

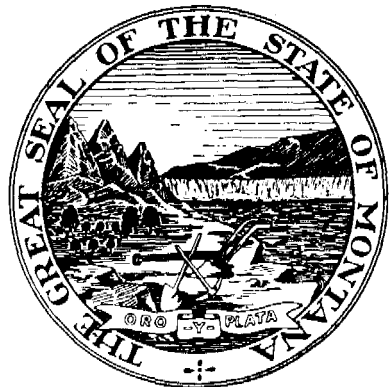
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RESERVE

MONTANA ADMINISTRATIVE REGISTER

STATE LAW DEPARTMENT
FEB 11 1982
OF MONTANA

1982 ISSUE NO. 3
FEBRUARY 11, 1982
PAGES 118-319



NOTICE TO ALL MAR SUBSCRIBERS

AS OF JANUARY 1, 1982 THE MONTANA ADMINISTRATIVE REGISTER WILL HAVE A NEW FORMAT TO HELP GUIDE YOU THROUGH THE INFORMATION MAR PROVIDES FOR YOU. THE FOLLOWING IS A LISTING OF THE NEW FORMAT:

- | | |
|--|------------------|
| 1. TABLE OF CONTENTS | WHITE PAGES |
| 2. NOTICE SECTION | BUFF PAGES |
| 3. RULE SECTION | WHITE PAGES |
| 4. INTERPRETATION SECTION | WHITE PAGES |
| 5. NOTICE OF FUNCTIONS OF
ADMINISTRATIVE CODE COMMITTEE | GREEN PAGE |
| 6. HOW TO USE ARM AND MAR | SALMON PAGE |
| 7. MAR ACCUMULATIVE TABLE | GOLDEN ROD PAGES |
| 8. CROSS REFERENCE TABLE | BLUE PAGES |
| 9. EMERGENCY RULES (WHEN LISTED) | PINK PAGES |

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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. Notices and tables are inserted at the back of each register.

TABLE OF CONTENTS

NOTICE SECTION

	<u>Page Number</u>
<u>COMMERCE, Department of, Title 8</u>	
8-10-8 (Board of Barbers) Notice of Proposed Amendment and Adoption of Rules Pertaining to Examinations, Teaching Staff, Identification. No Public Hearing Contemplated.	118-121
8-18-15 (State Electrical Board) Notice of Proposed Amendment and Adoption of Rules Pertaining to Responsibilities and Fee Schedule. No Public Hearing Contemplated.	122-124
8-42-5 (Board of Physical Therapy Examiners) Notice of Proposed Amendments and Adoptions of Rules Pertaining to Examinations, Temporary Licenses, Fees, Reciprocity Licenses, Exemptions, Code of Ethics, Complaint Process, Guide for Conduct for the Physical Therapists. No Public Hearing Contemplated.	125-138
8-44-28 (Board of Plumbers) Notice of Public Hearing on Proposed Amendment of Rule Pertaining to Renewals.	139-140
8-58-17 (Board of Realty Regulation) Notice of Proposed Amendment of Rule Pertaining to Fee Schedule. No Public Hearing Contemplated.	141-142

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-217 Notice of Public Hearing on Proposed Amendment of Rule Pertaining to Open Burning Restrictions. 143-146

16-2-218 Notice of Public Hearing on Repeal of Rules and Adoption of Rules Pertaining to Air Quality. 147-149

JUSTICE, Department of, Title 23

23-2-60 Notice of Proposed Amendment of Rule Pertaining to Adoption of Model Rules. No Public Hearing Contemplated. 150

23-2-61 Notice of Proposed Adoption of Sample Form. No Public Hearing Contemplated. 151-153

23-2-62 Notice of Proposed Amendment of Rules Pertaining to the Requirement of a Social Security Number on Driver's License Applications and Changes in the Motorcycle Licensing Exams. No Public Hearing Contemplated. 154-161

23-2-63 Notice of Proposed Amendment of Rule Pertaining to Driver Rehabilitation Point System. No Public Hearing Contemplated. 162-175

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-59 Notice of Proposed Amendment of Rule Pertaining to Interim Utility Rate Increases Rules. No Public Hearing Contemplated. 176-177

REVENUE, Department of, Title 42

42-2-186 Notice of Public Hearing on the Adoption and Amendment of Rules pertaining to the Valuation and Assessment of Industrial Property and Amendment of Rule Pertaining to the Assessment of Mining Equipment. 178-184

42-2-187 Notice of Public Hearing on the Adoption of Rules Pertaining to Appraisal of Mobil Homes. 185-186

42-2-188 Notice of Proposed Adoption of Rule Pertaining to Computation of Residential Property Tax Credit for Elderly. No Public Hearing Contemplated. 187-188

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-322 Notice of Public Hearing on Proposed Adoption and Amendment of Rules Pertaining to Day Care Centers.	189-198
46-2-323 Notice of Public Hearing on Proposed Adoption of Rules Pertaining to Day Care Facilities Caring for Infants.	199-206
46-2-324 Notice of Public Hearing on Proposed Adoption of Rules Pertaining to Family Day Care Homes.	207-213
46-2-325 Notice of Public Hearing on Proposed Adoption of Rules Pertaining to Group Day Care Homes.	214-224
46-2-326 Notice of Public Hearing on Proposed Amendment of Rules Pertaining to Reimbursement for Skilled Nursing and Intermediate Care Services, Reimbursement Method and Procedures.	225-244
46-2-327 Notice of Public Hearing for the Amendment of Rules, Adoption and Repeal of Rules Pertaining to Medicaid Eligibility.	245-285

RULE SECTION

COMMERCE, Department of, Title 8

NEW AMD REP	(Board of Nursing) Rules Pertaining to Standards for Montana Schools of Professional Nursing	286-287
AMD REP	(Board of Nursing) Rules Pertaining to License by Endorsement, Renewals, Professional Nursing Administration, Practical Nursing Administration	287-289
AMD	(Board of Plumbers) Examinations	290
AMD	(Board of Sanitarians) Rules Pertaining to Applications, Minimum Standards for Registration Certificate, Examination and Certificate; Renewals, Suspension and Revocation, Board Vacancies, Probationary Certificate.	290-291
	-iii-	3-2/11/82

FISH, WILDLIFE & PARKS, Department of, Title 12

AMD Rule Pertaining to Commercial Minnow Seining Licenses, 292

PUBLIC SERVICE REGULATION, Department of, Title 38

NEW Rules Pertaining to Regulation of Municipally-Owned Utilities 293

NEW Rule Pertaining to Urban Transportation Districts 294

REVENUE, Department of, Title 42

NEW Rules Pertaining to Taxation of Livestock and of Business Inventory. 295

NEW Rules Pertaining to Withholding for
AMD Purposes of Montana Individual Income
REP Tax 296-297

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

AMD Rules Pertaining to Procedures for
NEW the Making of Rules and Declaratory
Rulings. 298-299

NEW Rules Pertaining to Aid to Families
AMD with Dependent Children (AFDC) Program 299-300

AMD Rule Pertaining to Medical Services,
Dental Services 301

INTERPRETATION SECTION

Opinions of the Attorney General

46 Military Personnel - Motor Vehicle
Registration - Taxation 302-305

47 Banking and Banks - Contracts - Motor
Carriers - United States 306-309

SPECIAL NOTICE AND TABLE SECTION

Notice of Functions of Administrative Code Committee 310
How to Use the ARM and MAR 311
Accumulative Table 312-319

3-2/11/82

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF BARBERS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
Amendments of ARM 8.10.403 con-) OF ARM 8.10.403 EXAMINATIONS;
cerning examinations; 8.10.602) 8.10.602 EXAMINATION; 8.10.
concerning examinations for) 1002 TEACHING STAFF; 8.10.1008
apprentice barbers; 8.10.1002) IDENTIFICATION and PROPOSED
concerning teaching staff at) ADOPTION OF A NEW RULE SETTING
barber colleges; and 8.10.1008) A FEE SCHEDULE
concerning identification at)
barber schools; and proposed) NO PUBLIC HEARING CONTEMPLATED
adoption of a new rule setting)
a fee schedule.)

TO: All Interested Persons:

1. On March 13, 1982, the Board of Barbers proposes to amend ARM 8.10.403 concerning examinations; 8.10.602 concerning apprentice examinations; 8.10.1002 concerning the teaching staff at barber colleges; 8.10.1008 concerning identification at barber schools; and also proposes to adopt a new rule setting a fee schedule.

2. The proposed amendment of ARM 8.10.403 deletes subsection (3) in its entirety and will read as follows: (new matter underlined, deleted matter interlined)

"8.10.403 EXAMINATION (1) Applications for examinations shall be received in the office of the department at least fifteen days prior to the date of examination and are subject to the final approval of the board.

(2) A score of 75% is required on written and practical examinations to pass.

~~{3}--A student can take his barber examination six weeks before he/she graduates from barber school--However,--he/she will not be notified of the results until he/she shows proof to either the administrative secretary or one of the board members for the board of barbers, that he/she graduated from said barber school.~~

{3} {4} All vocational rehabilitation applicants shall be required to take an examination."

3. The board is proposing the amendment because even though the students are not to be notified of their scores, there are instances when they do find out before they graduate and they neglect their school work if they have passed. As the schools have complained of this a number of times, the board feels it would benefit the student to wait until completion of the schooling before being allowed to take the examination. The authority of the board to make the proposed change is based on section 37-30-203 (2), MCA and implements sections 37-30-203 (1) and 37-30-303, MCA.

4. The proposed amendment of ARM 8.10.602 amends subsection (3) and will read as follows: (new matter underlined, deleted matter interlined)

"8.10.602 EXAMINATION (1) Any one of the board members may give an apprentice his examination inbetween regular examination dates, providing unanimous approval of the board has been granted.

(2) The examination shall consist of a hair cut, shampoo, and written and/or oral questions.

(3) Every apprentice must serve one-normal-work-year, three months or its equivalent, at the discretion of the board, as an apprentice before he can take the barber examination.

(4) Any apprentice failing to pass the examination must return to barber college for at least three months before he can take the examination again.

(5) A facility fee may be charged by the board for all examinations."

5. The board is proposing the amendment as the legislature reduced the apprenticeships from one year to three months in Chapter 544, Session Laws of 1981. The authority of the board to make the proposed change is based on section 37-30-203 (2), MCA and implements section 37-30-305, MCA,

6. The proposed amendment of 8.10.1002 deletes subsection (2)(b) and will read as follows: (new matter underlined, deleted matter interlined)

"8.10.1002 TEACHING STAFF (1) No person shall be permitted to teach or assist in teaching barbering in any barber college in Montana, except as a registered barber holding a current Montana barber certificate and who has qualified as hereinafter provided.

(2) Assistant Instructor Requirements:

(a) No person shall be approved by the board for employment as an assistant instructor in any barber college unless he or she has completed his or her apprenticeship and can show proof of at least 5 years of barbering immediately prior to making application, and has received a high school diploma or its equivalent. Any person properly qualified as such, may be employed as an assistant instructor, provided that within 30 days after the commencement of such employment the barber college shall submit to the board his or her qualifications.

~~{b}--The board shall set a time and place for the examination of an assistant instructor--Upon successfully completing such examination the board shall grant approval to such applicant, which approval shall be valid for a period of 1 year--Should applicant fail to pass said examination, his or her employment shall terminate within 5 days after notice thereof from the board.~~

(3) Barber colleges shall terminate the employment of any instructor or assistant instructor who fails to make the application for renewal."

7. The board is proposing the amendment due to a supreme court decision that stated the board did not have authority to give instructor examinations. The authority of the board to make the proposed change is based on section 37-30-203 (2), MCA and implements section 37-30-402, MCA.

8. The proposed amendment of ARM 8.10.1008 deletes subsection (3) and will read as follows: (new matter underlined, deleted matter interlined)

"8.10.1008 IDENTIFICATION (1) Each barber college shall advertise to the public that it is a barber college by displaying a sign which shall contain in letters not less than 10 inches in height the words "BARBER COLLEGE" or "BARBER SCHOOL".

(2) No person shall own, manage, operate, or control any barber school or college or portion thereof wherein the practice of barbering is carried on, whether in the same building or not, without displaying a sign at all entrances to the place where such barbering is carried on, indicating that the work therein is done by students exclusively.

~~(3)--Barber schools or barber colleges shall not charge patrons for barbering services and materials rendered.~~

~~(4)-(3)~~ No barber college shall display a barber pole on its premises where it may be seen ~~from~~ by passers-by on the street."

9. The board is proposing the amendment to comply with the federal anti-trust laws. The authority of the board to make the proposed amendment is based on section 37-30-203 (2), MCA and implements section 37-30-404, MCA.

10. The proposed new rule on fees will read as follows:

"I. FEE SCHEDULE

(1) * Examination	
Barber	\$23.00
Apprentice	18.00
(2) Barber License	
Original	15.00
Renewal	15.00
(3) Apprentice License	
Original	10.00
Renewal	10.00
(4) Shop License	
Original	20.00
Renewal	20.00
(5) Barber School	
Original	50.00
Renewal	30.00
(6) Penalty fee	10.00
(7) Inspection fee	25.00
(8) Duplicate license	10.00

*For those applications which are withdrawn or denied, \$10.00 of this fee will be retained to cover administrative costs."

11. The board is proposing the adoption of a fee schedule to implement section 37-1-134, MCA which allows the boards to set fees commensurate with costs. The authority of the board to make the proposed adoption is based on section 37-30-203 (2), MCA and implements sections 37-1-134, 37-30-303, 307, 402, 404, and 423, MCA.

12. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Barbers, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

13. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Barbers, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

14. If the board receives requests for a public hearing on the proposed amendments and adoption 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 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.

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

BOARD OF BARBERS
LARRY SANDRETTO, PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 8.18.403 con-) OF ARM 8.18.403 GENERAL
cerning general responsibilities) RESPONSIBILITIES AND PROPOSED
and proposed adoption of a new) ADOPTION OF A NEW RULE SET-
rule setting a fee schedule.) TING A FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 13, 1982, the State Electrical Board proposes to amend ARM 8.18.403 concerning general requirements and adopt a new rule setting out a fee schedule.

2. The proposed amendment of ARM 8.18.403 will read as follows: (new matter underlined, deleted matter interlined)
"8.18.403 GENERAL RESPONSIBILITIES (1) Licensed journeyman or master electricians, shall have their license on their person at all times when employed at the trade.

(2) Electrical contractors shall have their contractors license posted at their place of business.

(3) No holder of a master electrician's license shall be named as the master electrician for more than one contractor, and the master named, shall be actively engaged in a full time capacity with that contracting company.

(a) For residential construction consisting of less than 5 living units in a single structure, subsection (3) above shall also apply to the holder of a journeyman electrician's license.

~~(3)~~ (4) No electrical contractor shall allow any person in his employ to perform electrical work unless properly licensed or working on a temporary permit.

~~(4)~~ (5) A licensed master electrician is required to sign all permit applications, certificates, countersign all tags and should ascertain that all such electrical installations meet the minimum safety standards as prescribed by the board.

(a) The licensed master electrician may be relieved from further responsibility under any application, certificate or tags countersigned by him if he has left or been discharged from the employ of an electrical contractor, provided he sends a notice in writing to that effect within 5 days to the state electrical board."

3. The board is proposing the amendment as master electricians are representing one or more companies and are not aware of the work being done or the quality of workmanship by those companies. The authority of the board to make the proposed amendment is based on section 37-68-201 (4)(a), MCA and implements section 37-68-103 (4), MCA.

4. The proposed new rule sets out a fee schedule and will read as follows:

" I. FEE SCHEDULE

(1) Examination fee	\$ 5.00
(2) Application fee (non-refundable)	5.00
(3) Original licenses:	
(a) Contractor	75.00
(b) Master	25.00
(c) Journeyman	10.00
(d) Residential	10.00
(4) Annual renewal fee:	
(a) Contractor	50.00
(b) Master	20.00
(c) Journeyman	7.50
(d) Residential	7.50
(5) Reciprocity	10.00
(6) Late renewal fee	5.00"

5. The board is proposing the adoption of a fee schedule to implement section 37-1-134, MCA which allows the boards to set fees commensurate with costs of operating the programs. The authority of the board to make the proposed adoption is based on section 37-1-134 and 37-68-201, MCA and implements sections 37-1-134, 37-68-304, 306, 307, 309, 310, 311, 312, and 313, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption to the State Electrical Board, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

7. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the State Electrical Board, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.


8. If the board receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment or adoption; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be 104.

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

-124-

STATE ELECTRICAL BOARD
ALBERT BERSANTI, PRESIDENT

BY:


GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

IN THE MATTER of the proposed) NOTICE OF PROPOSED AMENDMENT
amendments of ARM 8.42.402 con-) OF ARM 8.42.402 EXAMINATIONS,
cerning examinations, 8.42.403) 8.42.403 FEES, 8.42.405
concerning fees, 8.42.405 con-) TEMPORARY LICENSES, 8.42.406
cerning temporary licenses, 8.) RECIPROCITY LICENSES, 8.42.409
42.406 concerning reciprocity) EXEMPTIONS; PROPOSED REPEAL
licenses, 8.42.409 concerning) OF ARM 8.42.407 CODE OF
exemptions; proposed repeal of) ETHICS - UNPROFESSIONAL CON-
8.42.407 concerning a code of) DUCT, 8.42.408 COMPLAINT
ethics and 8.42.408 concerning) PROCESS; and PROPOSED ADOPTION
complaint procedures; and pro-) OF NEW RULES CONCERNING A
posed adoption of new rules) GUIDE FOR CONDUCT FOR THE
concerning a guide for conduct) PHYSICAL THERAPIST AND NEW
for the physical therapist and) RULES CONCERNING THE COMPLAINT
new rules for complaint proce-) PROCESS
dures.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 13, 1982 the Board of Physical Therapy Examiners proposes to amend, repeal and adopt the above entitled rules.

2. The proposed amendment of ARM 8.42.402 will read as follows: (new matter underlined, deleted matter interlined)
"8.42.402 EXAMINATIONS (1) The examination will be the Professional Examination Service or another equivalent examination as the board may in its discretion approve and adopt.

(2) The examination and meeting dates will be the first Tuesday in April and the first Tuesday in October of each year. Applicants must have their applications in the board office at least 45 days prior to the examination date.

(3) The board may, after review of an application, request the applicant to meet with the board at a time designated by the board and prior to licensure, for the purpose of conducting an oral examination interview.

(4) Applicants for examination shall file with the board office an application which shall include the following:

- (a) application for examination fee of \$100.00;
- (b) copy of their certificate of graduation from a board approved physical therapy school;
- (c) three affidavits of good moral character;
- (d) verification of physical therapy instruction and graduation; and
- (e) recent photograph of the applicant.

~~(4)~~ (5) The applicant's overall passing score must meet the criteria of is to be equal to or higher than 1.5 standard deviation below or higher than the national mean."

3. The board is proposing the amendment to outline the documents which are required to be filed with the application for examination. The authority of the board to make the proposed amendment is based on section 37-11-201, MCA and implements sections 37-11-303 and 304, MCA.

4. The proposed amendment to ARM 8.42.403 will read as follows: (new matter underlined, deleted matter interlined)

"8.42.403 FEES (1) The fees shall be as follows:

- | | |
|---|---------------------------|
| (a) <u>Application for examination</u> (for each examination taken) | \$100.00 |
| (b) <u>Application by for reciprocity licensure</u> | \$100.00 |
| (c) <u>Renewal</u> | \$ 25.00 |
| (d) <u>Late renewal (if paid after April 1)</u> | \$ 10-00 35.00 |
| (e) <u>Temporary license</u> | \$ 10.00 |

(2) All fees are non-refundable."

5. The board is proposing the amendment to clarify that the application for examination fee is one fee, clarify the application for reciprocity licensure fee, to include a \$10.00 penalty within the late renewal fee, and to set a fee for temporary licenses. The authority of the board to make the proposed change is based on section 37-11-201, MCA and implements sections 37-11-304, 307, 308, and 309, MCA.

6. The proposed amendment to ARM 8.42.405 will read as follows: (new matter underlined, deleted matter interlined)

"8.42.405 TEMPORARY LICENSES (1) Applicants for licensure by reciprocity who are holders of a license in another state may be issued a temporary permit license to practice pending licensure by the board, ~~after- An~~ interview with at least one board member may be required. Said temporary permit license will expire when the board makes its final determination on licensure.

(2) Applicants for licensure by examination may be issued a temporary permit license, ~~until such time as the next examination following issuance of the permit is given-~~ The temporary license shall identify the licensed physical therapist who shall be responsible for providing direct supervision. After issuance of the temporary license, the applicant must sit for the next scheduled examination. The temporary permit license shall be valid until the board makes its final determination on licensure, ~~after reviewing the examination scores.~~ Only one temporary permit license will be issued per applicant. ~~-if the applicant fails the examination, however, he may sit for the next examination with a limit of 3- examinations-inclusive-of-the-first-~~

(3) The board will not renew or extend a temporary license, except in its discretion in cases of emergencies.

(4) If the applicant fails the examination, he may sit for the next scheduled examinations with a limit of

3 examinations inclusive of the first. Temporary licenses will not be extended while the applicant is waiting to retake the examination."

7. The board is proposing the amendment to change all phrases of "temporary permit" to "temporary license" to correspond with the statutes and to set down specific requirements for the issuance of a temporary license. The authority of the board to make the proposed amendment is based on section 37-11-201, MCA and implements section 37-11-309, MCA.

8. The proposed amendment of ARM 8.42.406 will read as follows: (new matter underlined, deleted matter interlined)
"8.42.406 RECIPROCITY LICENSES (1) Each applicant applying for reciprocity licensure must have taken the Professional Examination Service examination in another state to be considered for ~~license~~ licensure by reciprocity. All Professional Examination Service scores must be reported directly to the board office through the Interstate Reporting Service. If the overall score ~~meets~~ is equal to or higher than the criteria of 1.5 standard deviation below ~~or higher than~~ the national mean, the individual ~~will~~ may be licensed by reciprocity.

(2) Applicants for reciprocity licensure shall file with the board office an application which shall include the following:

- (a) application for reciprocity licensure fee of \$100.00;
- (b) copy of their certificate of graduation from a board approved physical therapy school;
- (c) recent photograph of the applicant;
- (d) three affidavits of good moral character;
- (e) copy of all other physical therapy licenses; and
- (f) verification of current license in another state;
- (g) verification of physical therapy instruction and graduation."

9. The board is proposing the amendment to clarify the documents required to be submitted with the application for reciprocity. The authority of the board to make the proposed change is based on section 37-11-201, MCA, and implements sections 37-11-303 and 307, MCA.

10. The proposed amendment of ARM 8.42.409 will read as follows: (new matter underlined, deleted matter interlined)
"8.42.409 EXEMPTIONS (1) Whereas section 37-11-101, MCA creates and defines physical therapy students, physical therapy assistants, and physical therapy aides, the board interprets such categories as exempt from licensure as physical therapists so long as the supervision requirements stated in ~~that~~ section 37-11-101, MCA, are strictly adhered to. Such supervision requirements include also those imposed by section 67-Chapter-491, ~~Session-Laws-of-1979~~ 37-11-105, MCA.

(2) The board therefore, finds it necessary to define periodic checks, supervision and direct supervision to mean on site guidance by a licensed physical therapist who is responsible for and participates in a patients care."

11. The board is proposing the amendment to define periodic checks, supervision and direct supervision. The authority of the board to make the proposed change is based on section 37-11-201, MCA and implements section 37-11-101, MCA.

12. The proposed repeal of ARM 8.32.407 repeals the rule in its entirety and reads as follows: (deleted matter interlined)

~~"8.42.407--CODE-OF-ETHICS--UNPROFESSIONAL-CONDUCT-
(1)--Whereas-section-37-11-321-(3),-MCA-sets-out-'imperial
or-unprofessional-conduct'-as-a-cause-for-the-suspension
or-revocation-of-license,-the-board-herein-adopts-the
Code-of-Ethics-of-the-American-Physical-Therapy-Associ-
ation-as-its-standards-of-professional-conduct-for-purposes
of-determining-cause-under-the-aforementioned-statutory
provision.--A-copy-of-said-Code-of-Ethics-is-on-file-in
the-board-office,-1424-9th-Avenue,-Helena,-Montana-59620."~~

13. The board is proposing to repeal the above stated rule and adopt a specific code of ethics in sub-chapter 6 which will be shown later in this notice. The authority of the board to make the proposed repeal is based on section 37-11-201, MCA and implements section 37-11-321, MCA.

14. The proposed repeal of ARM 8-42-408 deletes the rule in its entirety and will read as follows: (deleted matter interlined)

~~"8.42.408--COMPLAINT-PROCEDURES--(1)-The-board-of-physical
therapy-examiners-will-receive-all-complaints-which-are-
made-in-writing-and-which-are-directed-towards-a-licensed
physical-therapist-or-an-unlicensed-person-practicing
physical-therapy.--The-board-will-screen-the-complaints
and-make-further-investigation-where-it-determines-that
merit-exists.--The-board-requests-and-expects-cooperation
from-the-State-Physical-Therapy-Association-whenever-it
can-be-offered-or-extended."~~

15. The board is proposing to repeal the above stated rule and replace it with a new sub-chapter 7, which will adopt specific procedures for complaints filed with the board. The authority of the board to make the proposed repeal is based on section 37-11-201, MCA and implements section 37-11-202, MCA.

16. The board is proposing to adopt a new sub-chapter 6, Guide for Conduct of the Physical Therapist which will read as follows:

"I. PREAMBLE (1) This guide for conduct sets forth professional conduct principles for the physical therapy profession. Members of this profession are responsible

for maintaining and promoting professional practice. This guide for conduct adopted by the board of physical therapy examiners, shall be binding on physical therapists who are licensed by the board.

- (a) Principle 1 - Respect the rights and dignity of all individuals. (see rules ARM IV and V)
- (b) Principle 2 - Compliance with the laws and regulations governing the practice of physical therapy. (see rules ARM VI and VII)
- (c) Principle 3 - Responsibility for the exercise of sound judgement. (see rules ARM VIII - XIV)
- (d) Principle 4 - Maintain and promote high standards. (see rules ARM XV - XVII)
- (e) Principle 5 - Remuneration for services (see rules ARM XVIII - XXI)
- (f) Principle 6 - Accurate information to the consumer. (see rules ARM XXII - XXIV)
- (g) Principle 7 - Responsibility to protect the public and the profession from unprofessional, incompetent, or illegal acts. (see rule ARM XXV)" (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"II. PURPOSE (1) These rules are intended to serve physical therapists who are licensed by the board in interpretation of the guide for conduct and in matters of professional and unprofessional conduct, providing guidelines by which they may determine the propriety of their conduct." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"III. INTERPRETING PROFESSIONAL CONDUCT PRINCIPLES (1) The interpretations expressed by these rules are not to be considered all inclusive of situations that could evolve under a specific principle of the guide for conduct, but reflect the opinions, decisions and counsel of the board. While the professional or unprofessional conduct principles apply universally, the application of interpretations of these principles are usually based on specific circumstances." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"IV. ATTITUDES OF PHYSICAL THERAPISTS (1) Physical therapists are to be guided at all times by concern for the physical, psychological and socioeconomic welfare of those patients entrusted to their care.
(2) Physical therapists are to be responsive to and mutually supportive of colleagues and associates.
(3) Physical therapists are to recognize that each individual is different from all other individuals and to be tolerant of and responsive to those differences." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"V. CONFIDENTIAL INFORMATION (1) The patient's lawful

consent is to be obtained before any information related to the patient is released.

(2) Inquiries regarding a patient's medical prognosis other than those made by a responsible health professional are to be referred by the physical therapist to the referring practitioner. Physical therapists are responsible for answering legitimate inquiries regarding a patient's physical dysfunction and treatment progress."

(Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"VI. PHYSICAL THERAPY REFERRAL RELATIONSHIPS

(1) Physical therapists are to require a referral by a licensed practitioner in order to provide physical therapy treatment. However, a physical therapist may provide evaluation without referral."

(Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"VII. PROFESSIONAL PRACTICE (1) Physical therapists are not to diagnosis a patient's medical condition, but are to be responsible for providing the referring practitioner with any information which will assist in the determination of an accurate medical diagnosis and prognosis." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"VIII. ACCEPTING RESPONSIBILITY (1) Upon accepting the referral of a patient from a qualified practitioner, the physical therapist assumes the responsibility for evaluating the patient, planning the patient's treatment program, implementing and supervising that program, reevaluating and changing that program, maintaining adequate records of the case, and filing appropriate progress reports with the attending practitioner.

(2) Physical therapists who do not possess the skill to evaluate a patient, plan the treatment program or carry out the treatment, are to inform the referring practitioner and the patient and assist in identifying a professional person qualified to provide the service.

(3) Physical therapists are to maintain the ability to make independent judgments which must not be limited or compromised by professional affiliations, including employment relationships." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"IX. DELEGATING RESPONSIBILITIES (1) Physical therapists are not to delegate to a less qualified person any activity which requires the unique skill, knowledge and judgment of the physical therapist.

(2) The primary responsibility for physical therapy care rendered by supportive personnel is to rest with the supervising physical therapist. Adequate supervision requires, at the minimum, that the supervisor perform

the following activities:

- (a) interpret the practitioner's referral;
- (b) provide initial evaluation of the referred patient;
- (c) develop a treatment plan and program, including the long and short-term goals;
- (d) assess the competence of supportive personnel to perform assigned tasks;
- (e) select and delegate appropriate portions of the treatment plan and program;
- (f) identify and document precautions, special problems, contraindications, goals, anticipated progress and plans for reevaluation;
- (g) direct and supervise supportive personnel in delegated functions;
- (h) reevaluate the patient, adjust the treatment plan, perform final evaluation of the patient and provide discharge planning; and
- (i) designate or establish channels of written and oral communication." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"X. INITIATING, CONTINUING OR TERMINATING TREATMENTS

(1) Physical therapists are to inform the referring practitioner and the patient when in their judgment the patient cannot benefit from treatment. It is unprofessional to initiate or continue treatment that in the therapist's judgment cannot result in demonstrable beneficial outcome or is contraindicated.

(2) Extension of physical therapy services beyond the initially proposed treatment program is to be undertaken in consultation with the referring practitioner." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XI. UTILIZATION OF SERVICES (1) Physical therapists are responsible for maintaining the integrity and reputation of their profession as reflected in business practices. Utilization of services for personal financial gain rather than patient need is unprofessional. Misuse or over use of physical therapy services cannot occur without the physical therapist's cooperation.

(2) Overutilization of services by continuing treatment beyond the point of possible benefit to the patient or treating more frequently than necessary to obtain maximum therapeutic effect is unprofessional.

(3) Professional affiliations, including employment relationships, are not to be used to limit access to services. The physical therapist recognizes the patient's freedom of choice in selection of the source of physical therapy services." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XII. REFERRAL TO OTHER PRACTITIONERS (1) Physical

therapists are not to suggest to a patient referred to them by one practitioner that the patient seek the services of another practitioner without first consulting the referring practitioner.

(2) Physical therapists may suggest to the referring practitioner the possibility of referring the patient to another practitioner who may represent a specialty area that could be beneficial to the patient." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"XIII. PROFESSIONAL-BUSINESS PRACTICES (1) Physical therapists' professional practice and their adherence to the professional conduct principles of the board are to take preference over business practices." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"XIV. GROUP PRACTICE-ORGANIZATION EMPLOYMENT (1) All professional conduct principles of the board shall be observed by all physical therapist licensees regardless of their employment status.

(2) The formation of a business, partnership, corporation, or other entity does not exempt the individual physical therapist, whether employer, partner or stockholder, either individually or collectively, from the obligation of promoting and maintaining the professional conduct principles of the board.

(3) Physical therapists are obligated to advise their employer(s) of any practice of their employer(s) which causes them to be in conflict with the professional conduct principles of the board. Physical therapist employees should also attempt to rectify any aspects of their employment which are in conflict with the professional conduct principles of the board." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"XV. CONTINUING SELF-EDUCATION (1) Physical therapists are to maintain a high level of professional competence by continued participation in educational activities which enhance their basic knowledge and provide new knowledge." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"XVI. CONTRIBUTING TO THE PROFESSIONAL BODY OF KNOWLEDGE

(1) Physical therapists are to participate, when possible, and support others in the conduct and publication of research activities that may contribute knowledge for improved patient care and for the growth of physical therapy as a profession." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"XVII. SELF ASSESSMENT (1) Physical therapists are to demonstrate their commitment to quality assurance by regular self assessment." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XVIII. FISCALLY SOUND REMUNERATION (1) Physical therapists are to charge for their services an amount which represents the cost of those services plus a reasonable profit for the physical therapist." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XIX. FINANCIAL CONSIDERATIONS (1) Under no circumstances are licensees to place their own financial interest above the welfare of their patients. Economic gain should always be a subordinate consideration.

(2) Physical therapists are not to support fee schedules of any provider, agency or person that contain unreasonable profit margins." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XX. ENDORSEMENT OF EQUIPMENT (1) Physical therapists are not to endorse equipment to the patient and the lay public if they receive any remuneration in return for such endorsement.

(2) Physical therapists may endorse equipment to physical therapists, medical doctors, nurses or other health professionals for remuneration. Such communication is not in any way to imply board endorsement.

(3) Physical therapists are not to exercise influence on patients to purchase equipment produced or supplied by a company in which the physical therapist owns stock or has any other direct or indirect financial interest."

(Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XXI. DIVISION OF FEES (1) Physical therapists are not to directly or indirectly request, receive or participate in the dividing, transferring, assigning, rebating or refunding or an unearned fee or to profit by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services.

(2) Physical therapists who practice physical therapy as partners or in other business entities may pool fees and moneys received, either by the partnership or other entity, for the professional services furnished by any physical therapist member or employee of the partnership or entity. Physical therapists may divide or apportion the fees and moneys received by them, in the partnership or other business entity, in accordance with the partnership or other agreement.

(3) Physical therapists may enter into agreements with organizations to provide physical therapy services if

such agreements do not violate the professional conduct principles of the board." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

"XXII. INFORMATION ABOUT THE PROFESSION (1) Physical therapists are to endeavor to educate the public to an awareness of the physical therapy profession.

(2) Preparation of articles for non-medical publications and participation in seminars, lectures and civic programs are to be motivated by a desire to educate the public to the services offered by the profession."

(Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XXIII. INFORMATION ABOUT SERVICES (1) Physical therapists are not to give the impression that there is a general solution to individual problems. The information given to the public should emphasize that individual problems cannot be treated without individualized evaluation and treatment.

(2) Physical therapists may provide information about themselves to the public to facilitate the public's selection of a physical therapist.

(3) Physical therapists are not to use, or participate in the use of, any form of communication containing a false, fraudulent, misleading, deceptive, self-laudatory, unfair or sensational statement or claim. All communications are to be governed by good taste and the requirements imposed by the professional conduct principles of the board.

(4) Physical therapists are not to compensate or give anything of value to a representative of the press, radio, television or other communication medium in anticipation of, or in return for, professional publicity in a news item. A paid advertisement is to be identified as such unless it is apparent from the context that it is a paid advertisement." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XXIV. SOLICITATION (1) Physical therapists are not to seek patients by direct mail or other forms of personal contact; this does not preclude the physical therapist from contact with those professional practitioners identified in this guide under Principle 2 and with health-related facilities." (Authority - Section 37-11-201, MCA, implement section 37-11-321, MCA)

"XXV. LICENSEE RESPONSIBILITY (1) Failure to report alleged unprofessional, incompetent or illegal acts is a violation of the professional conduct principles of the board." (Authority - Section 37-11-201, MCA, implement Section 37-11-321, MCA)

17. The board is proposing the new rules to adopt a specific guide for professional conduct. The authority of the board to make the proposed adoption is based on section 37-11-201, MCA and implements section 37-11-321, MCA.

18. The board is proposing to adopt new rules under the new sub-chapter heading "Procedural Steps for Processing of Reported Violations". The proposed rules will read as follows:

"I. WRITTEN COMPLAINT MUST BE MADE TO THE BOARD

(1) In order to have action taken when a violation of the provisions of Title 37, Chapter 11, MCA or Title 8, Chapter 42, Administrative Rules of Montana, is alleged, a complaint must be made. The complaint must at least give the name of the person suspected of an alleged violation and the nature of the complaint against that person. The complaint must be made to the Montana state board of physical therapy examiners in writing, by letter, or by completing the department's complaint form. Anyone, such as a patient, physician, physical therapist, board member, board, or other party, may make a complaint to report a suspected violation of Title 37, Chapter 11, MCA or Title 8, Chapter 42, Administrative Rules of Montana." (Authority - section 37-11-201, MCA, implements - section 37-11-202, MCA)

"II. BOARD OFFICE RECEIPT OF COMPLAINT (1) The complaint received by the department of commerce, professional and occupational licensing bureau, will be documented and referred to the board. Receipt of the complaint shall be acknowledged to the complainant and a copy supplied to the alleged violator." (Authority - section 37-11-201, MCA, implements - section 37-11-202, MCA)

"III. BOARD TO TAKE ACTION UPON RECEIPT OF THE COMPLAINT

(1) The board will investigate the complaint received and if investigation leads the board to determine that no violation of Title 37, Chapter 11, MCA or Title 8, Chapter 42, Administrative Rules of Montana has occurred, the complainant and alleged violator will be so notified and the case closed. If, however, the investigation leads the board to determine a possible violation of Title 37, Chapter 11, MCA or Title 8, Chapter 42, Administrative Rules of Montana may have occurred, the board will then initiate further investigative procedures." (Authority - section 37-11-201, MCA, implements - section 37-11-202, MCA)

"IV. INVESTIGATIVE PROCEDURES TO BE INITIATED WHEN A SUSPECTED VIOLATION OF TITLE 37, CHAPTER 11, MCA OR TITLE 8, CHAPTER 42, A.R.M. HAS OCCURRED (1) The board may make investigation by:

(a) obtaining additional information into the complaint in accordance with, but not limited to section 37-11-201 (1)(c), MCA;

(b) enlisting the cooperation of licensed physical therapist(s) upon approval of the department of commerce, professional and occupational licensing bureau; and

(c) requesting the department of commerce, professional and occupational licensing bureau hire or assign an investigator to gain additional information about the complaint." (Authority - section 37-11-201, MCA, implements - section 37-11-202, MCA)

"V. ACTIONS WHICH MAY BE TAKEN AFTER SUFFICIENT INFORMATION HAS BEEN OBTAINED THROUGH ACTION INITIATED BY THE BOARD

(1) The board may take various actions after it has obtained sufficient information about a complaint.

(2) The board may determine that, as a result of its investigation, no violation of Title 37, Chapter 11, MCA or Title 8, Chapter 42, A.R.M. has occurred. If so, the case will be closed and the complainant will be so notified.

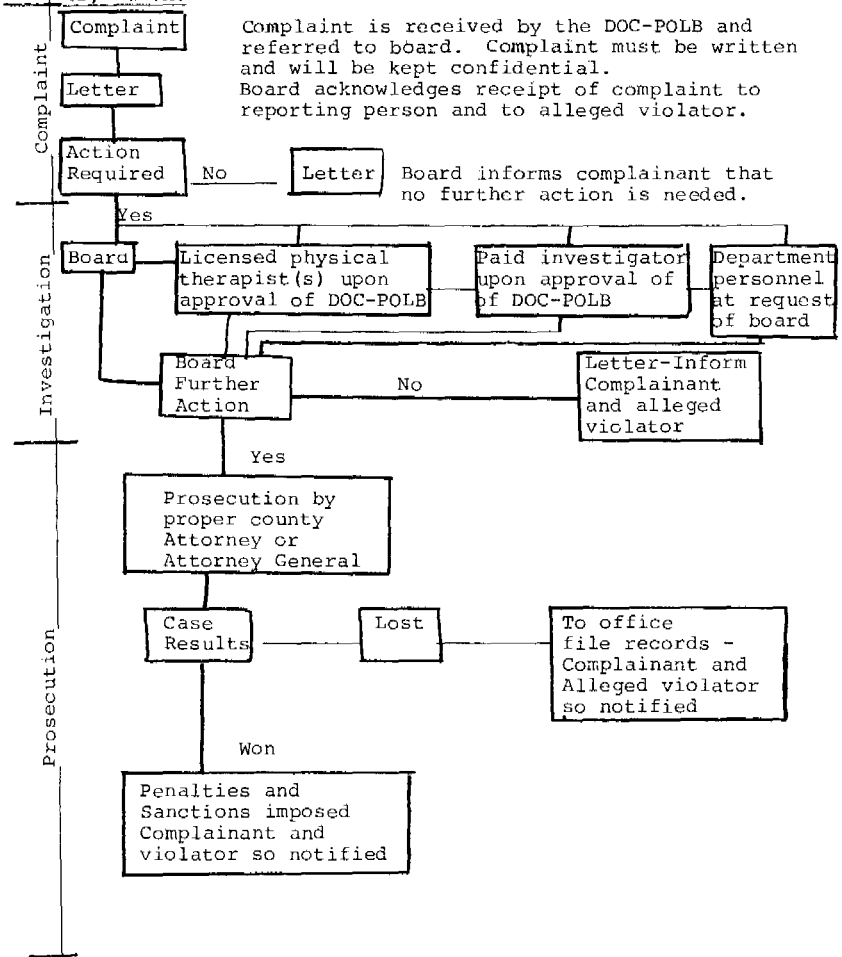
(3) The board may determine that a violation of Title 37, Chapter 11, MCA or Title 8, Chapter 42, A.R.M. has occurred. If so, the board will seek legal recourse through the appropriate county attorney or attorney general. Any such action shall proceed in accordance with the Montana administrative procedures act, Title 2, Chapter 4, MCA, as adopted by the department of commerce, professional and occupational licensing bureau.

(4) In either proceeding, the result may be the dismissal of charges or in the sustaining of the charges.

(5) Dismissal of the charges leads to case closure while the sustaining of charges merits those penalties and sanctions as expressed in Title 37, Chapter 11, MCA or Title 8, Chapter 42, A.R.M. upon the person in violation. Complainant and alleged violator are so notified." (Authority - section 37-11-201, MCA, implements - section 37-11-202, MCA)

VI. See next page.

VI. PROCEDURAL STEPS FOR THE PROCESSING OF REPORTED VIOLATIONS OF TITLE 37, CHAPTER 11, MCA AND TITLE 8, CHAPTER 42, A.R.M.



19. The board is proposing the adoption of the new rules to set out a specific procedure for complaints filed with the board. The authority and implementing sections are stated after each rule.

20. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Physical Therapy Examiners, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

21. If a person who is directly affected by the proposed amendments, repeals, and adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Physical Therapy Examiners, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

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

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

BOARD OF PHYSICAL THERAPY EXAMINERS
THOMAS LARSON, R.P.T., CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 18, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

In the Matter of the Proposed) NOTICE OF PUBLIC HEARING ON
Amendment of 8.44.405 concern-) THE PROPOSED AMENDMENT OF
ing renewals) ARM 8.44.405 RENEWALS

TO: All Interested Persons:

The notice of proposed board action published in the Montana Administrative Register on December 31, 1981 at pages 1816 - 1818, is amended as follows because the required number of persons designated therein have requested a public hearing. The original notice contained amendments of two rules, ARM 8.44.403 and 8.44.405. The request for a hearing referred only to the amendment of 8.44.405 and 8.44.403 will be amended as proposed in the Rule Section of this register.

1. On March 5, 1982, at 10:00 a.m., a public hearing will be held in the conference room of the Department of Commerce building, 1430 9th Avenue, Helena, Montana to consider the proposed amendment of 8.44.405 concerning renewal fees.

2. The proposed amendment provides as follows: (new matter underlined, deleted matter interlined)

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

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

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

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

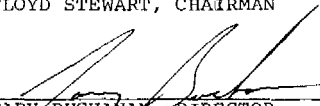
3. The board is proposing the amendment to comply with the provisions of Chapter 345, 1981 Session Laws (section 37-1-134, MCA), which requires the boards to set fees commensurate with costs incurred in administering the board program. The costs for administration have not increased greatly, however, the board was charging a lower renewal fee to deplete a surplus of money which occurred when code enforcement responsibility was removed from the board and placed within the department of administration. In effect the fees being taken in for the renewals were less than the cost of operating the board.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Plumbers, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

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

6. The authority of the board to make the proposed amendment is based on sections 37-1-134, MCA and 37-69-202, MCA and implements sections 37-1-134, MCA and 37-69-307, MCA.

BOARD OF PLUMBERS
FLOYD STEWART, CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 8.58.411 con-) OF ARM 8.58.411 FEE SCHEDULE
cerning a fee schedule.)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 13, 1982, the Board of Realty Regulation proposes to amend rule ARM 8.58.411 relating to the fee schedule.
2. The amendment as proposed will read as follows: (new matter underlined, deleted matter interlined)

"8.58.411 FEE SCHEDULE (1) The following fees are required by the board for each of the licensing services listed below. All fees are subject to change by the board, within the limitations provided in Section 37-51-311, MCA, ~~and without notice.~~

(2) No part of any fees paid in accordance with the provisions of this chapter are refundable. It is deemed earned by the board upon its receipt.

- (3) Examination fees
 - (a) For initial examination~~\$25.00~~ \$35.00
 - (b) For each subsequent examination by the same nominee.....~~\$20.00~~ \$30.00
- (4) For each rescheduling of examination ~~\$10.00~~ \$20.00
- (5) For each original resident broker's license ~~issued~~.....\$50.00
- (6) For each annual renewal of a resident broker's license ~~issued~~.....\$30.00
- (7) For each original non-resident broker's license ~~issued~~.....\$50.00
- (8) For each annual renewal of a non-resident broker's license.....\$30.00
- (9) For each original salesman's license \$25.00
- (10) For each annual renewal of salesman's license.....\$15.00
- (11) For each additional office or place of business, an annual fee.....\$25.00
- (12) For each change of place of business or change of employer or contractual associate.....~~\$15.00~~ \$25.00
- (13) For each duplicate license, where the original is lost or destroyed and affidavit is made thereof.....\$10.00
- (14) For each duplicate pocket card, where the original is lost or destroyed and affidavit is made thereof.....\$10.00
- (15) Notice of intention.....\$50.00
- (16) Questionnaire.....\$100.00
- (17) Application for registration of subdivided lands.....\$500.00

(18) Reinstatement of a license suspended or revoked within a license period...\$25.00

(19) For placing active license on inactive status.....\$ 5.00"

3. The board is proposing the rule to implement section 37-1-134, MCA which allows the boards to set fees commensurate with costs.


4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407 no later than March 11, 1982.

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

7. The authority of the board to make the proposed amendment is based on section 37-51-311 and 37-51-203, MCA and implements section 37-51-311, MCA.

BOARD OF REALTY REGULATION
DEXTER L. DELANEY, CHAIRMAN

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1982.

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule 16.8.1405 relating) ON PROPOSED AMENDMENT OF
to open burning restrictions) ARM 16.8.1405
(Open Burning Restrictions)

TO: All Interested Persons

1. On March 13, 1982, at 9:00 o'clock a.m. or as soon thereafter as the matter may be heard, a public hearing will be held in Room C-209, Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.8.1405.

2. The proposed amendment replaces present rule 16.8.1405 (4)(c) found in the Administrative Rules of Montana. The proposed amendment clearly removes wood product wastes such as scrap lumber, board ends or bark stabs from the prohibition on open burning of trade wastes contained in rule 16.8.1405(4)(c).

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

16.8.1405 OPEN BURNING RESTRICTIONS (1) Except as specified in subsection (2), no person shall cause, suffer or allow an open outdoor fire unless an air quality permit has been obtained, and further provided that the fire authority for the area of the burn shall be notified of intent to burn giving location, time and material to be burned and that proper fire safety directions given by the fire authority be complied with. A burning permit is required from the responsible fire control agency during the closed or extended fire season (May 1 -- September 30 or as extended pursuant to Sections 76-13-102, 76-13-203, 7-33-2205 to 7-33-2209, MCA). Reasonable precautions shall be taken to keep the area of the burn within the confines for which the permit was given. Reasonable measures shall be taken to eliminate smoke when the purpose for which the fire was set has been accomplished. A permit shall be allowed only under the following conditions:

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

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

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

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

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

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

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

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

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

(c) When in a county without a local air pollution control program pursuant to Section 75-2-301, MCA, an open burning control officer designated by the county commissioners of any county publicly announces that, on a given day and time approved by the department, open burning will be permitted without an air quality permit. All other provisions of the open burning rule shall remain in effect.

(3) For purposes of essential agricultural or forestry burning:

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

(b) Materials to be burned should be in a dirt-free condition.

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

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

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

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

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

(c) No person shall cause, suffer, allow, or permit the disposal of trade waste by open burning, except that the department may permit such burning in a device or devices equivalent to an air curtain destructor, air swift pit incinerator or a similar device which can be demonstrated to emit smoke not darker than one Ringelmann or of equivalent opacity. The operator of such devices or system must show adequate knowledge of the procedure to assure correct starting, operation,

and ending of the burn; not create a public nuisance or fire hazard; and must have applied for and received a permit from the department to construct and operate the destructor or pit. However, nothing in this rule shall be construed to prevent the open burning of wood product wastes such as scrap lumber, board ends, or bark slabs.

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

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

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

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

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

(5) Emergency open burning permits.

(a) The department may issue an emergency open burning permit to allow burning of substances not otherwise approved for burning under this rule if certain conditions exist. Before the department shall issue such a permit it must be satisfied that the applicant has demonstrated that the substance sought to be burned poses an immediate threat to public health and safety, or plant and animal life for which no other alternative is reasonably available.

(b) Application for such a permit may be made to the department by telephone. Upon completion of the burn, the recipient of the emergency open burning permit shall provide the department with a written report of the burn. It shall discuss why alternative methods of disposing of the substance were not reasonably available; why the substance posed an immediate threat to human health and safety or plant and animal life; the legal description of where the burn occurred; the amount of material burned; and the date and time of the burn.

(c) The department will issue emergency open burning permits for disposing of oil from oil field sludge pits under subsection (5) if the above procedures are met. After July 1, 1980, such burning will be prohibited. Owners and operators of oil fields with sludge pits shall submit to the department by January 1, 1979, a plan which provides for their disposing of oil wastes from sludge pits by alternative methods other than burning not later than July 1, 1980.

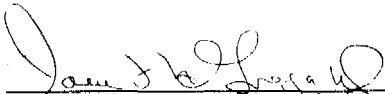
4. The Board is considering this amendment to the rule at the request of Representative Chris Stobie of Thompson Falls, Montana, and in accordance with the provisions of 2-4-315, MCA. In his petition which was approved by the board on May 22, 1981, Representative Stobie offered the following explanation for this proposed amendment:

The method chosen to control emissions from these types of wastes has proved to be a burden on some operators in that it precludes an efficient and inexpensive method of disposal. The methods condoned by the department in the cited rule are more time-consuming and generally require more expense to comply with than would open burning. Moreover, it is clear that there are certain types of trade wastes, old automobile tires for example, from which the emissions would be much greater than from other types of wastes, such as paper or board ends, which burn in a relatively clean manner. However, the regulation makes no distinction between the types of wastes for which burning is prohibited. In fact, there may be certain types of wastes which, when burned openly, would emit no more smoke or even less smoke than other types of wastes burned in the manner approved by the regulation. If the purpose of the regulation is to reduce or eliminate emissions over a certain level, a distinction between types of trade wastes that could or could not be burned openly should be made in the regulation.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Room C216, Helena, MT., 59620, no later than March 11, 1982.

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

7. The authority of the Board to make the proposed amendment is based on sections 75-2-111 and 75-2-203, MCA, and the rule implements section 75-2-203, MCA.



JOHN F. MCGREGOR, M.D., Chairman
Board of Health and Environmental
Sciences

Certified to the Secretary of State February 1, 1982

MAR Notice No. 16-2-217

3-2/11/82

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

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING
of rules 16.8.901 through	)	ON REPEAL OF RULES
16.8.920 and the adoption of	)	16.8.901 - 16.8.920
new rules for the prevention	)	AND ADOPTION OF
of significant deterioration	)	NEW RULES
of air quality	)	(Air Quality)

To: All Interested Persons

1. On March 13, 1982, at 9:30 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Mt., to consider the repeal of rules 16.8.901 through 16.8.920 which pertain to the prevention of significant deterioration of air quality and the adoption of new rules in this matter.

2. The rules proposed to be repealed are on pages 16-170 through 16-197 of the Administrative Rules of Montana

3. The rules proposed for adoption make changes in the current Montana regulatory scheme for prevention of significant deterioration (PSD) of air quality in order to conform to federal requirements found in 40 CFR 51.24. The explanation of the current PSD program in Montana may be found in MAR Notice No. 16-2-98 (1978 MAR issue no. 11, pp. 1351-1353) and Notice of Adoption (1979 MAR issue no. 5, pp. 242-260). The rules proposed for adoption provide in substance for changes in the current PSD program as follows:

(a) Sources requiring PSD review. Those sources requiring PSD permit review are changed somewhat from the existing rules. Major stationary sources that have the potential to emit 100 tons per year (listed sources) and 250 tons per year (unlisted sources) of any regulated pollutant will require the PSD review. The new rules determine the potential to emit by considering emissions after the use of air pollution controls while the existing rules determined the potential to emit by using the amount of pollutant emitted before the application of air pollution controls. This change reflects a change in the federal PSD program.

PSD review is also required for a major modification of a major stationary source. The same difference in potential to emit is noted for the modification as for the stationary source. In addition, the values that establish a source as a major modification is different. The existing rules use the values of 100 and 250 respectively (same as major stationary source) whereas the proposed rules use a specific level for each air pollutant. There is no differentiation between the listed and unlisted sources in terms of being a major modification.

(b) Baseline area and date. The existing rules establish a blanket baseline data for the entire state as August 7, 1977. The proposed rules would establish a baseline date on

a county-by-county basis. The baseline date would be established when the first major stationary source or major modification files an application with the Department of Health and Environmental Sciences which would locate the source within the county or have a significant impact upon the county. (The rules contain a definition for "significant.") The baseline area would be the area in which the source has a significant impact. The baseline area is used to determine over what extent the source would be required to conduct computer modeling to determine the impact of the source.

(c) Impacts on another state. The proposed rules contain a provision for notifying other states if the impact from the proposed source would have a significant impact upon the other state. No such provisions exist in the current rules.

(d) Baseline monitoring. Both rules contain similar provisions requiring any proposed major stationary source or major modification to conduct ambient air quality monitoring before an application is submitted. The proposed rules, however, contain provisions to allow a source to submit a monitoring plan to the Department for approval before actual monitoring begins. Once the Department approves the plan, the Department may not disapprove the application on the basis of the monitoring plan when the application is received.

(e) Fugitive dust. Fugitive dust is handled somewhat differently. The existing rules exempt from increment consumption all fugitive dust which is unprocessed native mineral matter. The new rules do not make any exemptions for fugitive dust regarding increment consumption. The new rules, however, exempt PSD sources that are largely emitters of fugitive dust from PSD permit review requirements.

(f) Exemptions from impact analysis. Both rules offer some exemptions for major stationary sources or major modifications from assessing the impacts of their facilities from modeling, monitoring, and the effects on other air quality-related values (soils, visibility, etc.). The existing rules allow an exemption from these requirements if the source would not affect a Class I area and the source emitted a minimum amount of air pollution. The new rules contain a slightly different exemption, but have the same undertones as the existing rules. Some of the exemption values are different in the new rules as well as offering some exemptions from monitoring if the effect of the modification on the existing air quality is below the concentrations specified in the rule for each air pollutant.

(g) Variations for Class I areas. The proposed rules contain a variance procedure for a major stationary source or major modification that would violate the Class I increments. The federal land manager, governor, and even the President, may be involved in the variance procedure. The procedure is essentially identical to the procedures found in the federal PSD program.

4. The Board is proposing these rules because the State of Montana desires to operate a program for the prevention of significant deterioration of air quality which would meet both the needs of Montana and the requirements for delegation of the federal PSD program. Currently there are two PSD permitting reviews required in Montana, one administered by EPA and the other administered by the Montana Department of Health and Environmental Sciences. The existence of two reviews are the result of substantial differences between the regulatory requirements of the federal program and those currently existing in ARM 16.8.901 through 16.8.920. If adopted, the proposed rules will be submitted to EPA for inclusion into Montana's state implementation plan, and, if accepted by EPA, would delegate the federal PSD program to the Department, thereby eliminating the dual permitting system and leaving one PSD permitting review required in Montana administered by the Department.

5. A copy of the new rules as proposed to be adopted can be obtained by contacting the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620 (phone: 449-3454).

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Room C216, Helena, Montana, 59620, no later than March 12, 1982.

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

8. The authority of the Board to repeal the rules is based on sections 75-2-111, 75-2-203, MCA, and the rules implement sections 75-2-202, 75-2-203, MCA. The authority of the Board to make the proposed rules is based on sections 75-2-111, 75-2-203, MCA, and the rules implement sections 75-2-202, 75-2-203, MCA.

John F. McGregor, M.D.
JOHN F. MCGREGOR, M.D., Chairman

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

Certified to the Secretary of State February 1, 1982

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of Rule 23.2.101	)	AMENDMENT OF RULE
adopting the Model Rules of	)	23.2.101
Procedure	)	(Adoption of Model Rules)
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On March 15, 1982, the Department of Justice proposes to amend rule 23.2.101, which adopts the Attorney General's Model Rules of Procedure.

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

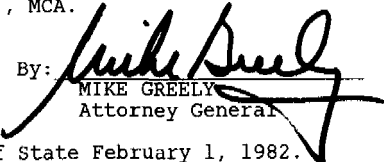
23.2.101 ADOPTION OF MODEL RULES Except as provided in ARM 23.2.111 ~~et seq.~~ -.131, the Department of Justice hereby adopts and incorporates by reference the Attorney General's Model Rules of Procedure. The model rules are found at ARM 1.3.101-.233, and a copy may be obtained from the Secretary of State, State Capitol, Room 202, Helena, Montana 59620.

3. This amendment is proposed to indicate the Department of Justice's adoption of the latest amendments to the model rules, found at 1981 MAR pp. 1196-1221, and to make changes in form to clarify the adoption in language recommended by the Secretary of State in ARM 1.2.211.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Assistant Attorney General Sheri K. Sprigg, State Capitol, Room 225, Helena, Montana 59620, no later than March 11, 1982.

5. The authority of the agency to make the proposed amendment is based on section 2-4-201(2), MCA, and the rule implements section 2-4-201(2), MCA.

By:


MIKE GREELY
Attorney General

Certified to the Secretary of State February 1, 1982.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Adoption) NOTICE OF PROPOSED
Of a Sample Form for Use With) ADOPTION OF A SAMPLE
The Attorney General's Model) FORM
Rules.)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons:

1. On March 15, 1982, the Department of Justice proposes to amend the Attorney General's Model Rules for use with the Administrative Procedure Act by adopting an additional sample form for inclusion in the Appendix of Forms.

2. The proposed form would be for agencies to use when adopting an amendment to a federal agency rule presently incorporated by reference. A copy of the proposed sample form follows:

BEFORE THE (name of agency)

OF THE STATE OF MONTANA

In the Matter of the Adoption) NOTICE OF ADOPTION
Of an Amendment to a federal) OF AN AMENDMENT TO A
agency rule pertaining to) FEDERAL AGENCY RULE
) PRESENTLY INCOR-
) PORATED BY REFERENCE
) IN (rule number,
) catchphrase)
)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons:

1. The (agency) hereby gives notice of the adoption and incorporation by reference of a later amendment to (citation to federal agency rule). (Citation to federal agency rule) is presently incorporated by reference in (rule number, catchphrase). The amendment sets forth (substance of amendment). A copy of (citation to

federal agency amendment) may be obtained from the (agency name and address).

2. The effective date for the adoption of the latter amendment is (effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding in which event the effective date may be no sooner than the date of publication--section 2-4-307(5), MCA.)

3. 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 (___) persons based on (___--for ex.: the 200 licensed plumbers in Montana.

4. The authority of the agency to make the proposed rule is based on section _____, MCA, and the rule implements section _____, MCA.

By: (authorized person's signature)

Certified to the Secretary of State _____,
1982.

3. The new form is being adopted at the request of the Administrative Code committee for purposes of implementing section 2-4-307, MCA.

4. Interested parties may submit their data, views of arguments concerning the proposed rule in writing to Allen Chronister, Attorney General's Office, State Capitol, Room 225, Helena, Montana 59601, no later than March 11, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he

must make written request for a hearing and submit this request along with any written comments he has to Allen Chronister, Attorney General's Office, State Capitol, Room 225, Helena, Montana 59601 no later than March 11, 1982.

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

7. The authority to make the proposed form is based on section 2-4-202, MCA, and the form implements section 2-4-202, MCA.

By:


MIKE GREELY
Attorney General

Certified to the Secretary of State on February 1,
1982.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Amendment)	NOTICE OF PROPOSED
of Rules 23.3.131, and 23.3.155,)	AMENDMENT OF RULES
through 23.3.158, concerning the)	23.3.131 and 23.3.-
requirement of a Social Security)	155 through 23.3.
Number on Driver's License Applica-)	158.
tions and Changes in the Motorcycle))	NO PUBLIC HEARING
Licensing Exams.)	CONTEMPLATED

TO: All Interested Persons

1. On March 15, 1982, the Department of Justice proposes to amend Rules 23.3.131 requiring a Social Security number on driver's license applications. Amendments are also proposed for Rules 23.3.155 through 23.3.158 concerning changes in the motorcycle licensing skill examinations.

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

23.3.131 Proof of Name, Date of Birth, and Social Security Number for Driver's License Application.

The name and date of birth on all original applications must be verified by a birth certificate or other satisfactory evidence. In addition, social security numbers must be given to ensure ready identification. Applicants must produce their Social Security card or two other documents identifying them by name and social security number (e.g., a paycheck stub). Applicants must produce acceptable documents as follows:

- (1) Birth certificate;
- (2) Marriage license;
- (3) Baptismal record;
- (4) Physician's office record, if physician is one attending birth;
- (5) Sworn statement of physician, midwife or attendant present at birth;
- (6) Family Bible or photostat of page showing parentage and birth entries;
- (7) Any two of the following documents at the discretion of the examiner:
 - (a) School census record;
 - (b) Federal census record;
 - (c) Applicant's own child's birth certificate;
 - (d) Printed notice of birth in newspaper;
 - (e) Birthday or baby book;

- (f) Hospital records;
- (g) Voting registration card;
- (h) Adoption decree;
- (i) Legal change of name as recorded in a court decree;
- (j) From members of the military, a letter from the base commander, or a personnel officer, certifying name and date of birth from their records, or a military identification card;
- (k) Military discharge or a release from service form, or certified copy;
- (l) A valid or expired driver's license issued by any other state or country;
- (m) A passport; or
- (n) Any confirmation of birthdate in a court; or
- (8) Any other documentary evidence which confirms to the satisfaction of the examiner the true identity and date of birth of the applicant. (History: Sec. 44-1-103 MCA; IMP, 61-5-111(1) MCA.)

23.3.155 MOTORCYCLE ENDORSEMENT SKILL EXAMINATION Each applicant for a motorcycle endorsement must complete a "skill" examination as follows:

(1) Vehicle check and equipment identification. The following items must be checked at the beginning of each skill test. The applicant must demonstrate reasonable skill in the ability to locate and identify controls.

- (a) Headlights (bright and dim);
- (b) Signal lights (front and rear, if equipped);
- (c) Brake light;
- (d) License plate light;
- (e) Muffler;
- (f) Tires (visually);
- (g) Check and record motorcycle license number. (If no plate or sticker, no test. If foreign plate, or new or newly purchased motorcycle, proceed with test.);
- (h) Brakes;
- (i) Horn;
- (j) Clutch;
- (k) Shift mechanism;
- (l) Fuel shut-off;
- (m) Choke;
- (n) Throttle; and
- (o) Light switch.

Test must be refused if in the examiner's opinion the brakes are unsafe or sufficient other items malfunction to make the motorcycle unsafe to operate.

(2) Applicant must complete one of the following three driving tests depending on the facilities available to the examining officer

(a) Applicant drives the "Serpentine" going as slowly as possible. Applicant may turn at far end by any method convenient, as long as control and balance are maintained. From a stop, opposite the last guard cone, applicant drives a straight line through triangle and cones to a complete stop, with front wheel between two cones on near end. During the straight drive, applicant must shift from low to second and back to low using the clutch.

(b) Applicant completes the Motorcycle Operator Skill Test (MOST). This test consists of nine (9) exercises, which require the applicant to drive through a course and complete the following skill tests:

- 1) Starting and moving up a hill
- 2) Making a sharp turn
- 3) Accelerating in a turn
- 4) Slowing in a turn
- 5) Coming to a normal stop
- 6) Turning speed selection
- 7) Quick stop on a straightaway
- 8) Obstacle turn
- 9) Quick stop on a curve

The examiner will give specific instructions on the requirements of each test.

(c) Applicant completes a modified Motorcycle Operator Skill Test (AL-MOST). This test consists of eight (8) exercises, the first of which is handled in (j) above. The remaining seven (7) skill tests are as follows:

- 1) Upshifting/Downshifting skills
- 2) Making a sharp left turn
- 3) Coming to a normal stop
- 4) Negotiating an off-set cone weave
- 5) Making a "U" turn
- 6) Coming to a quick stop
- 7) Obstacle turn

The examiner will give specific instructions on the requirements of each test.

(3) No passenger is permitted during any portion of the examination. (history: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq. MCA.)

23.3.156 MOTORCYCLE ENDORSEMENT TRAFFIC EXAMINATION

(i) If the applicant is administered the test outlined in 23.3.155(1)(a), above, a traffic examination must also be taken. Traffic examinations will be given regardless of weather if the applicant consents. If the applicant

requests a postponement, permit it, holding the test as incomplete.

(2) If the applicant has a minor accident and does not appear to be upset, direct him to drive back to the starting

point. If the applicant appears to be the least upset or major damage has occurred, direct him to make arrangements for someone to remove the motorcycle for him or to have the motorcycle towed away for repair.

(3) If an accident involves another car or a pedestrian, or if the damage amounts to more than \$25 to the applicant's motorcycle, have him complete and submit to you an accident report, listing you as a witness.

(4) If an applicant violates a law on the road test, such as running through a stop light, fail him but do not cite him. Because a purpose of the road test is to determine whether the applicant knows the laws, he is presumed not to have violated the law purposely. (History: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq. MCA.)

23.3.157 SKILL EXAMINATION DESCRIPTION AND SCORING

The skill tests discussed above in 23.3.155(2)(b) and (c) are administered and scored according to standards set out in the Motorcycle Operator Skill Test (MOST II) User's Manual, July 1980 edition, available upon request from the Department of Justice, Motor Vehicle Division, Driver Services, Room 253, Scott Hart Building, 303 Roberts, Helena, Montana 59620. The following are the requirements and scoring for the skill examination discussed in 23.3.155(2)(a):

- (1) Proper clothing:
 - (a) Boots, long pants, no shirt, helmet.....4 points
 - (b) Boots, shirt, cut-offs, helmet.....4 points
 - (c) Cut-offs, no shirt, no shoes.....8 points
- (2) Understanding controls:
 - (a) Readily explains and understands controls.0 points
 - (b) Understands and identifies major controls only.....4 points
 - (c) Does not identify one or more major controls.....8 points
- (3) Starting:
 - (a) Key-on position.....0 points
 - (b) Key-off position.....2 points
 - (c) Bike in gear and clutch engaged (Key-on position).....4 points
- (4) Clutch:
 - (a) Smooth acceleration and engaging of clutch.....0 points
 - (b) Smooth acceleration, jerky engagement of clutch.....4 points
 - (c) Excessive motor r.p.m., slipping or releasing clutch too fast causing bucking or stall..8 points
- (5) Stall:
 - (a) No stall.....0 points

- (b) Too low r.p.m., release clutch smooth.....2 points
- (c) Stalls motor repeatedly.....2 points each stall
- (6) Shifting:
 - (a) Fully completes up and down shift.....0 points
 - (b) Completes up shift only.....4 points
 - (c) Does not complete up shift.....8 points
- (7) Balance:
 - (a) Does not use feet except on end turn.....0 points
 - (b) Uses feet for balance once on serpentine or once on pinch cones.....4 points
 - (c) Uses feet for balance throughout skill test.....8 points
- (8) Steering ability:
 - (a) Completes serpentine, does not strike cones, makes end turn without difficulty, does not strike cones on shift and stop segment. (Pinch cones may be struck by anything other than wheels).....0 points
 - (b) Strikes any serpentine cone, or cannot easily make end turn, or strikes pinch cone or stop cone with front wheel.....2 points
 - (c) Any combination of items in (b).....4 points
- (9) Judgment of distance:
 - (a) Does not strike cones, allows sufficient room for end turn.....0 points
 - (b) Strikes cone on either course or does not allow room for end turn.....4 points
 - (c) Strikes more than one cone on either course and does not allow room for end turn.....8 points
- (10) Use of brake:
 - (a) Makes successful complete stop.....0 points
 - (b) Uses brake unnecessarily or does not complete successful stop.....6 points
 - (c) Rides brake throughout course.....3 points
 - (d) Uses front wheel brake only when required to stop.....6 points
- (11) Stop:
 - (a) Stops with front wheel in cones.....0 points
 - (b) Stops 6 inches or more from cones (either side).....3 points
 - (c) Stops 12 inches or more from cones (either side).....6 points
- (12) Any loss of control of the motorcycle that results in a fall or leaving the skill test area is scored as a dangerous action. (History: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq. MCA.)

23.3.158 TRAFFIC EXAMINATION DESCRIPTION AND SCORING

The traffic examination required under 23.3.156(1) uses a basic figure eight test pattern. The examiner follows the applicant. Following are the requirements and scoring for the traffic examination:

- (1) Judgment of conflicting traffic:

- (a) Complete awareness of all traffic around him, apparent knowledge of how to handle traffic situation should one arise.....0 points
- (b) Aware only of traffic immediately ahead of him.....4 points
- (c) Aware only of the immediate operation of motorcycle, and disregarding all traffic around him.....8 points
- (2) Right of way, pedestrian or vehicle: Same as operator's road test (ARM 23.3.124(18)).
- (3) Balance:
 - (a) Maintains good balance throughout test.....0 points
 - (b) Use of feet one time to maintain balance--other than when stopping.....4 points
 - (c) Use of feet more than one time to maintain balance--other than when stopping.....8 points
- (4) Steering control:
 - (a) Maintains complete steering control throughout traffic test.....0 points
 - (b) Wanders, slightly, in correct traffic lane, or has difficulty making turns.....4 points
 - (c) Wanders all over correct traffic lane and/or has great difficulty making turns.....8 points
- (5) Lane usage:
 - (a) Uses correct portion of correct traffic lane.....0 points
 - (b) Uses incorrect portion of traffic lane, or rides from one side of traffic lane to other side.....4 points
 - (c) Continually switching traffic lanes, and uses incorrect portion of traffic lane.....8 points
- (6) Use of brake:
 - (a) Correct use of rear and/or front brakes when required to stop.....0 points
 - (b) Unnecessary use of brakes when more practical to down shift.....4 points
 - (c) Excessive use of brakes, or use of front brake only.....8 points
- (7) Stall: Same as skill examination (ARM 23.3.157(5)).
- (8) Clutch: Same as skill examination (ARM 23.3.157(4)).
- (9) Following and overtaking: Same as operator's road test. (ARM 23.3.124(17)).
- (10) Stop sign or light: Same as operator's road test. (ARM 23.3.124(9)).

(11) Shifting: Same as skill examination. (ARM 23.3.157(6)).

(12) Attention to driving: Same as operator's road test. (ARM 23.3.124(15)).

(13) Turns: Same as operator's road test (ARM 23.3.124(5) and (6)).

(14) Scoring the traffic examination. Each item must be graded separately and compounded. In other words, each turn, stop, intersection, etc. is a separate part of the test and should be so graded. If an applicant makes an improper maneuver more than once, he must be graded for each error. For example, if an applicant creeps through a stop sign constituting a four point deduction, and at the next stop sign repeats the error, the examiner would deduct another four points.

(15) Causes for disqualifications. If any of the following conditions are met the driver is disqualified. The road test must be discontinued. If a return to the starting point of the test might be hazardous, the vehicle must be left in a safe place, pending arrangements for its removal.

(a) Accident, however slight: Any contact with another vehicle, any contact with a pedestrian except from the pedestrian's intention, or any contact with fixed objects.

(b) Dangerous action: Any action that would cause a driver or a pedestrian to take defensive action, stalls motorcycle in middle of busy intersection, or drives one or more wheels over curb or onto sidewalk.

(c) Clear violation of any traffic law: Any action for which a driver must be arrested.

(d) Lack of cooperation or refusal to perform: Offers bribe or gratuity, refuses to try to do any maneuver or states "I cannot do that," accuses examiner of discriminating against him.

(e) Various or repeated minor mistakes: Causes the deduction of more than the permitted number of points on the traffic examination score. (History: Sec. 44-1-103 MCA; IMP, 61-5-101 et seq. MCA.)

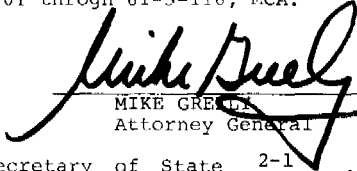
3. The rules are proposed to be amended to allow the department to upgrade its filing system and to establish safer and more accurate testing of motorcycle drivers when facilities are available.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Assistant Attorney General Sarah M. Power, State Capitol, Room 225, Helena, Montana 59620, no later than March 11, 1982.

5. If a person who is directly affected by the proposed amendments wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the requests along with any written comments to Assistant Attorney General Sarah M. Power, State Capitol, Room 225, Helena, Montana 59620, no later than March 11, 1982.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 59,000 persons based on 590,000 licensed drivers in Montana.

7. The authority of the agency to make the proposed amendments is based on sections 44-1-103, MCA, and the rule implements sections 61-5-101 through 61-5-116, MCA.


MIKE GREER
Attorney General

Certified to the Secretary of State 2-1, 1982.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Amendment) NOTICE OF PROPOSED
Of Rule 23.3.202 Concerning) AMENDMENT OF RULE
the Driver Rehabilitation/) 23.3.202 (Driver
Habitual Offender Point) Rehabilitation
Systems.) Point System)
)
No Public Hearing Contemplated.

TO: All Interested Persons:

1. On March 15, 1982, the Department of Justice proposes to amend rule 23.3.202 concerning the driver rehabilitation point system.

2. The rule as proposed provides as follows:

23.3.202 DRIVER REHABILITATION POINT SYSTEM (1) The following point values are established for Driver Rehabilitation Program purposes, and discretionary actions pursuant to section 61-5-206(1)(b) are specified:

<u>VIOLATION CODE</u>	<u>DRIVER REHABILITATION POINTS</u>	<u>DESCRIPTION OF OFFENSE</u>
0020-H	12	Negligent homicide
1170 9014	6	Driving while privilege to do so is suspended or revoked
1140	2	Operating with foreign driver's license when privilege suspended or revoked by this state
5110-H	10	Driving while under the influence of intoxicating liquor (being in actual physical control)
5111-H	10	Driving while under the influence of any drug (narcotic or other)
4000-H	8	Failure to stop immediately at accident scene where person injured
4001	8	Failure to remain at accident scene where person injured

4002-H	8	Failure to stop immediately at scene where person killed
4003	8	Failure to remain at scene of accident where person killed
4022	8	Failure to render reasonable assistance to injured
4000	2	<u>Driving without a valid driver's license (more than 180 days)</u>
<u>4020</u>	<u>4</u>	<u>Failure to identify self and vehicle when involved in an accident.</u>
4003	2	<u>Chauffeuring without a valid chauffeur's license if expired more than 180 days</u>
<u>4060</u>	<u>4</u>	<u>Failure to submit written report of accident within 20 days</u>
5130-H	5	Holding a race or speed contest on highway without written permission of proper authority (state, county, or city)
5131-H	5	Engaging in race or speed contest on public highway without written permission of proper authority
5133-H	5	Holding (engaging in, aiding, or abetting) a speed contest, the roadway of which is not fully and efficiently patrolled
5134-H	2	Careless driving
5120-H	5	Reckless driving
5121-H	5	Eluding police officers
4010-H	4	Failure to stop immediately at property damage accident scene
4011	4	Failure to remain at property damage accident scene
5141-H	3	Speeding: restricted speed zone

5142-E	3	Speeding: 25 miles per hour, urban district
5140-H	<u>23</u>	Speed restrictions (Basic Rule): Failure to drive in careful and prudent manner (driving at speed that is greater than is reasonable and proper under existing conditions at point of operating; driving at speed that would unduly or unreasonably endanger life, limb, property or other rights of persons using highways; driving at speeds that fail to take into account amount and character of traffic, conditions of brakes, weight of vehicle, etc.)
5143-H	3	Speeding: 35 miles per hour, construction zone
5144-E	3	Speeding: 55 miles per hour night limit
5145-H	3	Speeding: 65 miles per hour night limit on interstate
5146-E	3	Failure to reduce speed when approaching intersection, railroad crossing, etc.
5147-HT	3	Speeding: 55 miles per hour night limit (trucks)
5150-H	3	Speeding: speed limit established by Motor Vehicles Division
5160-H	3	Speeding: restricted speed limit established by local authorities
5171-H	3	Failure to pull over when operating slow moving vehicle obstructing traffic
5180-H	3	Speeding: 60 miles per hour truck limit
5181-H	3	Speeding: motor-driven cycle night speed

5182-H	3	Speeding: 50 miles per hour speed when towing trailer house
5183-H	3	Speeding: 65 miles per hour truck speed on interstate
5190-H	3	Speeding: posted speed over elevated structure
±000	2	Driving without a valid driver's license (less than ±00 days)
±003	2	Chauffeur without a valid chauffeur's license if expired less than ±00 days
1006	2	Operating with foreign driver's license beyond 90 day grace period
1010	2	Violation of privilege granted drivers of government vehicles
1011	2	Violation of privilege granted drivers of road machinery, farm implements and tractors
1020	2	Violation of restrictions on chauffeur's license
1030	2	Violation of restrictions on instruction permit
1031	2	Violation in use of temporary driver's permit
1032	2	Failure to have temporary driver's permit in possession
1070-H	2	Operating in violation of restrictions imposed on driver's license
1110	2	Violation of restrictions imposed on probationary driver's license
1250	2	Failure of person to subject self to traffic control at roadblock
±302	2	Driving school bus without chauffeur's license

2070-H	2	Exceeding the 102-inch width limit
2071-H	2	Exceeding- the 102-inch width limit on bus
2072-H	2	Operating overwidth implement of husbandry during hours of darkness
2073	2	Operating overwidth implement of husbandry in excess of 100 miles from base of operations
2074-H	2	Operating implement of husbandry exceeding 12-foot width without flagman escorts
2075-H	2	Exceeding 13-foot 6-inch height limit
2076-H	2	Exceeding 40-foot maximum truck length
2077-H	2	Exceeding 40-foot maximum bus length
2078-H	2	Exceeding 60-foot maximum length for combination of vehicles
2079	2	Towing more than one vehicle in combination
2080	2	Drawing more than two motor vehicles by saddle mount method
2081	2	Towing more than one trailer with vehicle rated less than 2000 pounds (manufacturer's rated capacity)
2111	2	Failure to follow directions and requirements of special permit
2119	2	Exceeding maximum size {haystack movers}
2120	2	Exceeding 100-mile limit {haystack-movers}
2362-H	2	Operating motorcycle without helmet-under age 18
4199-H	2	Sidewalk (driving on)

5010-H	2	Reckless or unsafe operation of authorized emergency vehicle
5050-H	2	Failure to obey instructions of traffic control devices
5222-H	2	Increasing speed when being overtaken
5230-H	2	Passing on right when prohibited
5240-H	2	Improper passing - highway ahead obstructed
5250-H	2	Improper passing - approaching crest of grade (hill) or curve
5251-H	2	Improper passing - approaching intersection
5252-H	2	Improper passing - approaching within 100 feet of bridge, tunnel or viaduct when view obstructed
5260-H	2	Improper passing - in no passing zone
5270-H	2	Pass to left of rotary traffic island
5271-H	2	Travel wrong direction on one-way street or highway
5280-H	2	Change lane when unsafe to do so
5281-H	2	Improper use of center lane of three lane roadway
5282-H	2	Failure to use designated lane when operating slow-moving vehicles
5290-H	2	Following too closely - reasonable and prudent
5291-H	2	Following too closely - insufficient space between vehicles or combinations
5300-H	2	Driving on other than right-hand roadway of divided highway

5301-H	2	Driving over, across, or within dividing space or barrier of divided highway
5310-H	2	Illegal entrance or exit to restricted access highway
5320-H	2	Violations of limitations put on restricted access highway
5330-H	2	Making right turn from improper lane
5331-H	2	Improper approach to intersections when making right turn
5332-H	2	Making left turn from improper lane
5333-H	2	Improper approach to intersection when making left turn
5334-H	2	Disobedience to signs and markers indicating direction to turn
5340-H	2	Improper turn - crest of grade or on curve
5350-H	2	Improper starting - failure to start vehicle in safety
5360-H	2	Improper turn - not in required position
5361-H	2	Turning when unsafe to do so
5362-H	2	Turning without giving proper signal
5365-H	2	Stopping or slowing without giving appropriate signal
5370	2	Failure to have vehicle equipped with signal lamps when required
5380-H	2	Right of way violation - failure to yield to vehicle on right at intersection
5390-H	2	Right of way violation - failure to yield to hazardous traffic when making left turn

5391-H	2	Right of way violation - failure of approaching drivers to yield to vehicle making left turn
5400-H	2	Right of way violation - failure to yield to vehicle on through highway
5401-H	2	Right of way violation - failure to yield to vehicle entering or crossing highway
5410-H	2	Right of way violation - failure to yield when entering highway from private road or drive
5411-H	2	Right of way violation - failure to yield when entering highway from public approach ramp
5420-H	2	Right of way violation - failure to obey requirements of yield sign
5060-H	2	Failure to yield right of way to vehicle when obeying green go traffic signal
5061-H	2	Failure to yield right of way to pedestrian when obeying green go traffic signal
5062-H	2	Failure to reduce speed when approaching yellow (caution) traffic signal
5063-H	2	Failure to obey red (stop) traffic signal
5064-H	2	Failure to yield right of way to pedestrians or other traffic in intersections when obeying green arrow traffic signal
5080-H	2	Flashing signal violation (red) Flashing signal violation (yellow)
5170-H	2	Obstructing traffic, under minimum reasonable speed, after being warned
5200-H	2	Failure to drive to right of roadway except when passing

5210-H	2	Failure to give approaching vehicle half of roadway
5220-H	2	Improper passing - crowding overtaken vehicle
5221-H	2	Failure to yield to overtaking vehicle
5430-H	2	Right of way violation - failure to yield to authorized emergency vehicle
5431-H	2	Operator of authorized emergency vehicle - failure to drive with due regard to safety of others
5450-H	2	Right of way violation - failure to yield to pedestrian
5452-H	2	Overtaking vehicle stopped at crosswalk
5453-H	2	Right of way violation - failure to yield to school children or school safety patrol
5470-H	2	Failure to exercise due care when observing pedestrian
5500-H	2	Failure of bicyclist to obey traffic regulations as required
5520-H	2	Riding on other than permanent and regular seat of bicycle
5530-H	2	Clinging to vehicle while riding bicycles, sleds, etc.
5540-H	2	Failure to ride to right of roadway with bicycles
5541-H	2	Failure to ride bicycles single file
5542-H	2	Riding bicycles on roadways when paths available
5550-H	2	Failure to have at least one hand on handlebars of bicycle

5570-H	2	Disobedience to signals indicating approach of railroad train
5580-H	2	Failure to stop at railroad crossing when stop sign erected
5590-H	2	Failure to stop at railroad crossing when carrying passengers for hire
5591-H	2	Failure to stop at railroad crossing when driving school bus
5592-H	2	Failure to stop at railroad crossing when carrying explosives
5593-H	2	Failure to stop at railroad crossing when carrying flammable liquids
5610-H	2	Stop sign violation
5620-H	2	Stop violation - emerging from alley, garage or driveway
5630-H	2	Failure to stop for school bus stopped (loading or unloading school children)
5631-H	2	Failure to slow for school bus preparing to stop (flashing amber lights for school children)
5633-H	2	School bus failing to activate flashing amber lights before stopping to receive or discharge school children
5640-H	2	Unlawful use of flashing lights on bus (amber or red)
5690-H	2	Interfering with traffic while backing
5700-HM	2	More than one on one-seated motorcycle
5702-HM	2	Carrying passenger on motorcycle which interferes with driver's operation

5703-HM	2	Carrying package, etc., which interferes with operation of motorcycle
5704-HM	2	Riding motorcycle side-saddle
5705-HM	2	Operating motorcycle on public highway or street without lights
5706-HM	2	Operating more than two motorcycles abreast in traffic lane
5707-HM	2	Failure to comply with duties applicable to motorcycle operators
5709-M	2	Operating without noise suppression device on motorcycle
5720-H	2	Failure to keep vehicle under control on mountain highways
5721-H	2	Failure to drive to extreme right side of road in canyons (defiles, mountains)
5730-H	2	Allowing vehicle to coast downgrade
5740	2	Following fire apparatus
5750	2	Crossing fire hose
5852-H	2	Failure of driver to take required precautions upon approaching the blind
7000-H	2	Operating a motor vehicle in unsafe condition without proper lights and equipment
7010-H	2	Failure to have lamps lighted when required
7020	2	Failure to have two headlamps properly operating on motor vehicle
7021	2	Failure to have proper headlamps on motorcycle
7030	2	Failure to have vehicle equipped with one or two tail lamps as required

7051	2	Operating motor vehicle not equipped with stop lamp
7063	2	Failure to have bus or truck properly equipped with stop lamps
7068	2	Failure to have safety chain when required on trailer
7110-H	2	Failure to display lamp or flag on projecting load
7130	2	Failure to have farm tractor or implement equipped with headlight
7131	2	Failure to have farm tractor or implement equipped with tail lamp
7132	2	Failure to have farm tractor or implement equipped with reflector (two red)
7133	2	Failure to have towed implement of husbandry equipped with tail lamps
7134	2	Failure to have towed implement of husbandry equipped with reflectors
7141	2	Failure to have proper emblem on slow-moving vehicle when required
7143	2	Failure of driver of slow-moving vehicle to pull off roadway as required
7160	2	Emergency vehicle - no audible signal
<u>7163</u>	<u>2</u>	<u>Fail to proceed with caution past an alternately flashing or rotating red or blue light, at a speed that is reasonable and proper under the conditions existing at the point of operation (failure to stop for emergency lights).</u>
<u>7164</u>	<u>2</u>	<u>Fail to stop for an alternately flashing or rotating red or blue light at point of operation (fail to stop for emergency lights).</u>

7200-H	2	Failure to dim within 1000 feet of oncoming traffic
7201-H	2	Failure to dim within 300 feet when approaching vehicle from rear
7210	2	Defective lights - motor-driven cycle
7231	2	Displaying unauthorized red light
7240	2	Violation in use of red blinker light authorization for fireman's private car
7261-H	2	Inadequate or defective service brakes
7262-H	2	inadequate or defective parking brake
<u>7263</u>	<u>2</u>	<u>Fail to have automatic breakaway brakes on trailer which exceeds 3000 pounds G.V.W.</u>
7270-H	2	Failure to keep brakes properly maintained
<u>7268</u>	<u>2</u>	<u>Insufficient or inadequate reservoir for air or vacuum brakes</u>
7280-H	2	Defective brakes - motor-driven cycle
7291-H	2	Failure to sound horn to ensure safe operation
7310	2	Failure to have rear view mirror
<u>7311</u>	<u>2</u>	<u>Defective rear-view mirror</u>
7320-H	2	Obstructed windshield
7321-H	2	Defective windshield wipers
7502	2	Moving defective vehicle beyond specified limits
<u>7603</u>	<u>2</u>	<u>Fail to identify disabled vehicle with proper equipment while towing</u>

0012-H

2

Transporting passengers in vehicle carrying explosives

(2) The following actions resulting from the accumulation of these points may be taken:

(a) A warning letter results from the accumulation of seven points within a 36 month period or from the accumulation of any three pointed violations within a 12 month period.

(b) An advisory letter results from the accumulation of 12 or more points within a 36 month period.

(c) A 6 month suspension results from the accumulation of 15 or more points in a 36 month period. (History: Sec. 44-1-103 and 61-2-302(1) MCA; IMP, 61-5-201 et seq. and 61-2-302(2) MCA.)

3. The rule is proposed to be amended to conform to changes in the law as enacted by the 1981 legislative session and to actual practices of the department.

4. Interested parties may submit their data, views or argument concerning the proposed amendment in writing to Assistant Attorney General Sarah M. Power, State Capitol, Room 225, Helena, Montana 59620 no later than March 11, 1982.

5. If a person who is directly affected by the proposed amendments wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the requests along with any written comments to Assistant Attorney General Sarah M. Power, State Capitol, Room 225, Helena, Montana, 59620, no later than March 11, 1982.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 59,000 persons based on the 590,000 licensed drivers in Montana.

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

By: 
MIKE GREELY
Attorney General

Certified to the Secretary of State on February 1, 1982.

3-2/11/82

MAR Notice No. 23-2-63

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

IN THE MATTER of Proposed Amend-) NOTICE OF PROPOSED AMENDMENT
ment of Rule 38.5.506 Regarding) OF RULE 38.5.506
Interim Utility Rate Increases) NO PUBLIC HEARING
Rules.) CONTEMPLATED

TO: All Interested Persons

1. On March 28, 1982, the Department of Public Service Regulation proposes to amend Rule 38.5.506, "CRITERIA FOR APPROVAL OF REQUEST," regarding interim utility rate increases.

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

38.5.506 CRITERIA FOR APPROVAL OF REQUEST (1) Consideration of an application to increase rates on an interim basis in a general rate increase proceeding will be guided by ~~the facts in the record~~ and generally established principles of utility rate regulation.

(2) The Commission shall calculate all interim rate increase requests in a general rate increase proceeding in the following manner:

(a) Test year booked net income and test year average rate base will be normalized and annualized, when such test year data is available.

(b) Any adjustments that were made in the most recent Commission general rate order of the utility will also be made using the methodology and rate of return on equity from that order, and applied to the filed test year amounts. These adjustments may be modified and other adjustments made as deemed appropriate by the Commission.

~~(2)~~ (3) Consideration of an application to increase rates on an interim basis in a tracking case will be guided by:

(a) A showing that the expense item concerned is a clearly identifiable cost to the utility;

(b) A clear showing that the proposed rate increase precisely matches the known increased expenses;

(c) A clear showing that deferred rate relief would result in irreparable financial harm to the petitioning utility; and

(d) Supporting material as enumerated in ARM 38.5.505(3).

~~(3)~~ if an application to increase rates on an interim basis is made which seeks to implement interim relief at times and under circumstances not contemplated by these rules, the Commission will be guided by:

~~(a)~~ A clear showing that the petitioning utility is suffering an obvious income deficiency; and

~~(b)~~ A clear showing of any two of the following circumstances:

~~(i)~~ A sudden decline in income caused by factors outside of the control of the utility,

~~(ii)~~ An inability on the part of the utility to arrange debt financing or attract capital at a reasonable cost

without increased operating income;

(iii) That deferred rate relief until a final order can be issued would result in irreparable financial harm to the petitioning utility; and

(iv) That reasonable grounds exist for the Commission to believe that, under its current utility rate-making standards, the utility would be entitled to rate relief at the time a final order is issued in the proceedings.

(4) All interim rate increase requests must be accompanied by a revenue increase figure calculated in accordance with ARM 38.5.506(2).

3. The Public Service Commission is proposing this amendment to Rule 38.5.506 to clarify the type of information that the Commission will consider and analyze when determining whether or not an interim rate increase for a particular utility is warranted in the event a contested case hearing has not yet been held or is not contemplated to be held.

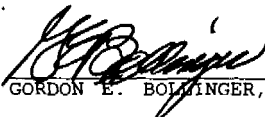
4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Opal Winebrenner, 1227 11th Avenue, Helena, Montana 59620, no later than March 15, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Opal Winebrenner, 1227 11th Avenue, Helena, Montana 59620, no later than March 15, 1982.

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

8. The authority for the Commission to make this rule is based on Sections 69-3-102 and 69-3-103, MCA, and the rule implements Section 69-3-304, MCA.



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 1, 1982.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules relating to the) valuation and assessment of) industrial property and the) Amendment of Rule 42.21.132,) ARM, relating to the assess-) ment of mining equipment.)	NOTICE OF PUBLIC HEARING ON the Adoption of Rules relating to the valuation and assess- ment of industrial property and the Amendment of Rule 42.21.132, ARM, relating to the assessment of mining equipment.
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TO: All Interested Persons:

1. On March 5, 1982, at 1:30 p.m., a public hearing will be held in the First Floor Conference Room, Mitchell Building, Helena, Montana, to consider the adoption of new rules 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.

2. The new rules do not modify or replace any existing rules contained in the Administrative Code. The rule proposed for amendment can be found at pages 42-2127 - 42-2130, ARM.

3. The rules proposed for adoption provide as follows:

RULE I INDUSTRIAL PROPERTY Industrial property is property used in the extraction, production, distribution, and changing the form of raw materials or assembling components and parts, packing and warehousing, and shipping of the finished products.
AUTH: 15-1-201, IMP: 15-8-111, MCA.

RULE II INDUSTRIAL PLANT An industrial plant is a combination of land, land improvements, improvements and machinery which have been organized into a functioning unit. The value of the several components will be placed in the proper tax classification according to the use of the property.
AUTH: 15-1-201, IMP: 15-8-111, MCA.

RULE III CLASSIFICATION OF INDUSTRIAL BUILDINGS For purposes of classification pursuant to 15-6-134, MCA, all improvements upon the land, of a civil construction character, utilized to house the industrial process and all storage facilities shall be treated as improvements to land.
AUTH: 15-1-201, IMP: 15-6-134, MCA.

RULE IV VALUATION OF INDUSTRIAL IMPROVEMENTS (1) All property determined by the department to be an improvement to the land shall be valued by use of the Marshall Valuation Service.

(2) If the property is not listed in the Marshall Valuation

Service, then the department may use other appropriate cost manuals such as, "Means" or "Boeckh" to obtain the best estimate of reproduction costs.

(3) The departmental appraiser shall use his best judgment to establish the effective age of the property.

(4) Upon the determination of the property's effective age, it shall be depreciated according to schedules published by the Marshall Valuation Service.

AUTH: 15-1-201; IMP: 15-8-111, MCA.

RULE V INDUSTRIAL PROPERTY OTHER THAN LAND (1) Property used in the manufacturing process and not treated as land or improvements to land, which includes such items as manufacturing machinery and equipment whether permanently or temporarily in place shall be placed in Class 8.

(2) Manufacturing machinery and equipment is all property used in the manufacturing process, whether permanently or temporarily in place, used to transform raw or finished materials into something possessing a new nature or name and adopted to a new use.

(3) All property which has been certified by the department of health to control air water pollution shall be placed in Class 5.

(4) All property which has been included in a new industry classification shall be placed in Class 5.

AUTH: 15-1-201; IMP: 15-6-138, 15-8-111, MCA.

RULE VI VALUATION OF INDUSTRIAL PROPERTY OTHER THAN LAND All property other than land or improvements to land shall be valued by trending the original installed cost to a current replacement cost, then depreciating on an age/life basis to compensate for ordinary physical deterioration and/or functional obsolescence.

AUTH: 15-1-201, IMP: 15-8-111, MCA.

RULE VII TREND FACTORS The trending factors for all property other than land or improvements to land shall be published annually by the department. These factors will be taken from the Marshall Valuation Service except in those instances when the taxpayer can demonstrate to the department that another source of information will provide a more reliable indication of replacement/reproduction cost and thus the resulting "market value" for the industry as a whole.

AUTH: 15-1-201, IMP: 15-8-111, MCA.

RULE VIII DEPRECIATION SCHEDULES Depreciation schedules for all property, other than land or improvements to land, shall be published annually by the department. These depreciation schedules will be an expanded version of the depreciation schedule provided by the Marshall Valuation Service. These depreciation rates will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to technological changes

within the process during the life expectancy period.

AUTH: 15-1-201, IMP: 15-8-111, MCA.

RULE IX ECONOMIC OBSOLESCENCE Extraordinary functional and/or economic obsolescence are treated on a case by case basis.
AUTH: 15-1-201, IMP: 15-8-111, MCA.

RULE X ISSUANCE OF DEPRECIATION AND TRENDING SCHEDULES The schedules referred to in Rules VII and VIII shall be supplied to the Department's local agent by the 15th day of January of each year. A taxpayer may request such documents from the department of revenue after January 15.

AUTH: 15-1-201, IMP: 15-8-111, MCA.

The rule as proposed for amendment provides as follows:

42.21.132 MINING EQUIPMENT. (1) (1) The average market value for the mobile equipment used in mining, including coal and ore haulers, shall be the average resale value of such property as shown in "Green Guides", Volumes I and II, Older Equipment, Off Highway Trucks and Trailers, and Lift Trucks, using the current volumes of the year of assessment. This guide may be reviewed in the Department or purchased from the publisher: Equipment Guide Book Company, 3980 Fabian Way, P.O. Box 10113, Palo Alto, California 94303. 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) If the above names guides cannot be used to value these properties, then trended depreciation tables established by the department of revenue shall be used to determine the average market value. The tables are found in subsection (2) 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) For the calendar year commencing January 1, 1981, the following tables are used for mobile mining equipment valued by using the procedures established for heavy equipment (42.21.131, ARM).

TABLE I

Wheel Loaders, Crawler Tractors, Belt Loaders, Hydraulic Cranes, Crawler Cranes and Shovels, Truck Mounted Cranes and Shovels

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981			100%
1980	96%	1.000	96%
1979	84%	1.055	88%
1978	74%	1.157	85%
1977	67%	1.257	84%
1976	59%	1.353	79%
1975	53%	1.454	77%
1974	47%	1.555	73%
1973	40%	1.917	76%
1972	37%	2.000	74%
1971	33%	2.070	68%
1970	29%	2.159	62%
1969	26%	2.314	60%
1968	23%	2.427	55%
1967	22%	2.523	55%
1966	19%	2.610	49%
1965	17%	2.718	46%
1964	16%	2.764	44%
1963	14%	2.793	39%
1962	12%	2.814	33%
1961 and older	12%	2.814	33%

TABLE II

Crawler Loaders, Miscellaneous Mining Equipment not Included in Table I or III.

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981			100%
1980	96%	1.000	78%
1979	84%	1.055	71%
1978	74%	1.157	69%
1977	67%	1.257	64%
1976	59%	1.353	63%
1975	53%	1.454	58%
1974	47%	1.555	55%
1973	40%	1.917	59%
1972	37%	2.000	52%
1971	33%	2.070	51%
1970	29%	2.159	49%

1969	26%	2,314	50%
1968	23%	2,427	48%
1967	22%	2,523	47%
1966	19%	2,610	44%
1965	17%	2,718	43%
1964	16%	2,764	44%
1963	14%	2,793	39%
1962	12%	2,814	33%
1961 and older	12%	2,814	30%

TABLE III

Air Equipment, Hydraulic Excavators, Wheel Tractors, Ditchers

Year of Purchase	Percentage Depreciation	Trend Factor	Percentage Trended Depreciation
1981			100%
1980	74%	1,000	74%
1979	65%	1,055	68%
1978	57%	1,157	65%
1977	50%	1,257	62%
1976	43%	1,353	58%
1975	39%	1,454	56%
1974	34%	1,555	52%
1973	29%	1,917	55%
1972	26%	2,000	52%
1971	22%	2,070	45%
1970	16%	2,159	34%
1969	14%	2,314	32%
1968	12%	2,427	29%
1967	11%	2,523	27%
1966	9%	2,610	23%
1965	8%	2,718	21%
1964	8%	2,764	22%
1963	6%	2,793	16%
1962	6%	2,814	16%
1961 and older	5%	2,814	14%

The percentage trended depreciation is applied to the purchase price.

(b) In addition, for mobile mining equipment, the department multiplies the percentage trended depreciation in tables I, II, and III or the Green Guide value, as appropriate, by a factor based on equipment use. The multiplier is determined from the following table:

ANNUAL HOURS OF USE (T)	MULTIPLIER
0 < T < 2,920	1.000
2,920 < T < 3,650	.800
3,650 < T	.667

~~(3) Fixtures and accessories adjunct to a mine are valued by trending the original installed cost to reflect a current replacement cost using Table II above.~~

~~(4) The tables in subsection (2) were compiled to approximate depreciation as given by the resale values of the green guides. The trend factors were compiled using comparative cost multipliers based on data published by the Marshall and Swift Publication Company. More detailed information concerning the table entries can be obtained from the department.~~

~~(5) As used in this rule, mining equipment is equipment that digs, excavates, burrows, and actually frees raw materials from the earth. (3) Mobile mining equipment as found in the "Green Guide", is mining equipment that moves freely about under its own power and and/or on its own wheels and chassis, including any attachments used with the or attached to such equipment. Mobile equipment does not include equipment that require 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. Pursuant to §15-8-111, MCA, the Department must appraise property for ad valorem tax purposes at 100% of its current market value. While the Legislature has defined the term market value in that same statute, there are different methods by which that standard may be achieved. The Department in the new rules proposed has set out the method which it will use to accomplish that standard for the property defined.

The Montana Administrative Code defines rule as a regulation that implements law or describes procedure. Because there are several methods to arrive at market value, it is necessary that the Department adopt these rules to describe the procedures to be used.

The amendment of the rule on mining machinery is being made to bring it into conformity with the industrial property rules and rule 42.21.121, ARM, on heavy equipment.

The need for this amendment is the same as for the rules on industrial property. There are several accepted ways of valuing personal property. The Department believes that is the best way of achieving a market value for this type of property.

5. 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 in writing no later than March 11, 1982 to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

5. Mr. Dennis Moreen, Agency Legal Services, Office of the

Attorney General, has been designated to preside over and conduct the hearing.

7. The authority of the Department to adopt and make the proposed amendments is based upon §15-1-201, MCA. The implementing sections are listed below each amendment or adoption.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/82

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING ON
of Rule I, II and III)	the adoption of Rules I, II
relating to the appraisal of)	and III relating to the
mobile homes.)	appraisal of mobile homes.

TO: All Interested Persons:

1. On March 5, 1982, at 9:00 a.m., a public hearing will be held in the First Floor Conference Room of the Mitchell Building at Helena, Montana, to consider the adoption of rules relating to the appraisal of mobile homes.
2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.
3. The proposed rules provide as follows:

RULE I APPRAISAL OF MOBILE HOMES (1) Residences of all types are classified as Class 4 property, 15-6-134, MCA. During the appraisal cycle ending January 1, 1978, one group of mobile homes was appraised by use of the Montana Appraisal Manual (Group A). The remaining mobile homes were appraised by use of a schedule prepared by the Department to approximate the values in the Montana Appraisal Manual. (Group B.)

(2) Both Group A and Group B will maintain their current value on the tax roll through the end of this present cycle, unless the property is altered, modified, or unless the owner of a Group B category property elects to use the provisions of Rule II.

(3) At the end of the current appraisal cycle (December 31, 1985), all mobile homes will have been appraised by use of the 1982 Montana Appraisal Manual.

(4) This rule will be effective for tax years beginning on or after December 31, 1981.

AUTH: 15-1-201, IMP: 15-6-134, 15-8-111, MCA.

RULE II REVIEW OF MOBILE HOME APPRAISAL Upon request of a Group B property owner or for purposes of picking up new construction, the department will schedule an appraisal of the property using the Montana Appraisal Manual, 1972 Edition, value it accordingly, and place it on the tax rolls at that value.

AUTH: 15-1-201, IMP: 15-6-134, MCA.

RULE III MOBILE HOME - IMPROVEMENT TO REAL PROPERTY Pursuant to 15-1-101(e), MCA, a mobile home will be considered an improvement to real property as soon as it is connected to a utility. Utilities for this purpose include, but are not limited to, water, sewage, electricity, natural gas, propane and telephone.

AUTH: 15-1-201, IMP: 15-1-101(e), MCA.

4. All property must be valued at its market value. §15-8-111, MCA. Further, all like property or property in the same tax classification must be valued similarly. Under the terms of §15-6-134, MCA, all mobile homes are to be treated as other permanent dwellings. It appears to the Department that past appraisal practices may not have treated all mobile homes in a similar fashion and may not have treated them the same as other permanent dwellings.

5. 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 in writing no later than March 11, 1982 to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

5. Mr. David Slovak, Agency Legal Services, Office of the Attorney General, has been designated to preside over and conduct the hearing.

7. The authority of the Department to adopt and make the proposed amendments is based upon §15-1-201, MCA. The implementing sections are listed below each amendment or adoption.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/82

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PROPOSED ADOPTION OF
of Rule I relating to the)	RULE I, relating to the com-
computation of the)	putation of the residential
residential property tax)	property tax credit for the
credit for the elderly.)	elderly.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons;

1. On March 15, 1982, the Department of Revenue proposes to adopt a rule relating to the computation of the residential property tax credit for the elderly.

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

3. The proposed rule provides as follows:

RULE I COMPUTATION OF RESIDENTIAL PROPERTY TAX CREDIT FOR ELDERLY. (1) When the taxpayer owns the dwelling but rents the land or owns the land and rents the dwelling, he shall add the rent-equivalent tax paid on the rented property to the property tax paid on the owned property. The total shall then be reduced as provided by 15-30-176(3), MCA. The tax credit will be the reduced amount or \$150, whichever is less.

(2) A taxpayer shall not be entitled to rent-equivalent tax paid on either a rented dwelling or rented land which was not subject to ad valorem taxes in Montana during the claim period.

AUTH: 15-30-305, IMP: 15-30-176, MCA.

4. The purpose of the first section of this rule is to clarify treatment of the cases in which a homestead is partially owned and partially rented. The definition of a homestead under 15-30-171(6), MCA, clearly states that both a dwelling and "the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling" are to be included in a homestead for the purposes of claiming the property tax credit. The statutes did not, however, directly provide a method for calculating the credit in the case of a partially owned and partially rented homestead. Section 1 of the proposed rule provides a method for calculating the credit that insures consistency with the statutory definition of a homestead for property tax credit purposes. Without this method of calculation, either the dwelling or the eligible land might be excluded from the computation of the credit, and if such exclusion occurred, the definition of a homestead would be violated.

The purpose of the second section of the proposed rule is to clarify that the residential property tax credit for the elderly

is not to be claimed for rental property that is not subject to ad valorem taxes in Montana. The rule is necessary to implement the intent of law which is to provide a form of property tax relief to the elderly.

5. Interested parties may submit their data, views, or arguments concerning the proposed rule in writing to R. Bruce McGinnis, address given in paragraph 6, no later than March 11, 1982.

6. 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 no later than March 11, 1982 to:

R. Bruce McGinnis
Legal Bureau
Department of Revenue
Mitchell Building
Helena, Montana 59620

6. If the Department receives requests for a public hearing on the proposed rule from either 10% or 25 whichever is less, of the persons who are directly affected by the proposed rule, 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 based on at least 250 individual income tax returns being filed which will claim this credit.

7. The authority of the agency to make the proposed amendment is based upon §15-30-305, MCA. The implementing sections are listed below the proposed rule.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary 2/1/82

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

In the matter of the adoption of rules and the amendment of Rules 46.5.912 and 46.5.913 pertaining to day care center licensing, eligibility and program requirements)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES AND THE AMENDMENT OF RULES 46.5.912 AND 46.5.913 PERTAINING TO DAY CARE CENTERS
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TO: All Interested Persons

1. On March 4, 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 adoption of rules and the amendment of Rules 46.5.912 and 46.5.913 pertaining to day care center licensing, eligibility and program requirements.

2. Rule 46.5.912 proposed to be amended provides as follows:

46.5.912 DAY CARE CENTER, LICENSING SERVICES AND GENERAL ELIGIBILITY AND PROGRAM REQUIREMENTS ~~(1)~~ The licensing requirements for day care centers are as follows:

(1) General eligibility requirements for licensure.

~~(a)~~ A day care center must be licensed, which receives seven or more children simultaneously for care for more than 4 hours during any 24 hour period for 5 or more consecutive weeks.

~~(b)~~ A day care center must have at least two staff members available at all times. If the group exceeds 20 children, there will be an additional staff member for each unit of children numbering up to 10 children.

~~(c)~~ (b) The day care center must arrange for fire and health inspections prior to licensing. Before a license can be issued, each applicant shall submit to the department a certificate of approval from the fire marshal bureau indicating that fire safety rules have been met.

~~(d)~~ (c) Day care centers must have fire and public liability insurance coverage. This requirement may not be waived.

~~(e)~~ Substantial compliance with program requirements must be documented.

(d) Prior to the issuance of a license to operate a day care center, each applicant shall submit to the department a certificate from local public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection of the facility by local public health authorities.

(2) Subsection (2) is deleted in its entirety.

(3) Subsection (3) is deleted in its entirety.

3-2/11/82

MAR Notice No. 46-2-322

(4) Subsection (4) is deleted in its entirety.

3. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-505, 53-4-506 and 53-4-507, MCA.

4. Rule 46.5.913 proposed to be amended provides as follows:

46.5.913 DAY CARE CENTER LICENSING SERVICES PROVIDED

The department will provide the following:

(1) assistance to the applicant to meet licensing standards;

(2) counseling services around child problems;

(3) assistance to the day care center in providing programs which contribute to the development of the children;

(4) supplying the operator with the proper forms to obtain agency payment; each month the operator must submit a voucher for child care services to an SRS district office before deadline date, as established by the SRS district office; and

(5) technical assistance to day care centers for staff training;

(6) the department or its authorized representative shall make periodic visits to all licensed day care centers to ensure that minimum standards are maintained; and

(7) the department may investigate and inspect the conditions and qualifications of any day care center seeking or holding a license.

5. The authority of the agency to amend the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-508 and 53-4-511, MCA.

6. The rule proposed to be adopted provides as follows:

RULE I DAY CARE CENTERS, PROGRAM REQUIREMENTS (1) The program conducted in a day care facility shall be written and shall provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth and well-being, both active and passive learning experiences which promote the development of skills and social competence based on enhanced self-esteem and positive self-identity and shall be conducted in consultation with parents to provide experiences in harmony with the life style and cultural background of the children.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation and approves the program based upon the criteria below:

(i) the program operation reflects an on-going process of parent-staff cooperation in development and modification of program goals;

(ii) the program operation reflects diversity of experiences during the day for each child with opportunity for quiet and active experiences, group and individual activities, the exercise of choice and for experience with different types of equipment and materials;

(iii) there are opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of his own clothing.

(iv) the program includes numerous firsthand experiences for children to learn about the world in which they live; at least once a month opportunities are provided for field trip visits to places of interest in the community and/or family and other community people are utilized as resources to further expand the exposure and experiences of the children. Caregivers are required to secure a release form from parents before children are taken on field trips and/or taken to a doctor;

(v) learning experiences regarding the value of food in relation to growth and development is provided for children.

(vi) opportunities are provided for children to develop language, and mathematical skills, to receive readiness for reading and writing, for spontaneous conversations in a variety of situations and for regular exposure to books, drama, poetry, music and other forms of verbal expression; in multilingual communities, the children are exposed to the languages of the community.

7. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-508, MCA.

8. The rule proposed to be adopted provides as follows:

RULE II DAY CARE CENTERS, DISCIPLINE (1) Caregivers shall use appropriate forms of discipline but must not use spanking or other forms of corporal punishment or any other technique which is humiliating, shaming, frightening, or otherwise damaging to children.

(a) This requirement shall be deemed to have been satisfied when:

(i) the caregiver has participated in an in-service training session regarding discipline and guidance techniques appropriate for children;

(ii) the caregiver demonstrates knowledge and understanding of guidance techniques in using them in the day care setting;

(iii) the caregiver contacts parents to determine the discipline used in the child's home in hopes of establishing some consistency in discipline between the home and the day care setting, although corporal punishment is not to be utilized in a day care setting even when such practices are employed in the home.

9. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504 and 53-4-508, MCA.

10. The rule proposed to be adopted provides as follows:

RULE III DAY CARE CENTERS, SCHEDULING (1) A daily schedule must be established for each group of children in care which will promote physical, emotional, intellectual and social development, provide regularity in the routines of program activities and physical care with sufficient flexibility to respond to individual differences in children's needs and interests, and provide a balance of quiet and active, small and large group and individual activities.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the program based on the criteria below:

(i) Each caregiver in charge of a group of children follows a written schedule of daily activities which includes time for meals, snacks, sleep, toileting, and indoor and outdoor play.

(ii) The schedule is followed without rigidity in order to respond to individual needs of children. Children not participating in group activities will have adult supervision.

(iii) A nap period is provided for children who need it; and for children unable to sleep, time, space and appropriate activities allowing for rest and quiet play are available.

11. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504 and 53-4-508, MCA.

12. The rule proposed to be adopted provides as follows:

RULE IV DAY CARE CENTERS, SPACE AND EQUIPMENT (1) A day care center must have sufficient indoor and outdoor space and equipment in relationship to the number and ages of children in care to accommodate the full range of developmental needs of children, particularly those needs most affected by space limitations such as physical development.

(a) This requirement shall be deemed to have been satisfied if:

(i) the facility must have a minimum of 35 square feet per child of indoor space, exclusive of floor area devoted to fixed equipment or support functions such as kitchens, offices, etc. as well as 75 square feet per child of outdoor play space;

(ii) the equipment and furniture arrangement permits unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care, as well as arrangements of sleeping equipment which permit easy access to every child and unobstructed exits, or;

(iii) the center can obtain a variance from the above for the following reasons:

(A) limited outdoor space offset by a greater amount of indoor space, such as a gym, permitting an equivalent activity program;

(B) limited indoor space offset by sheltered outdoor space; where climate permits, reliance on outdoor space for activities normally conducted indoors;

(C) scheduling for use of limited space or equipment, provided the availability to each group of children is not unreasonably short;

(D) part day programs which can demonstrate that children can reasonably be expected to have naps or rest periods when they are away from the facility need not provide space or equipment for napping; and

(E) scheduling for the use of an adjacent school playground, nearby public or park lands, cleared vacant safe lots, and/or a street blocked off by local authorities.

13. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504 and 53-4-508, MCA.

14. The rule proposed to be adopted provides as follows:

RULE V DAY CARE CENTERS, STAFF SPACE AND EQUIPMENT

(1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions necessary to the program for children and to provide for the reasonable comfort and convenience of staff and parents.

(a) This requirement shall be deemed to have been satisfied if:

(i) The center has appropriate storage and work areas adjacent to the area of use, to accommodate the following functions if these are conducted on the premises:

(A) administrative office functions, record storage, meeting arrangements for staff or for parent conference offering privacy of conversation;

(B) food preparation and serving;

(C) custodial services;

- (D) laundry;
- (E) rest area for staff relief periods; and
- (F) storage of program materials and manipulative toys to be used and rotated at different times during the year.

15. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504 and 53-4-508, MCA.

16. The rule proposed to be adopted provides as follows:

RULE VI DAY CARE CENTERS, MATERIALS (1) The amount and variety of materials and equipment available, and their arrangement and use, must be appropriate to the developmental needs of the children in care.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the selection, arrangement and use of materials and equipment, based on the criteria below:

(i) in-service training regarding the relationship of equipment and materials to the developmental needs of children is provided; special emphasis should be placed on how children learn. At a minimum, centers will maintain a housekeeping area, table activities (manipulative toys) area, block building area, library corner, science area, music area and creative arts area. Arrangement of these areas should be such that quiet and active zones are separated and not conflicting;

(ii) the quantity and quality of materials and equipment is sufficient to permit multiple use of the same item by several children so that excessive competition and long waits are avoided;

(iii) materials and equipment are of sufficient quantity and quality to provide for a variety of experiences and appeal to the individual interests of the children in care;

(iv) furniture is durable, safe, and clean and is child size or appropriately adapted for children's use;

(v) storage shelves must be provided to children at their level.

17. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504 and 53-4-508, MCA.

18. The rule proposed to be adopted provides as follows:

RULE VII DAY CARE CENTERS, CHILDREN'S ACTIVITIES (1) A day care center serving school-age children shall supplement and augment, but not duplicate, the child's activities at school and at home, enable the child to develop his sense of independence, responsibility, identity and of mastering the

skills of problem solving, helping him to achieve a place among his peers in his own neighborhood, and staff is provided in-service training regarding aspects of child development through the early and middle school years.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has observed the program in operation and approved the program based on the criteria below:

(i) provision is made for special interest groups in the center, or for individual pursuit, in the areas of crafts, sewing, cooking, art, music, etc., where a skilled adult is available;

(ii) provision is made for individual participation in classes, clubs, or other groups holding meetings in other locations in the community and to engage in activities outside the center which may be simply riding a bike or roller skating around the block, or playing with neighborhood children in the school playground;

(iii) children have regular chores appropriate for their age that they are expected to perform, and, where feasible, older children have a chance to earn money either within the center or in the community;

(iv) children have the opportunity appropriate to the child's age to participate in making rules and opportunities to express objections to them;

(v) parents have participated in planning and approving the after-school activities, have participated in approving rules and agree on the management of infractions of the rules.

19. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504 and 53-4-508, MCA.

20. The rule proposed to be adopted provides as follows:

RULE VIII DAY CARE CENTERS, NIGHT CARE AND SHIFT (1) A day care center offering night care or shift care must develop a set of plans for staff use, equipment and space usage, and program modifications for that aspect of their service, which will provide appropriately for the personal safety as well as for the emotional and physical care of children away from their families at night.

(a) This requirement shall be deemed to have been met if the licensing representative is satisfied that:

(i) special attention is given by the caregiver with the parents to provide for a transition into this type of care appropriate to the child's emotional needs;

(ii) children are left for care and picked up before and after their normal sleeping period so that there is minimal disturbance of the child during sleep;

(iii) a selection of toys for quiet activities which can be used with minimal adult supervision is available prior to bedtime;

(iv) bathing facilities are provided; comfortable beds or cots, complete bedding, and night clothes are available;

(v) sufficient staff are available to assist children during eating and pre-bedtime hours and during the morning period when dressing; during sleeping hours, staff shall be awake and in the immediate vicinity of sleeping children in order to provide for the needs of children and respond to an emergency;

(vi) a nutritious meal shall be served to children and a bedtime snack shall be offered.

21. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504 and 53-4-508, MCA.

22. The rule proposed to be adopted provides as follows:

RULE IX DAY CARE CENTERS, STAFFING REQUIREMENTS

(1) Child/staff ratio.

(a) 4:1 for infants 0-2 years;

(b) 10:1 for children 2-6 years;

(c) 14:1 for children over 6 years

(d) centers may have only one provider whenever the number of children in attendance is less than seven.

(e) only the provider, primary caregiver(s) and aides may be counted as staff in determining the staff ratio.

(2) Qualifications of staff.

(a) The director shall have an associate degree in a related field plus one year experience in child care or child development associate certification (CDA) or three years experience in child care. Existing directors are exempt from this requirement.

(b) The primary caregiver shall meet all of the qualifications of an aide plus the following:

(i) six months experience as a licensed day care home provider or day care center staff person or a bachelor of arts in education or a related field.

(ii) trained in cardio-pulmonary resuscitation or multi-media first aid.

(3) An aide is directly supervised by a primary caregiver and shall meet the following qualifications.

(a) sufficient language skills;

(b) mobility;

(c) submit annually personal statement of health for licensure or certification;

(d) one day of on the job orientation;

(e) eight hours of training, within the first year, in at least two separate sessions provided either by the depart-

ment or center operator or other equivalent trainer in the following areas:

- (i) 4 hours - to include emotional, cognitive, physical and social development, self-esteem and creative activities;
- (ii) 1 hour - discipline.
- (iii) 1 hour - first aid;
- (iv) 1.5 hours - nutrition and sanitation;
- (v) .5 hours - fire safety.

23. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, 53-4-506 and 53-4-508, MCA.

24. The rule proposed to be adopted provides as follows:


RULE X DAY CARE CENTERS, PARENT INFORMATION (1) The following written information shall be available to all parents: a typical daily schedule of activities, admission requirements, enrollment procedures, hours of operation, meals and snacks served, fees and payment plan, regulations concerning sick children, transportation and trip arrangements, discipline policies, religious activities and department day care standards.

25. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, 53-4-506 and 53-4-508, MCA.

26. The program requirements for day care centers are being deleted from subsection 4 of Rule 46.5.912. Those requirements now appear in proposed Rules I through X. By breaking the one, cumbersome rule into a number of short, readable rules, they will allow the reader, whether provider, social worker or other to find the rule applicable to his particular question and kind of day care facility quickly and easily. Deletions of vague and arbitrary standards have been made as well as attempts to clarify language.

27. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than March 12, 1982.

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



Director, Social & Rehabilitation Services

Certified to the Secretary of State February 1, 1982

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

In the matter of the adoption of) NOTICE OF PUBLIC HEAR-
rules pertaining to special re-) ING ON PROPOSED ADOP-
quirements for day care facilities) TION OF RULES PERTAIN-
caring for infants) ING TO DAY CARE FACILI-
) TIES CARING FOR INFANTS

TO: All Interested Persons

1. On March 4, 1982, at 9:00 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of rules pertaining to special requirements for day care facilities caring for infants.

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

RULE I DAY CARE FACILITIES CARING FOR INFANTS, PHYSICAL EXAMINATION (1) Physical examination.

(a) Each infant shall have a preadmission physical within two weeks of admission including a statement by a physician concerning any special needs of the infant.

(b) Health examinations shall be repeated each three months during the infant's first year and each six months during the infant's second year. The date and results of health examinations shall be submitted by the parent to the day care facility.

3. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

4. The rule proposed to be adopted provides as follows:

RULE II DAY CARE FACILITIES CARING FOR INFANTS, DIAPERING AND TOILET TRAINING (1) A sufficient supply of

clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the infant's family may be used although disposable diapers are recommended.

(2) Soiled reusable diapers shall be placed into separate cleanable covered containers provided with waterproof liners prior to transport to laundry, parent, or acceptable disposal. These containers shall be emptied, cleaned and disinfected at least daily. Soiled disposable diapers shall be disposed of immediately into an outside trash disposal or put in a securely tied plastic bag and discarded indoors until outside disposal is possible. Reusable diapers shall

3-2/11/82

MAR Notice No. 46-2-323

be removed from the facility daily.

(3) Diaper-changing surfaces shall be cleaned after each use by washing or by changing a pad or disposable sheeting and sanitized or covered for reuse.

(4) Soft, absorbent, disposable towels or clean reusable towels which have been laundered between each use shall be used for cleaning the infant.

(5) Safety pins shall be kept out of reach of infants and toddlers. Infants shall not be left unattended on a surface from which they might fall.

(6) All toilet articles shall be identified and separated as to each infant and kept in a sanitary condition.

(7) Diapering and toilet areas shall contain a wash basin that is separate from that used for food preparation.

(8) There shall be posted in a conspicuous place in diapering, feeding and toilet areas a reminder that employees must wash their hands before and after feeding infants and after changing diapers or using the toilet facilities.

(9) Toilet training shall be initiated when readiness is indicated for the child and in consultation with the child's parent(s) or placement agency. There shall be no routine attempt to toilet train infants under the age of 18 months.

5. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

6. The rule proposed to be adopted provides as follows:

RULE III DAY CARE FACILITIES CARING FOR INFANTS, CLOTHING (1) Wet or soiled clothing shall be changed promptly. Parent(s) shall provide additional clothing and it is the responsibility of the parent(s) to care for the clothing.

7. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

8. The rule proposed to be adopted provides as follows:

RULE IV DAY CARE FACILITIES CARING FOR INFANTS, FEEDING (1) An individualized diet and feeding schedule shall be provided according to a written plan submitted by the parent(s) or by the child's physician with the knowledge and consent of the parent(s), guardian or placement agency. A change of diet and schedule shall be noted on each child's daily activity schedule.

(2) Formula feedings of infants under one year of age shall be on a schedule agreed upon by the infant's parent(s), guardian or placement agency and the provider.

(3) A day's supply of formula or breast milk in nursing bottles shall be provided by the parent(s). Bottles of formula or breast milk shall be clearly labeled with each infant's name and date. After use bottles shall be thoroughly rinsed before returning to the parent. Special dietary foods required by the infant shall be prepared by the parent(s).

(4) Bottles shall be refrigerated immediately upon arrival at the facility. All bottles shall be returned to the parent at the end of the day.

(5) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings. Older infants and toddlers shall be fed in safe high chairs or at baby feeding tables. Infants six months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant. Bottles shall be taken from the infant when he/she finishes feeding, when the bottle is empty and while the infant is sleeping.

(6) If the parent is unable to bring sufficient or usable formula or breast milk, the facility may use commercially prepared and packaged formulas. Older infants shall be provided suitable foods which encourage freedom in self-feeding. Unused infant food shall be stored in the original container and kept separate from other foodstuffs. Dry cereal, cookies, crackers, breads and similar foods shall be stored in clean, covered containers.

(7) If the container in which the formula was purchased does not include a sanitized bottle and nipple, then transfer of ready-to-feed formula from the bulk container to the bottle and nipple feeding unit must be done in a sanitary manner in the kitchen. Bottles filled on the premises of the facility should be refrigerated immediately if not used and contents discarded if not used within 12 hours.

(8) Any formula provided by the parent(s), guardian, placement agency or provider shall be in a ready-to-feed strength or require no preparation other than dilution with water at the day care facility.

(9) If bottles and nipples are to be used by the facility, they must be sanitized by boiling for 5 minutes or more just prior to refilling. Terminal (one-step) sterilization of bottles, nipples and formula is acceptable.

9. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

10. The rule proposed to be adopted provides as follows:

RULE V DAY CARE FACILITIES CARING FOR INFANTS, BATHING

(1) Bathing shall not be done routinely by the facility but if required:

(a) No child shall be left unattended in the bathing area.

(b) Bathing materials shall be sanitized after bathing the infant.

(c) Nonallergic soap shall be used.

(d) Arrangements shall be made so a child can not turn on hot water while being bathed. Water supply to bathing area will not be over 120°F.

(e) The bathing area shall be out of drafts and provisions should be made so the child may be completely dried after a bath.

11. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

12. The rule proposed to be adopted provides as follows:

RULE VI DAY CARE FACILITIES CARING FOR INFANTS, SLEEPING

(1) There shall be adequate opportunities for sleep periods during the day suited to the infants' individual needs.

(2) Infants shall be provided with cribs for sleeping until, at the discretion of the parent and provider, they are safe on a cot or mat. Cot or mat surfaces may be of plastic or canvas or other material which can be cleaned with detergent solution and allowed to air dry.

(3) Cribs shall be made of wood, metal or approved plastic and have secure latching devices. Cribs shall have no more than 2 and 3/8 inches of space between the vertical slats. Mattresses shall fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses shall be waterproof and easily sanitized. Cribs, cots or mats shall be thoroughly cleansed before assignment to another infant.

(4) Cribs, cots or mats shall be spaced to allow for easy access to each child, adequate ventilation, and easy exit. Aisles between cribs or cots shall be kept free of obstructions while cribs or cots are occupied.

(5) Each infant shall have been provided by the parent with a clean washable blanket or other suitable covering for his/her use while sleeping. Each infant's bedding shall be stored separate from bedding used by other infants.

(6) All cries of infants shall be investigated.

13. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

14. The rule proposed to be adopted provides as follows:

RULE VII DAY CARE FACILITIES CARING FOR INFANTS, TRANSPORTATION (1) Facilities providing transportation for infants shall comply with the following requirements:

(a) All vehicles shall be equipped with car beds and/or children's car seats that meet federal department of transportation standards.

(b) Car beds shall be anchored securely to the floor of the vehicle. Infants shall be strapped in the car bed.

(c) Car seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts anchored to the floor.

(i) Any infant who has developed skill to sit alone safely shall use a car seat, not a car bed.

(ii) There shall be no more than one infant in each car bed or car seat.

(d) There shall be one adult in addition to the driver for each four (4) infants being transported. When transporting more than two infants, there will be a minimum of two adults. No child shall be left unattended in a vehicle. An adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parent(s) to receive the child.

15. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

16. The rule proposed to be adopted provides as follows:

RULE VIII DAY CARE FACILITIES CARING FOR INFANTS, ACTIVITIES (1) All infants shall have ample opportunity during each day for freedom of movement, such as creeping or crawling or rolling in a safe, clean, open, uncluttered area.

(2) An infant who is awake shall not spend more than one hour of consecutive time confined in a crib, playpen, jump chair or walker.

(3) Each infant shall have individual personal contact and attention by the same adult on a regular basis at least once each hour during nonsleeping hours. Examples of personal contact and attention include being held, rocked, taken on walks inside and outside the center, talked to and played with.

(4) There shall be provisions for the infant to safely explore and investigate the environment. There shall be both stimulation and time for quiet activity. Infants shall be taken outside for some period during each day in good weather.

(5) Each infant shall be allowed to maintain his/her own pattern of sleeping and waking period according to instructions from the parents.

17. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

18. The rule proposed to be adopted provides as follows:

RULE IX DAY CARE FACILITIES CARING FOR INFANTS, BUILDING AND SPACE (1) Infants shall be protected from draft and prolonged exposure to direct sunlight.

(2) The play areas for infants shall be separate from older children's play areas, or not be used for any other group of children while being used for infants. Sleeping areas shall be separate from play areas.

(3) The outdoor activity area shall be adjacent to the facility, fenced and free of hazards which are dangerous to the health and life of infants. The outdoor area shall be designed so that all parts are always visible to and easily supervised by staff.

(4) Adequate protection against insects shall be provided.

(5) Provision shall be made for both sunny and shady areas.

19. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

20. The rule proposed to be adopted provides as follows:

RULE X DAY CARE FACILITIES CARING FOR INFANTS, EQUIPMENT (1) Feeding tables equipped with a harness or high-chairs with a broad base and a harness for securing the child, shall be provided for every four children.

(2) The facility shall provide, in adequate numbers, playpens, jump chairs and adult rocking chairs.

21. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

22. The rule proposed to be adopted provides as follows:

RULE XI DAY CARE FACILITIES CARING FOR INFANTS, STAFF REQUIREMENTS (1) Staff/infant ratio.

(a) Each facility caring for infants shall maintain a staff ratio of one caretaker for each four (4) infants in attendance.

(b) Each infant shall be assigned one primary caregiver.

(c) There shall be sufficient staff so that an adult is always present and supervising when infants are sleeping.

23. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

24. The rule proposed to be adopted provides as follows:

RULE XII DAY CARE FACILITIES CARING FOR INFANTS, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS (1) Day care centers

shall post the diet and schedule in an area clearly visible to the center staff.

(2) Individual storage space that is labeled for the infant's clothing shall be provided.

(3) Clothing worn to and from work by the day care center staff members shall be covered by or replaced with clean comfortable non-irritating washable smock or similar clothing.

25. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Sections 53-4-504, MCA.

26. These rules are necessary because of the specialized care requirements of infants who are defined in Rule 46.5.902 as being between 6 months and 2 years. The health, safety, food, and nurturing requirements for infants are sufficiently unique that it would not be practical to have developed rules that would apply to all day care facilities regardless of what age children were in care. Additionally, because there are no statutory or rule restrictions, each individual facility, whether family day care home, group day care home or day care center, decides if it will provide care to infants. Therefore, the proposed rules apply to only those facilities that do, in fact, care for infants and are in addition to any other rules applying to the facility.

27. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana, no later than March 12, 1982.

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



Director, Social & Rehabilitation
Services

Certified to the Secretary of State February 1, 1982.

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

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of rules pertaining to family)	ON PROPOSED ADOPTION OF
day care home program re-)	RULES PERTAINING TO FAMILY
quirements)	DAY CARE HOMES

TO: All Interested Persons

1. On March 4, 1982, at 11:30 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 adoption of rules pertaining to family day care home program requirements.

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

RULE I FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care provider's absence must be at least 18 years of age.

(2) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a family day care home and group day care home.

(3) The provider shall have experience in the care and supervision of children.

(4) Family relatives in the day care home shall assure a safe and stable environment for the child.

(5) Personal information about the child or his family must be kept confidential.

(6) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or multi-media first aid and be familiar with standard Red Cross first aid procedure.

3. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

4. The rule proposed to be adopted provides as follows:

RULE II FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS

(1) All areas used for day care purposes must have at least one door for egress of not less than 24 inches wide and a minimum of one other means of egress with a minimum of 5.7 square feet of full clear opening. All exits must be unobstructed at all times.

(2) Basements, if in use, must be dry, well ventilated, warm and well lighted.

3-2/11/82

MAR Notice No. 46-2-324

(3) All rooms used for napping by children must have at least one window which can be readily used for rescue and ventilation.

(4) Third stories in dwellings must not be used for day care purposes and must be barricaded or locked to prevent entry by children.

(5) Doorways and stairs must be clear of any obstruction.

(6) Every closet door must be such that children can open the door from the inside.

(7) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency and the opening device must be readily accessible to the provider.

(8) Protective receptacle covers must be installed on electrical outlets in all areas occupied by children under five years of age.

(9) Maintenance: A maintenance program shall be provided to maintain the home and grounds used by children to ensure the following:

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are easily cleanable;

(c) the building and grounds are free of harborage for insects, rodents and other vermin;

(d) no paint containing lead in excess of .06% shall be used.

5. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

6. The rule proposed to be adopted provides as follows:

RULE III FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS

(1) If the sleeping room is on the second story, there must be a plan to rescue children if the stairway is blocked. A UL approved smoke detector, which is properly maintained and regularly tested, must be located on the second floor and basement, if they are being used for day care.

(2) A portable fire extinguisher with a minimum rating of 2A10BC is required. Extinguishers must be readily accessible at all times.

(3) Mobile homes must meet all criteria plus:

(a) smoke detecting devices near all sleeping areas;

(b) exit doors which open by turning knob.

(4) All wood burning stoves must be properly installed and inspected by the local fire marshal.

(5) No portable electric or unvented fuel-fired heating devices are allowed. All radiators, if too hot to touch, must be provided with protective enclosure.

(6) No stove or combustion heater will be so located as to block escape in case of malfunctioning of the stove or heater.

7. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

8. The rule proposed to be adopted provides as follows:

RULE IV FAMILY DAY CARE HOMES, SAFETY REQUIREMENTS

(1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(2) All medication must be kept in a place inaccessible to children, in their original containers, labeled with the original prescription label.

(3) No extension cord will be used as permanent wiring and all appliance and lamp cords must be suitably protected to prevent pulling or chewing by children.

(4) Any pet or animal, present at the home, indoors or outdoors with the provider's permission, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider must make reasonable efforts to keep stray animals off the premises.

(5) Guns and ammunition must be kept in locked storage or out of the reach of children and with guns stored separate from ammunition.

(6) The home must be clean and free from accumulation of dirt, rubbish, or other health hazards.

(7) Any outdoor play area must be maintained free from hazards such as wells and machinery. If any part of the play area is adjacent to a highway, drainage ditch, holes, or other hazardous areas, the play area must be enclosed with fencing or natural barriers to restrict children from these areas.

(8) Toys and objects with a diameter of less than 1 inch (2.5 centimeters), objects with removable parts that have a diameter of less than 1 inch (2.5 centimeters), plastic bags, and styrofoam objects must not be accessible to children who are still placing objects in their mouths.

(9) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions.

9. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

10. The rule proposed to be adopted provides as follows:

RULE V FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS (1) Each home must have hot and cold running water with at least one toilet provided with toilet paper and one sink provided with soap and towels.

(2) Each facility must have a telephone. Those facilities which have an unlisted number must make this number available to the parent(s) and emergency contact persons of the children in care, and the appropriate regional or district offices of the department.

(3) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

11. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

12. The rule proposed to be adopted provides as follows:

RULE VI FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS

(1) The provider or other person at least 18 years of age shall be on the premises at all times children are in care.

(2) Providers shall not use any form of physical punishment, including spanking.

13. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

14. The rule proposed to be adopted provides as follows:

RULE VII FAMILY DAY CARE HOMES, HEALTH CARE REQUIREMENTS

(1) All family members and other children residing in the facility under 12 years of age shall be immunized against diphtheria, polio, measles, and, if under 5 years of age, whooping cough. Any child with a history of measles is considered immunized. Such medical and immunization history will be recorded on forms provided by the department and on file.

(2) No child shall be admitted to a family day care or group day care home except in an emergency before obtaining from the parent the "Medical Record of Children Receiving Day Care" prescribed by the department stating that he is free from communicable disease and that he has been immunized or is in the process of being immunized against diphtheria, tetanus, polio, measles, and, if under five years of age, whooping cough. Any child with a history of measles is considered immunized. These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. Such medical records shall be on file at the home for each child.

(3) If a child becomes ill or is suspected of having a communicable disease while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

(4) All adults at the home shall not be in contact with the children in care whenever any contagious or infectious condition of their own exists or is suspected of existing.

(5) Standard Red Cross first aid supplies shall be kept on hand.

(6) Sewage disposal: An adequate and safe sewerage system shall be provided.

(7) Garbage storage and disposal.

(a) Garbage cans shall be provided in sufficient number and capacity to store all refuse between collections and shall be corrosion resistant, fly tight, watertight, and rodent proof with lids.

(b) Kitchen garbage containers must have lids or be stored in an enclosed area.

(8) Food services.

(a) All food shall be transported, stored, covered, prepared and served in a sanitary manner to prevent contamination.

(b) Milk and other dairy products shall be pasteurized.

(c) Home canned foods of low acid content are prohibited. (Example: Foods that require pressure canning).

(d) Perishable foods shall be kept at temperatures above 140° F or below 45° F.

(e) No persons with boils, infected wounds, respiratory diseases or other communicable diseases shall handle food or food utensils.

(f) Hands shall be washed with warm water and soap before handling of food.

(g) All food utensils shall be properly washed and rinsed after each usage.

(h) Single service utensils may only be used once.

15. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

16. The rule proposed to be adopted provides as follows:

RULE VIII FAMILY DAY CARE HOMES, TRANSPORTATION

(1) The provider shall obtain written consent from the parent(s) for any transportation provided as stated on day care contract.

(2) The operator of the vehicle shall be at least 18 years of age and possess a valid driver's license.

(3) All doors on vehicles must be locked whenever the vehicle is in motion.

(4) No vehicle shall begin moving until all children are seated and secured in age appropriate safety restraints, which must remain fastened at all times the vehicle is in motion.

(5) Children shall never be left unattended in a vehicle.

(6) The back of pickup trucks must not be used to transport children.

17. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

18. The rule proposed to be adopted provides as follows:

RULE IX FAMILY DAY CARE HOMES, DROP-IN CARE (1) Drop-in care program.

(a) All regulations for full time care apply for drop-in care.

(b) No more than a two hour overlap period of more than the number of children for which a facility is registered. This is to allow the home to care for children during after school hours. At no time during the hours of drop-in shall the number of children in a family day care home exceed eight.

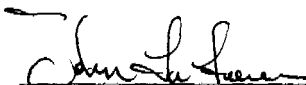
19. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

20. These rules are proposed due to the passage of HB 646 (Sections 53-4-501 et seq.) which instructed the department to promulgate rules for family day care centers along

suggested guidelines. Prior to this time, there have been no rules governing day care facilities caring for less than seven children. The proposed rules are intended to be minimal standards for insuring the health and safety of children in family day care homes.

21. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than March 12, 1982.

22. 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 February 1, 1982.

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING
of rules pertaining to group) ON PROPOSED ADOPTION OF
day care home program re-) RULES PERTAINING TO GROUP
quirements) DAY CARE HOMES

TO: All Interested Persons

1. On March 4, 1982, at 10:30 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 adoption of rules pertaining to group day care home program requirements.

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

RULE I GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care provider's absence must be at least 18 years of age.

(2) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a family day care home and group day care home.

(3) The provider shall have experience in the care and supervision of children.

(4) Family relatives in the day care home shall assure a safe and stable environment for the child.

(5) Personal information about the child or his family must be kept confidential.

(6) The provider shall attend a basic day care orientation or its equivalent within the first year of certification.

(7) It is strongly recommended that the provider have training in cardio-pulmonary resuscitation or multi-media first aid and be familiar with standard Red Cross first aid procedure.

3. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

4. The rule proposed to be adopted provides as follows:

RULE II GROUP DAY CARE HOMES, BUILDING REQUIREMENTS

(1) The day care home must have a minimum of 35 square feet of usable space per child.

(2) All areas used for day care purposes must have at least one door for egress of not less than 24 inches wide and a minimum of one other means of egress with a minimum of 5.7 square feet of full clear opening. All exits must be unobstructed at all times.

(3) Basements, if in use, must be dry, well ventilated, warm and well lighted.

(4) All rooms used for napping by children must have at least one window which can be readily used for rescue and ventilation.

(5) Third stories in dwellings must not be used for day care purposes and must be barricaded or locked to prevent entry by children.

(6) Doorways and stairs must be clear of any obstruction.

(7) Every closet door must be such that children can open the door from the inside.

(8) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency and the opening device must be readily accessible to the provider.

(9) Protective receptacle covers must be installed on electrical outlets in all areas occupied by children under five years of age.

(10) Maintenance: A maintenance program shall be provided to maintain the home and grounds used by children to ensure the following:

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are easily cleanable;

(c) the building and grounds are free of harborage for insects, rodents and other vermin;

(d) no paint containing lead in excess of .06% shall be used.

5. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

6. The rule proposed to be adopted provides as follows:

RULE III GROUP DAY CARE HOMES, FIRE SAFETY REQUIREMENTS

(1) If the sleeping room is on the second story, there must be a plan to rescue children if the stairway is blocked. A UL approved smoke detector, which is properly maintained and regularly tested, must be located on the second floor and basement, if they are being used for day care.

(2) A portable fire extinguisher with a minimum rating of 2A10BC is required. Extinguishers must be readily accessible at all times.

(3) Mobile homes must meet all criteria plus:

(a) smoke detecting devices near all sleeping areas;

(b) exit doors which open by turning knob.

(4) All wood burning stoves must be properly installed and inspected by the local fire marshal. They must be protected by a guard railing of a noncombustible material if used during the hours of care.

(5) No portable electric or unvented fuel-fired heating devices are allowed. All radiators, if too hot to touch, must be provided with protective enclosure.

(6) No stove or combustion heater will be so located as to block escape in case of malfunctioning of the stove or heater.

7. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

8. The rule proposed to be adopted provides as follows:

RULE IV GROUP DAY CARE HOMES, SAFETY REQUIREMENTS

(1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(2) All medication must be kept in a place inaccessible to children, in their original containers, labeled with the original prescription label.

(3) No extension cord will be used as permanent wiring and all appliance and lamp cords must be suitably protected to prevent pulling or chewing by children.

(4) Any pet or animal, present at the home, indoors or outdoors with the provider's permission, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider must make reasonable efforts to keep stray animals off the premises.

(5) Guns and ammunition must be kept in locked storage or out of the reach of children and with guns stored separate from ammunition.

(6) The home must be clean, reasonably neat, and free from accumulation of dirt, play rubbish, or other health hazards.

(7) Any outdoor play area used regularly must be adjacent to the day care home with 75 square feet of play space per child. It must be maintained free from hazards such as wells and machinery. If any part of the play area is adjacent to a highway, drainage ditch, holes, or other hazardous areas, the play area must be enclosed with fencing or natural barriers to restrict children from these areas.

(8) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders

on slides, and must be kept in good repair and well maintained.

(9) Toys and objects with a diameter of less than 1 inch (2.5 centimeters), objects with removable parts that have a diameter of less than 1 inch (2.5 centimeters), plastic bags, and styrofoam objects must not be accessible to children who are still placing objects in their mouths.

(10) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions.

9. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

10. The rule proposed to be adopted provides as follows:

RULE V GROUP DAY CARE HOMES, OTHER FACILITY REQUIREMENTS

(1) Each home must have hot and cold running water with at least one toilet provided with toilet paper and one sink provided with soap and towels.

(2) Each facility must have a telephone. Those facilities which have an unlisted number must make this number available to the parent(s) and emergency contact persons of the children in care, and the appropriate regional or district offices of the department.

(3) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

(4) No provider shall actively operate another business in the facility during the time the children are present for day care services.

11. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

12. The rule proposed to be adopted provides as follows:

RULE VI GROUP DAY CARE HOMES, EQUIPMENT

(1) Play equipment.

(a) Play equipment and materials must be provided that are appropriate to the developmental needs, individual interests, and ages of the children. There must be a sufficient amount of play equipment and materials so that there is not excessive competition and long waits.

(b) Play equipment and materials must include items from each of the following six categories: dramatic role playing, cognitive development, visual development, auditory development, tactile development and large-muscle development.

(2) Physical equipment.

(a) High chairs, when used, must have a wide base and a safety strap.

(b) Each child, except school-age children who do not take naps, shall have clean, age-appropriate rest equipment, such as a crib, cot, bed or mat. Seasonably appropriate top and bottom covering, such as sheets or blankets, must be provided.

13. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

14. The rule proposed to be adopted provides as follows:

RULE VII GROUP DAY CARE HOMES, PROGRAM REQUIREMENTS

(1) A plan of daily activities and routines, in addition to free play, must be established. The plan must be flexible to accommodate the ages and needs of individual children and the group as a whole. It is designed with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest.

(2) The family day care or group day care provider:

(a) will include activities which foster sound social, intellectual, emotional and physical growth;

(b) offers children opportunities for individual and small group activities;

(c) offers time and opportunity for creative experiences through art, music, books and stories, and dramatic play;

(d) offers outdoor play each day except when precluded by severity of weather.

(3) Supervision of children.

(a) The provider or someone at least 18 years of age shall be on the premises at all times children are in care.

(b) Providers shall not use any form of physical punishment, including spanking.

(c) Television watching during the hours children are in care shall be limited to child-appropriate programs.

15. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

16. The rule proposed to be adopted provides as follows:

RULE VIII GROUP DAY CARE HOMES, HEALTH CARE REQUIREMENTS

(1) All family members and other children residing in the facility under 12 years of age shall be immunized against diphtheria, polio, measles, and, if under 5 years of age, whooping cough. Any child with a history of measles is considered immunized. Such medical and immunization history will be recorded on forms provided by the department and on file.

(2) No child shall be admitted to a family day care or group day care home except in an emergency before obtaining from the parent the "Medical Record of Children Receiving Day Care" prescribed by the department stating that he is free from communicable disease and that he has been immunized or is in the process of being immunized against diphtheria, tetanus, polio, measles, and, if under five years of age, whooping cough. Any child with a history of measles is considered immunized. These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. Such medical records shall be on file at the home for each child.

(3) The name of the physician they wish called for their child and a release authorizing the provider to call said physician in case of an emergency will be obtained from the parent(s) of each child admitted.

(4) If a child becomes ill or is suspected of having a communicable disease while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

(5) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If it is a suspected communicable disease, the provider shall so inform the health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that his return will not harm him or the other children. Disease charts that identify the reportable diseases are available from the health department.

(6) All adults at the home shall not be in contact with the children in care whenever any contagious or infectious condition of their own exists or is suspected of existing.

(7) Each provider shall develop policies for first aid. These policies must include directions for calling parents or someone else designated as responsible for the child when a child is sick or injured.

(8) Standard Red Cross first aid supplies shall be kept on hand.

(9) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.

(10) All new children shall be accompanied to the toilet, taught to use it and flush it, and to wash hands after using the toilet, and before eating. Young children should have help in toileting.

(11) Water supply.

(a) When a municipal system is not available, a private system may be developed and used as approved by the state or local health department. Testing must be conducted at least

annually by a certified lab to ensure that the water supply remains safe.

(b) Sanitary drinking facilities shall be provided by means of disposable single-use cups, fountains of approved design, or separate, labeled or colored glasses for each child.

(12) Sewage disposal: An adequate and safe sewerage system shall be provided.

(13) Garbage storage and disposal.

(a) Garbage cans shall be provided in sufficient number and capacity to store all refuse between collections and shall be corrosion resistant, fly tight, watertight, and rodent proof with lids.

(b) Kitchen garbage containers must have lids or be stored in an enclosed area.

(14) Food services.

(a) All food shall be from an approved source and shall be transported, stored, covered, prepared and served in a sanitary manner to prevent contamination.

(b) Milk and other dairy products shall be pasteurized.

(c) Home canned foods of low acid content are prohibited. (Example: Foods that require pressure canning.)

(d) Perishable foods shall be kept at temperatures above 140° F or below 45° F.

(e) No persons with boils, infected wounds, respiratory diseases or other communicable diseases shall handle food or food utensils.

(f) Hands shall be washed with warm water and soap before handling of food.

(g) All food utensils shall be properly washed and rinsed after each usage. A domestic style dishwasher may be used if equipped with a heating element.

(h) Single service utensils may only be used once.

(15) Laundry.

(a) Folding of clean laundry must not take place on the same work surface used for sorting dirty laundry.

(b) Bedding shall be laundered when necessary and aired out periodically to prevent mildew.

17. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

18. The rule proposed to be adopted provides as follows:

RULE IX GROUP DAY CARE HOMES, SWIMMING (1) Children may not be allowed to use a swimming pool, as defined in ARM 16.10.1201, unless it and the surrounding area are constructed and operated in accordance with department of health and environmental sciences ARM 16.10.1207.

(2) Inflatable wading pools, if used, must be drained, cleaned, sanitized and refilled with fresh water at least daily.

(3) All inground swimming pools located in the outdoor play space area or accessible to children must be fenced with a locked gate. When children are swimming, supervision must include at all times at least 1 person certified in Red Cross advanced life saving or an equivalent certificate by a recognized agency.

19. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

20. The rule proposed to be adopted provides as follows:

RULE X GROUP DAY CARE HOMES, NUTRITION (1) Nutritious meals and snacks must be provided to children in such quality and quantity to meet the national research council recommended dietary allowances for children of each age. Minimum nutritional requirements, age appropriate, will be supplied to the provider by the state or county health department.

(2) Special diet orders must be submitted in writing by parents.

(3) For the child requiring a rigid diet, food shall be brought from home and labeled clearly.

(4) Menu plans shall be available to parent upon request.

(5) A record of food served shall be kept on file for at least one month.

(6) Meal and snack service to children and the preparation of food by children shall be carefully supervised.

(7) Drinking water shall be available to children and offered at frequent intervals.

(8) Proper methods of handling, preparing, and serving food in a safe and sanitary manner shall be clearly understood by the provider.

21. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

22. The rule proposed to be adopted provides as follows:

RULE XI GROUP DAY CARE HOMES, TRANSPORTATION (1) The provider shall obtain written consent from the parent(s) for any transportation provided as stated on day care contract.

(2) The operator of the vehicle shall be at least 18 years of age and possess a valid driver's license.

(3) All doors on vehicles must be locked whenever the vehicle is in motion.

(4) No vehicle shall begin moving until all children are seated and secured in age appropriate safety restraints, which must remain fastened at all times the vehicle is in motion.

(5) Children shall never be left unattended in a vehicle.

(6) The back of pickup trucks must not be used to transport children.

23. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

24. The rule proposed to be adopted provides as follows:

RULE XII GROUP DAY CARE HOMES, SPECIAL PROGRAM REQUIREMENTS

(1) Night care program. The following requirements apply only to night care programs and are in addition to all other requirements contained in these rules except, an outdoor play area is not required, outdoor play is not required, and only a bedtime snack need be provided.

(a) Appropriately timed nutritional snacks must be provided to children in attendance for more than 2½ hours prior to bedtime.

(b) Bedtime schedules must be established for children in consultation with the child's parent(s).

(c) Evening quiet time activity such as story-time, games, art and craft activities, and reading must be provided to each child.

(d) Each child shall have individual, clean, comfortable sleeping garments.

(e) There must be at least 1 bathtub or shower. Bathtubs and showers must be equipped to prevent slipping.

(f) Children under 6 years of age will be supervised while in the bathtub or shower.

(2) Drop-in care program.

(a) All regulations for full time care apply for drop-in care.

(b) No more than a two hour overlap period of more than the number of children for which a facility is registered. This is to allow the home to care for children during after school hours. At no time during the hours of drop-in shall the number of children in a group day care home exceed sixteen.

25. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

26. The rule proposed to be adopted provides as follows:

RULE XIII GROUP DAY CARE HOMES, APPLICATION AND ADMISSION

(1) The parent shall be informed about the activities, hours of care, fees, policies, responsibilities for meals, clothing, health policies and supervision, transportation and pick up arrangements.

(2) Expectations of the parent.

(a) The parent shall be given the day care contract by the provider which shall be completed and returned to the provider prior to caring for the child.

(b) The parent shall be given a copy of the day care regulations by the provider which shall be in the form of a parent handbook.

(c) A daily attendance record shall be kept by the provider.

27. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

28. The rule proposed to be adopted provides as follows:

RULE XIV GROUP DAY CARE HOMES, ADDITIONAL REQUIREMENTS

(1) Provider/child ratio.

(a) There shall be at least two caregivers caring for the children at all times when there are more than six children present at the home.

(b) There shall be no more than six infants in a group day care home at any one time.

(2) Program for children.

(a) A written plan of daily activities and routines, in addition to free play, shall be established. The plan must be flexible to accommodate the needs of individual children and the group as a whole.

(3) Parent involvement.

(a) The provider shall provide opportunities for the parent(s) to participate in activity planning and individual meetings. In cases where the parents cannot or will not participate, documentation of written notification of meetings and activities must be placed in the child's records.


29. The authority of the agency to adopt the rule is based on Section 53-4-503, MCA, and the rule implements Section 53-4-504, MCA.

30. These rules are proposed to be adopted due to the passage of HB 646 (Sections 53-4-501 et seq.) passed by the 47th Legislature which created a new type facility, the group day care home, and implemented registration in lieu of licensing for group day care homes. Because of the new provisions in HB 646 and the fact rules have not been revised since 1965, the 47th Legislature anticipated new rules would

be promulgated and so state in the Statement of Intent for HB 646. Previously, facilities with more than six children were governed by day care center standards. These proposed rules for facilities caring for from seven to ten children are intended to be no more strict than previous rules, are more understandable and comply with the guidelines for standards set out in Section 53-4-504, MCA.

31. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than March 12, 1982.

32. 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 February 1 _____, 1982.

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

In the matter of the amend-) NOTICE OF PUBLIC HEARING
ment of Rules 46.12.1201,) ON PROPOSED AMENDMENT OF
46.12.1202, 46.12.1203 and) RULES 46.12.1201,
46.12.1204 pertaining to the) 46.12.1202, 46.12.1203 AND
reimbursement for skilled) 46.12.1204 PERTAINING TO
nursing and intermediate care) THE REIMBURSEMENT FOR
services, reimbursement) SKILLED NURSING AND INTER-
method and procedures) MEDIATE CARE SERVICES,
) REIMBURSEMENT METHOD AND
) PROCEDURES

TO: All Interested Persons

1. On March 3, 1982, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.12.1201, 46.12.1202, 46.12.1203 and 46.12.1204 pertaining to the reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures.

2. Rule 46.12.1201 proposed to be amended provides as follows:

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE APRIL 1, 1979 (1) The rules in effect between April 1, 1979 and December 31, 1980 provide for determining a prospective rate based on prior fiscal year's costs. Those rules further provide for determining rates under an alternative rate review process.

(2) A facility which has entered into an agreement for rate review prior to December 31, 1980, will continue under that agreement for the period covered by the agreement. A facility which has not requested a rate review by December 31, 1980, shall receive a rate determined under the rules that follow.

(3) These rules shall be effective ~~January 1, 1981~~
April 1, 1982.

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

4. Rule 46.12.1202 proposed to be amended provides as follows:

46.12.1202 PURPOSE AND DEFINITIONS (1) ~~Reasonable cost-related reimbursement for skilled nursing and intermediate care facility services is mandated by section 249 of Public Law 92-603, the 1973 amendment to the Social Security~~

3-2/11/82

MAR Notice No. 46-2-326

Act. In accordance with section 1902(a) (13) (E) of the Social Security Act, payment for skilled and intermediate nursing care services shall be made through the use of rates which the state determines are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care in conformity with applicable state and federal statutes, regulations, and standards.

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

(b) The rates determined under the following rules exclude costs estimated to be in excess of those necessary in the efficient delivery of needed health services, but shall not be set lower than the level which the department reasonably finds to be adequate to reimburse in full actual allowable costs of a provider operating economically and efficiently and having no deficiencies which would result in decertification. A provider will be defined to be operating efficiently if he is a prudent and cost conscious buyer. A prudent and cost conscious buyer not only refuses to pay more than the going price for a service or item, he also seeks to minimize costs. The department defines a provider to be operating economically if the actual allowable costs for a rate year have increased from the applicable prior fiscal year at a rate which is no more than the rate of change in the trend factor (see ARM 46.12.1204(3)(d)) for the same period. The department defines a provider to have no deficiencies if that provider holds a current certification for participation in the medicaid program issued by the Montana department of health and environmental sciences.

(c) The rules for determining rates and the rate setting methodology may be amended or revised from time to time, but such amendments or revisions will become effective only after members of the public have had adequate opportunity to review and comment according to procedures established under Montana state law.

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

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

(a) "CPI" means the consumer price index for all urban consumers published monthly by the bureau of labor statistics, U.S. department of labor. CPI-all means the all items figure. CPI-food means the food at home item. CPI-other means the CPI all items figure excluding the food item and the shelter item.

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

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

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

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

(f) "Routine nursing care services" means skilled or intermediate nursing care as defined in rules for nursing home care in ARM 46.12.1103 and 46.12.1104.

(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.

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

(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.

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

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

(i) An individual or entity shall be deemed a related party to his spouse, ancestors, descendants, brothers and sisters, or the spouses of any of the above, and also to any corporation, partnership, estate, trust, or other entity in

which he or a related party has a substantial interest or in which there is common ownership.

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

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

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

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

(l) "Fiscal year" and "fiscal reporting period" both mean the facility'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.

(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.

(u) 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~~ October 31, 1981.

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

6. Rule 46.12.1203 proposed to be amended provides as follows:

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

(1) maintain a current license under the rules of the department of health and environmental sciences for the category of care being provided;

(2) maintain a current certification for Montana medicaid under the rules of the department for the category of care being provided;

(3) maintain a current agreement with the department to provide the care for which payment is being made;

(4) have a licensed nursing home administrator or other qualified supervisor for the facility as statutes or regulations may require; and

(5) accept, as payment in full for all operating and property costs, the amounts calculated and paid in accordance with the reimbursement method set forth in these rules; and

(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 has given written delegation. A provider may not borrow funds from these accounts for any purpose.

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

8. Rule 46.12.1204 proposed to be amended provides as follows:

46.12.1204 REIMBURSEMENT METHOD AND PROCEDURES (1) Reimbursement is the amount the department pays for routine nursing home services provided to a medicaid patient. Reimbursement for the rate year is determined by multiplying the retrospective rate times medicaid patient days and deducting therefrom the amount each patient participates in the cost of care. During the rate year, an interim rate shall be the basis for determining the estimated payment for each month. At the close of the rate year, the department shall reconcile the amount paid on the interim basis with the reimbursement due according to ARM 46.12.1204(3). Overpayments will be recovered in accordance with ARM 46.12.1205(8).

(2) The interim rate shall be determined as follows unless a provider enters into an agreement for rate review according to rule ARM 46.12.1204(7). The interim rate shall be announced no later than the beginning of the rate year and shall be in effect for the provider's fiscal year. Interim rates are subject to private pay limitations (see ARM 46.12.1204(3)(f)), a maximum reimbursable operating cost (see ARM 46.12.1204(3)(c)), and property cost limitations (see ARM 46.12.1204(5)(c)).

(a) The interim rate for each facility is the sum of its cost per day (see ARM 46.12.1204(3)(e)), a trend factor (see ARM 46.12.1204(3)(d)), an adjustment for property cost increases (see ARM 46.12.1204(2)(b)), and an estimation of the performance incentive factor, if applicable (see ARM 46.12.1204(3)(b)(i)).

(b) An adjustment for property cost increases shall be made for property cost increases incurred after the fiscal year covered in the cost report used to determine cost per day in ARM 46.12.1204(3)(e). However, such property cost increases shall be subject to limits on allowable costs as set forth in ARM 46.12.1204(5). Those increases must have been approved through the certificate of need process and must be related to routine nursing care services. Cost per day in ARM 46.12.1204(3)(e) shall be adjusted accordingly.

(c) In calculating the interim rate the department will include an estimate of the performance incentive factor as derived in ARM 46.12.1204(3)(b)(i). For the purpose of making this estimate, the allowable costs from the applicable prior fiscal year as adjusted by a trend factor (see ARM 46.12.1204(3)(d)) shall be used in determining the amount of the performance incentive factor. The department will reconcile this estimated performance incentive factor with the actual allowable performance incentive factor upon audit of the cost report for the rate year.

(d) New facilities participating for the first time in the program will be given an initial interim rate based on an evaluation of a budget and a staffing pattern report submitted on forms provided by the department. The budget will be evaluated in terms of rates currently in effect for similar size facilities participating in the program. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate for similar size facilities. Once the provider has provided the department with a twelve month cost report acceptable for use in determining interim rates, submission of budgets for rate determination will no longer be required.

(e) A new provider, who by reason of his purchasing or leasing of a facility which is currently participating in the

program, will be given an initial interim rate based on an evaluation of a budget and a staffing pattern report submitted on a form provided by the department. The budget will be evaluated in terms of rates in effect for the prior provider. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate as the prior provider. Once the new provider has provided the department with a twelve month cost report acceptable for use in determining interim rates, submission of budgets for the rate determination will no longer be required.

(3) Retrospective Rate. The retrospective rate shall be issued upon audit of a cost report for the rate year and shall be determined as follows:

(a) The retrospective rate for all facilities shall be the lesser of the actual allowable costs per day experienced during the provider's rate year plus a performance incentive factor (see ARM 46.12.1204(3)(b)(i)) or the actual allowable cost from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d) plus a performance incentive factor (see ARM 46.12.1204(3)(b)).

(i) To the extent that an interim rate is based on a cost report which did not include return on net invested equity as an allowable cost, the interim rate shall be adjusted to allow for the inclusion of this cost when necessary in calculating the retrospective rate.

(b) The performance incentive factor is the amount which is included in a provider's retrospectively determined rate if the provider meets the department's definition of cost containment. A facility shall have met the definition of cost containment if its operating cost per day is less than the maximum reimbursable operating cost per day as defined in ARM 46.12.1204(3)(c) and if the facility has been operated economically as defined in 46.12.1202(1).

(i) The performance incentive factor to be included in the retrospectively determined rate of a provider which has operated economically (see ARM 46.12.1202(1)) is determined by the relationship of its allowable operating cost per day in the rate year to the allowable operating costs per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)). A facility with operating costs per day which are equal to or less than the 66th percentile of all reported operating costs plus the applicable trend factor shall receive a performance incentive factor of \$1.50 per patient day. A facility with operating costs per day which fall between the 66th percentile and the 76th percentile of all reported operating costs per day plus the applicable trend factor shall receive a performance incentive factor of

\$1.00 per patient day. A facility with operating costs per day which are equal to or greater than the 76th percentile of all reported operating costs per day plus the applicable trend factor, but which are less than the maximum reimbursable cost per day, shall receive a performance incentive factor of \$0.50 per patient day.

(ii) The performance incentive factor to be included in the retrospectively determined rate of a provider which has not operated economically (see ARM 46.12.1202(1)) is determined by the relationship of its allowable operating cost per day in the rate year to the allowable operating cost per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204 (3)(d)) and by the relationship of its allowable operating cost per day of the rate year to its allowable operating cost per day of the applicable prior fiscal year plus a trend factor. The maximum performance incentive factor for this provider will be determined under the method indicated in ARM 46.12.1204(3)(b)(i), however, this maximum performance incentive factor shall be adjusted by subtracting from it twice the difference between the allowable operating cost per day for the rate year and the allowable cost per day from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)). The amount of the adjustment shall not exceed the maximum performance incentive factor. Any amounts overpaid by the department under this section shall be recovered by the department in accordance with ARM 46.12.1205 (8)(b) through (g).

(iii) An estimation of the performance incentive factor includable in the retrospective rate shall be included in the interim rate except where a provider requests that the rate not include the performance incentive factor. The amount of estimated performance incentive factor to be included in the interim rate will be determined by the relationship of a provider's allowable operating cost per day from the applicable prior fiscal year to the allowable operating cost per day of all participating Montana facilities for the same period. The amount of performance incentive to be included in the interim rate will be determined through the method set forth in 46.12.1204.3(b)(i).

(c) The maximum reimbursable operating cost per day is the operating cost which is the 90th percentile operating cost of all Montana facilities participating in the program in the applicable prior fiscal year plus the applicable trend factor (see ARM 46.12.1204(3)(d)). For rates effective January 1, 1981, the 90th percentile cost shall be derived from all audited cost reports submitted for fiscal years ending in 1979. Subsequent 90th percentile costs shall be derived from cost reports with ending dates no more than two years prior to the beginning of the rate year.

(d) The trend factor is the amount which is added to the cost per day from the applicable prior fiscal year to account for the effects of inflation on operating costs in the rate year. The trend factor is determined by multiplying the indicator of inflation times the operating cost per day for the applicable prior fiscal year. The indicator of inflation is the sum of 10 percent of the change in CPI-food, 19 percent of the change in CPI-other, and 71 percent of the change in the labor index. These indexes are further defined in ARM 46.12.1202. The change in these indexes is the percentage change between the midpoint of the applicable prior fiscal year and the midpoint of the rate year.

(i) Interim Rate. For the purpose of determining the trend factor to be included in the interim rate, the percentage change in the indexes between the midpoint of the applicable prior period and the midpoint of the rate year will be extrapolated from the most currently available data on each index.

(ii) Retrospective Rate. For the purpose of determining the trend factor to be included in the retrospective rate, the actual percentage change in the indexes from the midpoint of the applicable prior fiscal year to the midpoint of the rate year will be used unless the percentage change determined according to ARM 46.12.1204(3)(d)(i) is higher. If the trend factor determined in ARM 46.12.1204(3)(d)(i) is higher, then the trend factor for the retrospective rate will be the trend factor used in determining the interim rate.

(e) Cost per day is the allowable cost for a facility as determined by ARM 46.12.1204(5) divided by related total patient days.

(i) A facility's cost per day for the initial interim rate shall be computed utilizing the most recent audited cost report of the facility for a fiscal year ending on or before December 31, 1979. Costs shall not be taken from cost reports which are submitted more than two years prior to the rate year for the purpose of computing an interim rate.

(ii) Each facility's cost per day for the retrospectively determined allowable costs will be taken from the cost report for the rate year for which the applicable interim rate was issued.

(iii) If a facility has increased its bed capacity with newly licensed beds on or after January 1, 1981 and if the facility has an occupancy rate which is less than 90 percent of capacity, then an adjusted occupancy rate shall be used in determining cost per day. The adjusted occupancy rate will be calculated as the actual occupancy plus 50 percent of the difference between 90 percent occupancy and the actual occupancy.

(iv) Facilities which have not increased bed capacity on or after January 1, 1981 shall have an occupancy adjustment

if the occupancy rate for the facility is less than 50 percent of capacity. The property cost of these facilities will be computed based on 50 percent of capacity. Operating costs will be determined based on actual occupancy.

(f) The rate for any facility shall not exceed private pay limitations, except that a state or county facility charging nominally is not subject to private pay limitations. The weighted average charges for similar nursing care services to private pay patients in effect during a rate year shall be used in determining whether the rate is limited or not. The provider shall be responsible for informing the department's fiscal intermediary immediately if the rate exceeds the private pay rate.

(4) Intermediate Care Facilities for the Mentally Retarded. If a facility is certified to provide care for patients under federal and state ICF/MR regulations, then the retrospective rate for the facility shall be determined according to ARM 46.12.1204(3) with the following exception.

(a) Actual allowable costs shall be determined in two parts.

(i) Part one costs will be those costs associated with routine nursing care for intermediate care patients.

(ii) Part two costs will be those costs associated with services required by and provided to mentally retarded patients incremental to routine nursing care of intermediate care patients. Such incremental services are defined in 42 CFR, Part 442, Subpart G, Sections 411, 456-464 472, 475, 477 and 489 which are federal regulations setting forth standards for intermediate care facilities for the mentally retarded, and which regulations the department hereby adopts and incorporates herein by reference. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Providers must be able to document in a manner acceptable to the department the method of determining those incremental costs for the purpose of cost reporting.

(iii) The allowable operating costs determined in ARM 46.12.1204(4)(a)(i) shall be the only costs limited to the maximum allowable operating cost per day (see ARM 46.12.1204(3)(c)). In addition, those costs shall be the only allowable operating costs used in determining the performance incentive factor (see ARM 46.12.1204(3)(b)(i)).

(b) The interim rate will be issued according to ARM 46.12.1204(2) except that there will be one interim rate issued for skilled and intermediate care patients served by the provider and another interim rate issued for ICF/MR patients. The basis for these interim rates will be allowable costs from the applicable prior fiscal year as determined in ARM 46.12.1204(3)(e).

(5) Allowable Cost. Allowable costs for cost reports with ending dates before January 1, 1981 shall be determined

according to the rules for allowable costs then in effect. The department hereby adopts and incorporates herein by reference the health insurance manual HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the health insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Allowable costs for cost reports with ending dates subsequent to January 1, 1981, will be determined in accordance with HIM 15 subject to the exceptions and clarifications herein provided, including the following:

(a) Return on net invested equity will be an allowable cost for the profit facilities.

(b) Cost incurred in the provision of routine nursing care services to the extent such costs are reasonable and necessary are allowable. Routine services include a regular medically necessary room, dietary services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of routine nursing care services are:

(i) all general nursing services including but not limited to administration of oxygen and related medications, hand-feeding, incontinent care, trav service, and enemas;

(ii) items furnished routinely and relatively uniformly to all patients without charge, such as patient gowns, water pitchers, basins and bed pans;

(iii) items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities without charge, such as alcohol, applicators, cotton balls, band-aids, antacids, aspirin (and other non-legend drugs ordinarily kept on hand), suppositories, and tongue depressors;

(iv) items which are used by individual patients which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(v) special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet; and

(vi) laundry services whether provided by the facility or by a hired firm, except for patients' personal clothing which is dry cleaned outside of the facility.

(c) Allowable property costs shall be limited in the following manner:

(i) The capitalized cost of a facility including the building, leasehold improvements, and fixed equipment shall not exceed the indexed cost per bed of the most recently

newly constructed entire facility participating in the Medicaid program which was licensed due to new construction prior to March 31, 1982, and approved according to the certificate of need process prior to March 31, 1982. The basis for indexing the cost per bed of this newly constructed facility shall be the index for construction costs as prepared by marshall valuation service. The indexing period shall be from the year of construction to the rate year using section 98 of the marshall valuation service, western region index for a class B building.

(ii) The capitalized cost of movable equipment shall not exceed the fair market value of the asset at the time of acquisition.

(iii) Property related interest, whether actual interest or imputed interest for capitalized leases, shall not exceed the interest rates available to commercial borrowers from established lending institutions at the date of asset acquisition or at the inception of a lease.

~~(iv)--leases shall be capitalized according to generally accepted accounting principles-- Noncapitalized lease costs shall not exceed the sum of the cost per bed as determined according to ARM-46.12.1204(5)(c)(i) plus the applicable interest as determined according to ARM-46.12.1204(5)(e)(iii)~~

(iv) For all leases entered into, assigned, or renewed after April 1, 1982, the allowable lease cost will be determined as though the lessor and lessee are one and the same. The basis for depreciation will be the historical cost of the asset to the lessor adjusted for accumulated depreciation. If historical cost records are not available, an acceptable appraisal for establishing the historical cost must be supplied. Historical cost shall be determined from an appraisal by establishing current replacement cost indexed using section 98 of the marshall valuation service, western region index for a class B building, back to the date of original construction. To the extent that the lessor can supply acceptable documentation of other allowable costs incurred by the lessor and directly associated with the leased assets, these costs will be included in the basis for determining allowable lease costs.

(v) For all leases originally entered into on or prior to April 1, 1982, not to include renewals or assignments, the allowable lease cost will be determined as stated in ARM 46.12.1204(5)(c)(iv) except that in addition to the allowable property costs of the lessor, the allowable lease cost may include a return on equity to the lessor. The percentage rate of return on equity shall not exceed one and one-half times the average of the rates of interest on special issues of public debt obligations issued to the federal hospital insurance trust fund for each of the months during the provider's fiscal year. The percentage rate is determined by

the health care financing agency of the United States department of health and human services.

(v) (vi) Depreciation of real property, but not movable equipment, reported in cost report periods with beginning dates on or after January 1, 1981, shall be based on estimated economic useful lives which have been established by an acceptable appraisal prepared by an appraisal expert as defined in HIM 15 which has been incorporated by reference into this rule (see ARM 46.12.1204(5)). A copy of the appraisal must accompany the cost report. The cost of the original appraisal to determine economic useful life shall be an allowable cost, but the cost of an appraisal to determine the value of assets shall not be an allowable cost.

(d) Administrators' compensation:

(i) Administrators' compensation is limited to the amounts allowed according to HIM 15 which has been incorporated by reference into this rule (see ARM 46.12.1204(5)).

(ii) Administrators' compensation and the reporting of administrators' compensation shall include:

(A) salary amounts paid to the administrator for managerial, administrative, professional and other services;

(B) employee benefits excluding employer contributions required by state or federal law--FICA, WCI, FUI, SUI. For a self-employed administrator, an amount equal to what would have been the employer's contribution for FICA and WCI may be excluded from such employee benefits;

(C) deferred compensation either accrued or paid;

(D) supplies, services, special merchandise, and the cost of assets paid or provided for the personal use or benefit of the administrator;

(E) wages of a domestic or other employee who works in the home of the administrator;

(F) personal use of a car owned by business;

(G) personal life, health, or disability insurance premium paid;

(H) a portion of the physical plant occupied as a personal residence;

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

(e) Employee benefits:

(i) Employee benefits are defined as amounts paid to or on behalf of an employee, in addition to direct salary or wages, and from which the employee or his beneficiary derives a personal benefit before or after the employee's retirement or death.

(ii) All employer contributions which are required by state or federal law, including FICA, WCI, FUI, SUI are allowable employee benefits. In addition, employee benefits

which are uniformly applicable to all employees are allowable. A bona fide employee benefit must directly benefit the individual employee, and shall not directly benefit the owner, provider or related parties.

(iii) Costs of activities or facilities which are available to employees as a group, such as condominiums, swimming pools or other recreational activities, are not allowable.

(iv) For purposes of this subsection, an employee is one from whose salary or wages the employer is required to withhold FICA. Stockholders who are related parties to the corporate providers, officers of a corporate provider, and partners owning or operating a facility are not employees even if FICA is withheld for them.

(v) Paid vacation and sick leave shall be considered employee benefits to the extent that the facility has in effect a written policy which is uniformly applicable to all employees within a given class of employees, and paid vacation and sick leave are reasonable in amount.

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

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

(h) Dues, membership fees or subscriptions to organizations unrelated to the provider's provision of nursing care services are not allowable costs.

(i) Charges for services of a chaplain are not an allowable cost.

(j) Fees for management or professional services (e.g., management, legal, accounting or consulting services) are allowable to the extent they are identified to specific services, and the hourly rate charged is reasonable in amount. In lieu of compensation on the basis of an hourly rate, the provider may compensate for professional services on the basis of a reasonable retainer agreement which specifies in detail the services to be performed. Documentation that such services were in fact performed shall be provided by the provider. No cost in excess of the agreed upon retainer fee shall be allowed for services specified under the fee.

(k) Travel costs related to patient care are allowable to the extent that such costs are allowable under Sections 162 and 274 of the internal revenue codes and section 1.162-2 of the income tax regulations, which are federal statutes and regulations dealing with allowable travel expenses and transportation costs. The above-cited sections of the internal revenue code and income tax regulations are hereby adopted and incorporated herein by reference. A copy of the statutes and regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Vehicle operating costs will be pro-rated between business and personal use based on mileage

logs or a prior approved percentage derived from a sample mileage log or other method acceptable to the department. For vehicles used primarily by the administrator, any portion of vehicle costs disallowed on pro-ration shall be included as compensation subject to the limits specified in ARM 46.12.1204 (4)(d). Depreciation shall be allowed on a straight-line basis (subject to salvage value) with a minimum of 3 years. Depreciation and interest or comparable lease costs may not exceed \$2,400 per year. Other reasonable vehicle operating expenses will be allowed. Public transportation costs will be allowable at tourist or other available commercial rate (not first class).

(1) Purchases from related parties. Costs applicable to services, facilities and supplies furnished to a provider by parties related to that provider shall not exceed the lower of costs to the related party or the price of comparable services, facilities or supplies purchased elsewhere. Providers shall identify such related parties and costs in the annual cost report. The department hereby adopts and incorporates herein by reference 42 CFR 447.284(a) and (b), which is a federal regulation setting forth limits on costs of purchases from related organizations. A copy of the regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601.

(6) Ancillaries. Ancillary medical supplies and services are not allowable costs. The provider shall be paid for ancillary medical supplies and services in addition to the reimbursement rate determined by this rule provided that the ancillary medical supplies and services have been previously authorized by the Montana foundation for medical care to signify that the item is medically necessary and the bills for these items have the authorization on the face of the claim form. Payment for ancillary medical supplies and services are limited to the medical supplies and services needed to provide nursing care to patients who are required by doctor's orders to receive extraordinary care, and shall be the actual cost the provider incurred. The provider must maintain a separate cost center or centers for ancillary medical supplies and services. Revenues received from the department and/or patients for ancillary medical supplies or services are recoveries of cost and shall be deducted from the related cost when determining allowable cost. Any cost remaining after offsetting the related revenues must be eliminated from the cost report before determining allowable costs.

Ancillary medical supplies and services shall be billed by the provider licensed to provide such supplies or services and shall be designated on bills using codes established by the department and are limited to the following: oxygen (code 932-3308-00), wheelchairs customized with special

design for a unique condition (code 932-3242-00), wheelchairs that are standard but motorized (code 932-3237-00), wheelchairs for children and are motorized (code 932-3241-00), helmets (code 932-3315-00), disposable colostomy appliances (code 932-4210-00), colostomy shield appliances (code 932-4213-00), disposable lelostomy appliances (code 932-4219-00), catheters (urethral, rubber or silicone) (code 932-4233-00), catheters (indwelling Foley balloon retention) (code 932-4234-00), miscellaneous catheters (code 932-4235-00), scrotal truss (code 932-6101-00), umbilical truss (code 932-6102-00), shoulder braces (code 932-6103-00), sacroiliac supports (code 932-6104-00), lumbosacral supports (code 932-6105-00), post hernia truss (code 932-6106-00), hinged joint steel knee cap (code 932-6707-00), wrist support leather (code 932-6108-00), corsets (code 932-6109-00), abdominal supports (code 932-6110-00), dorso lumbar supports (code 932-6111-00), orthopedic braces (code 932-6113-00), elastic stockings (sheer type, Jobst or comparable) (code 932-6201-00), elastic stockings (surgical type, Jobst or comparable) (code 932-6201-00), prescription drugs; occupational, speech, physical and other therapy; x-rays; supplies that are not required as a part of routine nursing care services for a particular patient and not otherwise compensated under ARM 46.12.1204.

(7) Reviews and Adjustments of Rates. The department will review a rate determined under ARM 46.12.1204 for a possible increase if it is found that the established rate is set below the minimum level defined in ARM 46.12.1202.

(a) A rate may be reviewed according to this rule if a provider submits to the department a rate review application and supportive documents which:

(i) references a letter of warning from the state department of health and environmental sciences that the facility is in jeopardy of being decertified as a provider of nursing home care to medicaid patients due to certain specified deficiencies, and/or

(ii) provides documentation which clearly indicates that the established rate affects facility revenues to such an extent that reductions in essential services will be necessary and will very likely, in the provider's opinion, cause deficiencies that could lead to decertification by the department of health and environmental sciences;

(iii) details total revenue estimates for the period using private and established medicaid and non-medicaid rates and patient occupancy projections;

(iv) provides detailed expenditure projections according to line items mutually acceptable to the provider and the department along with supporting documentation justifying each item;

(v) provides other normally available information that the department may request in support of its review efforts.

(b) Within 14 days of receipt of a rate review application according to ARM 46.12.1204(7)(a), the department will determine, based on the rate review application, the documentation provided and other information available to the department, whether the circumstances warrant rate review.

(i) The department will reject an application for rate review if substantial evidence shows that the established rate is not set below the minimum level defined in ARM 46.12.1202 (1). The provider shall supply evidence to justify that cost increases in excess of the issued rate are due to extraordinary circumstances.

(ii) If the provider is not satisfied with the departmental decision to reject a request for rate review, such provider may seek a fair hearing in accordance with ARM 46.12.1206.

(c) If the department determines that a rate should be reviewed, the department will negotiate an interim prospective rate with the provider, which rate will be in effect from the first day of the quarter in which the review application is received by the department until such time as it takes to review the adequacy of the established rate and effect a rate revision should such be the result of the review. In no case, will the negotiated interim rate exceed 120% of the rate on record with the department's fiscal intermediary on the day previous to the beginning of the state's fiscal quarter in which the request for rate review is initiated according to ARM 46.12.1204(7)(a).

(d) The budget period to be used for the review and rate setting will include at least one fiscal year for any provider who is determined to be eligible for rate review. If extraordinary or unanticipated circumstances dictate, a request for a budget amendment can be submitted and a revised prospective rate determined. A longer budget period may be included if it is mutually agreeable to the department and the provider. All of the items submitted for the purposes of review shall be evaluated for reasonableness and cost relatedness, the conclusions of which are subject to administrative and judicial review.

(e) After determining the necessary costs that will contribute to economic and efficient operation during the budget period, the department will add the performance incentive factor calculated according to ARM 46.12.1204(3)(b)(i) and recommend to the provider a rate that will reasonably compensate those necessary costs. Should the provider disagree with the recommended rate, the provider may seek a fair hearing according to ARM 46.12.1206.

(f) The rate determined according to ARM 46.12.1204(7)(e) will be made effective for the budget period used to conduct the review. Three months prior to the end of the budget period used to conduct the review, the provider may apply for a new review according to ARM 46.12.1204(7)(a) to

become effective the following fiscal year, or continue with the rate established under ARM 46.12.1204(7)(e) until the rates established under ARM 46.12.1204(2) may be found to be adequate.

(i) The department will reject an application for rate review if substantial evidence shows that the established rate is not set below the minimum level defined in ARM 46.12.1202 (1). The provider shall supply evidence to justify that cost increases in excess of the issued rate are due to extraordinary circumstances.

(ii) If the provider is not satisfied with the departmental decision to reject a request for rate review, such provider may seek a fair hearing in accordance with ARM 46.12.1206.

(c) If the department determines that a rate should be reviewed, the department will negotiate an interim prospective rate with the provider, which rate will be in effect from the first day of the quarter in which the review application is received by the department until such time as it takes to review the adequacy of the established rate and effect a rate revision should such be the result of the review. In no case, will the negotiated interim rate exceed 120% of the rate on record with the department's fiscal intermediary on the day previous to the beginning of the state's fiscal quarter in which the request for rate review is initiated according to ARM 46.12.1204(7)(a).

(d) The budget period to be used for the review and rate setting will include at least one fiscal year for any provider who is determined to be eligible for rate review. If extraordinary or unanticipated circumstances dictate, a request for a budget amendment can be submitted and a revised prospective rate determined. A longer budget period may be included if it is mutually agreeable to the department and the provider. All of the items submitted for the purposes of review shall be evaluated for reasonableness and cost relatedness, the conclusions of which are subject to administrative and judicial review.

(e) After determining the necessary costs that will contribute to economic and efficient operation during the budget period, the department will add the performance incentive factor calculated according to ARM 46.12.1204(3)(b)(i) and recommend to the provider a rate that will reasonably compensate those necessary costs. Should the provider disagree with the recommended rate, the provider may seek a fair hearing according to ARM 46.12.1206.

(f) The rate determined according to ARM 46.12.1204(7)(c) will be made effective for the budget period used to conduct the review. Three months prior to the end of the budget period used to conduct the review, the provider may apply for a new review according to ARM 46.12.1204(7)(a) to become effective the following fiscal year, or continue with

the rate established under ARM 46.12.1204(7)(e) until the rates established under ARM 46.12.1204(2) may be found to be adequate.

(g) If the interim prospective rate determined in ARM 46.12.1204(7)(c) is found to produce an overpayment or underpayment with respect to the rate determined through review for the period the interim rate was in effect, then the overpayment or underpayment will be administered according to ARM 46.12.1205(8)(b) through (g). As thorough examinations of and limits on staffing patterns will be accomplished prior to full facility evaluation, no recovery of directly patient care related staffing salary amounts shall be undertaken following the review process. In addition, recovery of nondirectly patient care related staffing salary sums shall be effected only upon completion of administrative and judicial review of such contested amounts.

(8) Reimbursement for Authorized Absence.

(a) No payment or subsidy will be made to a nursing home for holding a bed while the recipient is receiving medical services elsewhere, such as in a hospital except in a situation where a nursing home is full and has a waiting list of potential residents. A nursing home will be considered full if all beds are occupied or being held for a patient temporarily in a hospital. In this exceptional instance, a payment may be made for holding a bed while the resident is temporarily receiving care in a hospital, is expected to return to the nursing home, and the cost of holding the nursing home bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate nursing home bed would otherwise become available. Furthermore, payment in this exceptional instance, may be made only upon approval from the director of the department or his designee.

(b) Reimbursement will be made to a nursing home for reserving a bed while the recipient is temporarily absent if the recipient's plan of care provides for therapeutic home visits. A total of 24 days annually will be allowed for therapeutic home visits. The facility is responsible for notifying the department on a form provided by the department when a resident leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the form is filed with the department. Absences are restricted to no more than 72 consecutive hours per absence. Additional days and longer hours per absence may be allowed if determined medically appropriate and prior authorized by the director of the department or his designee.

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

10. The Department is proposing these amendments to its rules in order to better accomplish cost containment within the nursing home reimbursement program and to clarify several portions of the current rules. Specifically, the changes proposed involve:

A. Clarification of the Department's policy regarding provider loans from patient trust accounts.

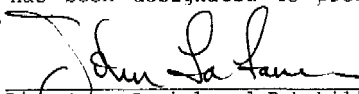
B. Clarification of the Department's policy relative to the determination of allowable lease costs for facility leases entered into on or before March 31, 1982.

C. Changing the method used to determine allowable lease costs. This change applies to leases entered into or renewed on or after April 1, 1982.

D. Revising and clarifying the method used to determine maximum allowable cost per bed for facilities built or sold on or after April 1, 1982.

11. Interested parties may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, no later than March 11, 1982.

12. 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 January 29, 1982.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING
ment of Rules 46.12.101,	)	FOR THE AMENDMENT OF RULES
46.12.102, 46.12.201,	)	46.12.101, 46.12.102,
46.12.202 and 46.12.3803,	)	46.12.201, 46.12.202 AND
the adoption of rules and	)	46.12.3803, THE ADOPTION OF
the repeal of Rules	)	RULES AND THE REPEAL OF
46.12.203 and 46.12.217 per-	)	RULES 46.12.203 AND
taining to medicaid eligi-	)	46.12.217 PERTAINING TO
bility.	)	MEDICAID ELIGIBILITY

TO: All Interested Persons

1. On March 4, 1982, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.12.101, 46.12.102, 46.12.201, 46.12.202, and 46.12.3803, the adoption of rules and the repeal of Rules 46.12.203 and 46.12.217 pertaining to Medicaid eligibility.

2. Rule 46.12.203 proposed to be repealed is on page 46-1112 of the Administrative Rules of Montana.

3. The authority of the agency to repeal the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-141, MCA.

4. Rule 46.12.217 proposed to be repealed is on page 46-1137 of the Administrative Rules of Montana.

5. The authority of the agency to repeal the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-141, MCA.

6. Rule 46.12.101 as proposed to be amended provides as follows:

46.12.101 MEDICAL ASSISTANCE, PURPOSE The medical assistance program pays for necessary medical services for persons who are unable to pay for such care for themselves. The covered groups include recipients of AFDC, supplemental security income, and persons considered medically needy. The program is commonly referred to as the "medicaid program". ~~It is partially funded by federal funds and must be administered in accordance with all federal statutes and regulations including, but not limited to, Title XIX of the Social Security Act, as amended, 42 CFR, Parts 430-456 and 460, which are applicable to the medical assistance program and incorporated by reference.~~

3-2/11/82

MAR Notice No. 46-2- 327

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

8. Rule 46.12.102 as proposed to be amended provides as follows:

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS

(1) through (23) remain the same.

(24) ~~In-the~~ For SSI-related medically needy program, family size means the number of eligible individuals and responsible relatives living in the same household unit. Ineligible persons living in the same household who are not responsible relatives are not counted when determining family size. For AFDC-related medically needy, family size means the number of eligible individuals in the same household unit. Ineligible persons living in the same household, including ineligible responsible relatives, are not counted in determining family size.

(25) Medically needy means aged, blind or disabled individuals or families and children who are otherwise eligible for medicaid and whose income is above the prescribed limits for the categorically needy but within the limits prescribed in subchapter 38.

(26) Families and children refers to eligible members of families with dependent children who are financially eligible under AFDC-related rules in subchapters 34, 38, and 40. In addition, this group includes individuals under 21 who are not dependent children but who are financially eligible under the above-cited subchapters. It does not include individuals under age 21 whose eligibility for medicaid is based on blindness or disability; for these individuals, the SSI-related rules in subchapters 36, 38, and 40 apply.

(27) Categorically needy means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for medicaid and who meet the financial eligibility requirements of AFDC, SSI, or an optional state supplement; or

(b) whose categorical eligibility is otherwise provided for in subchapters 34, 36, 38, and 40.

(28) AFDC means aid to families with dependent children under Title IV-A of the Social Security Act.

(29) SSI means supplemental security income under Title XVI of the Social Security Act.

(30) Optional state supplement means a cash payment made by the department, under ARM 46.9.201 through 205, to an aged, blind or disabled individual.

(31) OAA means old age assistance under Title I of the Social Security Act.

(32) AB means aid to the blind under Title X of the Social Security Act.

(33) AABD means aid to the aged, blind and disabled under Title XVI of the Social Security Act.

(34) APTD means aid to the permanently and totally disabled under Title XIV of the Social Security Act.

(35) OASDI means old age, survivors, and disability insurance under Title II of the Social Security Act.

9. The authority of the agency to amend the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-101, 53-6-131 and 53-6-141, MCA.

10. Rule 46.12.201 as proposed to be amended provides as follows:

46.12.201 MEDICAL ASSISTANCE,--ELIGIBILITY--REQUIREMENTS
RESTRICTION ON PAYMENTS

~~(1)--Medical assistance shall be granted on behalf of all persons in the state of Montana, including persons temporarily absent from the state who meet the following requirements:
----(a)--For the categorically needy:
----(i)--Those who receive all or part of their income from the federally aided assistance programs which include people who, in December 1973, were eligible for medical assistance as an essential spouse or who has, as spouse, continued to live with and be essential to the well being of a recipient of cash assistance, so long as the recipient with whom the essential spouse is living continues to meet the December 1973 criteria of the state of Montana's aid to the aged, blind, and the permanently and totally disabled assistance; those people who were eligible for aid to dependent children including the unborn child and needy caretaker relative of such children, and recipients of supplemental security income under the categories of aged, blind or disabled, or who would be eligible for such a program if application were made; those persons who, for any month from September 1972, who for the current month would have been eligible for AFDC or SSI, if the increase in monthly insurance benefits under Title II of the Social Security Act resulting from the enactment of P.L. 92-336 had not been applicable to him, provided such individual was, for the month of August 1972, eligible for or receiving OAA, AB, APFB or AFDC and also entitled to monthly payments under Title II of the Act; all blind and disabled persons who meet the current financial eligibility standard of this plan, and in December 1973 met the conditions of eligibility including financial eligibility for aid under the State's approved ANB or APFB plan and who were eligible under this plan, and who continue to meet the criteria for blindness and disability and meet the financial criteria under the State's approved ANB or~~

APFB plan as in effect in December 1973.

----(ii)--Persons in medical institutions who, if they were no longer in such institution, would be eligible for financial assistance under any one of the above programs, including all individuals in medical institutions in December 1973 who, if not institutionalized, would have been eligible for OAA, ANB and APFB and continue to meet December 1973 eligibility criteria.

----(iii)--All children under 21 years who meet the conditions of eligibility for AFDC, other than with respect to school attendance or age.

----(iv)--All children under 21 years who are in foster care under the supervision of the state, private non-profit child care agency, or private child care institution.

----(v)--All children under 21 years who were in foster care under the supervision of the state, and who have been adopted as "hard-to-place" children as defined in section 402(b)(7) of the MCA.

----(vi)--Persons under 21 years who are eligible for any of the above enumerated federally aided categories shall receive such early and periodic screening and diagnosis to ascertain physical and mental defects, and treatment of the conditions discovered to the extent of the services offered under the medical assistance program including the amount, duration and scope of such services.

----(b)--For the medically needy.

----(i)--Whose income is less than 133-1/3% of the income level for AFDC and;

----(ii)--In arriving at a determination of whether an individual is eligible for the medically needy program, the division shall evaluate resources and income in the following manner:

----(A)--Clients most closely related to eligibility criteria of supplemental security income and AFDC for the medically needy program shall have their resources and income evaluated in the following manner:

----(I)--All real property including a home and lot not to exceed a market value of \$26,000 shall be imposed. Income-producing property necessary for self support, producing a reasonable rate of return, is to be excluded as a resource for medically needy eligibility.

----(II)--A personal property limitation of \$1,500 shall be imposed for a single person or \$2,250 for two people with an additional \$100 for each additional eligible person in the household and an automobile not to exceed \$1,500 retail value. Where the auto is encumbered, the amount of owner equity only will be considered. Exempted for the personal property limitations stated above are household goods, life insurance policies not exceeding a cash value of \$1,500 and an auto used for employment or needed for medical purposes. Any individual in

a nursing home will be allowed a \$25.00 exemption from his income.

----(iii)--The first \$20 of unearned or earned income is to be disregarded and the next \$65 plus half the remainder of earned income will be disregarded.

----(iv)--Educational grants, scholarships, fellowships, foster care payments and 1/3 of the child support payments shall be disregarded.

----(v)--A transfer of real property made to bring the persons within the real property limitation of \$26,000 is subject to the personal property limitation outlined in (ii) above.

----(vi)--All other supplemental security income criteria concerning treatment of income and resources shall be observed where it is appropriate.

----(B)--AFDC cases shall have their resources and income evaluated in the manner for medically needy as outlined above.

----(i)--The income and resource requirements found in the above paragraph (b) (ii) of this rule shall govern in medically needy cases related to AFDC.

----(ii)--The \$30 plus 1/3 disregard of earned income is not available as a disregard under the medically needy program.

----(iii)--Who meet eligibility requirements under any federally aided assistance program above enumerated with the exception that where the other requirements of AFDC are met, assistance will be granted where it is an unemployed parent in the family who qualifies for assistance as an unemployed parent under ARM 46-10-304.

----(iv)--Medically needy individuals who have incomes in excess of 133-1/3% of AFDC eligibility standards become eligible for medical assistance when their incurred medical expenses, both paid and unpaid, are greater than or equal to their excess incomes for four consecutive months, including the month in which eligibility is sought. These medical expenses may be for medical insurance premiums and/or medical services/licenses under state law not subject to third party liability.

----(v)--Individuals under the age of 21 who are placed in foster homes or private institutions by a public or private non-profit agency or who reside in intermediate care facilities or psychiatric hospitals are eligible for Title XIX, medically needy if they meet the following requirements:

----(A)--Are not within the definition of dependent children, and;

----(B)--After all of the disregards and set asides allowed under the AFDC plan and after applying any payment the individual is making toward his care and after any spend down is deducted, has no more than \$56.00 per month personal need money, and;

(c) (1) Payments on behalf of persons in state-operated institutions shall be made only from funds appropriated

specifically for this purpose, as such funds are available. However, if available funds are not sufficient to provide an adequate medical care program for all eligible persons, first as the categorically needy.

11. The authority of the agency to amend the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-101, 53-6-131 and 53-6-141, MCA.

12. Rule 46.12.202 as proposed to be amended provides as follows:

46.12.202 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS
ACCESS TO MEDICAL SERVICES

~~(1) --The client, or his representative when he is unable, makes application at the welfare office in the county where he lives. -- See ARM 46.12.501 for retroactive medical and application for medical assistance in behalf of a person after his death.~~

~~----(2) --An eligibility technician verifies and documents all factors necessary to determine eligibility for medical assistance and shall make a determination of relative responsibility as found in ARM 46.10.209. -- The only relatives held responsible for contribution under medical assistance are the husband or wife of the individual, and the parents of children under age 18.~~

~~----(3) --The completed application is submitted to the county welfare board for disposition.~~

~~----(4) --The client is notified in writing of the reasons for approval or disapproval.~~

~~(5) (1) Any individual eligible for medical assistance may obtain the services available from any institution, agency, pharmacy, or practitioner, qualified to perform such services and participating under the program, including an organization which provides these services or arranges for their availability on a prepayment basis.~~

~~(6) --Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:~~

~~----(a) --when required on the basis of information the department obtained previously about anticipated changes in the individual's situation;~~

~~----(b) --within 30 days after a report is obtained which indicates that changes in the individual's circumstances may affect the amount of assistance to which he is entitled or may make him ineligible; and~~

~~----(c) --periodically, no less than every 12 months, except where the client is categorically related to AFDC, then at least every six months.~~

13. The authority of the agency to amend the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-132, MCA.

14. Rule I as proposed to be adopted provides as follows:

RULE I (46.12.3001) APPLICATION (1) Opportunity to apply:

(a) Any individual wishing to do so will be afforded the opportunity to apply for medicaid without delay.

(2) Written application and place of application:

(a) The application must be submitted in writing:

(i) on the form and in the manner prescribed by the department of social and rehabilitation services; and

(ii) at the office of the county welfare department in the county in which the person presently resides, except that institutionalized individuals may make application with the county in which the institution is located.

(3) Assistance with application:

(a) An application will be accepted from a person acting responsibly on the behalf of a client who is:

(i) incompetent;

(ii) incapacitated; or

(iii) otherwise incapable of submitting the application himself.

(b) An individual or individuals of the applicant's choice may accompany, assist and represent the applicant in the application process.

(4) Automatic entitlement to medicaid:

(a) Except as provided for below, a separate application for medicaid will not be required from an individual if he receives:

(i) aid to families with dependent children (AFDC);

(ii) supplemental security income (SSI);

(iii) mandatory state supplement; or

(iv) optional state supplement.

(b) Recipients of SSI, mandatory state supplement and optional state supplement must provide on the form and in the manner prescribed by the department, information on third party liability as a further condition of eligibility.

(5) Availability of program information:

(a) The following information will be made available in the form of brochures, pamphlets and other appropriate printed materials, to all applicants and all other individuals who request it:

(i) the eligibility requirements;

(ii) available medicaid services;

(iii) the rights and responsibilities of the applicant/recipient; and

(iv) the rules governing appeals of department decisions.

(6) Use of social security number:

(a) In the Montana medicaid program, disclosure of or application for a social security number is voluntary. Medicaid may not be denied or delayed to an otherwise eligible applicant for failure or refusal to disclose or apply for a SSN.

(b) Notwithstanding the above, under 42 CFR 435.910 and 53-2-201, MCA, the department will request, on the application, the SSN of each individual (including children) for whom medicaid services are requested.

(c) In requesting a SSN, the department will inform the applicant that:

(i) disclosure of or application for a SSN is voluntary and not a mandatory eligibility requirement;

(ii) the request for a SSN is made under the authority of 42 CFR 435.910 and 53-2-201, MCA; and

(iii) the SSN will be used only in the administration of the medicaid program.

(d) Further, under 42 CFR 435.910 and 53-2-201, MCA, if an applicant cannot recall his SSN, or has not been issued one, and wishes to secure one, the department will:

(i) assist the applicant in completing an application for a SSN;

(ii) obtain evidence required under social security administration regulations to establish the age, the citizenship or alien status, and the true identity of the applicant; and

(iii) either send the application to the SSA or, if there is evidence that the applicant has previously been issued a SSN, request that the SSA verify the number.

15. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-132 and 53-6-133, MCA.

16. Rule II as proposed to be adopted provides as follows:

RULE II (46.12.3002) DETERMINATION OF ELIGIBILITY

(1) Timely determination of eligibility:

(a) Aid will be furnished in a timely manner to eligible persons and will conform to the following time standards:

(i) sixty days for applicants on the basis of disability; and

(ii) forty-five days for all other applicants.

(b) These time standards cover the period from the date of application to the date the department mails or otherwise provides the applicant with a formal written notice of decision.

(c) Eligibility will be determined within the time standards except in cases of unusual circumstances which are caused by the claimant or which are beyond the department's control.

(d) The time standards will not be used:

(i) as a waiting period before determining and announcing eligibility; or

(ii) as a reason for denying eligibility because it has not been determined within the time standard.

(2) Adequate notice:

(a) Each applicant will be sent a written notice of the department's decision on his application.

(b) If eligibility is denied, written notice will include the reasons for the action, the specific regulation or statute supporting the action, and an explanation of the applicant's right to request a hearing and will be mailed or otherwise provided to the applicant no later than date of denial.

(3) Disposal of applications:

(a) Each application will be disposed of by a finding of eligibility or ineligibility, unless:

(i) the applicant voluntarily withdraws his application;

(ii) the applicant dies and no one acting responsibly on his behalf requests in writing to have the application continued; or

(iii) the applicant cannot be located.

(b) Voluntary withholding of information that is mandatory for eligibility determination by the applicant will result in a finding of ineligibility.

(4) Effective date:

(a) Eligibility for medicaid will be effective as provided below, if the individual was or if he had applied would have been eligible for medicaid.

(i) "if he had applied" includes if someone had applied for him; also, the individual need not be alive when application for medicaid is made on his behalf.

(b) For prospective coverage, eligibility is granted for any full month provided the individual met all the eligibility conditions at any time during that month, except that:

(i) for medically needy individuals, prospective coverage begins when incurred medical expenses are greater than or equal to the required incurment for the prospective period.

(c) For retroactive coverage, eligibility is granted beginning the first day of the third month before the month of application provided the individual met all the eligibility conditions during the retroactive period, except that:

(i) for medically needy individuals, retroactive coverage begins when incurred medical expenses are greater

than or equal to the required incurment for the retroactive period.

17. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-132 and 53-6-133, MCA.

18. Rule III as proposed to be adopted provides as follows:

RULE III (46.12.3003) REDETERMINATION OF ELIGIBILITY

(1) Periodic redetermination of eligibility:

(a) where an individual has been determined eligible, eligibility will be reconsidered or redetermined;

(i) at the time required when the department has information obtained previously about anticipated changes in the individual's situation which might affect eligibility;

(ii) within 30 days after a report is obtained which indicates that changes in the individual's circumstances may affect the individual's eligibility; and

(iii) at least every six (6) months if the client is categorically eligible related to AFDC; or

(iv) at least every twelve (12) months if the client is categorically eligible related to SSI.

(2) The department will provide recipients with timely and adequate notice of proposed action to terminate, discontinue or suspend their eligibility or to reduce or discontinue services they may receive under medicaid.

(a) Timely notice is as defined in ARM 46.2.204.

(3) In redetermining eligibility, the department will also review case records for the recipient's SSN or, in the case of families, each family member's SSN. If the case record does not contain the SSN's, the department will request but not require them in accordance with ARM 46.12.3001 (6).

19. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-142, MCA.

20. Rule IV as proposed to be adopted provides as follows:

RULE IV (46.12.3004) FURNISHING ASSISTANCE (1) The

department will:

(a) furnish medicaid in a timely manner to recipients, as required by ARM 46.12.3002(1) (a), without any delay caused by the agency's administrative procedures;

(b) continue to furnish medicaid regularly to all eligible individuals;

(c) make arrangements to assist applicants and recipients to get emergency medical care whenever needed.

21. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-132 and 53-6-133, MCA.

22. Rule V as proposed to be adopted provides as follows:

RULE V (46.12.3201) CITIZENSHIP AND ALIENAGE (1) As a condition of eligibility for medicaid, an otherwise eligible individual must be either:

- (a) a citizen of the United States or
- (b) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States under authority of sections 203(a)(7) or 212(d)(5) of the Immigration and Nationality Act.

23. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

24. Rule VI as proposed to be adopted provides as follows:

RULE VI (46.12.3202) RESIDENCY (1) For purposes of this rule, a person is considered incapable of indicating intent if:

- (a) his I.Q. is 49 or less or he has a mental age of 7 or less, based on standardized tests;
 - (b) he has been judged legally incompetent; or
 - (c) documentation acceptable to the department supports a finding that he is incapable of indicating intent. Acceptable documentation includes but is not limited to medical, psychological or psychiatric reports prepared by a qualified professional person.
- (2) Medicaid will be provided to otherwise eligible residents of Montana.

- (a) Noninstitutionalized individuals:
 - (i) An individual age 18 and over is a resident if he is living in Montana with the intent to remain permanently or for an indefinite period.
 - (A) there is no durational requirement for residency;
 - (B) residency is retained until abandoned; and
 - (C) temporary absences from Montana with intent to return when the purpose of the absence is accomplished does not interrupt continuity of residence.
 - (ii) An individual under age 19 living with a caretaker relative who qualifies as a resident of Montana under the criteria of this rule is also considered a resident of the state. Caretaker relative is as defined in ARM 46.10.302.

(iii) A blind or disabled individual under age 21 is considered a resident of Montana if he is living in the state.

(b) Individuals receiving an SSI state supplementary payment:

(i) Any individual receiving a state supplementary payment from Montana is considered a resident of Montana.

(ii) Any individual receiving a state supplementary payment from a state other than Montana is considered a resident of the state making the supplementary payment.

(c) Institutionalized individuals:

(i) An institutionalized individual who became incapable of indicating intent at or after age 18 is a resident of Montana if he was residing in the state when he first became incapable of indicating intent.

(ii) An individual under age 18 or an individual age 18 or older who became incapable of indicating intent before 18 is a resident of Montana if his parents or legal guardian resides in the state or, when the parents live in separate states and there is no legal guardian appointed, if the parent applying for medicaid on his behalf resides in Montana.

(iii) Medicaid eligibility may not be denied to an institutionalized individual who did not establish residency in Montana prior to entering the institution.

(d) Out-of-state institutional placements:

(i) Any individual placed in an out-of-state institution by Montana continues to be a Montana resident.

(ii) Any individual placed in a Montana institution by another state continues to be a resident of the placing state.

(3) Montana has entered into an interstate residency agreement with certain other states. This agreement sets forth rules and procedures for resolving cases of disputed residency and takes precedence over the provisions above. A copy of the agreement and list of states involved in the agreement may be obtained from the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59604.

25. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

26. Rule VII as proposed to be adopted provides as follows:

RULE VII (46.12.3203) APPLICANT'S CHOICE OF CATEGORY

(1) An individual who would be eligible in more than one category will have his eligibility determined for the category he selects.

(2) "Category" as used in this rule means aged, blind, or disabled, or families and children.

27. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

28. Rule VIII as proposed to be adopted provides as follows:

RULE VIII (46.12.3204) LIMITATION ON THE FINANCIAL RESPONSIBILITY OF RELATIVES

(1) Only the income and resources of a spouse or, if the individual is an individual who is under age 21 or blind or disabled, of a natural or adoptive parent or, if specifically provided for in sub-chapters 34, 36, 38 and 40, of a stepparent will be considered available to an individual in determining his eligibility for medicaid. The income and resources of any other relative will not be considered available to the individual.

(2) Reimbursement for amounts paid by the department for medical services provided to an individual will be collected only from a spouse or, if the individual is under age 21 or blind or disabled, from a natural or adoptive parent. Reimbursement will not be obtained from any other relative.

29. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

30. Rule IX as proposed to be adopted provides as follows:

RULE IX (46.12.3205) APPLICATION FOR OTHER BENEFITS

(1) As a condition of eligibility, applicants and recipients must make every effort to obtain any benefits to which they are entitled, unless they can show good cause for not doing so. These benefits include, but are not limited to, veteran's compensation and pensions, OASDI benefits, railroad retirement benefits, and unemployment compensation.

31. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

32. Rule X as proposed to be adopted provides as follows:

RULE X (46.12.3206) ASSIGNMENT OF RIGHTS TO BENEFITS

(1) General rule:

(a) As a condition of eligibility for medicaid, each legally able applicant and recipient must assign his rights to medical support or other third party payments to the department and must cooperate with the department in obtaining medical support or payments.

(2) Assignment method and rights assigned:

(a) Under 53-2-612, MCA, the department is subrogated to the rights of a recipient of medicaid to medical support or other third party payments. Under 53-2-613, MCA, by signing the department-prescribed application form for medicaid, an applicant for or recipient of medicaid assigns to the department:

(i) his own rights to any medical care support under an order of a court or an administrative agency, and any third party payments for medical care; and

(ii) the rights of any other eligible individual in the family for whom he can legally make an assignment.

(b) Assignment of rights to benefits does not include assignment of rights to medicare benefits.

(3) Cooperation in establishing paternity and obtaining support:

(a) The individual whose rights are assigned as provided in subsection (2) must cooperate in:

(i) establishing paternity of a child born out of wedlock for whom he can legally assign rights; and

(ii) obtaining medical care support and payments for himself and any other individual for whom he can legally assign rights.

(b) As a part of cooperation, the department may require an individual to:

(i) appear at the state or county office to provide information or evidence relevant to the case;

(ii) appear as a witness at a court or other proceeding;

(iii) provide information, or attest to lack of information, under penalty of perjury;

(iv) pay to the department any support or medical care funds received that are covered by the assignment of rights; and

(v) take any other reasonable steps to assist in establishing paternity and securing medical support and payments.

(c) The department will waive the requirements in subsections (a) and (b) if it determines that the individual has good cause for refusing to cooperate.

(i) With respect to establishing paternity of a child born out of wedlock or obtaining medical care support and payments for a child for whom the individual can legally assign rights, good cause is as defined in ARM 46.10.314(2).

(ii) With respect to obtaining medical care support and payments for an individual in any case not covered by subsection (i), the department will waive cooperation if the department determines that cooperation is against the best interests of the individual or other person to whom medicaid is being furnished, because it is anticipated that cooperation will result in reprisal against, and cause physical or emotional harm to, the individual or other person.

(d) The procedure for waiving cooperation is as provided in ARM 46.10.314(3), (4), (5), and (6).

(4) Denial or termination of eligibility:

(a) Eligibility for medicaid will be denied or terminated for any applicant or recipient who refuses without good cause to cooperate.

(b) However, medicaid will be provided to any individual who would otherwise be eligible for medicaid but for the refusal, by a person who has legally assigned his rights under this rule, to cooperate as required by this rule.

33. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-2-612, 53-2-613 and 53-6-131, MCA.

34. Rule XI as proposed to be adopted provides as follows:

RULE XI (46.12.3401) GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) Individuals receiving AFDC.

(i) An individual is receiving AFDC if his needs are included in determining the AFDC grant amount.

(b) Individual deemed to be receiving AFDC. These individuals are limited to:

(i) those who are not receiving an AFDC check solely because the grant amount was less than \$10;

(ii) pregnant women who would be eligible for an AFDC grant under ARM 46.10.321 except for the prohibition against such grants being made any earlier than the third month prior to the month in which the child is expected to be born;

(iii) individuals under age 21 who are receiving foster care or adoption assistance under Title IV-E of the Social Security Act. Eligibility requirements for Title IV-E foster care and adoption assistance are found in ARM 46.10.307.

(2) Medicaid will also be provided to families with dependent children who are not receiving AFDC. This coverage is limited to:

(a) individuals who would be eligible for AFDC had they applied;

(b) individuals under age 19 who would be eligible for AFDC if they met the school attendance requirements which are found in ARM 46.10.301;

(c) caretaker relatives as defined in ARM 46.10.302 who have in their care an individual under age 19 who is eligible for medicaid under subsection (b);

(d) individuals who would be eligible for AFDC except for failure to meet the WIN participation requirements found in ARM 46.10.308;

(e) individuals who, in August 1972, were eligible for OASDI and who were also receiving AFDC or would have been receiving AFDC had they applied, providing:

(i) they meet all current AFDC non-financial requirements except those identified as inapplicable to medicaid eligibility in ARM 46.12.3402;

(ii) they meet the current AFDC resource limitations found in ARM 46.10.406; and

(iii) they would currently be eligible for an AFDC grant if the increase in OASDI benefits on July 1, 1972 had not raised family income over the AFDC income standards found in ARM 46.10.403;

(f) individuals whose AFDC is terminated solely because of increased income from employment;

(i) these individuals will continue to receive medicaid for four further months, providing:

(A) the assistance unit received AFDC in any three or more months during the six month period preceding the month of AFDC closure;

(B) at least one member of the assistance unit is employed throughout the four month period of continued medicaid coverage;

(ii) this four month period of continued medicaid coverage begins:

(A) the month following the date of AFDC closure; or

(B) if AFDC eligibility ends prior to the month of closure, with the first month in which AFDC is erroneously paid.

(3) Medicaid will be provided to individuals under age 21 who are not eligible for foster care or adoption assistance under Title IV-E or do not qualify as dependent children. Such individuals under 21 are limited to:

(a) individuals for whom public agencies are assuming full or partial financial responsibility and who are placed in foster homes or in private institutions by either public or private, nonprofit agencies;

(b) individuals in adoptions subsidized in full or part by a public agency.

35. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

36. Rule XII as proposed to be adopted provides as follows:

RULE XII (46.12.3402) NON-FINANCIAL REQUIREMENTS, NON-
INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN

(1) Individuals receiving AFDC, including those deemed to be receiving AFDC, are presumed to have met the non-financial requirements of the medicaid program.

(2) For individuals and families under the heading families with dependent children who are not receiving AFDC, the AFDC non-financial requirements which are set forth in ARM 46.10.301 through 313 and in ARM 46.10.320 and 321 will be used to determine whether:

(a) an individual under age 19 is a dependent child because he is deprived of parental support or care;

(b) an individual is an eligible member of a family with a dependent child.

(c) Notwithstanding the above and in accordance with ARM 46.12.3401(2)(b) and (d), the school attendance requirement found in ARM 46.10.301 and the WIN participation requirements found in ARM 46.10.308 through 313 do not apply to this coverage group.

(3) For individuals under 21 who are not eligible for foster care or adoption assistance under Title IV-E or do not qualify as dependent children, the nonfinancial requirements for medicaid under this subchapter are as provided in ARM 46.12.3401(3).

37. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

38. Rule XIII as proposed to be adopted provides as follows:

RULE XIII (46.12.3403) FINANCIAL REQUIREMENTS, NON-
INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN

(1) Individuals receiving AFDC, including those deemed to be receiving AFDC, are presumed to have met all the financial requirements for medicaid eligibility.

(2) For individuals and families under the heading families with dependent children who are not receiving AFDC, the AFDC financial requirements which are set forth in ARM 46.10.401 through 406 and 46.10.505 through 514 will be used to determine whether:

(a) the assistance unit is eligible with respect to resources;

(b) the assistance unit is eligible with respect to gross and net income and with respect to the applicable benefit standards.

(c) Notwithstanding the above and in accordance with ARM 46.12.3401(e) and (f), for purposes of this coverage group:

(i) the increase in OASDI benefits on July 1, 1972 will be excluded from unearned income; and

(ii) ineligibility for AFDC on the basis of the gross monthly income test found in ARM 46.10.402 and 403 will not preclude continued medicaid coverage under ARM 46.12.3401(f).

(3) For individuals under 21 who are not eligible for foster care or adoption assistance under Title IV-E or do not

qualify as dependent children, the AFDC financial requirements which are set forth in ARM 46.10.401 through 406 and 46.10.505 through 514 will be used to determine whether:

(a) the individual in his placement is eligible with respect to resources;

(b) the individual in his placement is eligible with respect to gross and net income and with respect to the applicable benefit standards.

(c) In applying the above:

(i) because the individual is not living with his parent, parental income will be considered only when actually contributed; and

(ii) applicable standards are the child's only standards.

39. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

40. Rule XIV as proposed to be adopted provides as follows:

RULE XIV (46.12.3404) THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN

(1) Three month retroactive coverage will be provided to individuals determined eligible for medicaid under this subchapter if:

(a) they received medical services during any of the three months prior to application;

(b) they are determined eligible for medicaid in the month or months medical services were received.

(c) Eligibility in the retroactive period will be determined in accordance with this subchapter, except that eligibility with respect to income will be determined using actual income received in the month or months of service.

(2) Under subsection (1), medicaid will pay only unpaid bills for services:

(a) incurred in the retroactive period;

(b) provided for in chapter 12; and

(c) for which no third party payment is available.

41. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

42. Rule XV as proposed to be adopted provides as follows:

RULE XV (46.12.3601) GROUPS COVERED, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES

(1) Medicaid will be provided to:

(a) Aged, blind or disabled individuals or couples receiving SSI, including:

(i) those receiving SSI pending final determination of blindness or disability;

(ii) those receiving SSI under an agreement with the social security administration to dispose of resources that exceed the SSI dollar limits on resources; and

(iii) those deemed to be receiving SSI under the special SSI eligibility status granted by the social security administration to certain severely impaired individuals who work.

(b) Aged, blind or disabled individuals or couples receiving mandatory state supplements.

(c) Aged, blind or disabled individuals or couples receiving only a state supplementary payment (but no SSI payment) under the optional state supplementary program established in ARM 46.9.201 through 205.

(2) Medicaid will also be provided to aged, blind or disabled individuals or couples who are not receiving SSI. This coverage is limited to:

(a) Individuals who would be eligible for SSI had they applied.

(b) Individuals who, in August 1972, were eligible for OASDI and who were also receiving OAA, AB, APTD, or AABD or would have been receiving such cash assistance had they applied, providing:

(i) they meet all current SSI non-financial requirements identified as applicable to medicaid eligibility in ARM 46.12.3602;

(ii) they meet all current SSI resource limitations identified as applicable to medicaid eligibility in ARM 46.12.3603; and

(iii) they would currently be eligible for an SSI payment if the increase in OASDI benefits on July 1, 1972 had not raised individual or couple income over the SSI income standards identified as applicable to medicaid eligibility in ARM 46.12.3603.

(c) Individuals who are receiving OASDI and were receiving SSI but became ineligible due solely to a cost-of-living increase in OASDI paid under section 215(i) of the Social Security Act after April 1977, providing they would still be eligible for SSI if such increases were excluded from income.

(3) Medicaid will also be provided to aged, blind or disabled individuals or couples who are not receiving a state supplementary payment under the optional state supplementary program. This coverage is limited to:

(a) Individuals who, in August 1972, were eligible for OASDI and who were also receiving OAA, AB, APTD, or AABD or would have been receiving such cash assistance had they applied, providing:

(i) they meet all current optional state supplementary program non-financial requirements identified as applicable to medicaid eligibility in ARM 46.12.3602;

(ii) they meet all current optional state supplementary program resource limitations identified as applicable to medicaid eligibility in ARM 46.12.3603; and

(iii) they would currently be eligible for a state supplementary payment if the increase in OASDI benefits on July 1, 1972 had not raised individual or couple income over the optional state supplementary program income standards identified as applicable to medicaid eligibility in ARM 46.12.3603.

(b) Individuals who are receiving OASDI and were receiving a state supplementary payment under the optional state supplementary program but became ineligible due solely to a cost-of-living increase in OASDI paid under section 215(i) of the Social Security Act after April 1977, providing they would still be eligible for a state supplementary payment if such increases were excluded from income.

(4) Finally, medicaid will be provided to individuals who were eligible for medicaid in December 1973. This coverage is limited to:

(a) Individuals who in December 1973 were eligible for medicaid as an essential spouse of a recipient of OAA, AB, APTD, or AABD, providing:

(i) the spouse has continued to live with and be essential to the well-being of the former recipient of OAA, AB, APTD, or AABD;

(ii) the former recipient of OAA, AB, APTD, or AABD continues to meet the December 1973 eligibility requirements; and

(iii) the spouse continues to meet the December 1973 requirements for having his needs included in computing the cash payment available in December 1973.

(b) Individuals who meet all current SSI non-financial and financial requirements identified as applicable to medicaid eligibility in ARM 46.12.3602 and 3603 except the blindness or disability criteria, providing:

(i) they were eligible for medicaid in December 1973 as blind or disabled; and

(ii) for each consecutive month after December 1973, they continue to meet not only the December 1973 blindness or disability criteria, but also all other December 1973 eligibility criteria.

43. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

44. Rule XVI as proposed to be adopted provides as follows:

RULE XVI (46.12.3602) NON-FINANCIAL REQUIREMENTS, NON-
INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES

(1) Aged, blind or disabled individuals or couples receiving SSI, mandatory state supplements, or only a state supplementary payment under the optional state supplementary program are presumed to have met the non-financial requirements for medicaid eligibility.

(2) For individuals and couples under the heading aged, blind or disabled individuals or couples who are not receiving SSI, the SSI non-financial requirements which are set forth in 20 CFR Part 416, Subparts H and I, will be used to determine whether an individual is aged, blind or disabled. 20 CFR Part 416, Subpart H, contains the SSI criteria for determining age, and 20 CFR Part 416, Subpart I, contains the SSI criteria for determining blindness and disability. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts H and I. 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.

(3) For individuals and couples under the heading aged, blind or disabled individuals or couples who are not receiving a state supplementary payment under the optional state supplementary program, the optional state supplementary program non-financial requirements set forth in ARM 46.9.201 through 205 will be used to determine whether an individual is aged, blind or disabled and is certified as requiring the services covered by the state supplementary payment.

(4) For individuals under the heading individuals who were eligible for medicaid in December 1973, the December 1973 OAA, AB, APTD, or AABD non-financial requirement will be used to determine whether an individual continues to be a medicaid-eligible essential spouse, as provided in ARM 46.12.3601(4)(a), or may be considered blind or disabled in spite of SSI criteria, as provided in ARM 46.12.3602(4)(b). A copy of the December 1973 OAA, AB, APTD, and AABD non-financial requirements may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

45. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

46. Rule XVII as proposed to be adopted provides as follows:

RULE XVII (46.12.3603) FINANCIAL REQUIREMENTS, NON-
INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES

(1) Aged, blind or disabled individuals or couples receiving SSI, mandatory state supplements, or only a state supplementary payment under the optional state supplementary

program are presumed to have met the financial requirements for medicaid eligibility.

(2) For individuals and couples under the heading aged, blind or disabled individuals or couples who are not receiving SSI, the SSI financial requirements which are set forth in 20 CFR Part 416, Subparts J, K and L, will be used to determine whether an individual or couple is eligible with respect to resources and with respect to income. 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships; 20 CFR Part 416, Subpart K, for evaluating income, including the income of financially responsible relatives; and 20 CFR Part 416, Subpart L, for evaluating resources, including the resources of financially responsible relatives. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J, K and L. 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.

(a) Notwithstanding the above and in accordance with ARM 46.12.3601(2)(b) and (c), for purposes of this coverage group:

(i) the increase in OASDI benefits on July 1, 1972 will be excluded from unearned income; and

(ii) any cost-of-living increases in OASDI paid under section 215(i) of the Social Security Act after April 1977 will be excluded from unearned income.

(3) For individuals and couples under the heading aged, blind or disabled individuals or couples who are not receiving a state supplementary payment under the optional state supplementary program, the optional state supplementary program financial requirements set forth in ARM 46.9.201 through 205 will be used to determine whether an individual or couple is eligible with respect to resources and with respect to income.

(a) Notwithstanding the above and in accordance with ARM 46.12.3601(3)(a) and (b), for purposes of this coverage group:

(i) the increase in OASDI benefits on July 1, 1972 will be excluded from unearned income; and

(ii) any cost-of-living increases in OASDI paid under section 215(i) of the Social Security Act after April 1977 will be excluded from unearned income.

(4) For individuals under the heading individuals who were eligible for medicaid in December 1973, the December 1973 OAA, AB, APTD, or AABD financial requirements will be used to determine whether the individual continues to be eligible with respect to December 1973 medicaid financial criteria. A copy of the December 1973 OAA, AB, APTD, and AABD financial requirements may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(a) When individuals under this heading must also meet current medicaid financial requirements, as provided in ARM

46.12.360(4)(b), the SSI financial requirements identified in subsection (2) above apply.

47. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

48. Rule XVIII as proposed to be adopted provides as follows:

RULE XVIII (46.12.3604) THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES

(1) Three month retroactive coverage will be provided to individuals determined eligible for medicaid under this subchapter if:

(a) they received medical services during any of the three months prior to application;

(b) they are determined eligible for medicaid in the month or months medical services were received.

(c) Eligibility in the retroactive period will be determined in accordance with this subchapter, except that eligibility with respect to income will be determined using actual income received in the month or months of service.

(2) Under subsection (1), medicaid will pay only unpaid bills for service:

(a) incurred in the retroactive period;

(b) provided for in this chapter; and

(c) for which no third party payment is available.

49. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

50. Rule XIX as proposed to be adopted provides as follows:

RULE XIX (46.12.3801) GROUPS COVERED, NON-INSTITUTIONALIZED MEDICALLY NEEDY

(1) Medicaid under this subchapter will be provided to the following groups of noninstitutionalized AFDC-related families and children:

(a) Individuals who would be receiving AFDC if their income had not exceeded the AFDC income standards found in ARM 46.10.403.

(i) This group does not include individuals whose AFDC is terminated solely because of increased income from employment and who, under ARM 46.12.3401(2)(f), are receiving 4 months continued medicaid coverage. However, this group does include such individuals when the 4 month period of continued medicaid coverage expires.

(ii) This group does not include individuals who are currently ineligible for an AFDC grant because the increase in

OASDI benefits they received on July 1, 1972, raised family income over the AFDC income standards found in ARM 46.10.403. These individuals, under ARM 46.12.3401(2)(e) and ARM 46.12.3403(2)(c)(i), have their July 1, 1972, increase in OASDI benefits excluded from unearned income and are determined eligible for medicaid under subchapter 34. However, this group does include such individuals when, after excluding the July 1, 1972, increase in OASDI benefits, other income causes ineligibility for medicaid under subchapter 34. At this juncture, for the purposes of medicaid under the present subchapter, the July 1, 1972, increase in OASDI benefits is no longer excluded from but is counted as unearned income.

(iii) This group does not include individuals who would be eligible for AFDC had they applied. These individuals are not relevant to medicaid under this subchapter.

(b) Pregnant women who, under ARM 46.12.3401(1)(b)(ii), would be deemed to be receiving AFDC if their income had not exceeded the AFDC income standards found in ARM 46.10.403.

(c) Individuals under age 19 who would be eligible for AFDC if they met the school attendance requirements which are found in ARM 46.10.301 and if their income had not exceeded the AFDC income standards found in ARM 46.10.403.

(d) Caretaker relatives as defined in ARM 46.10.302 who have in their care an individual under age 19 who is eligible for medicaid under subsection (d).

(e) Individuals who would be eligible for AFDC except for failure to meet the WIN participation requirements found in ARM 46.10.308 and income in excess of the AFDC income standards found in ARM 46.10.403.

(f) Individuals under age 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3) because of excess income.

(2) Medicaid under this subchapter will also be provided to the following groups of noninstitutionalized SSI-related individuals and couples:

(a) Individuals who would be receiving SSI if their income had not exceeded the current SSI income standards.

(i) This group does not include aged, blind or disabled individuals or couples receiving mandatory state supplements or only a state supplementary payment (but no SSI payment) under the optional state supplementary program established in ARM 46.9.201 through 205. Under subchapter 36, these individuals are eligible for medicaid on the basis of income standards higher than the current SSI income standards. However, this group does include such individuals when increased income causes ineligibility for such supplementary payments. At this juncture, for the purposes of medicaid under the present subchapter, any income used to meet needs previously met by the supplementary payment is not excluded from income.

(ii) This group does not include individuals who are currently ineligible for SSI or only a state supplementary

payment under the optional state supplementary program because the increase in OASDI benefits they received on July 1, 1972, raised individual or couple income over the current SSI or optional state supplementary program income standards. These individuals, under ARM 46.12.3601(2)(b) and 46.12.3603(2) and ARM 46.12.3601(3)(a) and 46.12.3603(3), have their July 1, 1972, increase in OASDI benefits excluded from unearned income and are determined eligible for medicaid under subchapter 36. However, this group does include such individuals when, after excluding the July 1, 1972 increase in OASDI benefits, other income causes ineligibility for medicaid under subchapter 36. At this juncture, for the purposes of medicaid under the present subchapter, the July 1, 1972, increase in OASDI benefits is no longer excluded from but is counted as unearned income.

(iii) This group does not include individuals who are currently ineligible for SSI or only a state supplementary payment under the optional state supplementary program solely due to a cost-of-living increase in OASDI paid under section 215 (i) of the Social Security Act after April, 1977. These individuals, under ARM 46.12.3601(2)(c) and 46.12.3603(2) and ARM 46.12.3601(3)(b) and 46.12.3603(3), have such increases excluded from unearned income and are determined eligible for medicaid under subchapter 36. However, this group does include such individuals when, after excluding such increases, other income causes ineligibility for medicaid under subchapter 36. At this juncture, for the purposes of medicaid under the present subchapter, cost-of-living increases in OASDI paid under section 215(i) of the Social Security Act after April, 1977, are no longer excluded from but are counted as unearned income.

(iv) This group does not include individuals who in December, 1973, were eligible for medicaid as an essential spouse of a recipient of OAA, AB, APTD, or AARD. These individuals are eligible for medicaid under subchapter 36 if the provisions of ARM 46.12.3601(4)(a), 46.12.3602(4), and 46.12.3603(4) are met. When medicaid under subchapter 36 is lost, such individuals must qualify for medicaid under the present subchapter in their own right. Medicaid under the present subchapter does not provide for coverage of an essential person.

(v) This group does not include individuals who would be eligible for SSI had they applied. These individuals are not relevant to medicaid under this subchapter.

(b) Individuals who, under ARM 46.12.3601(4)(b) and 46.12.3603(4), would be eligible for medicaid under subchapter 36, on the basis of December, 1973, blindness or disability criteria, if their income had not exceeded the income standards specified in ARM 46.12.3603(4).

51. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

52. Rule XX as proposed to be adopted provides as follows:

RULE XX (46.12.3802) NON-FINANCIAL REQUIREMENTS, NON-
INSTITUTIONALIZED MEDICALLY NEEDED (1) Except as provided in subsection (2), for groups under noninstitutionalized AFDC-related families and children, the AFDC nonfinancial requirements which are set forth in ARM 46.10.301 through 313 and in ARM 46.10.320 and 321 will be used to determine whether:

(a) an individual under age 19 is considered a dependent child because he is deprived of parental support or care;

(b) an individual is an eligible member of a family with a dependent child;

(c) notwithstanding the above and in accordance with ARM 46.12.3801(1)(c), (d), and (e), the school attendance requirement found in ARM 46.10.301 and the WIN participation requirements found in ARM 46.10.308 through 313 do not apply to this coverage group.

(2) In the case of individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3), the nonfinancial requirements for medicaid under this subchapter are as provided in ARM 46.12.3401(3).

(3) Except as provided in subsection (4), for groups under noninstitutionalized SSI-related individuals and couples, the SSI nonfinancial requirements which are set forth in 20 CFR, Part 416, Subparts H and I, will be used to determine whether an individual is aged, blind or disabled. 20 CFR Part 416, Subpart H, contains the SSI criteria for determining age, and 20 CFR Part 416, Subpart I, contains the SSI criteria for determining blindness and disability. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts H and I. 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.

(4) For individuals who, under ARM 46.12.3801(2)(b), may meet the December, 1973, blindness or disability criteria instead of the current SSI criteria, see ARM 46.12.3602(4) for these.

53. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

54. Rule 46.12.3803 as proposed to be amended provides as follows:

46.12.3803 MEDICALLY NEEDED INCOME STANDARDS (1) The following tables contains the amount of net income protected for maintenance by family size. ~~in compliance with the following federal regulations which are hereby incorporated by reference. The federal regulations incorporated by reference are 42-CFR-435.811, "general requirements", 42-CFR-435.812-(a)-(1) and -(2), and (b)-(1) and -(2), "medically needy income standard for one person, noninstitutionalized", 42-CFR-435.814 (a)-(1) and -(2), and (b)-(1) and -(2), "medically needy income standard for two persons, noninstitutionalized", 42-CFR-435.816, "medically needy income standards for three or more persons", and 42-CFR-435.1007, "medically needy".~~ A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604. The first table applies to AFDC-related families and children, and the second to SSI-related individuals and couples.

(a) To arrive at quarterly medically needy income level, as used in ARM 46.12.3804, multiply the applicable monthly income level from the tables below by 3.

MEDICALLY NEEDED INCOME LEVELS
FOR AFDC-RELATED FAMILIES AND CHILDREN

<u>Family Size</u>	<u>Monthly</u> <u>Income Level</u>
1	\$ 195.00
2	257.00
3	306.00
4	392.00
5	462.00
6	520.00
7	575.00
8	631.00
9	686.00
10	741.00
11	796.00
12	851.00
13	906.00
14	961.00
15	1,016.00
16	1,071.00

MEDICALLY NEEDY INCOME LEVELS
FOR SSI-RELATED INDIVIDUALS AND COUPLES

<u>Family Size</u>	<u>Monthly</u> <u>Income Level</u>
1	265.00
2	342.00
3	375.00
4	475.00
5	567.00
6	633.00
7	700.00
8	767.00
9	833.00
<u>Each-Additional-Person</u>	<u>75.00</u>
10	900.00
11	967.00
12	1,033.00
13	1,100.00
14	1,167.00
15	1,233.00
16	1,300.00

(2) (b) All families are assumed to have a shelter obligation, and no urban or rural differentials are recognized in establishing those amounts of net income protected for maintenance.

55. The authority of the agency to amend the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-101, 53-6-131, and 53-6-141, MCA.

56. Rule XXI as proposed to be adopted provides as follows:

RULE XXI (46.12.3804) INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Income eligibility for both noninstitutionalized AFDC-related families and children and SSI-related individuals and couples will be computed using a quarterly (three month) prospective period.

(a) For groups under non-institutionalized AFDC-related families and children, quarterly countable income will be determined using the AFDC income requirements, in particular those with respect to prospective budgeting and including those with respect to the \$30 plus 1/3 disregard, set forth in ARM 46.10.401 through 404 and ARM 46.10.505 through 514.

(i) In the case of stepparent households, the above cited AFDC income requirements which pertain to evaluating the stepparent's income will be used.

(ii) In the case of individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3), the above cited AFDC income requirements will be used to determine quarterly countable income for the individual in his placement. Because the individual is not living with his parent, parental income will be considered only when actually contributed.

(iii) In the case of individuals who, under ARM 46.10.403 (3), are ineligible for AFDC for a number of months on the basis of the net monthly income test, for each month of AFDC ineligibility in the quarterly prospective period an amount equal to the AFDC net monthly income standard for the family size will be added to other income expected during the quarter in order to arrive at countable income.

(b) For groups under noninstitutionalized SSI-related individuals and couples, quarterly countable income will be determined using the SSI income requirements set forth in 20 CFR, Part 416, Subpart K, as supported by 20 CFR, Part 416, Subpart J. 20 CFR Part 416, Subpart K, contains the SSI criteria for evaluating income, including the income of financially responsible relatives, and 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J and K. 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.

(2) When an otherwise eligible AFDC-related family or SSI-related individual or couple has quarterly countable income equal to or less than the applicable quarterly medically needy income level, the family, individual or couple is eligible for medicaid.

(3) If quarterly countable income exceeds the quarterly medically needy income level, eligibility will be based on an incurment requirement. Unpaid medical expenses incurred in and not already used to meet the incurment requirement for the prior prospective period and both paid and unpaid medical expenses incurred in the current prospective period will be deducted from quarterly countable income to reduce such income to the quarterly medically needy income level.

(a) Such medical expenses may be incurred by eligible individuals or by ineligible individuals who must be considered in determining family size as defined in ARM 46.12.102(24).

(b) Such medical expenses may not be the liability of a third party.

(c) Such medical expenses will be deducted in the following order:

(i) medicare and other health insurance premiums, deductibles, or coinsurance charges;

(ii) expenses for necessary medical and remedial services that are recognized under Montana law but are not provided for under this chapter;

(iii) expenses for necessary medical and remedial services that are provided for under this chapter.

(4) Under subsection (3), medicaid will pay only unpaid bills for services:

(a) incurred by an eligible individual in the current prospective period and not used to meet the incurment requirement;

(b) provided for under this chapter; and

(c) for which no third party payment is available.

57. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

58. Rule XXII as proposed to be adopted provides as follows:

RULE XXII (46.12.3805) RESOURCE STANDARDS, NON-INSTITUTIONALIZED MEDICALLY NEEDY

(1) For groups under noninstitutionalized AFDC-related families and children, the AFDC resource standards set forth in ARM 46.10.406 will be used to determine whether the family is eligible with respect to resources.

(a) In the case of individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3), the above cited AFDC resource standards will be used to determine whether the individual in his placement is eligible with respect to resources. Because the individual is not living with his parent, parental resources will be considered only when actually contributed.

(2) For groups under noninstitutionalized SSI-related individuals and couples, the SSI resource standards set forth in 20 CFR, Part 416, Subpart L, as supported by 20 CFR, Part 416, Subpart J, will be used to determine whether the individual or couple is eligible with respect to resources. 20 CFR Part 416, Subpart L, contains the SSI criteria for evaluating resources, including the resources of financially responsible relatives, and 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J and L. 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.

(3) Under subsections (1) and (2), countable resources may not exceed the applicable standards during the quarterly period over which income is evaluated.

59. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

60. Rule XXIII as proposed to be adopted provides as follows:

RULE XXIII (46.12.3808) THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Three month retroactive coverage will be provided to individuals determined nonfinancially eligible for medicaid under this subchapter in the month of application if:

(a) they received medical services during any of the three months prior to application;

(b) they are determined financially eligible for medicaid for the three months prior to the month of application.

(c) Financial eligibility in the retroactive period will be determined in accordance with this subchapter, except that eligibility with respect to income will be determined using:

(i) actual income received in the three months prior to application;

(ii) a quarterly medically needy income level for the family size; and

(iii) if an incurment requirement must be met, only unpaid bills for services which were incurred in the retroactive period and in the three month period immediately prior to the retroactive period and for which no third party payment is available.

(2) Under subsection (1), medicaid will pay only unpaid bills for services:

(a) incurred in the retroactive period and not used to meet the incurment requirement;

(b) provided for in this chapter; and

(c) for which no third party payment is available.

61. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

62. Rule XXIV as proposed to be adopted provides as follows:

RULE XXIV (46.12.4001) DEFINITIONS RELATING TO INSTITUTIONAL STATUS (1) As used in this subchapter:

(a) "Active treatment in institutions for the mentally retarded" requires the following:

(i) The individual's regular participation, in accordance with an individual plan of care, in professionally developed and supervised activities, experiences, or therapies.

(ii) An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The overall purpose of the plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.

(iii) An interdisciplinary professional evaluation that:

(A) is completed for a recipient, before admission to the institution but not more than 3 months before, and for an individual applying for medicaid after admission, before the institution requests payment;

(B) consists of complete medical, social and psychological diagnosis and evaluations and an evaluation of the individual's need for institutional care; and

(C) is made by a physician, a social worker and other professionals, at least one of whom is a qualified mental retardation professional.

(iv) Reevaluation medically, socially and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individual plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care.

(v) An individual postinstitutional plan, as part of the individual plan of care, developed before discharge by a qualified mental retardation professional and other appropriate professionals. This must include provision for appropriate services, protective supervision, and other follow-up services in the resident's new environment.

(b) "In an institution" refers to an individual who is admitted to live there and receive treatment or services provided there that are appropriate to his requirements.

(c) "Inmate of a public institution" means a person who is living in a public institution. An individual is not considered an inmate if:

(i) he is in a public educational or vocational training institution for purposes of securing education or vocational training; or

(ii) he is in a public institution for a temporary period pending other arrangements appropriate to his needs.

(d) "Inpatient" means a patient who has been admitted to a medical institution on recommendation of a physician or dentist and is receiving room board, and professional services in the institution on a continuous 24-hour-a-day basis.

(e) "Institution" means an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor.

(f) "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for the mentally retarded is not an institution for mental diseases.

(g) "Institution for the mentally retarded or persons with related conditions" means an institution (or distinct part of an institution) that:

(i) is primarily for the diagnosis, treatment, or rehabilitation of the mentally retarded or persons with related conditions; and

(ii) provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his greatest ability.

(h) "Institution for tuberculosis" means an institution that is primarily engaged in providing diagnosis, treatment or care of persons with tuberculosis, including medical attention, nursing care, and related services. Whether an institution is an institution for tuberculosis is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of tuberculosis, whether or not it is licensed as such.

(i) "Medical institution" means an institution that:

(i) is organized to provide medical care, including nursing and convalescent care;

(ii) has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;

(iii) is certified under Montana law to provide medical care; and

(iv) is staffed by professional personnel who are responsible to the institution for professional medical and nursing services. The services must include adequate and continual medical care and supervision by a physician; registered nurse or licensed practical nurse supervision and services and nurses' aid services, sufficient to meet nursing care needs; and a physician's guidance on the professional aspects of operating the institution.

(j) "Patient" means an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or lessening of illness, disability or pain.

(k) "Persons with related conditions" means individuals who have epilepsv, cerebral palsy, or other developmental disabilities.

(l) "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include a medical institution as defined above, an intermediate care facility as defined in subchapter 12, or a publicly operated community residence that serves no more than 16 residents, as defined below.

(m) "Publicly operated community residence that serves no more than 16 residents" means:

(i) It is the responsibility of a governmental unit, or a governmental unit exercises administrative control over it.

(ii) It has been designed or has been changed to serve no more than 16 residents and it is serving no more than 16.

(iii) It provides some services beyond food and shelter such as social services, help with personal living activities, or training in socialization and life skills. Occasional medical or remedial care may also be provided.

(iv) A publicly operated community residence does not include the following facilities, even though they accommodate 16 or fewer residents:

(A) residential facilities located on the grounds of, or immediately adjacent to, any large institution or multiple purpose complex;

(B) educational or vocational training institutions that primarily provide an approved, accredited, or recognized program to individuals residing there;

(C) correctional or holding facilities for individuals who are prisoners, have been arrested or detained pending disposition of charges, or are held under court order as material witnesses or juveniles;

(D) hospitals, skilled nursing facilities, and intermediate care facilities.

(n) "Resident of an intermediate care facility" is an individual who is:

(i) in need of and receiving professional services to maintain, improve, or protect health or lessen disability or pain under the direction of a practitioner of the healing arts;

(ii) admitted to an intermediate care facility in accordance with subchapter 11;

(iii) under care and supervision 24-hours-a-day; and

(iv) if he is in an institution for the mentally retarded, receiving active treatment as defined above.

63. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

64. Rule XXV as proposed to be adopted provides as follows:

RULE XXV (46.12.4002) GROUPS COVERED, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS (1) Medicaid will be provided to the following AFDC-related institutionalized individuals under the heading categorically needy:

(a) Individuals who continue to receive AFDC even though they are in a medical institution or intermediate care facility. Such individuals are limited to those under age 19 who continue to receive AFDC under ARM 46.10.302 which provides for continued eligibility when the dependent child is temporarily absent from the home. Under ARM 46.10.302, caretaker relatives are ineligible for AFDC when in a medical institution or intermediate care facility, even though for a temporary period.

(b) Individuals under age 21 in intermediate care facilities, including in intermediate care facilities for the mentally retarded.

(c) Individuals under age 21 receiving active treatment as inpatients in psychiatric facilities or programs.

(2) Medicaid will also be provided to the following AFDC-related institutionalized individuals under the heading medically needy:

(a) individuals described in subsections (1)(b) and (1)(c) who are ineligible for coverage as categorically needy because of excess income.

65. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

66. Rule XXVI as proposed to be adopted provides as follows:

RULE XXVI (46.12.4003) GROUPS COVERED, SSI-RELATED INSTITUTIONALIZED INDIVIDUALS (1) Medicaid will be provided to the following SSI-related institutionalized individuals under the heading categorically needy:

(a) Individuals receiving SSI on the basis of the SSI income standard for institutionalized individuals.

(b) Individuals in medical institutions and intermediate care facilities who are ineligible for SSI because the SSI income standard for institutionalized individuals is lower than the SSI income standard for noninstitutionalized individuals.

(c) Individuals who were eligible for Medicaid in December, 1973, as inpatients of medical institutions or residents of intermediate care facilities, if, for each consecutive month after December, 1973, they:

(i) continue to meet the December, 1973, eligibility requirements;

(ii) remain institutionalized; and

(iii) continue to need institutional care.

(2) Medicaid will also be provided to the following SSI-related institutionalized individuals under the heading medically needy:

(a) individuals described in subsection (1)(b) who are ineligible for coverage as categorically needy because of excess income.

67. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

68. Rule XXVII as proposed to be adopted provides as follows:

RULE XXVII (46.12.4004) NON-FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS (1) Individuals under age 19 who continue to receive AFDC even though they are in a medical institution or intermediate care facility are presumed to have met the non-financial requirements for medicaid eligibility.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs, the nonfinancial requirements for medicaid under this subchapter, whether as categorically needy or medically needy, consist of the age requirement and applicable service requirements.

69. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

70. Rule XXVIII as proposed to be adopted provides as follows:

RULE XXVIII (46.12.4005) NON-FINANCIAL REQUIREMENTS, SSI-RELATED INSTITUTIONALIZED INDIVIDUALS (1) Individuals receiving SSI on the basis of the SSI income standard for institutionalized individuals are presumed to have met the nonfinancial requirements for medicaid eligibility.

(2) For individuals in medical institutions and intermediate care facilities who are ineligible for SSI because the SSI income standard for institutionalized individuals is lower than the SSI income standard for noninstitutionalized individuals, the nonfinancial requirements for medicaid under this subchapter, whether as categorically needy or medically needy, are the SSI nonfinancial requirements which are set

forth in 20 CFR, Part 416, Subparts H and I. These will be used to determine whether an individual is aged, blind, or disabled. 20 CFR, Part 416, Subpart H, contains the SSI criteria for determining age, and 20 CFR, Part 416, Subpart I, contains the SSI criteria for determining blindness and disability. The department hereby adopts and incorporates 20 CFR, Part 416, Subparts H and I. 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.

(3) For individuals who were eligible for medicaid in December, 1973, as inpatients of medical institutions or residents of intermediate care facilities, the nonfinancial requirements for medicaid under this subchapter are the December, 1973 OAA, AB, APTD, or AABD nonfinancial requirements. A copy of the December, 1973 OAA, AB, APTD, and AABD nonfinancial requirements may be obtained from the Department of Social and Rehabilitation Services, P. O. Box 4210, 111 Sanders, Helena, Montana 59604.

71. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

72. Rule XXIX as proposed to be adopted provides as follows:

RULE XXIX (46.12.4006) FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS (1) Individuals under age 19 who continue to receive AFDC even though they are in a medical institution or intermediate care facility are presumed to have met the financial requirements for medicaid eligibility.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs, the financial requirements for medicaid under this subchapter as categorically needy are the AFDC financial requirements which are set forth in ARM 46.10.401 through 406 and 46.10.505 through 514. These will be used to determine whether:

(a) the individual in his placement is eligible with respect to resources;

(b) the individual in his placement is eligible with respect to gross and net income and with respect to the applicable benefit standards.

(c) In applying the above;

(i) because the individual is not living with his parent, parental income will be considered only when actually contributed; and

(ii) applicable standards are the child only standards.

(3) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs who are ineligible under subsection (2) because of excess income, the financial requirements for medicaid under this subchapter as medically needy are the medically needy financial requirements for noninstitutionalized AFDC-related families and children which are set forth in subchapter 38. The financial provisions of this subchapter which apply to individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3) apply identically to the above described individuals under 21.

73. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

74. Rule XXX as proposed to be adopted provides as follows:

RULE XXX (45.12.4007) FINANCIAL REQUIREMENTS, SSI-RELATED INSTITUTIONALIZED INDIVIDUALS

(1) Individuals receiving SSI on the basis of the SSI income standard for institutionalized individuals are presumed to have met the financial requirements for medicaid eligibility.

(2) For individuals in medical institutions and intermediate care facilities who are ineligible for SSI because the SSI income standard for institutionalized individuals is lower than the SSI income standards for noninstitutionalized individuals, the financial requirements for medicaid under this subchapter as categorically needy are the categorically needy financial requirements for noninstitutionalized SSI-related individuals and couples which are set forth in subchapter 36. The provisions of this subchapter, in particular those which apply to the individual living in his own home, apply identically to the above described individual.

(3) For individuals in medical institutions and intermediate care facilities who are ineligible under subsection (2) because of excess income, the financial requirements for medicaid under this subchapter as medically needy are the medically needy financial requirements for noninstitutionalized SSI-related individuals and couples which are set forth in subchapter 38. The financial provisions of this subchapter which apply to the individual living in his own home apply identically to the above described individual.

(4) For individuals who were eligible for medicaid in December, 1973, as inpatients of medical institutions or residents of intermediate care facilities, the financial requirements for medicaid under this subchapter are the December, 1973 OAA, AB, APTD, or AABD financial requirements. A copy of the December, 1973, OAA, AB, APTD, and AABD financial require-

ments may be obtained from the Department of Social and Rehabilitation Services, P. O. Box 4210, 111 Sanders, Helena, Montana 59604.

75. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

76. Rule XXXI as proposed to be adopted provides as follows:

RULE XXXI (46.12.4008) POST-ELIGIBILITY APPLICATION OF PATIENT INCOME TO COST OF CARE (1) After the criteria for eligibility are met, the income of individuals in medical institutions and intermediate care facilities will be applied to the cost of care. This provision applies to all covered groups in this subchapter, except individuals under age 19 who continue to receive AFDC even though they are in a medical institution or intermediate care facility, as provided in ARM 46.12.4002(1)(a), and to individuals receiving SSI on the basis of the SSI income standard for institutional individuals, as provided in ARM 46.12.4003(1)(a).

(2) The following amounts will be deducted from gross income in computing the amount of an AFDC-related institutionalized individual's income which must be applied to his cost of care:

(a) \$40.00 personal needs allowance for the institutionalized individual;

(b) amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including:

(i) medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) necessary medical or remedial care recognized under Montana law but not provided for under this chapter.

(3) The following amounts will be deducted from gross income in computing the amount of SSI-related institutionalized individual's income which must be applied to his cost of care:

(a) \$40.00 personal needs allowance for the institutionalized individual;

(b) the SSI-related medically needy income level for an individual for maintenance of the noninstitutionalized spouse only;

(c) amounts for incurred medical expenses not subject to payment by a third party, including:

(i) medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) necessary medical or remedial care recognized under Montana law but not provided for under this chapter.

(d) An amount for maintenance of a single individual's home for not longer than 6 months, if a physician has certified that the individual is likely to return home within that period. The amount allowed for maintenance of the home is the SSI-related medically needy income level for an individual.

77. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

78. Rule XXXII as proposed to be adopted provides as follows:

RULE XXXII (46.12.4009) PROHIBITED COVERAGE (1) Medicaid will not be provided to:

(a) an individual who is an inmate of a public institution;

(b) an individual who is a patient under age 65 in an institution for tuberculosis or mental disease except as an inpatient receiving active treatment in a psychiatric facility or program.

79. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA and the rule implements Section 53-6-131, MCA.

80. These rules and amendments are proposed for the following reasons:

1) HB 38, enacted by the 47th Legislature, imposes additional notice requirements on state agencies that incorporate materials by reference into their administrative rules. These rules and amendments represent a reorganization of the department's rules with respect to Medicaid eligibility which will enable the department to more efficiently meet the requirements of HB 38.

2) The first special session of the 47th Legislature, in response to the federal Omnibus Budget Reconciliation Act of 1981, eliminated assistance to unemployed parents and adjusted assistance to pregnant women. These rules and amendments reflect these required changes.

3) The federal Omnibus Budget Reconciliation Act of 1981 gives states considerable flexibility in establishing eligibility criteria for the medically needy. These proposed rules and amendments are intended to streamline the department's Medicaid eligibility process. The process is made more efficient by making AFDC-related medically needy income levels and resource standards identical to the AFDC benefit and resource standards for families with a shelter obligation. Further the SSI medically needy income levels and

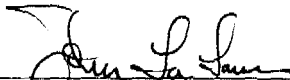
resource standards will be identical to the SSI income and resource standards except where the rules governing federal financial participation require otherwise. This change will cause a few individuals to have an increased liability for their own medical expenses.

4) To comply with applicable federal regulations, the department is changing its medically needy incurment period so that the retroactive coverage period is treated separately from the prospective coverage period. Also, while doing this, the department is imposing reasonable limitations on medical expenses which may be deducted from excess income, as allowed by federal regulations.

5) Under 42 CFR 433.145, states are now allowed to require recipients to assign rights to medical support and other third party payments and to cooperate in obtaining such support payments. Through these rules and amendments the department proposes to implement this federal option in an effort to bolster the department's ability to ensure that all available resources are utilized by a recipient before Medicaid funds are utilized.

81. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59604, no later than March 12, 1982.

82. 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 February 1, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM
of ARM 8.32.902 concerning) 8.32.902 PHILOSOPHY AND OBJEC-
philosophy, objectives and cur-) TIVES; 8.32.905 LENGTH AND
riculum; 8.32.905 concerning) AREAS OF CONTENT; 8.32.906
length and areas of content;) EVALUATION; 8.32.907 ORGANIZA-
8.32.906 concerning evaluation;) TION AND ADMINISTRATION OF
8.32.907 concerning administra-) THE SCHOOLS; 8.32.909 FACULTY;
tion and organization of schools) 8.32.910 EDUCATIONAL FACILITIES;
of nursing; 8.32.909 concerning) 8.32.911 SELECTION AND ADMIS-
faculty; 8.32.910 concerning) SION OF STUDENTS; 8.32.912
educational facilities; 8.32.911) GENERAL WELFARE OF STUDENTS;
concerning selection and admis-) 8.32.913 PROMOTION AND GRADUA-
sion of students; 8.32.912 con-) TION; REPEAL OF ARM 8.32.908
cerning general welfare of stu-) THE INDEPENDENT SCHOOL; and
dents; 8.32.913 promotion and) ADOPTION OF 8.32.914 REPORTS
graduation; repeal of 8.32.908)
concerning the independent)
school and adoption of a new)
rule concerning reports.)

TO: All Interested Persons:

1. On November 12, 1981, the Board of Nursing published a notice of proposed amendments, repeal and adoption of the above stated rules at pages 1303 - 1312, 1981 Montana Administrative Register, issue number 21.

2. Following notice of the board's intent to amend, repeal and adopt the above stated rules referring to standards for Montana schools of professional nursing, the board received written views on rules 8.32.907 (4), 8.32.909 (3) and 8.32.910 (4) from the Montana Hospital Association. Based on the Hospital Association's view on ARM 8.32.907 (4), the board is amending this section by removing language requiring J.C.A.H. accreditation and providing for required accreditation of hospitals and other agencies by their appropriate approving or accrediting groups. J.C.A.H. accreditation is a voluntary program involving about one third of Montana hospitals.

The Montana Hospital Association requested rule ARM 8.32.909 (3) be amended to clarify that the master degree requirement applies only to nursing school based faculty and not to hospital based nurses functioning in nursing intern and extern programs. After reviewing this request the board determined preceptors work with faculty, but are not actually nursing faculty as described in rule 8.32.909 (1) and clarification as requested by the Hospital Association would result in specifying the difference of preceptors and nursing faculty in cooperative agreements between the school and cooperating agencies.

The Montana Hospital's expressed concern with subsection (4) (a) of rule ARM 8.32.910 is the broadness of the statement "learning experiences in the actual clinical situation shall be planned and controlled by the faculty of the school" and

the need for clarity as to the intent of this section. Based on these concerns the Hospital Association urged amendment of the language to clarify that the clinical experiences of nursing students are also subject to the requirements of hospital policies and scheduling. The board is of the opinion this concern is also subject to the written agreement between the school and the cooperating agency and consequently believe it is unnecessary to amend the rule as requested. Adherence to hospital or other agency policy and scheduling is a part of the cooperative agreement required in rule 8.32.907 (5).

Based on the above, the board of nursing is amending, repealing, and adopting the rules exactly as proposed with the exception of rule ARM 8.32.907 subsection (4) which will be amended to read as follows: (new matter underlined, deleted matter interlined)

"8.32.907 ORGANIZATION AND ADMINISTRATION OF THE SCHOOLS OF NURSING....

(4) Educational institutions conducting a nursing program shall be accredited by the appropriate state, regional or national accrediting agencies. The institution of which the school of nursing is a part and all agencies Hospitals and other agencies with which the school maintains cooperative agreements shall have approval or accreditation appropriate to the hospital and to those agencies. must be approved by appropriate accrediting authorities.---The colleges must be accredited by the Northwest Association of Secondary and Higher Schools; the hospitals must be licensed by the Montana state board of health and accredited by the joint Commission on Accreditation of Hospitals--
(5)..."

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM
of ARM 8.32.405 concerning li-) 8.32.405 LICENSE BY ENDORSE-
censure by endorsement; 8.32.411) MENT; 8.32.411 RENEWALS;
concerning renewals, sub-chapter) SUB-CHAPTER 6, RULES 8.32.601
6, rules 8.32.601 - 8.32.609 con-) - 8.32.609, PROFESSIONAL
cerning the professional nursing) NURSING ADMINISTRATION;
administration and repeal of sub-) and REPEAL OF SUB-CHAPTER
chapter 7, rules 8.32.701 - 8.32.) 7, RULES 8.32.701 - 8.32.709,
709 concerning the practical nurs-) PRACTICAL NURSING ADMINISTRATION
ing administration) TION

TO: All Interested Persons:

1. On December 31, 1981 the Board of Nursing published

a notice of amendments and repeals of the above stated rules at pages 1827 - 1833, 1981 Montana Administrative Register, issue number 24.

2. Based on a telephone call from David Niss, Counsel to the Administrative Code Committee, regarding inappropriate material contained in the text of the rules the Board of Nursing was proposing relative to sub-chapter 6, board organization, the following additions or deletions are being made. The remainder of the rule changes are being amended and repealed exactly as proposed. (new matter underlined, deleted matter interlined)

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

"8.32.603 OFFICERS (1)--The officers of this board shall be a president and a secretary-

~~(2)--Officers shall be elected at the annual meeting of the board;~~

~~(3) (1) The terms of office of these officers shall begin at the close of the annual meeting. The term of office for each shall be until the next annual meeting.~~

~~(4) (2) A vacancy occurring in the office of the president or secretary shall be filled by election."~~

"8.32.604 MEETINGS (1) The board shall meet annually and hold other meetings when necessary to transact its business-

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

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

~~(4) (3) Meeting dates for the next calendar year are approved by the board at its annual meeting in the year prior to its application.~~

~~(5) (4) The agenda for board members to review shall be mailed to board members prior to each meeting."~~

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

~~"8.32.609--AMENDMENTS--(1)--These bylaws may be amended by an affirmative vote by the majority of the board at any regular or annual meeting of the board except insofar~~

~~as such an amendment would be contrary to any provisions of Title 37, Chapter 87, MCA.~~

3. No other comments or testimony were received.

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

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

In the matter of the amendment) NOTICE OF AMENDMENT OF ARM
of ARM 8.44.404 concerning) 8.44.404 EXAMINATIONS
examinations and the proposed)
amendment of ARM 8.44.405 con-)
cerning renewals)

TO: All Interested Persons:

1. On December 31, 1981, the Board of Plumbers published a notice of proposed amendment of ARM 8.44.404 concerning examinations and ARM 8.44.405 concerning renewals at pages 1816 - 1818, 1981 Montana Administrative Register, issue number 24.

2. The board received the required number of requests for a public hearing on the proposed amendment of ARM 8.44.405 concerning renewals and this register contains a notice of hearing on that rule.

3. No adverse comments or testimony or requests for a hearing were received with regard to the proposed amendment of ARM 8.44.404 concerning examinations and the board has amended the rule exactly as proposed.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SANITARIANS

In the matter of the amendments) NOTICE OF AMENDMENTS OF ARM
of ARM 8.60.407 concerning ap-) 8.60.407 APPLICATIONS; 8.60.408
plications; 8.60.408 concerning) MINIMUM STANDARDS FOR REGISTRA-
minimum standards for issuance) TION CERTIFICATE; 8.60.410
of a probationary certificate;) REGISTRATION EXAMINATION AND
8.60.410 concerning minimum) CERTIFICATE; 8.60.411 ANNUAL
standards for registration; 8.) CERTIFICATE (LICENSE) RENEWAL;
60.411 concerning annual li-) 8.60.412 SUSPENSION AND REVOCATION
cense renewals; 8.60.412 con-) TION; and REPEAL OF ARM 8.60.402
cerning license revocation or) BOARD VACANCIES AND 8.60.409
suspension; and repeal of ARM) PROBATIONARY CERTIFICATE
8.60.402 board vacancies and)
8.60.409 concerning probation-)
ary certificates)

TO: All Interested Persons:

1. On December 31, 1981, the Board of Sanitarians published a notice of proposed amendment and repeal of the above stated rules at pages 1819 - 1824, 1981 Montana Administrative Register, issue number 24.

2. The board received one comment from the Administrative Code Committee questioning the wording of the amendment of ARM 8.60.408. Based on those comments, the board is amending and repealing the rules exactly as proposed with the exception

of ARM 8.60.408 which will be reworded as follows: (new matter underlined, deleted matter interlined)

"8.60.408 MINIMUM STANDARDS FOR REGISTRATION CERTIFICATE

~~(1) The applicant for registration must possess the standards set forth in section 37-40-302 or the following:~~

The board will accept the following as the equivalent qualification of a bachelors degree in environmental health as required by section 37-40-302, MCA:

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

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

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

~~(c) (2) The applicant must successfully complete an examination within 30 days from the date of application with a minimum score of 60%. Additional time may be allowed at the discretion of the board."~~

3. No other comments or testimony were received.

BY: 
GARY BUCHMAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, February 1, 1982.

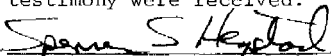
BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment)NOTICE OF THE ADOPTION OF AN
of Rules 12.7.201 and 12.7.202)AMENDMENT OF RULES 12.7.201
relating to commercial minnow)AND 12.7.202 RELATING TO
seining licenses)COMMERCIAL MINNOW SEINING
)LICENSES

TO: All Interested Persons:


1. On December 17, 1981, the Montana Fish & Game Commission published notice of proposed amendment of rules 12.7.201 and 12.7.202 relating to commercial minnow seining licenses at pages 1640-1641 of the Montana Administrative Register, issue #23.

2. The commission has amended the rule as proposed.
3. No comments or testimony were received.



Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

ATTEST:



James W. Flynn, Secretary
Montana Fish & Game Commission

Certified to Secretary of State February 1, 1982

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

IN THE MATTER of Proposed Adop-) NOTICE OF ADOPTION OF
tion of Interpretive Rules for) INTERPRETIVE RULES FOR
Public Service Commission) PUBLIC SERVICE COMMISSION
Regulation of Municipally-Owned) REGULATION OF MUNICIPALLY-
Utilities.) OWNED UTILITIES

TO: All Interested Persons

1. On September 30, 1981, the Department of Public Service Regulation published notice of proposed adoption of interpretive rules specifying the position of the Commission concerning its regulatory jurisdiction over municipally owned utilities as provided in Sections 69-7-101, 69-7-102, 69-7-113, and 69-7-201, MCA (Chapter 607, Laws of 1981). 1981 MAR p. 1097.

2. The agency has adopted the rules as proposed.

RULE I. 38.5.701 JURISDICTIONAL POLICY No change

RULE II. 38.5.702 DETERMINATION OF PUBLIC SERVICE COMMISSION JURISDICTION No change

3. No comments were received.


GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 1, 1982.

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

IN THE MATTER of Proposed Adop-) NOTICE OF ADOPTION OF AN
tion of an Interpretive Rule) INTERPRETIVE RULE BY PUBLIC
for Public Service Commission) SERVICE COMMISSION THAT
Policy Concerning Urban Trans-) URBAN TRANSPORTATION
portation Districts.) DISTRICTS ARE NOT WITHIN THE
) COMMISSION'S REGULATORY
) JURISDICTION

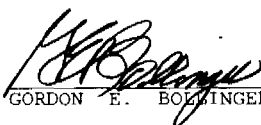
TO: All Interested Persons

1. On October 15, 1981, the Department of Public Service Regulation published notice of proposed adoption of an interpretive rule specifying the position of the Commission concerning its regulatory jurisdiction over urban transportation districts created in accordance with Section 7-14-201 et seq., MCA, at pages 1175-1176 of the 1981 Montana Administrative Register issue number 19.

2. The agency has adopted the rule as proposed.

RULE 1. 38.3.301 JURISDICTIONAL POLICY No change

3. Comment: Comments to the proposed interpretive rule were received from Mr. Al Thelen, City Administrator, City of Billings and Ms. Cynthia White, Chairman, Missoula Urban Transportation District. Mr. Thelen's comments concerned the fact that the proposed rule would not include cities that have chosen to operate their urban transportation programs through a city department (Title 7, Chapter 14, Part 44) rather than through the creation of an urban transportation district (Title 7, Chapter 14, Part 2). However, Section 7-14-4403, MCA, specifically provides that municipal bus lines are subject to the provisions of the Montana Motor Carrier Act (Title 69, Chapter 12), and the rates charged by the bus lines must be approved by the Public Service Commission. The urban transportation districts statutes, on the other hand, do not contain a specific law that places the districts under the Commission's regulatory jurisdiction. Ms. White's comments were to explain that the Missoula Urban Transportation District had previously solicited a Commission staff opinion concerning the Commission's jurisdiction over the districts, and fully supported the formal adoption of the proposed rule.



GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 1, 1982.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE)	NOTICE OF ADOPTION OF RULES
ADOPTION OF RULES IMPLEMENTING)	IMPLEMENTING Chapters 330 and
ING Chapters 330 and 613,)	613, Laws of 1981, relating to
Laws of 1981, relating to the)	the taxation of livestock and
taxation of livestock and of)	of business inventory.
business inventory.)	(42.15.505, 42.23.523, 42.21.120)

TO: All Interested Persons:

1. On December 17, 1981, the Department of Revenue published notice of the proposed adoption of new rules relating to taxation of livestock and business inventory, page 1695, MAR Issue No. 23, 1981.

2. The Department has adopted the rules as proposed.

3. On January 15, 1982, at 9:30 a.m., the Department conducted a public hearing on the proposed rules. All comments received at the hearing were favorable to the rule as proposed. On January 14, 1982, the Department received a written comment from M. Berl Stallard, CPA of Miles City, Montana. Mr. Stallard requests the Department to treat livestock as business inventory, however, this proposition is beyond the scope of the legislation.

The Revenue Oversight Committee conducted a poll of the Legislature regarding the Department's proposed rules. The results of that poll were:

Thirty-five Senators agreed that proposed Rules I and II are consistent with the intent of the Legislature in passing Senate Bill 283 in the 1981 Legislative Session.

No Senators disagreed.

Fifty-Seven Representatives agreed that proposed Rules I and II are consistent with the intent of the Legislature in passing Senate Bill 283 in the 1981 Legislative Session.

Seven Representatives disagreed.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/82

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE	)	NOTICE OF REVISION OF RULES
Revision of Rules relating	)	relating to withholding for
to Withholding for purposes	)	purposes of Montana individual
of Montana individual income	)	income tax, found in Title 42,
tax, found in Title 42,	)	Chapter 17, ARM.
Chapter 17, ARM.)	

TO: All Interested Persons:

1. On December 17, 1981, the Department of Revenue published notice of the proposed revision of rules relating to withholding for purposes of Montana individual income tax found in Title 42, Chapter 17, ARM, at page 1714, 1981 WAR Issue No. 23. The Department proposed to amend Rules 42.17.101, 42.17.103, 42.17.111, 42.17.112, 42.17.113, 42.17.114, 42.17.116, 42.17.117, 42.17.118, 42.17.131, 42.17.133, 42.17.201 and 42.17.301. The Department proposed to adopt three new rules, and repeal rules 42.17.202 and 42.17.211 through 42.17.217.

2. The Department has amended and adopted the rules as proposed with the exception of 42.17.131, which is set out below.

42.17.131 WITHHOLDING EXEMPTIONS (1) The employee's exemptions for purposes of determining the amount of tax to be withheld are deemed, unless the department has determined otherwise, to be the same as or less than those claimed ~~in the~~ on line 4 of the withholding exemption certificate Form W-4 furnished by the employee to his employer for federal withholding tax purposes. Accordingly, the department of revenue does not provide forms for this purpose.

(2) "Exempt" status claimed for federal purposes does not exempt an employee's wages from withholding requirements for Montana purposes.

(3) If an employee fails or refuses to provide his allowable number of exemptions on line 4 of Form W-4, the employer shall withhold, for Montana purposes, on the basis of zero withholding allowances.

(4) Any change to line 4 of Form W-4 for federal purposes, including federal redeterminations of allowable exemptions, automatically changes the number of allowances for Montana purposes unless the allowances have been set at a fixed number by the department under subsection (5) below.


(5) An employer is required to provide a copy of any withholding exemption certificate (W-4) to the Department of Revenue, Helena, Montana, on which an employee has claimed 9 or more withholding exemptions. Each such certificate is to be provided at the same time and in the same manner as such certificate is required to be provided to the Internal Revenue Service under 26 CFR §37.3402-1. If, upon review of any such

certificates, the department determines that the certificate is defective, it may require in writing that the employer disregard the exemptions claimed and advise the employer of a maximum number of exemption allowances permitted the employee for state purposes. The filing of a new certificate by an employee whose exemption allowances have been set at a fixed maximum number by the department shall be disregarded by the employer unless a number equal to or less than the set maximum is claimed or written notice by the department is given authorizing a different maximum.

The IRS has changed the Federal W-4 form so that line 1 has now become line 4.

The Department has repealed the rules as proposed.

3. The change made to Rule 42.17.131, ARM, is the result of a change made to the Federal W-4 form by the IRS. The change was effective January 1, 1982. The Department conducted a public hearing on January 15, 1982, at 1:30 p.m. No testimony or comments were received.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 2/1/82

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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.2.101 and the	)	RULE 46.2.101 AND THE
adoption of Rule 46.2.102	)	ADOPTION OF RULE 46.2.102
pertaining to the procedures	)	PERTAINING TO THE PROCE-
for the making of rules and	)	DURES FOR THE MAKING OF
declaratory rulings	)	RULES AND DECLARATORY
	)	RULINGS

TO: All Interested Persons

1. On December 17, 1981, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.2.101 and the adoption of Rule 46.2.102 pertaining to the procedures for the making of rules and for declaratory rulings at page 1770 of the Montana Administrative Register, issue number 23.

2. The agency has amended Rule 46.2.101 as proposed with the following changes:

46.2.101 PROCEDURES FOR RULE CHANGES AND DECLARATORY RULINGS PROCEDURES FOR ADOPTING, AMENDING AND REPEALING AGENCY RULES (1) The department of social and rehabilitation services has herein adopted and incorporated the ~~does hereby adopt~~S AND INCORPORATES by REFERENCE attorney general's model procedural rules 1 through 7- FOUND IN ARM 1.3.102 THROUGH ARM 1.3.211 WHICH SET FORTH THE RULE MAKING PROCEDURES FOR THE DEPARTMENT RULES. 12 and 28 through 34 by reference to such rules as stated in ARM 1-3-102 through ARM 1-3-215 and ARM 1-3-231 through ARM 1-3-233 of this code. The department adopts these rules by incorporating by reference the following rules: ARM 1-3-102 through ARM 1-3-210. A copy of the amended model rules may be obtained by contacting the Attorney General's Office, State Capitol, Helena, Montana 59601. Phone 449-2026.

3. The agency has adopted Rule 46.2.102 as proposed with the following changes:

46.2.102 PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS (1) The department of social and rehabilitation services ~~does hereby adopt~~s and incorporates by reference attorney general's model procedural rules 22 through 24 and 28 found in ARM 1.3.227 through ARM 1.3.230 which set forth the procedures for the issuance of declaratory rulings. The department adopts these rules by incorporating by reference the following rules: ARM 1-3-226 through ARM 1-3-233. A copy

of the amended model rules may be obtained by contacting the Attorney General's Office, State Capitol, Helena, Montana 59601. Phone 449-2026.

4. No testimony was presented at the public hearing. Written comments received and the agency's response are as follows:

Comment: The Administrative Code Committee stated that both rules lack the necessary statement of general subject matter of the omitted rules being incorporated and, therefore, fail to comply with 2-4-307, MCA which relates to incorporations by reference. To be in compliance with 2-4-307, MCA, a short phrase inserted in the rules stating the general subject matter and identifying which of the Model Rules are being incorporated is needed.

Response: The Department concurs with the above-mentioned comment; therefore, the two rules will be modified to clarify which of the Model Rules are being incorporated by inserting a statement of general subject matter.

In the matter of the adoption)	NOTICE OF THE ADOPTION OF
of Rules 46.10.320 and)	RULES 46.10.320 AND
46.10.321, the amendment of)	46.10.321, THE AMENDMENT
Rules 46.10.108, 46.10.205,)	OF RULES 46.10.108,
46.10.207, 46.10.301,)	46.10.205, 46.10.207,
46.10.303, 46.10.308,)	46.10.301, 46.10.303,
46.10.310, 46.10.312,)	46.10.308, 46.10.310,
46.10.319, 46.10.401,)	46.10.312, 46.10.319,
46.10.402, 46.10.403,)	46.10.401, 46.10.402,
46.10.404, 46.10.406,)	46.10.403, 46.10.404,
46.10.505, 46.10.506,)	46.10.406, 46.10.505,
46.10.508, 46.10.510,)	46.10.506, 46.10.508,
46.10.511, 46.10.512,)	46.10.510, 46.10.511,
46.10.513, 46.10.514, and the)	46.10.512, 46.10.513,
repeal of Rules 46.10.209,)	46.10.514, AND THE REPEAL
46.10.304, 46.10.507,)	OF RULES 46.10.209,
46.10.509, and 46.10.515 per-))	46.10.304, 46.10.507,
taining to the Aid to Fam-))	46.10.509, AND 46.10.515
ilies with Dependent Children)	PERTAINING TO THE AID TO
(AFDC) Program)	FAMILIES WITH DEPENDENT
)	CHILDREN (AFDC) PROGRAM

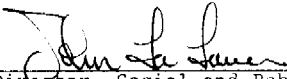
TO: All Interested Persons

1. On December 17, 1981, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules 46.10.320, DENIAL OF BENEFITS TO STRIKERS, and 46.10.321, NEEDED PREGNANT WOMAN, the amendment of Rules 46.10.108, 46.10.205, 46.10.207, 46.10.301, 46.10.303,

46.10.308, 46.10.310, 46.10.312, 46.10.319, 46.10.401,
46.10.402, 46.10.403, 46.10.404, 46.10.406, 46.10.505,
46.10.506, 46.10.508, 46.10.510, 46.10.511, 46.10.512,
46.10.513, 46.10.514, and the repeal of Rules 46.10.209,
46.10.304, 46.10.507, 46.10.509, and 46.10.515 pertaining to
the Aid To Families With Dependent Children (AFDC) Program at
page 1741 of the Montana Administrative Register, issue number
23.

2. The agency has adopted, amended and repealed the
rules as proposed.

3. No comments or testimony were received.



Director, Social and Rehabilita-
tion Services

Certified to the Secretary of State January 29, 1982.

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

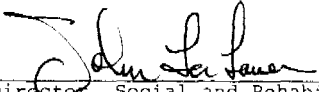
In the matter of the amend-) NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.602 and) RULES 46.12.602 AND
46.12.605 pertaining to) 46.12.605 PERTAINING TO
medical services, dental) MEDICAL SERVICES, DENTAL,
services) SERVICES

TO: All Interested Persons

1. On December 31, 1981, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.602 and 46.12.605 pertaining to medical services, dental services at page 1875 of the Montana Administrative Register, issue number 24.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State February 1, 1982.

VOLUME NO. 39

OPINION NO. 46

MILITARY PERSONNEL - Exempt from license fees imposed by section 61-3-533, MCA; not exempt from fees imposed by sections 61-3-321 and 61-3-502, MCA;

MOTOR VEHICLE REGISTRATION - Military personnel exempt from license fees imposed by section 61-3-533, MCA; military personnel not exempt from new car sales tax imposed by section 61-3-502, MCA, or registration fees under section 61-3-321, MCA;

TAXATION - Military personnel exempt from motor vehicle license fees not essential to State's licensing and registration laws;

MONTANA CODE ANNOTATED - Sections 61-3-321, 61-3-502, 61-3-533;

UNITED STATES CODE - Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 574.

- HELD: 1. Military personnel serving on active duty on a military installation in Montana are exempt from the new motor vehicle fees imposed by section 61-3-533, MCA, whether or not they have paid such fees in their home state.
2. Such military personnel are not exempt from the sales tax on new motor vehicles imposed by section 61-3-502, MCA.

20 January 1982

J. Fred Bourdeau, Esq.
Cascade County Attorney
Cascade County Courthouse
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion concerning:

Whether military personnel serving on active duty on Malmstrom Air Force Base or any other similar installation in Montana can be required to pay the new fees on motor vehicles, or whether the exception under the Soldiers' and Sailors' Civil Relief Act applies?

The Soldiers' and Sailors' Civil Relief Act of 1940 is codified at 50 U.S.C. App. §§ 501-591. The specific section in question here is section 574 which provides nonresident servicemen stationed in a state under military orders with widespread immunity from the personal property and income taxation of that state. Section 574(2) further states:

(a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to license, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, that the license, fee, or excise required by the state...of which the person is a resident or in which he is domiciled has been paid.

Your question arises due to the implementation of a new vehicle fee licensing system effective January 1, 1982, based on vehicle age and weight. The previous licensing system was a tax on personal property and therefore, under section 574, military personnel were exempt and required to pay only the registration fee provided for in section 61-3-321, MCA. Whether or not military personnel are also exempt under the flat fee licensing system requires review of the case law surrounding section 574. The section has been the subject of a good deal of litigation and the decisions arising from that litigation provide guidance for our determination.

The leading case involving section 574 and motor vehicles is California v. Buzard, 382 U.S. 386 (1966). In Buzard, the Court ruled that a resident of Washington, stationed in California under military orders, was exempt from a California "license fee" calculated at 2% of a vehicle's market value. The fee was "imposed...in lieu of all taxes according to value levied for state or local purposes on vehicles...subject to registration under the Vehicle Code...." Id. at 389. The Court ruled that the purpose of section 574 (there codified as section 514) was to relieve a serviceman of the burden of supporting a state government where he was acting solely in compliance with military orders. The phrase "license, fee, or excise required by the State" in section 574(2) indicated only Congressional recognition of the need to register cars and that certain fees are necessary to accomplish this. The essential purpose of the section then is to assure that "servicemen comply with

the registration and licensing laws of some states, whether their home state or the host state...." *Id.* at 392. Any law which requires fees beyond that intention is not to be applied to servicemen.

[We must consider the overall purpose of § 514 [now § 574] as well as the words of subsection (2)(b). Taxes like the California 2% "license fee" serve primarily a revenue interest, narrower in purpose but no different in kind from taxes raised to defray the general expenses of government. It is from the burden of taxes serving such ends that nonresident servicemen were to be freed, in the main, without regard to whether their home states imposed or sought to collect such taxes from them.... We conclude that subsection (2)(b) refers only to those taxes which are essential to the functioning of the host state's licensing and registration laws in their application to the motor vehicles of nonresident servicemen.

Id. at 395. The Court also went on to note that the registration and license statutes were separate sections and clearly severable.

Applying this rationale to Montana's new system raises several points of similarity. Montana's registration and license fees are separate statutes and the registration fee can clearly be applied without the license fee. The new fee system is "in lieu of a property tax...", 1981 Montana Laws, chapter 614, section 2, as was the California system. The money generated by the fee is to be used in the same manner as the previous property tax and thus serves primarily a revenue purpose. As a recent Attorney General's Opinion recognized, the fee system "is more akin to a property tax than a registration fee." 39 Op. Att'y Gen. No. 45 (1981). Thus while the title for the new licensing system has been changed, the underlying purposes have not.

A few other questions have arisen in conjunction with your opinion request. The first involves whether or not a serviceman who has not paid any taxes or licensing fees in his home state may be required to pay those fees in Montana. The answer was given in a companion case to Buzard, Snapp v. Neal, 382 U.S. 397 (1966). In Snapp, the Court ruled that "failure to pay the motor vehicle license, fee, or excise of the home state entitles the host state only to exact motor

vehicle taxes qualifying as licenses, fees, or excises," not any ad valorem taxes imposed by the state. Id. at 398. (Emphasis added.)

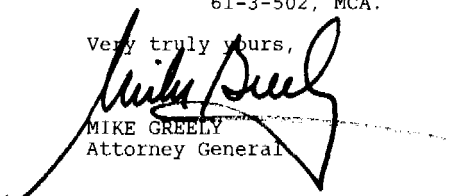
This means that only those fees which are essential to the administration of the States' licensing and registration laws can be imposed. In Montana those fees are set out in section 61-3-321, MCA.

The second question is whether or not the sales tax on new motor vehicles imposed by section 61-3-502, MCA, can be applied to military personnel. The answer is that military personnel are not exempt from this tax. In the case of U.S. v. Sullivan, 270 F. Supp. 236 (D. Conn. 1967), aff'd 398 F.2d 672 (1967), reversed on other grounds, 395 U.S. 169, 184 (1969), the Court ruled that section 514 [now section 574] "does not exempt servicemen from the sales...taxes imposed by Connecticut."

THEREFORE, IT IS MY OPINION:

1. Military personnel serving on active duty on a military installation in Montana are exempt from the new motor vehicle fees imposed by section 61-3-533, MCA, whether or not they have paid such fees in their home state.
2. Such military personnel are not exempt from the sales tax on new motor vehicles imposed by section 61-3-502, MCA.

Very truly yours,



MIKE GREELY
Attorney General

BANKS AND BANKING -- Federal reserve and national banks as federal agencies;
CONTRACTS -- Motor carriers and federal agencies;
MOTOR CARRIERS -- Contracts with federal reserve and national banks;
UNITED STATES -- Federal reserve and national banks as federal agencies;
MONTANA CODE ANNOTATED -- Section 69-12-324.

HELD: Both federal reserve banks and national banks are agencies of the United States government for purposes of the Montana Motor Carrier Act, in particular, section 69-12-324(1), MCA.

27 January 1982

Opal Winebrenner
Staff Attorney
Public Service Commission
1227 11th Avenue
Helena, Montana 59620

Dear Ms. Winebrenner:

You have requested my opinion on the following question:

Whether a federal reserve bank or a national bank is considered an agency or department of the federal government for the purposes of the Montana Motor Carrier Act, particularly section 69-12-324, MCA.

Title 69, chapter 12, part 3, of the Montana Code Annotated generally provides that motor carriers in Montana must obtain a certificate of public convenience and necessity from the Public Service Commission before operating in the state. Section 69-12-324, MCA, sets forth certain exceptions to this basic rule. In particular, subsection (1) of that statute provides that a contract between a motor

carrier and the United States government or "an agency or department thereof" for the transportation of persons or commodities is deemed to be sufficient proof of public convenience and necessity. Therefore, when such a contract exists, the hearing normally required on that issue is obviated.

In the case you have presented, Security Armored Transport is contemplating entering into a contract with the Federal Reserve Bank in Helena and certain national banks for the transportation of commodities between those institutions. The question has arisen whether federal reserve banks and national banks are considered to be agencies of the federal government under section 69-12-324, MCA.

The Federal Reserve System is a central bank system charged with assisting in the attainment of national economic and fiscal goals through its ability to influence the availability and cost of money and credit in the economy. Members of the Federal Reserve Board are appointed by the President with the approval of the Senate. Each branch bank within the system has its own board of directors which guides the particular bank's operations, but all federal reserve banks are under the general supervision and regulatory power of the Federal Reserve Board.

Questions concerning the role and character of federal reserve banks have produced a long and consistent line of case law holding that such banks are agencies of the federal government. E.g., Raichle v. Federal Reserve Bank, 34 F.2d 910, 916 (2d Cir. 1929); Committee to Save the Fox Building v. Birmingham Branch of the Federal Reserve Bank, 497 F. Supp. 504, 509 (N.D. Ala. 1980); Brinks, Inc. v. Board of Governors, 466 F. Supp. 116, 118-19 (D. D.C. 1979). Based upon the applicable judicial authority and the integral part played by federal reserve banks in the promotion of federal economic policies, it is my opinion that the reference in section 69-12-324(1), MCA, to contracts with agencies of the United States government includes contracts with federal reserve banks.

National banks are chartered by the United States Treasury Department's Comptroller of the Currency, who has primary responsibility for their regulation and supervision. The banks are required to be members of the Federal Reserve System and are subject to the general regulatory power of the Federal Reserve.

As pointed out in your inquiry, national banks perform many functions similar to those undertaken by private commercial banks, such as providing checking, savings, and lending services and sharing profits with stockholders. Moreover, Congress, in the interest of competition, has given the states the power to regulate various incidental operations of national banks and to impose certain state taxes on those institutions.

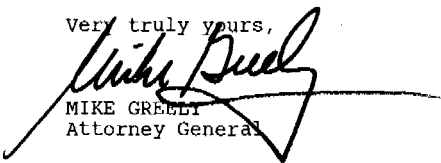
Regardless of their similarity to private banks and the ability of states to regulate or tax national banks in some areas, the majority of the cases dealing with the status of national banks has held that they are considered to be agencies or instrumentalities of the federal government. See, e.g., Mercantile National Bank v. Langdeau, 371 U.S. 555, 558-59 (1963); First National Bank v. Anderson, 269 U.S. 341, 347 (1926); United Missouri Bank v. Danforth, 394 F. Supp. 774, 785 (W.D. Mo. 1975); Zarrell v. Bank of America National Trust & Savings Association, 327 P.2d 436, 438 (Wash. 1958); cf. First Agricultural National Bank v. State Tax Commission, 229 N.E.2d 245, 248, 255-56 (Mass. 1967). The Montana Supreme Court has also specifically held that national banks are federal agencies, responsible, at least in part, for implementation of national economic and financial policies. State ex rel. Powell v. State Bank of Moore, 90 Mont. 539, 555, 4 P.2d 717, 720-21 (1931); Montana National Bank v. Yellowstone County, 78 Mont. 62, 76, 252 P. 876, 879 (1926). These authorities make it clear that the limited power of the state to impose operational conditions or taxes on national banks is based upon a specific grant of such power by Congress, and not upon any inherent state power or lack of agential relationship between the banks and the federal government. See Mercantile National Bank, 371 U.S. at 558-59, Montana National Bank, 90 Mont. at 555, 252 P. at 879.

Section 69-12-324(1), MCA, refers generally to contracts with agencies or departments of the United States government. It does not, by its language, exclude agencies over which Congress has allowed the states to exert limited control. Based upon the plain language of the statute and the authorities cited above, particularly the decisions of the United States and Montana Supreme Courts, it is my opinion that national banks must be considered agencies of the federal government under section 69-12-324(1), MCA.

THEREFORE, IT IS MY OPINION:

Both federal reserve banks and national banks are agencies of the United States government for purposes of the Montana Motor Carrier Act, in particular, section 69-12-324(1), MCA.

Very truly yours,



MIKE GRELLI
Attorney General

3-2/11/82

Montana Administrative Register

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

ADMINISTRATION, Department of, Title 2

I-VII Pertaining to Administration of Holidays and
Holiday Pay, p. 1246, 1776
I-VII Pertaining to Employee Record Keeping, p. 1250,
1777
I-VII Rules Pertaining to Alternate Work Schedules, p.56
I-XVI Rules Pertaining to State Employee Incentive Awards
Program, p. 48
2.4.113 Use of Personal Vehicles - Reimbursement at
Standard Rate, p. 1633, 100
2.21.1513 and Other Rules Pertaining to Compensatory Time -
and Overtime, p. 73
2.21.3002 and Other Rules Pertaining to Decedent's Warrants,
p. 66
2.21.5001 and Other Rules Pertaining to Reduction in Work
Force, p. 69
2.21.6501 and Other Rules Pertaining to Discipline Handling,
p. 60
2.23.303 and Other Rules in Chapter 23, Pertaining to
Montana Merit System p. 1120, 1245, 1885, 1
2.32.303 Minimum Required Plumbing Fixtures, p. 1533

AGRICULTURE, Department of, Title 4

I Emergency Rule Temporarily Imposing Certain Grain
Sampling and Testing Fees, p. 1287
I Emergency Rule Pertaining to Suspension of All Uses
of Endrin, p. 1057

- I-IX Pertaining to Regulating the Importing, Keeping and Sale of Alfalfa Leafcutting Bees, 1254, 1779 through 4.9.306 and 4.9.310 through 4.9.321
- 4.9.301 Pertaining to Wheat Research Grants, p. 1070
- 4.10.207 4.10.208, 504, 505 and new Rules Pertaining to Regulating the Use of Endrin, Strychnine, Aquatic Herbicides and Notification, p. 1635
- 4.12.1012 and 4.12.1013 Pertaining to Grain Fee Schedule and Sample Lot Inspection Service Fee, p. 1258, 1778

AUDITOR, Title 6

- I-XIII Medicare Supplement Insurance, p. 865, 1474
- 6.6.501 Disclosure Statements in Sale of Medicare Supplements Information to be Furnished Prospective Insured, p. 865, 1474

COMMERCE, Department of, Title 8

- I Conditions of Investment (Bank Investment and Agriculture Credit Corporations), p.1185
- (Board of Athletics)
- 8.8.101 and Other Rules in Chapter 8 Pertaining to the Board of Athletics, p. 1536, 6
- (Board of Chiropractors)
- 8.12.601 602, 606, 609 Pertaining to Applications, Licensing, Renewals, Continuing Education Requirements, p. 1537, 6
- (Board of Dentistry)
- I Oral Interview, p. 1144
- 8.16.405 Fee Schedule, p. 1144, 1613
- (State Electrical Board)
- 8.18.402 Application Approval, p. 1638, 101
- (Board of Horse Racing)
- 8.22.801 8.22.803 Pertaining to General Requirements, Declarations and Scratches, p. 76
- (Board of Medical Examiners)
- I-XIV Pertaining to Physician's Assistants, p. 1146, 1808
- (Board of Nursing)
- 8.32.902 and Other Rules in Chapter 32 Pertaining to the Standards for Montana Schools of Professional Nursing, p. 1303, 1827
- (Board of Plumbers)
- 8.44.404 8.44.405 Relating to Examinations and Renewals, p 1816
- (Board of Psychologists)
- I Fee Schedule, p. 3, 78
- (Board of Realty Regulation)
- 8.58.404 and Other Rules in Chapter 58 Pertaining to Realty, p. 1152, 1613
- (Board of Sanitarians)
- 8.60.407 and other rules Relating to Board of Sanitarians, p. 1819

3-2/11/82

- (Board of Speech Pathologists and Audiologists)
I-V Relating to Continuing Education, p. 1825
(Board of Veterinarians)
8.64.601 through 611 Veterinary Technicians, p. 881, 1184
(Weights and Measures Bureau)
8.77.103 Specifications, Tolerance, and User Requirements
for Weighing Devices, p. 1540, 7
(Board of Milk Control)
8.86.301 Relating to Milk Pricing Reflecting Butterfat
Values and Minimum Jobber Prices, p. 1181
8.86.301 Relating to the Minimum Price of Milk, p. 880
8.86.301 Relating to Rate Charged Producers for Hauling Milk
from Farm to Plant and Providing Uniform System of
Accounting, p. 1183
(Board of Housing)
I-Ch 111 Areas of Chronic Economic Distress, p. 1313, 1890

EDUCATION, Title 10

- (Superintendent of Public Instruction)
10.12.101 and other Rules in Chapter 12, Pertaining to Adult
and Community Education and High School Equivalency
Testing Certificates, p. 1316, 1891
(Board of Public Education)
I-IV LP Gas Motor Fuel Installation, p. 1330
I-IV Standards for Four Wheel Drive Vehicles, p. 1346
10.55.101 and other rules in Chapter 55, Pertaining to
Standards of Accreditation, p. 964, 1492
10.55.201 301, 401, 501, Introductions to Accreditation
Standards, p. 1349
10.57.101 and other rules in Chapter 57, Pertaining to
Teacher Certification, p. 1318, 1319, 1322, 1325
10.58.208 and other rules in Chapter 58, Pertaining to
Standards for State Approval of Teacher Education--
Programs for Interstate Reciprocity of Teacher
Certification, p. 1335
10.64.301 and other Rules in Chapter 64, Pertaining to
Transportation, p. 976, 1493
10.64.501 through 10.64.516 Special Education Vehicle
Standards, p. 1076
10.65.301 through 10.65.303 Compulsory School Attendance, p.
1082, 1892
10.66.101 GED Requirements, p. 1328

FISH, WILDLIFE & PARKS, Department of, Title 12

- 12.6.501 through 12.6.514 Pertaining to Outfitters and
Professional Guides Qualification, p. 1261, 80
112.6.901 Water Safety Regulations, p. 792, 882, 1784, 1785,
1896
12.7.201 and 12.7.202 Pertaining to Commercial Minnow
Seining License, 1640

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I Laboratory Fees, p. 1270, 1645
- I Procedures for Compliance with MEPA, p. 1162
- I-III Tumor Registry, p. 1834
- I-VII Pertaining to Variances from Solid Waste Management Rules, p. 794, 1190
- I-V Pertaining to Regulating Fluoride and Particulate Emissions from Existing Primary Aluminum Reduction Plants, p. 1642
- I-XI Public Water Supply System, p. 1838
- 16.2.101 Model Rules, p. 1559
- 16.2.201 Clean Air Rules--Notice, p. 1646
- 16.2.621 MEPA Requirements for Specific Activities, p. 1159
- 16.6.101 and other rules in Chapter 6, Pertaining to Vital Statistics Records, Certificates and Permits, p. 885-915, 1187-1189
- 16.8.701 Definitions - Air Quality Rules, p. 1170
- 16.8.1102 Air Quality Permit Required, When, p. 1170
- 16.8.1405 Open Burning Rules, p. 797, 1164
- 16.10.601 through 16.10.609 Pertaining to Policy, License, Guest Registration, Structural and Operational Requirements of Establishments, p.1353
- 16.10.610 and 16.10.619 Pertaining to Ventilation and Fire Safety Requirements, p. 1351, 1897
- 16.10.611 612, 615, 616, 617, 620, 625 Pertaining to Toilet Facilities, Beds, Cleaning, Employee Requirements and Refuse-Storage and Disposal of for Establishments, p. 1353
- 16.10.626 Food Service Requirements, p. 1352, 1898
- 16.10.701 and other Rules in Chapter 10 Pertaining to Tourist Campgrounds and Trailer Courts, p. 1647
- 16.16.803 and 16.16.804 Fee Schedule and Disposition of Fees -- Subdivision, p. 1019, 1020, 1288
- 16.18.201 through 16.18.204 Pertaining to Water and Wastewater Operators, p. 1085, 1787
- 16.18.205 and 16.18.206 Pertaining to Water and Wastewater Operators and Plants, p. 1092, 1787
- 16.20.201 and other Rules in Chapter 20, Pertaining to Public Water Supplies, p. 1543
- 16.20.209 and 16.20.218 Pertaining to Laboratory Analysis and Control Tests of Groundwater Supplies, p. 1542
- 16.20.230 through 16.20.233 Relating to Variances, p. 1844
- 16.24.401 and other Rules Relating to Day Care Centers, p. 1845, 1854, 81, 84
- 16.24.803 Facility Report, p. 916, 1188
- 16.28.202 Reportable Diseases, p. 1016, 1289
- 16.28.706 and 16.28.714 Immunization, p.1267, 1788

HIGHWAYS, Department of, Title 18

- 18.8.424 Dealer's Demonstration Permits, p. 1561, 9
- 18.8.601 Overweight Single Trip Permits, p. 798, 1194

18.8.1202 through 18.8.1215 Various Special Vehicle Movement Conditions, p. 798, 1194

INSTITUTIONS, Department of, Title 20

20.3.101 through 20.3.216 Approval of Alcohol Program, p. 1899

20.7.101 through 20.7.109 Relating to Supervised Release Program, p. 1855, 86

JUSTICE, Department of, Title 23

1.3.101 through 1.3.234 Model Rules, p. 802, 1195
(Board of Crime Control)

23.14.402 Minimum Standards for the Employment of Peace Officers, p. 1274, 1903

23.14.412 Qualifications for Certification of Law Enforcement Academy and Training Courses, p. 1272, 1904

23.14.413 Certification Requirements for Trainee Attendance and Performance, p. 1276, 1905

LABOR AND INDUSTRY, Department of, Title 24

I-IV Pertaining to Unemployment Insurance, p. 1563

24.9.217 Complaint, Notice of Commission, p. 805, 1615

24.9.252 Declaratory Rulings: Filing and Notification of Disposition of Petition, p. 803, 1616

24.9.255 Declaratory Ruling: Effect of Ruling, p. 806, 1618

24.9.261 Dismissal of Complaints Also Pending in Court, p. 809, 1619

24.9.802 Commission Meetings, Quorum, Decision Making Authority, p. 807, 1621

24.11.411 Regarding School as a Reason for Voluntary Quit, p. 1568

24.19.501 Rebate of Service Charges Interest and/or Placement Fees, p. 919, 1290

24.19.503 Providing for Termination after 30 Days, p. 919, 1290

STATE LANDS, Department of, Title 26

I-XX Rules Governing State Leases for Metalliferous Minerals and Gems, p. 921, 1920

I-XX Rules Governing State Leases for Uranium and other Fissionable Material, p. 932, 1906

LIVESTOCK, Department of, Title 32

I-II Emergency Rules Requiring a Tuberculosis Test on Wild Species of Cloven-hoofed Ungulates, p. 1494, 1572

- I-IV Pertaining to Montana Beef Research and Marketing Act; Assessment and Levy of Authorized Tax, p. 1278, 1933
- I-X Relating to Quarantine of Livestock, p. 1869
- II Research Facility Exemption, p. 1873
- 32.3.212 Special Requirements for Cattle, p. 1866
- 32.3.214 Requiring Tuberculosis Test on Goats, p. 1570

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Model Procedural Rules, p. 1094, 1622
- I-XX Pertaining to Water Development Loan and Grant Program, p. 1574
- 36.2.101 Model Procedural Rules, p. 1670
- 36.12.102 and 36.12.103 Pertaining to Revised Forms and Increased Application Fees for Beneficial Water Use Permits, p. 1671
- 36.22.602 Survey Plat With Notice of Intention to Drill, p. 4
- 36.22.1607 Deadlines for Action on Determinations, p. 1095, 1496

PUBLIC SERVICE, Department of, Title 38

- I Jurisdictional Policy, p. 1175
- I-III Rules for Radio Common Carriers, p. 943, 1497
- I-II Rules for Public Service Commission Regulation of Municipally Owned Utilities, p. 1097
- I-XIV Governing Water Service Provided by Privately Owned Water Utilities and County Water Districts, p. 1585
- 38.2.316 Transcripts, p. 1025, 1789
- 38.2.1209 Copies, p. 1676
- 38.5.1107 Interest on Deposits, p. 1023, 1791

REVENUE, Department of, Title 42

- I-II Interest Income Exclusion and Two Earner Married Couples Deduction, p. 1592
- I-III Relating to Taxation of Livestock and of Business Inventory, p. 1695
- I-IV Relating to Assessment of Furniture and Fixtures Used in Commercial Establishments, p. 1724
- 42.15.104 and other Rules in Chapter 15 Pertaining to Montana Individual Income Tax, p. 1592, 10
- 42.16.101 and other Rules in Chapter 16 Pertaining to Montana Individual Income Tax, p. 1605, 14
- 42.17.101 Amendments and new Rules Pertaining to Withholding for Purposes of Montana Individual Income Tax, p. 1714
- 42.21.101 and other Rules in Chapter 21 Relating to Assessment of Personal Property, p. 1679, 102
- 42.21.103 and 42.21.105 Relating to Assessment of Snowmobiles and Automobiles and Light Trucks, p. 1693, 103

3-2/11/82

- 42.22.105 and Other Rules Pertaining to Reporting Requirements for Centrally Assessed Companies, p. 87
- 42.22.1117 Marketing, Administrative and Other Operational Costs Mines Tax, p. 1677
- 42.23.103 and other Amendments and New Rules in Chapters 23, 24, 26 Relating to Montana Corporate License and Income Tax, p. 1699, 104

SECRETARY OF STATE, Title 44

- I-LVII Pertaining to Advisory Opinions, p. 1367, 1936
- I-VIII Pertaining to Implementing Initiative 85, the Montana Lobbyist Disclosure Act of 1980, p. 1281, 91
- 1.2.210 Adoption of an Agency Rule by Incorporation by Reference, p. 1729
- 1.2.419 Montana Administrative Register Schedule, p. 1177, 1623
- 1.2.421 Subscription to the Code - Cost, p. 1179, 1280, 1624
- 1.2.423 Agency Filing Fees, p. 1179, 1280, 1624
- 44.2.101 Incorporation of Model Rules, p. 1386, 1935

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I Transfer of Resources, p. 1469, 1979
- I Pertaining to the Reduction of the Number of Children in Foster Care for More Than 24 Months, p. 98
- I Program Requirements for Family Day Care Homes and Group Day Care Homes, p. 1027
- I Eligibility and Other Requirements for AFDC, p. 1239
- II Family Day Care Homes, Group Day Care Homes and Day Care Facilities Caring for Infants, p. 1045
- I-III Prosthetic Devices, Durable Medical Equipment, and Medical Supplies, Requirements, Reimbursement and Fee Schedule, p. 1446, 1977
- I-XXIII Emergency Rules Relating to Low Income Energy Assistance Program, p. 1950
- 46.2.101 and New Rule Pertaining to Procedures for Making of Rules and Declaratory Rulings, p. 1770
- 46.5.501 and New Rules Pertaining to Foster Care Reviews, Review Committees, and Defining Department, p. 1733
- 46.5.901 and Rules Pertaining to Day Care Homes, Group Day Care Homes and Centers, p. 945, 1792
- 46.5.912 Day Care Center Licensing Services, General Eligibility and Program Requirements, p. 1037
- 46.5.913 Day Care Center Licensing Services Provided, p. 1050

- 46.10.108 and Other Rules in Chapter 10 Pertaining to
Emergency Amendments and Repeals Pertaining to Aid
to Families with Dependent Children, p. 1499
- 46.10.108 Amendments, Repeal and New Rules in Chapter 10,
Pertaining to the Aid to Families with Dependent
Children (AFDC) Program, p. 1741
- 46.11.101 Food Stamp Program, p. 1241, 1731, 1974, 97
- 46.12.102 Medical Assistance, Definitions, p. 1737, 105
- 46.12.523 and Other Rules in Chapter 12, Pertaining to
Medical Services, Reimbursement, p. 1387, 1975
- 46.12.602 and other rules Relating to Dental Services, p.
1875
- 46.12.702 Outpatient Drugs, Requirements, p. 1772, 105
- 46.12.801 Prosthetic Devices, Durable Medical Equipment, and
Medical Supplies, Definition, p. 1445, 1977
- 46.12.1001 1002, 1005 Transportation and Per Diem, Definition,
Requirements and Reimbursement, p. 1465, 1976
- 46.12.2003 Physician Services, Reimbursement/General
Requirements and Modifiers, p. 1460, 1976
- 46.12.3803 Medically Needy Income Standards, p. 1774, 105