 1982.

COMMENT: The Department must guarantee that it will not change its reimbursement rules for at least three years in order to allow providers to accurately budget and adjust to this proposed payment system.

RESPONSE: The Department agrees that it could be advantageous to all concerned if the proposed system could be guaranteed for three years. However, because of the uncertainty of Federal funding and the significantly fluctuating inflation rates of the past few years, as well as the uncertainties necessarily attendant with a totally revised payment methodology, the Department simply cannot make any such assurances.

COMMENT: The Department's proposal is apparently to be in effect for three years. We suggest that the Department re-evaluate the system after 12 months to be sure that it is actually meeting its intended goals.

RESPONSE: The Department will continually monitor and evaluate the proposed methodology and assess its effectiveness. If modifications are found to be necessary, appropriate rule changes will be proposed.

COMMENT: The Department should use a three-to-six month average for patient assessment data when rates are to be altered after initial rates are set under this system. This would preclude the potential of a one-month shift in patient population characteristics drastically changing a rate in an inappropriate manner.

RESPONSE: The Department agrees, and the applicable change has been made effective for all rate determinations after July 1, 1983.

COMMENT: The mean should be used as a base point for making geographic area wage adjustments rather than using one standard deviation. Using one standard deviation could result in substantial inequities.

RESPONSE: The Department has used one standard deviation as a basis for adjustment because wage areas do not operate as entirely autonomous units. In fact, there is likely to be considerable interaction between wage areas, that is, a facility in a given wage area may hire many of its employees from other adjoining areas. Therefore, wage area adjustments should only be made for extremely low cost or high cost areas. To do otherwise would be to potentially overpay or underpay facilities without genuine regard to the actual wage situations.

COMMENT: The $5.82 maximum property rate was based upon actual construction costs of 9 facilities and imputed costs for 5 leased facilities. Since the Department assumed that these 5 leased facilities were of lower cost than the over-all average construction cost, it has artificially set the cost of a new facility too low.

RESPONSE: When the $5.82 figure was calculated, the Department did impute a value to the 5 leased facilities based upon the average cost of for-profit facilities. Since those 5 leased facilities are all for-profit, this seemed to be a reasonable method of determining average construction costs. However, the Department has re-calculated the average using only those 9 facilities for which it has accurate cost data. The result was a maximum property rate of $6.09, which the Department has incorporated in the final rule.

COMMENT: The imputed down-payment should consist of only 20% of the construction cost, rather than 20% plus the cost of moveable equipment.

RESPONSE: It is the Department's position that 20% of the construction cost plus the cost of moveable equipment is a reasonable down-payment requirement. In fact, this will generally result in an average total down-payment requirement of about 28%, which is significantly less than the down-payment requirements of many other states.

COMMENT: The rule proposal should be amended so that a personal representative of the patient can give written permission for expenditures from patient trust fund accounts. As originally proposed, it appears that actual legal guardianship will have to be obtained by someone for many patients.

RESPONSE: The final rule has incorporated this suggestion.

COMMENT: The methods used to determine the base operating rates were completely unfair in that higher cost facilities were excluded from the base data.

RESPONSE: All costs reported for FY 1980 were analyzed in determining base operating rates. When those costs were regressed against facility size, it was found that 9 facilities were true "outlyers", that is, their costs were so high or so low as to improperly skew the results for the majority of facilities. Exclusion of such outlyers is an accepted statistical practice. The intent, and the result, was not to lower base operating rates, but rather to determine equitable base operating rates. Failure to exclude those "outlyers" would have resulted in statistically questionable results.

COMMENT: Return on equity is an allowable cost and should be used as part of the base data.

RESPONSE: Return on equity is an allowable cost for purposes of determining retrospective rates under the current reimbursement rules only. It is, in fact, an "opportunity" cost but it is not an out-of-pocket expense and therefore it was properly not included when the actual cost of providing services in an "efficiently and economically operated facility" was calculated.

COMMENT: Adjustments for patient assessment should be made more often than annually.

RESPONSE: The Department will closely monitor patient assessment results and will propose appropriate rule changes if annual adjustments prove to be inadequate. Based on current information, annual adjustments appear to be adequate.

COMMENT: Use of the 300-Series of Montana Job Services' Dictionary of Occupational Titles by itself is not a satisfactory indicator of wage levels because it includes no nurses.

RESPONSE: The Department will use an average composed of 50% 300-Series information and 50% starting wages for actual nursing home employees.

COMMENT: Why is only 71% of the area adjustment factor applied to operating costs?

RESPONSE: The area adjustment factor is an adjustment for wage difference. On the average, 71% of operating costs consist of wages and salaries.

COMMENT: Patient assessment adjustments should be based on mean patient assessment data rather than on one standard deviation from the mean.

RESPONSE: The Department agreed to this change prior to publication of the proposal and this remains in the final publication.

COMMENT: Smaller-sized facilities are more expensive on a per-patient-day basis and your proposal must consider this fact.

RESPONSE: The proposal does recognize this fact. The formulas used to calculate base operating rates will produce precisely that result.

COMMENT: The patient assessment system will classify all patients as "intermediate" and, if optional services are eliminated by the Medicaid program, the state will lose a lot of money.

RESPONSE: The patient assessment system will determine difficulty of care as expressed in management minutes. It will not directly determine level of care.

COMMENT: Older facilities cost far less to build per square foot than newer facilities. The property component of the rule fails to recognize this fact.

RESPONSE: The property component of the proposed rule is based, in part, precisely on that fact, because age is one of the factors in determining property rate.

COMMENT: When the supposed cost of operating an efficient and economic facility was determined, the costs associated with facilities having numerous deficiencies were included. Since these deficient facilities tend to be the lower cost ones, the result is an artificially low base operating rate.

RESPONSE: The Department included only those facilities which were licensed by the state and certified for Medicaid participation. While it is true that some facilities did operate with minor deficiencies which were being corrected or, in a few cases, with waivers issued by the Department of Health, it is incorrect to state that these tended to be the lower cost facilities. In fact, both low and high cost facilities have temporary deficiencies or waivers. Thus the Department is confident that its basic data is not skewed in either a positive or a negative direction. If such were the case, the statistical confidence level would be significantly lower.

COMMENT: The meaning of "Nursing care time" as it is used in 46.12.1204 is unclear.

RESPONSE: The Department has eliminated any potential confusion by specifically defining both "Average nursing care time" and "Provider's average nursing care time".

COMMENT: The proposed property rules must include a step-up for facility sales.

RESPONSE: The property component of the proposed rules seeks to pay a reasonable rate for use of each specific facility. That rate is based upon the age and type of construction of the facility. As long as inflation continues above approximately 4% a year, property payments to each facility will increase each year. However, since a sale neither causes a facility to become younger nor does it increase the quality of its construction, there is no logical reason to increase property rates due to sales.

COMMENT: The certification of patient assessment and staffing forms should require a statement of accuracy "to the best of the administrator's knowledge and belief" rather than an outright guarantee of accuracy.

RESPONSE: The final rule incorporates this recommendation.

COMMENT: The property section of the proposed rule does not allow compensation for recent remodeling of a facility although it does make specific provision for remodeling which occurs after July 1, 1982.

RESPONSE: Property rates are calculated on the basis of age and type of construction of the facility with specific provisions for remodeling occurring after July 1, 1982. Although there is no provision for remodeling prior to July 1, 1982, property rates are to be "grandfathered" separately from operating rates and therefore any recent remodeling will be adequately reimbursed.

COMMENT: I am convinced that, as a direct result of these proposed rules, the quality of patient care in Montana will be severely impaired and the facilities which have provided the best care are going to be the ones receiving little or no increases in their rates, while the largest increases will go to the poorest quality facilities. It appears that SRS will be saving some money on this proposed change and therefore cares very little about the living conditions that may result.

RESPONSE: Quality care is the most basic concern of the Medicaid program. Under the current reimbursement methodology, there is no direct relationship between rates and quality. The proposed rules will implement controls and safeguards relative to quality of care which will inevitably serve to improve the over-all level of care in Montana. The system will reward efficient facilities and, over time, cause inefficient and/or uneconomic facilities to make better use of their available resources. These results are clearly in the best interests of the patients, the facilities, the Medicaid program, and the taxpayers of Montana.

COMMENT: A retrospective adjustment should be made at the end of each fiscal year to reimburse uncontrollable costs such as utilities, union-mandated wage increases, property taxes, employee benefits when they must legally be increased, facility repairs, and medical supplies.

RESPONSE: With the addition of an upper and lower limit, the proposed rules will account for unusual cost increases. To implement the suggested retrospective adjustments would be to virtually abandon the cost controls inherent in a prospective rate system. However, the Department will continually monitor all aspects of the proposed system to insure that rates are adequate to allow for the provision of efficiently and economically delivered services.

COMMENT: The proposed rules assume 90% occupancy for all facilities. This is totally unreasonable in certain sections of the state. The Department should consider using one of the following alternatives: (1) 85% rather than 90%; (2) an estimated occupancy for each individual facility; or (3) an average occupancy rate for each area of the state, perhaps similar to the geographic wage adjustment. Every facility operating today was approved by the Certificate of Need process and, if too many beds were built because of errors in that process, the state should not expect providers to have to suffer as a result.

RESPONSE: Actual occupancy for FY 1980 was slightly under 92%; it was slightly over 92% for FY 1981. Thus the use of 90% is actually somewhat liberal. However, 90% is generally assumed to be an acceptable occupancy by most planning organizations and therefore 90% was selected. There is no valid reason for using 85% as suggested, and use of either actual occupancy by facility or by area would only serve to financially encourage low-occupancy. It would seem that each low-occupancy facility should explore its own range of possibilities and determine what actions could be taken to make better use of its available resources. In areas with apparently chronic occupancy problems, a facility could consider such alternatives as personal care and/or adult day care to better utilize its physical plant. Because non-institutional services like home health and adult day care are likely to expand in the future with the potential result of fewer individuals requiring nursing home care, occupancy problems for some facilities may very well be expected to continue or increase. It is the Department's position that better use of available space is a far more attractive alternative than subsidizing empty beds, from both the state's perspective and in the long run from the facilities' perspective as well.

COMMENT: The Department appears to be planning to send poorly-defined, probably unqualified "review teams" into nursing homes on an undefined mission to look for undefined deficiencies.

RESPONSE: The Department will, of course, utilize only qualified employees or contractors as review team members and their purpose will be to look into specific problem areas.

COMMENT: The Department of Health and Environmental Sciences already conducts adequate facility surveys. The Department is only seeking to add another layer of bureaucratic duplication. The result will be additional unnecessary expense.

RESPONSE: There will be no duplication of effort between DHES and SRS. The review functions of each Department can only serve to enhance each other and the result will be better quality assurance.

COMMENT: It is our understanding that audits will only be conducted when the Department intends to initiate a collect-back. Is this true?

RESPONSE: No. Field audits and desk reviews will continue to be conducted. In order to accurately evaluate the performance of the proposed system, audited cost information will have to be available. The scope and direction of the audit function will be altered somewhat in order to more closely examine employee hours and other factors, but routine field audits and desk reviews will be continued.

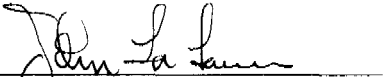
COMMENT: Federal regulations require prior approval by the Secretary of the U.S. Department of Health and Human Services of any proposed reimbursement rule changes.

RESPONSE: 45 CFR §447.256(2) permits an effective date no sooner than the first day of the quarter in which the agency submits the required assurances and related information described in 45 CFR §447.255. Under this requirement the new rates can become effective on July 1, 1982 if the state agency submits the proposal for review prior to September 30, 1982.

COMMENT: The 25% parameter which is used to cause a facility to pay back all Medicaid funds in excess of actual costs is too broad. We recommend that the figure be reduced to 15%.

RESPONSE: While 25% is indeed a very wide parameter, the Department's intention is to depend on that figure only in extreme and unusual circumstances. Prior to ever reaching a staff deficiency of 25%, it is the Department's opinion that other deficiencies will be noted which will cause a careful

analysis of the quality of care in that facility to be performed. Because various providers may be able to operate with varying levels of staff efficiency, it is important that the figure used to trigger mandatory pay-backs not be set too low. Therefore, 25% was chosen, not because this would likely be the first indication of a problem, but rather because this figure should allow for any reasonable staffing range.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the adoption of Rules 46.14.101, 46.14.102, 46.14.104, 46.14.105, 46.14.106, 46.14.201, 46.14.202, 46.14.203, 46.14.204, 46.14.205, 46.14.206, 46.14.207, 46.14.301, 46.14.302, 46.14.303, 46.14.304, 46.14.305, 46.14.401 and 46.14.402 pertaining to the low income weatherization assistance program	) NOTICE OF THE ADOPTION OF RULES 46.14.101, 46.14.102, 46.14.104, 46.14.105, 46.14.106, 46.14.201, 46.14.202, 46.14.203, 46.14.204, 46.14.205, 46.14.206, 46.14.207, 46.14.301, 46.14.302, 46.14.303, 46.14.304, 46.14.305, 46.14.401 and 46.14.402 PERTAINING TO THE LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the adoption of rules pertaining to the low income weatherization assistance program at page 982 of the Montana Administrative Register, issue number 9.

2. The agency has adopted Rules 46.14.101, SAFEGUARDING/SHARING INFORMATION, 46.14.102, ROLE OF THE LOCAL CONTRACTOR, 46.14.104, FAIR HEARINGS, 46.14.105, REFERRALS TO THE DEPARTMENT OF REVENUE, 46.14.202, APPLICATIONS TO BE VOLUNTARY, 46.14.301, DEFINITION OF HOUSEHOLD, 46.14.304, INCOME, and 46.14.305, RESOURCES, as proposed.

3. The agency has adopted the following rules as proposed with the following changes:

46.14.106 FRAUD (1) Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device low income weatherization assistance to which he/~~she~~ is not entitled is guilty of theft as provided in 45-6-301, MCA.

Subsection (2) remains the same.

46.14.201 INTERVIEWS REQUIRED AND CONTENT OF INTERVIEWS (1) Rights and responsibilities explained.

(a) A staff member of the local contractor shall interview all applicants or persons authorized to act responsibly on behalf of applicants who contact the offices of the local contractor to apply for low income weatherization assistance. During the first interview, the staff member shall explain the person's rights, outline his responsibilities and describe the process in the system which may affect the

client. (See ARM 46.14.203 for exceptions.)

(2) The staff member shall explain to the person applying all factors of eligibility which must be substantiated and assist the person to understand the regulations governing his eligibility and receipt of benefits. The staff member shall inform the client of the availability of the regulations affecting eligibility as found in the Administrative Rules of Montana 46.14.101 through 46.14.402, copies of which are available and may be inspected in the offices of the clerk and recorder and the clerk of court in each county.

Subsection (3) remains the same.

46.14.203 PLACE OF APPLICATION (1) The place of application shall ~~not be closed for any portion of the working day or working week~~ be open from 8:00 a.m. to 5:00 p.m. Mondays through Fridays with the exception of recognized holidays.

Subsection (2) remains the same.

46.14.204 INVESTIGATION OF ELIGIBILITY (1) Investigations of eligibility will include securing information from the person applying for or receiving benefits and such other investigation as may be determined necessary by the department.

(a) Each application for assistance will be promptly and thoroughly investigated by a staff member of the local contractor. If a case is picked for quality control review, the client must cooperate or be subject to reduced or terminated benefits.

46.14.205 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) Procedures followed in determining eligibility for low income weatherization assistance and determining priority for service are:

(a) Application is filed by applicant together with all necessary verification for determining financial eligibility and priority for service. The staff member of the local contractor accepts the application and determines financial eligibility and priority for service. The client is notified of the reasons for approval or disapproval of his application.

(b) Financial eligibility requirements that must be verified are:

(i) current receipt of benefits under supplemental security income or aid to families with dependent children;

(ii) income;

(iii) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education.

(c) If reasonable doubt exists as to the accuracy of the information provided by the client, the type of dwelling,

(including the number of bedrooms and/or the primary heating fuel/vendor) must also be verified.

46.14.206 NOTIFICATION OF ELIGIBILITY DETERMINATION (1) An individual who makes application for low income weatherization assistance will receive written notice of eligibility including priority for service within 45 days of the date of application. If the applicant is determined ineligible, notification shall include the reasons for nonapproval. The notice of decision shall be made by the local contractor immediately following final decision on the application.

(2) Households determined eligible but not prioritized high enough to receive service must be redetermined for eligibility after one year from initial application except that redetermination may be made within a year if a reasonable suspicion of change of status occurs.

46.14.207 NOTICE OF ADVERSE ACTION (1) Each person determined eligible for weatherization assistance must be notified ~~ten days~~ by the local contractor in advance of any action that terminates or reduces his benefits. Notification must be in writing and contain information about the amount of decrease or the closure, the reason and legal basis for the action, and must advise the client of the date on which the action will take effect. The notice must inform the client of his right to a fair hearing.

46.14.302 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) Except as provided below, households which ~~consist solely of members~~ contain a member receiving supplemental security income, aid to families with dependent children, or general assistance are automatically financially eligible for low income weatherization assistance. "Members receiving SSI, AFDC, or general assistance" includes any financially responsible relative or individual whose income and resources were considered in determining eligibility for these programs.

Subsection (2) remains the same.

(3) ~~Individuals living in licensed group living situations including recipients of SSI, AFDC, or general assistance, are not eligible for low income weatherization assistance.~~ Licensed group living housing is eligible for weatherization service if 66 2/3% of the individuals residing in the housing are eligible.

(4) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent ~~child~~ for federal income tax purposes by a taxpayer who is not a member of an eligible household are ~~ineligible~~ for low income weatherization assistance, after all other eligible homes have been weatherized.

(a) An institution of higher education means a college, university, or vocational or technical school at the post-high school level.

(5) Prior to weatherizing multi-family housing, a specific eligibility test will be applied. Not less than 66 2/3% of the household units must be eligible household units.

46.14.303 INCOME STANDARDS

Subsections (1), (2) and (3) remain the same.

(4) Adjusted gross income standards for all households:

Number of individuals in household	Annual adjusted gross income for ~~all~~ households of different sizes
1	$ 5,850
2	7,775
3	9,700
4	11,625
5	13,550
6	15,475
Each additional member	1,925

46.14.401 PRIORITIZATION FOR SERVICE (1) The department has established a priority formula in (2) below, for low income weatherization assistance.

(2) The applicable benefit award matrices amount from the low income energy assistance program found in ARM 46.13.401 is multiplied by;

(a) either 25 for eligible applicants 60 years or older who own their place of residence or 25 for eligible applicants who are disabled as defined by 20 CFR 416.901 who own their place of residence. The department hereby adopts and incorporates by reference the definition of a disabled person found in 20 CFR 416.901. A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604;

(b) either 7 for eligible applicants 60 years or older who rent their place of residence or for applicants who are disabled as defined by 20 CFR 416.901 who rent their place of residence;

(c) 3.5 for all other eligible applicants who own their place of residence;

(d) 1 for all other eligible applicants who rent their place of residence.

(3) If there exists a weatherization related imminent threat to the health or safety of an eligible household, their home may be designated a higher priority. To be so designated, it is the obligation of the household to provide proof of the imminent threat to health or safety to the local contractor who must request emergency designation from the

department.

(4) Eligible homes will be prioritized quarterly.

(5) Weatherization will be scheduled to minimize travel and other non-productive costs.

(a) A scheduled home with non-productive costs exceeding one hundred dollars ($100.00) will be advertised for bids within the locality of the work to be performed.

(b) If a local sub-contractor is unavailable or cost excessive, the scheduled home will be prioritized highest in the following contract period and so notified.

46.14.402 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE

Subsections (1), (2), (2)(a) and (2)(b) remain the same.

(3) STATE STANDARDS FOR WEATHERIZATION BY STANDARD DWELLING TYPE

PRIORITY	SOURCE OF HEAT LOSS	WEATHERIZATION MEASURE REQUIRED
Single Story Homes		
1	General Heat Waste	Stop Infiltration/Adjust Heating Source
2	Uninsulated Ceilings	Insulate Ceilings to R19
3	Partially Insulated Ceiling	Insulate Ceilings to R19
4	Windows	Storm Windows
5	Perimeter of Basement Uninsulated	Insulate Perimeter
6	Uninsulated Floor	Insulate Floor to R11
7	Uninsulated Walls	Insulate Walls
Mobile homes - all sizes, all heat types		
1	General Heat Waste	Stop Infiltration/Adjust Heating Source
2	Single Glass	Storm Windows/Thermal Curtains
3 or 4	Dead Air Locks	Construct Air Lock
4 or 3	Uninsulated Perimeter	Skirt Trailer
Two or more story homes - all heat types		
1	General Heat Waste	Stop Infiltration/Adjust Heat Source
2	Single Glass	Storm Windows
3	Uninsulated Ceilings	Insulate Ceilings R19
4	Partially Insulated Ceilings	Insulate Ceilings R19
5	Uninsulated Perimeter	Insulate Perimeter
6	Uninsulated Floors	Insulate Floors to R11
7	Uninsulated Walls	Insulate Walls

4. The Department has thoroughly considered all verbal and written commentary received:

COMMENT: The Department should not discriminate against low income renters by prioritizing renters lower than home owners.

RESPONSE: Because the limited weatherization funds preclude providing service to all eligible applicants, it is necessary to prioritize them. These priorities are aimed at dwellings which are more likely to continue to be occupied by eligible households. Census bureau statistics indicate 50% of renters move within a year, whereas 63% of owners remain in their home 6 years or longer.

COMMENT: The Administrative Rules should allow for emergency situations which threaten the health or safety of eligible individuals.

RESPONSE: The Department is adding subsection (3) to Rule XVIII (46.14.401) to read as follows: if there exists a weatherization related threat to the health or safety of an eligible household, their home may be designated a higher priority. To be so designated, it is the obligation of the household to provide proof of the imminent threat to health or safety to the local contractor who must request emergency designation from the Department.

COMMENT: Ten days notification of change of status is unnecessary and cumbersome.

RESPONSE: The Department is removing the words "ten days" from Rule XII (1) (46.14.207). This rule had been copied from other welfare rules and was not appropriate for weatherization where it is only necessary to notify in advance of termination or reduction of benefits.

COMMENTS: Group homes often have inhabitants that are eligible and need weatherization. A reduction in group home fuel costs would reduce the need for state aid in this area.

RESPONSE: The department is changing Rule XIV (3) (46.14.302) to read: licensed group living housing is eligible for weatherization service if 66 2/3% of the individuals residing in the housing are eligible.

COMMENT: In regards to Rule I (1)(2), (46.14.101), will the Department supply the appropriate forms or will this be left to the operating agency?

RESPONSE: The Department will provide the notification and fair hearing forms.

COMMENT: A member of a household enrolled at least half time in an institution of higher education should not be considered ineligible.

RESPONSE: The Department has determined that households with individuals enrolled more than half time in an institution of higher education, while often needy, are voluntarily poor and will not be weatherized until all other households have been weatherized.

COMMENT: Why is unemployment compensation considered as income but not food stamps?

RESPONSE: Unemployment compensation is provided in cash and can be spent in an unrestricted manner at the discretion of the recipient. Food Stamps are non cash and can only be used for food.

COMMENT: The Department has weighed the priority in favor of elderly and handicapped owners and to a lesser extent adult owners.

RESPONSE: Department of Energy regulations require that a higher priority is given to identifying and providing weatherization assistance to elderly and handicapped low income persons and such lower priority as the Department determines is appropriate is given to single family or other high energy consuming dwelling units.

COMMENT: What is the department's definition of "appropriate community-based organization"?

RESPONSE: A Community Action Agency (CAA) or other public or non-profit entity.

COMMENT: Rule VII (46.14.202) needs clarification as to the statement, "When a case has been closed, application must be made for reinstatement of benefits".

RESPONSE: A case is closed when weatherization is not performed within a year of application or for any other reason which terminates weatherization benefit prior to service. (See Rule IX (46.14.204), Rule XI (46.14.206), Rule XII (46.14.207).

COMMENT: In Rule XVIII (46.14.401), the date of application has not been included as part of the priority system.

COMMENT: Flexibility must be incorporated into the priority formula.

RESPONSE: The Department is adding another section to Rule XVIII (46.14.401) to read "(4) Eligible homes will be prioritized quarterly.

(5) Weatherization will be scheduled to minimize travel and other non-productive costs.

(a) A scheduled home with non-productive costs exceeding one hundred dollars will be advertised for bids within the locality of the work to be performed.

(b) If a local subcontractor is unavailable or cost-excessive, the scheduled home will be prioritized highest in the following contract period and so notified.

COMMENT: Are residents of subsidized housing eligible for weatherization?

RESPONSE: Yes, eligible individuals living in subsidized housing shall be prioritized for service in accordance with Rule XVIII (46.14.401).

COMMENT: Each county should be prioritized separately.

RESPONSE: The priority formula is aimed at dwellings more likely to continue to be occupied by eligible households. To prioritize by county would mean weatherizing some homes less likely to continue to be occupied by eligible households.

COMMENT: Since entry air locks are costly, why build them only to have them torn down with the trailer is moved.

RESPONSE: Entry air locks have a higher cost/benefit ratio, in most instances, than is the case of trailer skirting. Both weatherization measures are equally vulnerable to removal due to the movement of the trailer.

COMMENT: Based on the Human Resource Development Council's input and Department review, the Department is also making one further change. The addition of subsection (2) in Rule 46.14.206 is necessary to limit the program to eligible homes. This addition refers to eligibility redetermination.

COMMENT: Nonsubstantive procedural and format changes have been made.

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

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

In the matter of the adoption of Rules 46.16.101, 46.16.102, 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 and 46.16.115 pertaining to the end stage renal program.	))))))	NOTICE OF THE ADOPTION OF RULES 46.16.101, 46.16.102, 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 and 46.16.115 PERTAINING TO THE END STAGE RENAL PROGRAM.

TO: All Interested Persons

1. On May 13, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to the end stage renal program at page 993 of the Montana Administrative Register, issue number 9.

2. The agency has adopted Rules 46.16.101, PURPOSE, 46.16.102, DEFINITIONS, 46.16.103, APPLICATION PROCEDURES, 46.16.105, NONFINANCIAL ELIGIBILITY REQUIREMENTS, 46.16.106, FINANCIAL ELIGIBILITY REQUIREMENTS, 46.16.108, PROCEDURES FOR DETERMINING ELIGIBILITY, and 46.16.110, MEDICAL SERVICES, as proposed.

3. The agency has adopted Rule 46.16.115 as proposed with the following changes:

46.16.115 REIMBURSEMENT (1) Reimbursement for medical supplies and durable equipment will be the lower of the amount allowable by medicare or 90% of the usual and customary (billed) charges.

(2) Reimbursement for other services shall be made in accordance with ARM 46.12.503 and 506, "Hospital Services", ARM 46.12.562 "Home Dialysis for End Stage Renal Disease, Reimbursement", and ARM 46.12.2003 to 2008 "Physicians Services, Reimbursement".

(3) Members of a recipient's family shall not be reimbursed for providing "back-up" services.

(4) Only amounts specifically appropriated for this program may be used for this program. When all appropriated funds are spent for services, the program shall cease until further appropriations are received.

(5) All services shall be billed in ~~accordance~~ a manner consistent with ARM 46.12.303 "Billing, Reimbursement, Claim Processing, and Payment" and ARM 46.12.304, "Third Party Liability".

(6) All providers providing services under this program must agree to abide by all applicable state laws that apply to providers in the medicaid program and to accept reimbursement allowed by the department as payment in full. ~~accept-the-conditions--of--provider--participation--found--in--ARM-46.12.301 "Provider--Participation,"--ARM-46.12.302,---"Contracts",--ARM~~

~~46.12.307, "Provider Rights," and ARM 46.12.308, "Maintenance of Records and Auditing."~~

4. In comparison to the size of the Medicaid program, the End Stage Renal Disease program is a small one, and the Department has determined that it would not be cost effective to use the Medicaid fiscal intermediary for billings and claims processing. Subsection (5) of Rule VIII (46.16.115) has been changed to make this administrative decision clear.

Subsection (6) of Rule VIII (46.16.115) contains cross references to language that contains references to federal law and regulation which apply to the Medicaid program. The End Stage Renal Disease program is a program which is entirely state funded. The Department has modified Subsection (6) to avoid inappropriate references to federal law and regulations.

5. The agency has thoroughly considered all verbal and written commentary received:

COMMENT: The non-exempt property provisions in these proposed rules could substantially reduce the number of claimants who are eligible for assistance.

RESPONSE: These proposed rules were written with the intention of being restrictive. The guidelines used for the proposal were those of the most liberal federal program for medical assistance. We believe these rules are consistent with our attempt to insure that services are available to only those who experience a severe economic imbalance as mandated by statute.

COMMENT: The cash value of life insurance should be exempt from consideration as a resource for the program. This is one of the only sources for an emergency loan which a disabled person has.

RESPONSE: A claimant can keep cash value in life insurance up to the maximum resource limits for the program and remain eligible, provided they have no other non-exempt resources. We have chosen a restrictive resource limit for the program because the program's funds were exhausted after only six months last year and it is not known whether the program's funding will be adequate for the coming fiscal year.

COMMENT: The income and resources of parents should not be considered as available to meet the needs of an adult child who lives with them.

RESPONSE: The proposed rules recognize spouses, parents and children as a family unit when they live together. The re-

sources, income, and medical expenses of all the family members are evaluated and measured against a needs standard which is based on the family's size. We believe that when these closely related individuals live together, they should be recognized as a family unit.

COMMENT: Considering the equity value of a farm or business as a resource when its value exceeds $100,000 is not fair.

RESPONSE: This rule was proposed after a review of the eligibility rules for the State of Iowa which has an agricultural economy similar to Montana's. This rule was intended to be restrictive so that families with an equity value in a farm or business over $100,000 would make use of this equity before becoming eligible for the program. We believe that this rule does not deprive the family of the necessities of life.

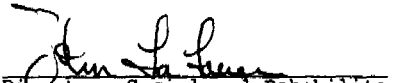
COMMENT: The proposed rules provide that kidney transplantation will only be authorized when a special budget fund for this purpose is available. Kidney transplantation is a method of curing End Stage Renal Disease. When it is successful the patient will hopefully not have a need for financial assistance from anyone. Kidney transplantations should not be restricted.

RESPONSE: It is agreed that kidney transplantation is a means to achieve a permanent correction of End State Renal Disease. The ESRD program has an annual appropriation of $125,000. Only a few kidney transplantations could be provided for with this appropriation. The Department has chosen to provide a wide scope of essential services to an estimated caseload of 100 people rather than to provide kidney transplantation to only a few people.

COMMENT: The proposed rule provides that claimants make application for program benefits and have their eligibility determined at county welfare departments. County welfare departments are too bogged down with ordinary problems to give thought or time to specialized cases such as those with End Stage Renal Failure.

RESPONSE: The Department has placed the tasks of taking application and determining eligibility for the ESRD program with county welfare departments because the county departments are aware of the eligibility requirements of a wide scope of financial assistance programs which are available. The intention of these rules is to utilize other medical assistance programs and resources before using the more limited funds of the ESRD program. It is not the intention of these rules to replace essential services which are provided by health care professionals, social workers, and vocational rehabilitation

counselors. County welfare departments do work closely with the people who provide essential health care services and serve as a coordinator for these services.



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 21, 1982.

VOLUME NO. 39 OPINION NO. 63

HIGHWAY PATROL - School bus inspections;

MOTOR VEHICLES - Definition of "school bus;"

SCHOOL BUSES - Definition of "school bus;"

MONTANA CODE ANNOTATED - Section 61-1-116, Title 61,

Chapter 1, Title 61, Chapter 8, Title 61, Chapter 9.

HELD: Vehicles operated by the Head Start Program and privately owned vehicles operated for compensation by or for parochial schools, as well as all vehicles operated by or for public school districts, for the purpose of transporting children to and from school are "school buses" within the meaning of section 61-1-116, MCA. Accordingly, they must comply with the statutory provisions in the Motor Vehicle Code (Title 61, MCA) relating to school bus equipment, operation and inspection.

14 June 1982

Colonel Robert W. Landon
Administrator
Highway Patrol Division
Department of Justice
303 North Roberts
Helena, Montana 59620

Dear Colonel Landon:

You have asked my opinion on the following question:

What constitutes a school bus for the purposes of Title 61, MCA?

Specifically you have inquired whether buses operated by parochial schools and by the federally sponsored Head Start Program are to be considered to be "school buses" under section 61-1-116, MCA. If so, they must comply with all the equipment requirements and traffic regulations of Title 61, MCA, pertaining to school buses. See, e.g., sections 61-8-350(2) (school bus to stop at railroad crossings); 61-8-351(2) ("school bus" signs to appear on front and rear of bus); (driver must actuate lights whenever the bus is to be stopped on a highway or street to receive or discharge school children); section 61-8-402(4) (school bus must be equipped with flashing red and amber lights), MCA. In addition, motorists would be obliged to stop for properly marked Head Start and parochial school vehicles whenever their flashing red signal lights were in operation. § 61-8-351(1), MCA.

Section 61-1-116, MCA, defines "school bus" as follows:

> "School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school. (Emphasis added.)

The statute utilizes both proprietary and functional criteria to define the term "school bus." A school bus may be publicly or privately owned. If privately owned, it must be operated "for compensation." To be considered as a school bus, a motor vehicle must also be used "for the transportation of children to or from school."

Resolution of your question turns on the interpretation given to the terms "school," "compensation" and "public or governmental agency."

For the purposes of the education title (Title 20), section 20-6-501, MCA, defines "school" as follows:

> As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. (Emphasis added.)

Under section 1-2-107, MCA, a definition of a word in one part of the Code is applicable anywhere that word appears in the Code unless a contrary intention appears. In my opinion, a contrary intention does plainly appear in the express limitation of that definition to Title 20. The term "school bus" is defined by section 20-10-101, MCA. Again, however, by express statutory provision, that definition expressly applies only to the use of the term in Title 20. Sections 20-6-501 and 20-10-101, MCA, defining "school" and "school bus," respectively, for the purposes of the education title are not in pari materia with section 6-1-116, MCA, defining "school bus" for the purpose of the Motor Vehicle Code. (See § 61-1-101, MCA.) The two titles govern different subjects. The concern of Title 20 is the administration of the public educational system in particular. The thrust of Title 61 is traffic safety and motor vehicle regulation in general. Furthermore, Title 20 and Title 61 both define "school bus" differently. The definition contained in section 61-1-116, MCA, is plainly broader in scope than the definition provided in section 20-10-101, MCA, which expressly limits "school bus" for the purpose of Title 20, inter alia, to motor vehicles owned by, or under contract to, a public school district. Section 61-1-116, MCA, makes no attempt to similarly limit the term.

Legislative intent is the polestar of statutory interpretation and that intent must be determined, if possible, from the plain meaning of the words used in a statute. Haker v. Southwestern Ry. Co., 176 Mont. 364, 369, 578 P.2d 724, 727 (1978). The words used in a statute should be given their usual and ordinary meaning. Rierson v. State, 37 St. Rptr. 627, 630, 614 P.2d 1020, 1023 (1980).

A school, in the ordinary acceptance of the word, is a place where general education is imparted to young people; it refers to an institution conducting a course of general education and mental training similar to that offered to children by a public education system. Cadet-ettes Corp. v. Brown, 406 N.E.2d 538, 540 (Ohio App. 1977); State ex rel. Church of the Nazarene v. Fogo, 79 N.E.2d 546, 547 (Ohio 1948); 68 Am. Jur. 2d Schools, § 1 (1973). The term refers to "an institution of learning of a lower grade, below a college or university; a place of primary instruction," Cadet-ettes, 406 N.E.2d at 540-41. The word "school" includes private as well as public institutions of learning. 68 Am. Jur. 2d Schools, § 1 at 360, § 307 at 627 (1973). It

does not, however, include a "Sunday school" providing solely religious instruction. Fogo, 79 N.E.2d at 547.

According to Webster's New International Dictionary (2d ed. 1941), "compensation" means "[t]hat which constitutes, or is regarded as, an equivalent or recompense;...that which compensates for loss or privation;...remuneration; recompense."

Clearly, privately owned vehicles are "school buses" within the meaning of section 61-1-116, MCA, if their owners are reimbursed in any manner for transporting children to or from school. A private or parochial school which operates any motor vehicle to transport children to and from its school and charges parents for that service, either by way of tuition or by a direct billing, is operating a "school bus" under section 61-1-116, MCA. The statutory definition of school bus is broad enough to include vehicles owned and operated by parochial schools, as well as private vehicles under contract with parochial schools or with public school districts to provide transportation of children to or from school.

By the plain and ordinary meaning of the term, "a public or governmental agency" is broad enough to encompass both federal and state agencies. Whether they are federally or privately owned, Head Start vehicles would, therefore, fall within the ownership criteria of section 61-1-116, MCA. Since the Head Start program would seem to impart general, primary education to the young, the program falls under the broad meaning of the word "school" as used in the statute. Hence, Head Start vehicles transporting children to and from such programs must be considered to be "school buses" for the purposes of Title 61. It is noteworthy that in 1976, the acting chief counsel of the National Highway Traffic Safety Administration (NHTSA) concluded in a memorandum that vehicles carrying children to and from Head Start programs are "school buses" for federal purposes. NHTSA Memorandum of February 18, 1976. There are two definitions of "school bus" in programs administered by NHTSA. Section 201 of the Motor Vehicle and School Bus Safety Amendments of 1974 added a definition of "school bus" to section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. § 1391), as follows:

> (14) "[S]choolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools;

NHTSA accordingly amended its definition of "school bus" in 49 C.F.R. § 571.3, effective October 27, 1976, as follows:

> "School bus" means a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation.

In the view of NHTSA a Head Start program designed to afford educational benefits to "preprimary" school children could reasonably be described as a "preprimary school" and its attendees are "preprimary school students." Hence, the NHTSA memorandum concluded that, under 49 C.F.R. § 571.3, a vehicle sold after October 27, 1976, for the purpose of transporting students to and from Head Start programs would have to comply with the school bus safety requirements established under the National Traffic and Motor Vehicle Safety Act.

The definition of school bus found at 49 C.F.R. § 571.3 reflects current congressional policy regarding school buses and, therefore, has a bearing on the scope of the definition of school bus in Uniform Highway Safety Program Standard No. 17 (23 C.F.R. § 1204.4), Pupil Transportation Safety, issued by NHTSA pursuant to its authority under the National Highway Safety Act of 1966 (23 U.S.C. § 401, et seq.). This standard sets minimum requirements for a state highway safety program dealing with pupil transportation and includes requirements for the identification, operation, and maintenance of school buses. Because No. 17's requirements apply to all vehicles while in operation as school buses and because neither NHTSA regulations nor the relevant statutes distinguish between categories of "school," the acting chief counsel of NHTSA concluded in his 1976 memorandum not only that Head Start vehicles are school buses for the purpose of

Standard No. 17, but also that both private and public educational institutions, whether profit or nonprofit institutions, were "schools" under the federal definitions.

The conclusions reached by the NHTSA memorandum are reenforced by both the similarities between Head Start and parochial school transportation, on the one hand, and public school transportation, on the other, and by the legislative history underlying the federal definitions. The apparent purpose of transportation is to give children instruction at a central site. The risks encountered by parochial and Head Start school children while traveling to or from the site are the same as those encountered by public school children. The congressional definition of school bus contained in section 102 of the National Traffic and Motor Vehicle Safety Act Amendments of 1974 (15 U.S.C. § 1391) is necessarily broad. It was intended to include a wide variety of passenger vehicles. See H.R. Rep. No. 93-1191, 93rd Cong., 2d Sess. 42, reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. Similarly, the scope of the Highway Safety Act of 1966, pursuant to which Uniform Standard No. 17 was promulgated, is broad. The express purpose of that enactment is the promotion of safety on the nation's highways in general. S. Rep. 1302, 89th Cong., 2d Sess., reprinted in [1966] U.S. Code Cong. & Ad. News 2741, 2743. In promulgating its administrative definition of "school bus" (49 C.F.R. § 571.3), NHTSA construed the congressional definition (15 U.S.C. § 1391) to include private as well as public school buses. See 40 Fed. Reg. No. 251, 60033 at 60034 (1975).

In finding Head Start buses to be "school buses" under Montana law, there is no danger in running afoul of federal law. Far from preempting state law on the matter, federal law complements state regulation of Head Start vans as school buses.

The definition of school bus which appears in section 61-1-116, MCA, is the original definition of "school bus" which appeared in the Uniform Vehicle Code (U.V.C.) from 1934 until 1962. U.V.C. Act V, § 1(e) (Rev. eds. 1934, 1938, 1944); U.V.C. Act V, § 1(f) (Rev. eds. 1948, 1952); U.V.C. § 1-156 (Rev. ed. 1954); U.V.C. § 1-160 (Rev. ed. 1956). As of 1972, a total of twenty states had adopted, with slight modification, the same definition. E. Yaw, National Committee on Uniform Traffic Laws and Ordinances, "Laws Requiring Drivers to Stop for School Buses," 1 Traffic

Laws Commentary No. 5 (August 1972), prepared for the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) at p. 4. In 1957, the Attorney General of Arizona, which had adopted the same U.V.C. definition as has Montana, had occasion to address much the same issue as is presented here. He held that the legislative definition of "school bus" was sufficiently broad to include not only buses owned and operated by school districts but also parochial school buses owned and operated by private institutions. 57-135 Op. Att'y Gen. at 139 (Ariz. 1957). He concluded that the equipment requirements and traffic regulations pertaining to school buses "were enacted for the purpose of protecting not only the children attending public school but all children of the state regardless of what type of school they attend." Id. In other states, the purpose of provisions relating to equipment and operation of school buses has also been declared to be the promotion of the safety of school children riding the bus. See, e.g., Hunter v. Boyd, 28 S.E.2d 412, 414 (1943).

It should be noted that under section 61-9-502(1), MCA, the Highway Patrol is statutorily obliged to conduct semiannual inspections of school buses. Under section 61-9-502(2), MCA, the Patrol is directed to determine whether "the school buses meet the minimum standards for school buses as adopted by the board of public education." Under section 20-10-111, MCA, the board of public education must promulgate uniform safety standards relating to "the design, construction, and operation of school buses in Montana." Because the Legislature has seen fit to incorporate by reference the board of education's safety standards into section 61-9-502(2), MCA, all school buses as defined by section 61-1-116, MCA, whether public or private, must comply with those standards and must be inspected semiannually by the Highway Patrol.

Under section 20-10-111(1)(a)(ii), MCA, the school bus standards promulgated by the board of public education may not be inconsistent with the "minimum standards adopted by the national highway safety bureau," now the National Highway Traffic Safety Administration (NHTSA). See Act of Oct. 15, 1966, P.L. 89-670, § 6(a)(1)(A), 80 Stat. 937, 49 U.S.C. § 1655; Act of Dec. 31, 1970, P.L. 91-605, Title II, § 202, 84 Stat. 1740.

The Legislature amended the aforementioned inspection statute, § 61-9-502, MCA, in 1973 to bring it in compliance

with the requirement of semiannual school bus inspection set forth in NHTSA's Uniform Standard No. 17. As discussed above, the federal definition of school bus includes all vehicles equipped to carry more than 10 passengers that are likely to be "significantly used" to transport preprimary, primary, or secondary school children to and from school or school events, whether the school be public or private. See 15 U.S.C. § 1391(14); 49 C.F.R. § 571.3. The federal definition was not, however, intended to include private motor vehicles used to transport members of the owner's household or other students in a car pool arrangement. H.R. No. 93-1191, 93rd Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. It should be noted that Montana law, unlike federal law, does not define "school bus" in terms of the number of students carried. Since the federal definition of school bus applies to private school as well as public school vehicles and since Montana's school bus inspection statute, 61-9-502, MCA, was amended in 1973 in order to comply with the requirements of the federal Uniform Standard No. 17, it is my opinion that section 61-9-502(1), MCA, requires semiannual inspections of both private and public school buses as well as Head Start vehicles.

THEREFORE, IT IS MY OPINION:

Vehicles operated by the Head Start program and privately owned vehicles operated for compensation by or for parochial schools, as well as all vehicles operated by or for public school districts, for the purpose of transporting children to and from school are "school buses" within the meaning of section 61-1-116, MCA. Accordingly, they must comply with the statutory provisions in the Motor Vehicle Code (Title 61, MCA) relating to school bus equipment, operation and inspection.

Very truly yours,

MIKE GREELY
Attorney General

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, Montana State Capitol, Helena, Montana, 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1982. This table includes those rules adopted during the period April 1, 1982 through June 30, 1982, 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 March 31, 1982, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1981 and 1982 Montana Administrative Registers.

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