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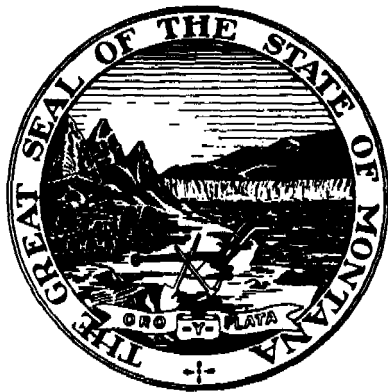
# **MONTANA ADMINISTRATIVE REGISTER**

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JUN 21 1983

OF MONTANA

**1983 ISSUE NO. 12  
JUNE 30, 1983  
PAGES 676-794**



# MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of Rules 4.12.1202, Defin- )	PROPOSED AMENDMENTS OF
itions; 4.12.1203, Standards )	RULES 4.12.1202, 4.12.1203,
for Certification; 4.12.1206, )	4.12.1206 and 4.12.1207 ARM,
Alfalfa Leafcutting Bee )	ALFALFA LEAFCUTTING BEES
Sampling Procedures; and )	
4.12.1207, Certification Pro- )	
cedures and Fees. )	

TO: All Interested Persons:

1. On July 28, 1983 at 1:00 p.m., a public hearing will be held in Billings, Montana at 2603 2nd Avenue North, (Montana Dakota Utilities Hospitality Room), to consider certain proposed amendments relating to the definitions, standards for certification, sampling procedures and sales of alfalfa leafcutting bees.

2. The rules are proposed for amendment as follows:

Rule 4.12.1202 DEFINITIONS is proposed to be amended by adding a subsection (4) as follows: (new material underlined.)

(4) "Custom pollinator" means any person who has a contract to pollinate alfalfa seed crops on property that he does not own or control. AUTH: Sec. 80-6-1103, MCA; IMP: Sec. 80-6-1102, MCA.

Rule 4.12.1203 STANDARDS FOR CERTIFICATION. Sub-section (4) is proposed to be amended to read as follows: (material to be deleted is stricken.)

~~(e)--Checkered-flower-beetle-(Trichodes-ornatus)~~  
~~(f)--Giant-flour-beetle-(Tribolium-brevicornis)~~  
~~(g)--Sunflower-beetle/Longtongued-blister-beetle~~  
~~(Nemognatha-lutea)~~  
~~(h)--Dried-fruit-moth-(Vitula-edmandae)~~  
~~(i)--Indian-meal-moth-(Plodia-interpunctella)~~  
~~(j)--Cadelle-beetle-(Tenebriodes-mauritanicus)~~  
 AUTH. and IMP: Sec. 80-6-1103, MCA.

Rule 4.12.1206 ALFALFA LEAFCUTTING BEE SAMPLING PROCEDURES is proposed to be amended by making the following changes to existing sub-section (5) and by adding a new sub-section (8): (new material underlined, old material stricken.)

(5) All official samples will be obtained by department designated personnel in the presence of the owner/manager of the bees, or by the owner/manager under the direct supervision of the department.

(8) A grower who's total bees consist of less than 100 pounds may have an official sample consisting of a 2 ounce sample drawn from each 20 pounds of bees; and from a composite

sample an official sample of 4 ounces may be drawn. AUTH:  
Sec. 80-6-1103, MCA; IMP: Sec. 80-6-1105, MCA.

Rule 4.12.1207 CERTIFICATION PROCEDURES AND FEES is proposed to be amended by making the following changes to the existing sub-sections (1)(b), (1)(d), (2)(a) and (2)(b): (new material underlined, old material stricken.)

(1)(b) Annual Certification -- Any person owning or possessing bees within Montana shall make, on or before January 31, 1982 and on or before October 1, 1982 and of December 1 and each year thereafter, a request for certification or re-certification and arrange a date for sampling each year of said possession. and pay assessment fees thereon.

(d) Any person owning or possessing bees within the state of Montana that are not ready for re-certification sampling on or before January 21 ~~July 1~~ April 1 of each year shall be subject to the penalties imposed under Section 80-6-1105 MCA.

(2)(a) All sales made during the preceding year shall be reported to the department on each application for annual certification giving name, address and location of the new owner. All sales of bees made in Montana between September 1 and June 15 of each crop year shall be reported to the department on or before June 20 of each year and any sales made between June 15 and September 1 of each crop year shall be reported within 20 days of sale. The sales shall contain the name, address, pounds sold, and location of the new owner.

(b) The department shall be notified of all sales or termination of bee operations. These sales shall be reported to the department in writing stating the name, address and location of the new owner within 60 days of the sale. AUTH: Sec. 80-6-1103, MCA; IMP: Sec. 80-6-1105, MCA.

3. The rules are proposed for amendment for the following reasons:

A. Rule 4.12.1202 is proposed for amendment because the 48th Legislature changed section 80-6-1102 by adding the definition for a "Custom pollinator". The proposed rule change will include the definition for "Custom pollinator" thus making the rule compatible with statute.

B. Rule 4.12.1203 (e) through (j) represent various nest destroyer organisms. The current statute only defines "Parasites" which does not include nest destroyers. Therefore the terms checkered flower beetle, giant flour beetle, sunflower beetle, dried fruit moth, indian meal moth and cadella beetle should be eliminated.

C. Rule 4.12.1206 (5) is proposed for amendment because the proposed rule change will allow the department inspectors to supervise other persons who may wish or desire to sample their own bees. Some leafcutting bee producers wish to use their own sampling equipment as they contend it reduces the chance of spreading chalkbrood disease.

D. Rule 4.12.1206 (8): the proposed amendment will allow the department to obtain a representative sample from small lots. In some cases, the existing rule mandates that one-half of the producer's bees were required for proper laboratory sampling.

E. Rule 4.12.1207 (1)(b) is proposed for amendment to move the annual certification date back to December 1, which suits or meets cultural practices of the industry.

F. Rule 4.12.1207 (2)(a) is amended to establish a deadline for reporting all leafcutting bee sales. The proposed rule will establish a uniform reporting system.

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 Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than July 30, 1983.

5. The department or its designee will preside over the hearing.

  
\_\_\_\_\_  
Keith Kelly, Director  
Montana Department of Agriculture

Certified to the Secretary of State June 20, 1983.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of adoption	)	NOTICE OF PROPOSED RULES
of rules pertaining to the	)	PERTAINING TO THE GRADING
grading of certified seed	)	OF CERTIFIED SEED POTATOES
potatoes.	)	
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 1, 1983, the Department of Agriculture proposes adoption of rules pertaining to the grading of certified seed potatoes.

2. The new rules are proposed as follows:

RULE 1 GENERAL REQUIREMENTS (1) The Department of Agriculture, pursuant to Sections 80-3-104 and 80-3-110, MCA adopts grade standards and inspection procedures to enforce those grades, as further set out in this rule.

(2) All seed potatoes shall be shipped under tags that represent all grade and classes to which they were sorted and certified.

(3) Final Pack Inspection (a) All Montana Certified Seed Potatoes sold in bulk or offered for sale in bags shall be inspected by a Federal or Federal-State Inspector or designated MSU Inspector(s). The final inspection shall be made before potatoes are moved from the loading point. If the potatoes do not meet the final grade requirements, the tags shall be removed and their use denied the grower unless the potatoes are regraded to meet the requirements and again submitted for inspection. Standard method of loading shall be used when loading trucks and/or railroad cars, or bulk shipments.

(b) Federal and Federal-State grade inspectors are granted authority at any or all times to call in certification staff of Montana State University if they suspect a grower or growers are not handling certified seed potatoes in accordance with rules set forth by Montana State University, or if they suspect potatoes inspected do not conform in other respects with the rules of Montana State University. However, under no circumstances shall the department be held responsible for inspecting for and enforcing compliance with university rules, and any failure to review for such compliance shall not be construed as approving for university rule compliance.

Certification by the department shall mean approval for department grading standards only.

(4) Tags and seals shall be issued to the applicant or his designated agent. No mutilation of tabs by writer or marking over, or otherwise altering original information printed thereon shall be permitted. If such occurs, the tag is invalid.

(5) The grower, to whom the tags were issued, shall be responsible for the proper tagging and sealing of containers.

(6) Each lot of certified seed potatoes shall be inspected by either Federal or Federal-State inspectors at the time of shipment.

(7) Ungraded potatoes shall not be inspected. AUTH. and IMP. Secs. 80-3-104 and 80-3-110, MCA.

RULE II PURPLE TAGS (1) These tags shall be used to designate seed lots that meet the Montana grade requirements of either Blue grade, Red grade, or Drop Seed grade.

(2) In addition to grade, purple tags shall be used to designate the class of seed as follows:

(a) Seeds meeting all requirements for Generation I, Generation II and Generation III of stem-cut, PVX-tested and non PVX-tested class shall be tagged with a purple tag having stem-cut PVX-tested or non-PVX tested, whichever is appropriate, printed clearly across the face of the tag and Generation printed with the grower's name, address, etc., at the time the tags are ordered by the grower.

(b) Oversize, undersize, sprout and Hollow Heart shall be permissible upon evidence of agreement of purchaser. AUTH. and IMP. Sec. 80-3-104, MCA.

RULE III BLUE TAGS (1) This tag shall be used to designate seed lots that are the equivalent of the U. S. No. 1 grade with the following exceptions:

(a) Size - the minimum size shall be 1 1/2 ounces and the maximum size shall be 12 ounces.

(b) Sunburn (greening) shall be permissible.

(c) Stem-end discoloration - not more than 4% (by weight) of the potatoes shall have serious discoloration extending beyond a depth of 1/2 inches.

(d) Immaturity, as indicated by feathering of skin, shall not disqualify provided there is no undue loss of weight from wilting or shrivelling of tubers.

(e) Oversize, undersize, and/or Hollow Heart - it shall be permissible to use tags on potatoes containing an excess of oversize, undersize, and/or Hollow Heart providing tags indicate excess tolerance. Grower must submit evidence that he had an agreement with the purchaser stating that said purchaser is willing to accept such a grade.

(f) Single side growth cracks may extend two-thirds length of tuber and one-fourth the diameter of the tuber.

(g) Washing of certified seed potatoes to be tagged with the official tag of shall not be permissible unless required by the buyer. Presence of soil on tubers shall not constitute reason for throwing them out of the grade. Grower should allow for weight of soil when packaging potatoes for sale.

(h) Sprouts - not more than 10% of the lot may have sprouts more than 3/4 inch in length. Individual sprouts or clusters shall not be scored on appearance or length if within the 10% tolerance. Excessive sprouts may be permitted upon evidence of agreement of purchaser.

(i) Cuts and bruises shall be scored only if the depth exceeds 1/2 inch.

(j) Air cracks shall be scored only if the depth exceeds 1/2 inch.

(2) In addition to grade, the blue tags shall be used to designate the class of seed as follows:

(a) Seeds meeting all requirements for Generation IV and Generation V of PVX-tested and non PVX-tested seed class shall be tagged with a blue tag having PVX-tested or non PVX-tested printed clearly as the face of the tag, and Generation printed with the grower's name, address, etc at the time the tags are ordered by the grower. AUTH. and IMP. Sec. 80-3-104, MCA.

RULE IV RED TAGS (1) This tag shall be used to designate seed lots that are the equivalent of U. S. No. 2 grade with the following exceptions:

(a) Size - the minimum size shall be 1 1/2 ounces and the maximum shall be 12 ounces.

(b) Second growth shall not be deliberately removed.

(c) Exception: in regard to sunburn, (greening), stem-end discoloration, immaturity, oversize, undersize, and Hollow Heart, shall be the same as for the blue grade.

(d) Sprouts - not more than 10% of the lot may have sprouts more than 3/4 inch in length. Individually, sprouts or clusters shall not be scored on appearance or length if within the 10% tolerance. Excessive sprouts may be permitted upon evidence of agreement of purchaser.

(e) Cuts and bruises shall be scored only if the depth exceeds 1/2 inch.

(f) Air cracks shall be scored only if the depth exceeds 1/2 inch.

(g) Growth cracks shall not be scored.

(2) In addition to grade, the red tag shall also be used to designate the CLASS of seed as follows:

(a) Seeds meeting all requirements for Generation I, Generation II and Generation III of stem-cut, PVX-tested and non PVX-tested seed class shall have stem-cut, PVX-tested, non PVX-tested, whichever is appropriate, printed clearly across the face of the tag and Generation printed with the grower's name, address, etc. at the time the tags are ordered by the grower. AUTH. and IMP. Sec. 80-3-104, MCA.

RULE V DROP SEED GRADE (1) Drop seed grade seed lots shall have a minimum weight of 1 ounce and a maximum of 4 ounces.

(2) There is no special color tag for drop seed grade. The words DROP SEED shall be printed on the tag with the grower's name, address, etc, and seed class at the time the tags are ordered by the grower. All other requirements for seed class shall be met according to the tag color and class. AUTH. and IMP. Sec. 80-3-104, MCA.

RULE VI TAGS AND GRADES FOR BULK SHIPMENT (1) Potatoes shipped in bulk shall meet all grade requirements. All official grade tags and seals shall be issued for bulk shipments. All carriers shall be tagged and sealed in such a

manner that it will be impossible to add or remove tubers during transport to the receiving point.

(2) Tags carrying information described in this section shall be used and, in addition, the following information must be filled out on the bulk tag at the time of sealing the carriers:

- (a) Seal number
- (b) Inspection certification number
- (c) Date inspected
- (d) Buyer's name
- (e) Date and time loaded
- (f) Trucking firm's name and driver's initials
- (g) Carrier license or car number
- (h) Approximate weight (100 lbs occupies about 2.4 cubic feet, or .42 x cu. ft. = number of CWT's). AUTH. and IMP. Secs. 80-3-104 and 80-3-110, MCA.

3. The reasons for the proposed adoption of these rules are as follow:

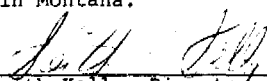
(a) to clarify the department's responsibility in grading certified seed potatoes.

(b) to clarify the department's responsibility in inspecting the seed potatoes.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than July 30, 1983.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59260, no later than July 30, 1983.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature; from a governmental 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. Ten percent of those persons directly affected has been determined to be 10 persons, based on 100 seed potato growers in Montana.

  
\_\_\_\_\_  
Keith Kelly, Director  
Montana Department of Agriculture

Certified to the Secretary of State June 20, 1983.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF HORSE RACING

In the matter of the proposed )	NOTICE OF PROPOSED AMENDMENTS
amendments of 8.22.610 concern- )	OF 8.22.610 STEWARDS; 8.22.808
ing interest and penalties on )	(6) OBJECTIONS - PROTESTS,
finer levied by stewards; 8.22.)	8.22.1501 GENERAL PROVISIONS;
808 subsection (6) concerning )	and PROPOSED ADOPTION OF NEW
objections and protests; 8.22. )	RULES under sub-chapter 3,
1501 subsection (6) concerning )	STAY OF SUMMARY IMPOSITION
general provisions; and pro- )	OF PENALTY and HEARING EXAM-
posed adoption of new rules; )	INER, under sub-chapter 4,
under sub-chapter 3, a new rule) )	POWERS AND DUTIES OF EXECUTIVE
concerning a stay of summary )	SECRETARY, under sub-chapter
imposition of penalty and a new )	15, DEFINITION OF CONDUCT
rule concerning hearing exam- )	DETRIMENTAL TO THE BEST INTER-
iner; a new rule defining the )	ESTS OF RACING; under sub-
duties of the executive secre- )	chapter 16, DEFINITION OF
tary under a new sub-chapter 4;) )	EXOTIC FORMS OF WAGERING and
a new rule under sub-chapter 15) )	BONUS FOR OWNERS OF MONTANA
concerning definition of con- )	BREDS
duct detrimental to the best )	
interests of racing; new rules )	NO PUBLIC HEARING CONTEMPLATED
under sub-chapter 16 concerning) )	
a definition of exotic forms of) )	
wagering and bonuses for owners) )	
of Montana breeds )	

TO: All Interested Persons:

1. On July 30, 1983, the Board of Horse racing proposes to amend and adopt the above stated rules.

2. The proposed amendment of 8.22.610 will add new subsections (9) and (10) and renumbers all following subsections. The full text of the rule is located at pages 8-652 through 8-655, Administrative Rules of Montana. (new matter underlined, deleted matter interlined)

"8.22.610 STEWARDS (1) ...

(9) Interest on fines levied or imposed by stewards is payable at the rate of 10% per annum.

(10) Penalty on fines levied or imposed by stewards is payable at the rate of 50% in all cases in which the fine is not paid within 30 days after the order imposing the fines becomes final and effective.

49) (11) ..."

3. The board is proposing the amendment to implement section 9 (4)(e) of Chapter 563, Laws of 1983 which gave the board the authority to adopt by rule interest on unpaid fines. In the past persons fined would not pay the fines imposed in a timely manner. Many would wait until the following spring and pay the fine just prior to being licensed. The authority of the board to make the proposed amendment is based on section 23-4-202 (4)(2), MCA and implements the same.

12-6/30/83

MAR Notice No. 8-22-27

4. The proposed amendment of 8.22.808 will amend subsection (6) and will read as follows: (full text of rule is located at page 8-693, Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.22.808 OBJECTIONS - PROTESTS (1)..."

(6) If a jockey wishes to protest a happening at a race, he must notify the clerk of scales immediately upon his arrival at the scales for weighing in. The clerk of scales will thereupon put the jockey in touch with the stewards by telephone.

(7)..."

5. The board is proposing the change as a housekeeping amendment which responds to experience in applying the rule. It clarifies the role of the clerk of scales in a protest proceeding. The authority of the board to make the proposed amendment is based on section 23-4-104, MCA and implements the same.

6. The proposed amendment of 8.22.1501 amends subsection (6) and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at 8-725 - 8-728, Administrative Rules of Montana)

"8.22.1501 GENERAL PROVISIONS (1) ..."

(6) No person shall ~~willfully~~ enter, or cause to be entered, or start, a horse which he knows or believes to be ineligible or disqualified.

(7) ..."

7. The board is proposing the change as a housekeeping amendment which responds to experiences in applying the rule. It eliminates the necessity to prove a particular intent. The authority of the board to make the proposed amendment is based on section 23-4-104, MCA and implements the same.

8. The proposed adoption of the rule concerning stay of summary imposition of penalty under sub-chapter 3 will read as follows:

"1. STAY OF SUMMARY IMPOSITION OF PENALTY (1) Either the applicable board of stewards or the board of horse racing may stay the imposition of a fine, license suspension and/or other penalty that results from a summary hearing conducted by the stewards with respect to violations of the rules of the board, the customs of the course, and the Montana Codes Annotated.

(2) Stays may be granted upon timely application and for good cause shown and may extend for any length of time not exceeding final order of the board of horse racing and sufficient time to petition for judicial review."

9. The board is proposing adoption of the new rule in the interest of due process, the rule allows for impacted parties to have adequate time to prepare a course of action or non-action. This rule is mandated by section 9, subsection (4) of Chapter 563, 1983 Montana session laws. The authority of the board to make the proposed adoption is based on section 23-4-202 (4) (b), MCA and implements the same.

10. The proposed new rule under sub-chapter 3 concerning hearing examiners will read as follows:

"II. HEARING EXAMINERS (1) In accordance with sections 2-4-611 and 37-1-121, MCA, a hearing examiner may be appointed to preside over administrative contested case proceedings under the jurisdiction of the board of horse racing. In those instances in which hearing examiners are appointed the powers of the board defined by these administrative rules of procedure shall be available to the hearing examiner. The board of horse racing retains jurisdiction under section 2-4-621, MCA to make all final orders."

11. The board is proposing the adoption of this rule to clarify the role of the hearing examiner in contested case hearings. The authority of the board to make the proposed adoption is based on section 23-4-202 (4), MCA and implements sections 23-4-202 (4) and 37-1-121, MCA.

12. The proposed new rule under sub-chapter 4 will read as follows:

"III. POWERS AND DUTIES OF EXECUTIVE SECRETARY (1) In accordance with section 23-4-106, MCA, the department shall appoint an executive secretary.

(2) The executive secretary shall:

- (a) supervise race meets and oversee all activities of all racing officials;
- (b) hire and supervise all state racing officials for the department;
- (c) inspect race facilities;
- (d) make inquiries into the financial dealing and solvency of any licensee;
- (e) handle complaints and make recommendations to the board in their regard;
- (f) prepare agendas for all board meetings;
- (g) schedule hearings and have hearing examiners appointed;
- (h) perform other duties as directed by the board;
- (i) hire staff to assist him in performing his duties;
- (j) maintain and preserve the official records of the board."

13. The board is proposing the adoption to define the duties of the executive secretary as called for by section 23-4-106, MCA. (section 7 of Chapter 563, Laws of 1983) The authority of the board to make the proposed adoption is based on section 23-4-104 and 23-4-106, MCA and implements section 23-4-106, MCA.

14. The proposed new rule under sub-chapter 15 will read as follows:

"IV. DEFINITION OF CONDUCT DETRIMENTAL TO THE BEST INTERESTS OF RACING For the purpose of implementing section 23-4-202 (2), MCA, as amended, the board rules that

the following conduct is detrimental to the best interest of racing but without limitation:

(1) disturbance of the peace on the grounds of a race meet;

(2) fighting, brawling, assault, intimidation, causing an altercation or participating in an altercation on the grounds of a race meet;

(3) use of boisterous, abusive and excessive profanity on the grounds of a race meet;

(4) committing moving traffic motor vehicle violations on the premises of a race meet;

(5) carrying fire arms or other dangerous weapons on the grounds of a race meet;

(6) mutilation or maiming of a race horse or other animal;

(7) possession, sale or giving away of a controlled drug or other chemical substance on the grounds of a race meet without a valid prescription;

(8) negotiating stolen checks and issuing bad checks;

(9) being a habitual offender of the laws of racing in this state;

(10) having been convicted of a crime involving moral turpitude but not having completed state supervision;

(11) making unwarranted or frivolous claims of foul;

(12) disobeying orders from stewards;

(13) entering a horse at more than one race meet on the same day."

15. The rule is needed to give substance to the word "detrimental" as it is applied to the regulation of horse racing. In many instances the word without specification is challenged in litigation. The rule is mandated in section 9 (2) of Chapter 563, Laws of 1983. The authority of the board to make the proposed amendment is based on section 23-4-202 (2), MCA and implements the same.

16. The first new rule under sub-chapter 16 will read as follows:

"V. DEFINITION OF EXOTIC FORMS OF WAGERING For purposes of section 23-4-202, (4)(f), MCA, 'exotic forms of wagering on races' are defined as including, but not limited to, Daily Double, Quiniela or Quinella, Big Q, Twin Quin, Exacta, Tri-fecta, and in general every form of wagering except win, place and show."

17. The new statute enacted by the last legislature refers to "exotic" as a form of wagering but offers no definition. This simple rule defines the word "exotic" as it is used. The definition is within the authority of the board. This definition is necessary in order to implement section 9, subsection (4) (f) of Chapter 563, Laws of 1983. The authority of the board to make the proposed amendment is based on section 23-4-202 (4)(f), MCA and implements the same.

18. The second proposed new rule under sub-chapter 16 will read as follows:

"VI. BONUS FOR OWNERS OF MONTANA BREDS (1) In accordance with section 23-4-202 (4), MCA, licensees shall pay to the department, within five days after the date collected, an additional 2% of all betting money derived from exotic wagering on races which shall be set aside, placed in, and distributed from, the board's agency fund account. 30% of the amount thus set aside shall be used by the board of horse racing to defray administrative costs and shall be transferred to the board's earmarked revenue account. The balance shall be used and distributed as bonuses to licensed owners of Montana bred horses pursuant to section 23-4-304 (2), MCA.

(2) Two percent of the exotic wagering at an individual race meet shall be paid to the department. Thirty percent of this amount shall be used by the board. The remaining 70% of this amount shall be designated as the 'Owners' Award Pool' and be distributed to owners of Montana breds having won a portion of any purse at that meet as follows:

(a) divide the total amount of the 'Owners' Award pool' from each race meet by the total amount won by Montana bred horses at that same meet;

(b) multiply the resulting amount (from above) by the total amount each individual owner's Montana bred horses won at that same meet. The resulting amount shall be each individual owner's award for that individual race meet;

(c) Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus;

(d) The licensee shall supply a list to the board of all Montana bred winners, their owners and amounts of purse monies earned. This list must be supplied no more than 10 days at the end of a meet.

(3) All funds collected under this rule shall be distributed within 30 days after the end of the current racing season. The award, as specified in 23-4-304 (2), MCA, shall be paid to owners of Montana bred horses 'finishing in the money' at individual race meets and shall be derived from amounts generated and paid by the same meet.

(4) The sums paid to the department under this rule shall be in addition to the 20% withheld on all pools, and shall not be used in calculating and paying purses by individual licensees."

19. Section 23-4-202 (4), MCA, gives the board the authority to withhold up to 2% additionally from exotic wagering pools to be set aside for a bonus to the owners of Montana bred horses and for board expenses. This rule specifically requires that the entire 2% shall be withheld and that 30% of this amount be used to defray its administrative expenses. The authority of the board to make the proposed adoption is based on sections

23-4-104 and 23-4-202 (4) (d), MCA and implements section 23-4-202 and 23-4-304, MCA.

20. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 28, 1983.

21. If a person who is directly affected by the proposed amendments and adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request along with any written comments he has to the Board of Horse Racing, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 28, 1983.

22. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments 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 public 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 HORSE RACING  
LINDA KING, ACTING CHAIRMAN

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 20, 1983.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF THE PROPOSED AMEND-
of Rule 8.79.101 (5), (6)(a), )	MENT OF RULE 8.79.101 (5),
(b), (7), (8), (11)(e), (f) )	(6)(a), (b), (7), (8), (11)
(13) regarding purchase and )	(e), (f), (13) <u>TRANSACTIONS</u>
resale: Rule 8.79.201 (1)(d) )	<u>INVOLVING PURCHASE AND RE-</u>
regarding trade practices: )	<u>SALE OF MILK WITHIN THE STATE</u>
)	<u>RULE DEFINITIONS; RULE 8.79.</u>
)	<u>201 (1)(d) REGULATION OF UN-</u>
)	<u>FAIR TRADE PRACTICES</u>
)	
)	NO HEARING CONTEMPLATED
)	
	DOCKET #65-83

TO: All Interested Persons

1. On July 30, 1983, the Milk Control Bureau of the Department of Commerce proposes to amend Rule 8.79.101 at the request of Gallatin Dairies to permit dairies to delay extending unit prices until the end of the billing period (subsection 5) and on its own cognizance to permit licensed Montana milk distributors to use composite milk samples to test for butterfat content and to amend Rule 8.79.201 (1)(d) to revise the reference marketing areas in the rule so it coincides with the repeal of 81-23-301, MCA, effective August 1, 1983.

2. Proposed Rule 8.79.101 (5), (6)(a), (b), (7), (8), (11)(e), (f) and (13) as amended will read as follows: (full text of rule is located at pages 8-2302 through 8-2310 Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.79.101 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE - RULE DEFINITIONS (1) . . .

(5) Distributors, jobbers and import jobbers delivering to wholesale stops, must leave at such wholesale stops an invoice of the sales of fluid milk for each day's delivery, itemized as to number of each separate form or use of milk sold and the total price of each such form or use sold. In instances where the distributor elects to utilize a computer to bill its customers, the distributor may elect to forego recording the total price and unit price of each such form or use of milk sold on the invoice left with the wholesale customers. In the computer invoice utilized, the billing system must indicate for each delivery, the number of each separate form or use of milk sold, the unit price of and the total price of each such form or use sold."

3. The purpose for the Gallatin Dairy Inc. request to amend Rule 8.79.101 (5) is to allow for greater flexibility in the rule to permit the use of alternative systems which will result in a considerable time and cost savings to Gallatin Dairies Inc.

4. Proposed Rules 8.79.101 (6) (a), (b), (7), (8) (11) (e), (f), and (13), as amended will read as follows: (full text of rule is located at pages 8-2302 through 8-2310 Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.79.101 PURCHASE AND RESALE OF MILK (1) . . .

(6) All tests testing-procedures approved by the Animal Health Division of the Montana Department of Livestock shall be considered by the Department as official tests for the purpose of Administration of the Milk Control Act.

~~(a)--In-the-case-of-controversy,--butterfat-testing-results-from-sampling-techniques-employed-by-Milk-Control-Bureau-personnel-and-testing-procedures-performed-by-the Animal-Health-Division-of-the-Department-of-Livestock---will-be-considered-by-the-Department-as-the-official-tests to-determine-the-minimum-producer-payment.~~

~~(b)--Plant-results-of-producer-butterfat-tests-with---variations-in-excess-of-ten-hundredths-(10)-of-a-percent from-Milk-Control-Bureau-results-will-not-be-accepted-as-an-allowable-deviation.~~

(7) When producer payments are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.

~~(7)--Distributors-must-test-each-farm-bulk-tank-of-producer-milk-picked-up-by-each-distributor-or-contract-hauler--Test-results-are-to-be-used-by-distributors-to-determine-producer-payments-each-month--Each-sample-must-be-retained-for-a-period-of-seven-(7)-days.~~

(8) Each distributor must maintain a record of butterfat tests of each producer's milk or cream covering each pay period of every farm bulk tank of producer milk picked up by processors or contract haulers. Such record shall be kept on file for two years and be made available to any authorized agent of the Department upon request. . . .

(11) . . .

(e) Producer butterfat tests for the first half of the month or other test period each farm bulk tank of producer milk picked up.

(f) Producer butterfat tests for the last half of the month or other test period.

~~(f)--Pounds-of-producer-milk-delivered-each-day-of-pick-up-from-each-farm-bulk-tank.~~

(13) On or before the 15th day of each month, each distributor must submit to the Department a duplicate or other correct copy of his producer payroll, for the preceding month indicating the daily weight of milk delivered from each farm bulk tank of producer milk and each butterfat test of same, the total producer deliveries and

payment for the preceeding month for each producer supplying the plant."

5. The amendments to the rule are proposed to permit licensed Montana milk distributors to use composite milk samples to test for butterfat content because fresh milk testing would place an additional cost and administrative burden on milk processing plants without any justifiable reason for requiring it.

6. The proposed Rule 8.79.201 (1) (d) as amended will read as follows: (full text of rule is located at pages 8-2311 through 8-2313 Administrative Rules of Montana) (new matter underlined, deleted matter interlined)

"8.79.201 REGULATION OF UNFAIR TRADE PRACTICES (1) . .

(d) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling ~~in any marketing area of~~ milk which is to be or is sold in the State of Montana or otherwise disposed of at less than the minimum wholesale or minimum retail prices established by the board pursuant to the act . . ."

7. The amendment to the rule is proposed so language coincides with 81-23-301, MCA.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 no later than July 28, 1983.

9. 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 Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 no later than July 28, 1983.

10. If the Department receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less of the persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the Legislature, from a governmental agency or subdivision, or from an association having no 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 38 based on twelve (12) licensed distributors, two hundred ninety eight (298) producers and seventy three (73) jobbers licensed to do business in Montana.

11. The authority of the Department to amend the proposed rules is based on Section 81-23-104, MCA, and implements Sections 81-23-103, 81-23-105 and 81-23-402, MCA

Gary Buchanan, Director  
Department of Commerce

BY William E. Ross  
William E. Ross, Chief  
Milk Control Bureau

Certified to the Secretary of State June 20, 1983.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE

In the matter of the adoption ) NOTICE OF PUBLIC HEARING  
of a rule concerning retention) ON ADOPTION OF A NEW RULE  
of bank records. ) RETENTION OF BANK RECORDS

TO: All Interested Persons:

1. On August 4, 1983, at 1:30 p.m. a public hearing will be held in the Downstairs Conference Room, Department of Commerce building, 1430 9th Avenue, Helena, Montana, to consider the adoption of a new rule concerning retention of bank records.

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

3. The proposed rule will read as follows:

"1. RETENTION OF BANK RECORDS (1) The following schedule establishes the minimum period for retention of bank records other than those specified in section 32-1-491 (1), MCA. When a bank microfilms or photographs records in the regular course of business as permitted by section 32-1-492 through 32-1-494, MCA, the retention period of the microfilm or photographs must be the same as specified below.

(2) Banks must comply with all federal laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. Likewise all state laws governing retention of personnel records, corporation records, etc. must be complied with.

(3) Minimum retention period

Symbols

The following defined symbols are hereby adopted for use in rule 1.

- (a) "C" - number of years after closing account.
- (b) "T" - number of years after termination of transaction.
- (c) "P" - permanent records.
- (d) "Arabic numeral" - number of years after making record unless other symbol appears.

Administration

Bank records that relate to the corporation of  
the corporate existence of the bank.....P  
Minutes of directors, executive committee and  
stockholder meetings.....P  
Bank charter.....P  
Incorporation papers.....P  
Bank examination reports.....7  
Condition reports.....7  
Income and dividend reports.....7  
Capital stock certificates and stock.....P  
Stock register book.....P

Stock certificate book.....	P
Capital stock ledger.....	P
Audit or directors' examination reports.....	7
Proxies.....	7

#### Checking Accounts

Dormant accounts and vouchers.....	20T
Resolutions.....	8C
Authority file.....	8C
Signature cards.....	8C
Stop orders.....	1
Trial balance.....	1

#### Proof and Transit

Proof machine sheets or tapes.....	2
Cash letters(film).....	1

#### Correspondent Accounts

Advices.....	2
Drafts.....	2
Statement.....	2
Reconcilements.....	2

#### Loans

Charged off ledger cards.....	P
Liability ledger.....	8C
Loan & discount register.....	7
Resolutions.....	8C
Debit and credit tickets(coupons).....	3
Credit files (not including financial statements).....	8C
Trial balance.....	1
Collateral cards and receipts.....	7C
Expired insurance policies.....	0

#### Savings Accounts

Dormant accounts and vouchers.....	20T
Resolutions.....	8C
Signature cards and/or power of attorney.....	8C
Cancelled certificates and register copies.....	7

#### Investments

Ledger cards.....	7
-------------------	---

Broker confirmations, invoices, etc.  
(including customers trust).....1

Safe Deposit

Leases or contracts.....7  
Access tickets.....7  
Signature cards.....7C  
Contents after removal.....7

Trust

Minute book.....P  
Trust ledgers.....20C  
Letters testamentary.....20C  
Tax returns.....7T  
Annual accounting.....3  
Final accounting.....7C  
Fiduciary bond.....7

Miscellaneous

Paid officers checks.....7  
Dividend checks.....7  
Correspondence.....3  
General ledger.....P  
Daily statement.....P

(4) If a bank does not maintain records enumerated above but maintains similar records with equivalent information, the bank's records must be retained for the time specified above as to the equivalent records."

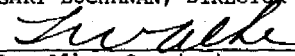
4. The rule is being promulgated to comply with the direction of House Bill 480, (Chapter 314, Laws of Montana, 1983) in the creation of rules with respect to record retention.

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 Les Alke, Commission of Financial Institutions, 1424 9th Avenue, Helena, Montana 59620, no later than July 28, 1983.

6. Robert Wood, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the department to make the proposed adoption is based on section 1, Chapter 314, Laws of Montana, 1983 and implements the same.

DEPARTMENT OF COMMERCE  
GARY BUCHANAN, DIRECTOR

BY:   
Les Alke, Commissioner of  
Financial Institutions

Certified to the Secretary of State, June 20, 1983.

12-6/30/83

MAR Notice No. 8-80-2

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adop-	)	NOTICE OF PUBLIC HEARING ON
tion of rules pertaining to	)	THE PROPOSED ADOPTION OF
the displaced homemaker	)	RULES PERTAINING TO THE
program.	)	DISPLACED HOMEMAKER PROGRAM.

TO: All Interested Persons

1. On July 20, 1983 at 10:00 a.m. a public hearing will be held in the Highway Department Auditorium, Helena, Montana to consider the adoption of rules pertaining to the Displaced Homemaker Program.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

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

RULE I. DISPLACED HOMEMAKER PROGRAM PURPOSE

(1) It is the intent of this program to provide necessary counseling, training, jobs, services, and health care for displaced homemakers so they may achieve independence and the economic security vital to a productive life.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE II. DISPLACED HOMEMAKER PROGRAM DEFINITIONS

(1) Act means the Displaced Homemaker Act, 1983 Mont. Laws, Ch. 709.

(2) Administrative Entity means the organization or agency designated by the Commissioner to administer a displaced homemaker program.

(3) Affirmative Action means specific results-oriented policy and procedures through which an agency commits itself to every good faith effort to correct deficiencies in the equitability with which it serves significant segments of its eligible population.

(4) Commissioner means the Commissioner of Labor and Industry.

(5) Counseling means the process of assisting participants in realistically assessing their needs, abilities, and potential; of providing guidance in the development of vocational goals and the means to achieve them; and of helping with the solution of a variety of individual problems occurring during participation.

(6) Displaced Homemaker is defined at [Section 3, 1983 Mont. Laws, Ch. 709.]

(7) Economically Disadvantaged means an individual who (a) receives, or is a member of a family which receives, cash, voucher, or scrip welfare payments under a federal, state, or local welfare program; (b) has, or is a member of a family which has, received a total family income for the

six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the U.S. Office of Management and Budget, or (ii) 70 percent of the lower living standard income levels; (c) is receiving food stamps pursuant to the Food Stamp Act of 1977; (d) is a foster child on behalf of whom state or local government payments are made; or (e) in cases permitted by regulations of the Secretary, is an adult handicapped individual whose own income meets the requirements of clause (a) or (b) but who is a member of a family whose income does not meet such requirements.

(8) Employability Development Plan (EDP) means a written plan for each participant which outlines the steps necessary to obtain unsubsidized employment. At a minimum, an EDP must include: assessment of job readiness and skills, barriers to employment, specific employment and training needs, services identified to meet needs, and transition steps to employment. It must be signed by the participant and copies must be placed in the participant file and given to the participant. The EDP shall be reviewed and updated at least every 90 days. The EDP format shall be made available to Subgrantees by the Department of Labor and Industry. Those Subgrantees who desire to use a format different from that supplied by the Department are required to submit their proposed format to the Department for prior approval.

(9) Equal Employment Opportunity (EEO) means the basic right of every individual, regardless of race, creed, color, sex, national origin, handicap, political affiliation or belief, or age, to pursue job and training opportunities without being subjected to discrimination under any program or activity supported by federal funds in whole or part.

(10) Handicapped Individual means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment, and who is certified by the Department of Social and Rehabilitation Services.

(11) Older Worker means a person who is 55 years of age or older.

(12) Participant means an individual who is determined eligible and is enrolled into any employment, training or services program.

(13) Performance Standards means factors used to evaluate the performance of programs.

(14) Placement means the act of securing unsubsidized employment for or by a participant.

(15) Program means a multipurpose service program established by the Commissioner to serve Displaced Homemakers.

(16) Underemployed Individuals means (a) persons who are working part time but seeking full time work; or (b) persons who are working full time but whose current annualized wage rate is not in excess of "for a family of one" the higher of

either (1) the poverty level, or (2) seventy percent of the lower living standard income level.

(17) Unemployed Individuals means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor and Industry in defining individuals as unemployed.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

#### RULE III. DISPLACED HOMEMAKER PROGRAM, ADMINISTRATIVE ENTITIES

(1) Administrative entities selected to operate multi-purpose service programs will assure through the grant agreement or contract that they will maintain adequate fiscal and programmatic systems.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

#### RULE IV. DISPLACED HOMEMAKER PROGRAM, COORDINATION

(1) The programs must be developed in cooperation with federal, state and local agencies and with private employers.

(2) An Advisory Board must be established by each subgrantee and will serve in an advisory oversight capacity. The Advisory Board must be representative of the community and should include such organizations as federal, state and local social service agencies, organized labor, private employers, local education agencies, and community service organizations including women's organizations.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

#### RULE V. DISPLACED HOMEMAKER PROGRAM, CRITERIA FOR GRANT MAKING

(1) Administrative entities will be selected annually by the Commissioner through a competitive solicitation process to operate multipurpose service programs.

(2) The Commissioner will provide public notice of fund availability, accept and review proposals and award grants based on standard selection criteria.

(3) Public and private non-profit agencies or organizations may apply to be administrative entities.

(4) Selection criteria will be included in the solicitation package developed by the Commissioner.

(5) The criteria include:

- (a) administrative capability;
- (b) community service;
- (c) demonstrated effectiveness; and
- (d) coordination with appropriate community service agencies.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE VI. DISPLACED HOMEMAKER PROGRAM, LOCAL FUNDING REQUIREMENT

(1) Any proposal to operate a program must demonstrate community support by including at least fifteen percent of the operational cost as a local contribution. The local contribution may include in-kind contributions. No other state or federal funds may be used as match.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE VII. DISPLACED HOMEMAKER PROGRAM, GRADUATED FEE SCHEDULE

(1) Any program may adopt a graduated fee schedule for services with prior written approval by the Commissioner. Documentation justifying the fee schedule must accompany the approval request.

(2) Graduated fee schedules should be based on the participant's ability to pay and the cost of services provided.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE VIII. DISPLACED HOMEMAKER PROGRAM, STAFF

(1) To the extent possible, supervisory, technical, and administrative positions in the programs must be filled by displaced homemakers.

(2) Outreach to and recruitment of displaced homemakers shall precede the filling of any staff positions.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE IX. DISPLACED HOMEMAKER PROGRAM, ELIGIBILITY

(1) Any Montana resident who meets the definition of displaced homemaker is eligible to receive training and services.

(2) Individual proposals shall establish priority for service based on need. Minorities, older worker and handicapped individuals shall be considered when establishing priority for services.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE X. DISPLACED HOMEMAKER PROGRAM, ACCEPTANCE OF FUNDS

(1) The administrator of the local displaced homemaker program may accept, use, and dispose of all grants or contributions of money, services, and property for the purpose of carrying out the provisions of the Act. Such grants or contributions may include grants or in-kind contributions from a local governmental unit.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE XI. DISPLACED HOMEMAKER PROGRAM, ALLOWABLE  
ACTIVITIES

(1) All activities under the program must be coordinated with activities funded under the Job Training Partnership Act (JTPA). Individuals eligible for JTPA should be served through that funding source to the extent feasible. Funds under this program should primarily be used to serve individuals who are not eligible for JTPA services.

(2) Allowable activities may include but are not limited to:

- (a) Job counseling;
- (b) Job training;
- (c) job placement;
- (d) referral to other social service agencies;
- (e) development of social service programs;
- (f) support services; and
- (g) development of outreach programs to rural areas.

(3) Job counseling should consist of development of an employability development plan, identification of job barriers and skill assessment, and may also include testing, personal and career goal setting and similar activities.

(4) Job training includes, but is not limited to, enrollment in a public or proprietary school or other institutional setting for pre-vocational or vocational instruction.

(5) Job placement means the hiring into unsubsidized employment of an individual served by this program, providing the subgrantee has taken the following steps:

- (a) Made prior arrangements with the employer for referral of an individual or individuals;
- (b) Referred an individual who has not been specifically designated by the employer;
- (c) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and
- (d) Recorded the transaction on an employer form or other appropriate form.

Placement does not include referral to another program activity, enrollment in education or training courses not supported under CETA or entrance into the Armed Forces.

(6) Referral to other social service agencies includes those agencies that provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems.

(7) Development of social service programs includes assistance to and coordination of activities with other social service agencies in fields such as health care, financial matters, education, nutrition, and legal problems.

(8) Support services include child care for preschool children, transportation assistance to participate in the program, health care, financial counseling, temporary shelter, grants for education, and post-termination services.

(9) Development of outreach programs to rural areas includes the provision of job counseling, training, placement and referral services in outlying areas. Services should be

advertised in advance, through such means as the media and local service organizations or agencies. A field office may be set up for this purpose.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE XII. DISPLACED HOMEMAKER PROGRAM, MONITORING/  
EVALUATION TECHNICAL ASSISTANCE AND TRAINING SYSTEM

The purpose of oversight and monitoring is to assure compliance, assess the efficiency and effectiveness of the program, and prevent fraud and abuse through reviews, monitoring, and evaluations. This activity identifies both proficiencies and deficiencies. Where deficiencies appear appropriate, action will be initiated to correct the problem. Oversight and monitoring may be accomplished using the following techniques:

(1) Reviews (desk monitoring) refer to the systematic analysis of program data on a regularly scheduled basis. Reviews are an analytical tool to measure program performance against the plan. Program performance is analyzed in statistical terms using information generated by the management information system, the fiscal unit, and program units. These reviews form the basis for further monitoring and evaluation and may identify the need for modifications in plans and practices.

(3) Compliance monitoring refers to efforts to assure contract requirements, fiscal responsibilities, and administrative guidelines are followed. Included in this category is monitoring of program operation to assure compliance with:

- (a) provisions of the Act;
- (b) regulations;
- (c) assurances and certifications agreed to by the subrecipients in their subgrants or agreements;
- (d) fiscal, property, EEO, Affirmative Action, and other legal requirements; and
- (e) administrative requirements such as instructions, policies, and procedures.

Compliance monitoring frequently involves on-site visits using checklists devised to obtain information in the above areas and interviews to see whether various requirements and procedures are being followed adequately.

(3) Performance evaluation refers to efforts to measure the accomplishment of performance standards. Performance standards are described in most subgrants and agreements and will be used as the basis for this evaluation. In addition, performance evaluation may include the assessment of the quality of training, placement, and counseling; the appropriateness and availability of services; the effectiveness of follow-up procedures; and the efficiency of management practices.

(4) Impact evaluation refers to evaluating the overall impact of a particular program or components of a program. This evaluation makes inquiry into and performs analysis concerning program consequences in a given jurisdiction;

identifies what is attributable to the program as opposed to what might have happened anyway; determines whether a given program is relevant to and appropriate for meeting the needs of a target group; and whether a program could be enhanced by innovative program linkages or increases or decreases in resources. Ultimately, the output of impact evaluation should help decide whether types of programs being conducted actually make a difference, thus effecting the formulation or reformulation of job training program policy.

(5) Technical assistance refers to the provision of information, guidance, and training by staff to program operators in areas where deficiencies are identified. Technical assistance does not involve monitoring or evaluation. Assistance of this nature may be requested by the subrecipient or be initiated by the Commissioner.

(6) Training may be conducted with individual program operators or through seminars, and workshops by geographic area, program, or organizational level. Training may be given to disseminate information on new programs, policies, or procedures or as a means to upgrade skills.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

#### RULE XIII. DISPLACED HOMEMAKER PROGRAMS, ADMINISTRATIVE STANDARDS

##### (1) General

(a) To ensure the integrity of the programs, special efforts are necessary to prevent fraud and other program abuses. Fraud includes deceitful practices and intentional misconduct, such as willful misrepresentation in accounting for the use of program funds. "Abuse" is a general term which encompasses improper conduct which may or may not be fraudulent in nature. While any violation of the Act or regulations may constitute fraud or program abuse, this part identifies and addresses those specific program problems which are of most concern to the Commissioner.

(b) This Subpart sets forth specific responsibilities of recipients and subrecipients to prevent fraud and program abuse in programs.

##### (2) Conflict of Interest

(a) No member of any Advisory Board under this Act shall cast a vote on the provision of services by that member (or any organization which that member directly represents) or vote on any matter which would provide direct financial benefit to that member or to the organization he or she represents.

(b) Each recipient and subrecipient shall avoid organizational conflict of interest, and their personnel shall avoid personal conflict of interest and appearance of conflict of interest in awarding financial assistance, and in the conduct of procurement activities involving funds under the Act.

(c) Neither the recipient nor subrecipient shall pay funds under the Act to any nongovernmental individual, insti-

tution or organization to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor.

(3) Kickbacks

No officer, employee or agent of any recipient or subrecipient shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential subrecipient or contractor.

(4) Charging of Fees

Fees charged may be used only for providing additional services to participants. Plans for expenditure of program income shall be submitted to the Commissioner for approval prior to beginning expenditures.

(5) Nepotism

All recipients and subrecipients shall comply with applicable federal, state, and local nepotism laws.

(6) Child Labor

All recipients and subrecipients shall comply with applicable federal, state, and local child labor laws.

(7) Political Patronage

(a) No recipient or subrecipient may select, retain, or promote staff or participants based on that individual's political affiliation or beliefs. The selection or advancement of employees as a reward for political services or as a form of political patronage whether or not the political service or patronage is partisan in nature, is prohibited.

(b) There shall be no selection of subrecipients or contractors based on political patronage or affiliation.

(8) Political Activities

(a) Financial assistance shall not be provided for programs under this Act which involve political activities.

(1) No participant may engage in partisan or nonpartisan political activities during hours in which the participant is enrolled.

(2) No participant may, at any time, engage in partisan or nonpartisan political activities in which such participant represents himself/herself as a spokesperson of the program.

(9) Sectarian Activities

(a) No funds under the Act may be used to support any religious or antireligious activity. However, this does not preclude religious organizations from administering or operating programs or from the use of the facilities of religious organizations for the operation of such programs within the limits set forth in the Act.

(b) Participants shall not be employed in the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

(10) Theft or Embezzlement From Employment and Training Funds; Improper Inducement; Obstruction of Investigations

(a) Whoever, being an officer, director, agent or employee of, or connected in any capacity with any agency or organization receiving financial assistance or any funds under the Act knowingly enrolls an ineligible participant,

embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a financial assistance agreement or contract pursuant to such Act shall be subject to criminal penalties.

(b) Whoever, by threat of procuring dismissal of any person from employment or of refusal to employ or of refusal to renew a contract of employment in connection with a financial assistance agreement or contract under the Act induces any persons to give up any money or thing of any value to any person (including such organization or agency receiving funds) shall be subject to criminal penalties.

(c) Any person whoever willfully obstructs or impedes or willfully endeavors to obstruct or impede, an investigation or inquiry under the Act or the regulations thereunder, shall be subject to criminal penalties.

(11) Funding/Program Restrictions

(a) Funds provided under this Act shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of such funds.

(b) Programs will not impair existing contracts for services or result in the substitution of federal funds for other funds in connection with work that would otherwise be performed, including services normally provided by temporary, part-time or seasonal workers or through contracting such services out.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE XIV. DISPLACED HOMEMAKER PROGRAM, LABOR STANDARDS

(1) Equitable Treatment in Employment

(a) Conditions of employment and training shall be appropriate and reasonable in light of such factors as the type of work, geographical region, and proficiency of the participant.

(b) No funds available under this Act may be used for contributions on behalf of any participant to retirement systems or plans.

(c) No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

(2) Unionization/Antiunionization Activities and Work Stoppages

(a) No funds under this Act shall be used to assist, promote, or deter union organizing.

(b) Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the same area as that proposed to be funded under this Act, an opportunity shall be provided for such organization to submit comments with respect to such proposal.

(c) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional

training involves individuals employed under a collective bargaining agreement which contains a union security provision.

(d) No program shall impair existing contracts for services or collective bargaining agreements, except that no program under this Act which would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE XV. DISPLACED HOMEMAKER PROGRAMS, FISCAL MANGEMENT

(1) General

This section describes State requirements relating to the administration of subgrants by recipients. Administrative requirements found in this subpart apply to all programs under the Act unless stated to the contrary for any specific program.

(2) Program Year

The program year will begin July 1 and end June 30.

(3) Method of Payment to Recipients of JTPA Funds

(a) Subgrantee payments shall be made on an advance basis. The State shall limit advance payments to actual and immediate cash needs. If a subgrantee does not comply with the requirement to keep cash advances limited to only actual and immediate needs, the State may, after notice to the subgrantee, discontinue the advance payment method and make payments by reimbursement only.

(b) The State may withhold otherwise payable funds to recover amounts expended in any program year in violation of statutory or regulatory requirements, or if the subgrantee has failed to carry out project objectives, or to comply with the subgrant.

(4) Monitoring

The State is authorized to monitor all recipients of financial assistance under the Act to determine whether they are complying with the provisions of the Act and the regulations issued under the Act.

(5) Fiscal Controls; Management Information Systems

(a) Each subgrantee shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the recipient.

(b) At least once every two years, the subgrantee shall have prepared an independent financial and compliance audit for funds received.

(1) Whenever, as a result of financial and compliance audits or otherwise, the State determines that there is a substantial violation of a specific provision of the Act or the regulations, and corrective action has not been taken, the State may issue a notice of intent to revoke approval of all or part of the subgrant affected.

(2) The State shall withdraw the notice if the appropriate corrective action has been taken.

(3) Every recipient shall repay to the state amounts found not to have been expended in accordance with the Act. The Commissioner may offset such amounts against any other amount to which the recipient is or may be entitled under the Act unless he determines that such recipient should be held liable. No such action shall be taken except after notice and opportunity for a hearing have been given to the recipient.

(4) Each recipient shall be liable to repay such amounts, from funds other than funds received under the Act, upon a determination that the misexpenditure of funds was due to willful disregard of the requirements of the Act, gross negligence, or failure to observe accepted standards of administration. No such finding shall be made except after notice and opportunity for a fair hearing.

(5) In emergency situations, if the Commissioner determines it is necessary to protect the integrity of the funds or ensure the proper operation of the program, the Commissioner may immediately terminate or suspend financial assistance, in whole or in part, if the recipient is given prompt notice and the opportunity for a subsequent hearing within 30 days after such termination or suspension.

(c) If the Commissioner determines that any recipient under the Act has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to the Act, or has testified or is about to testify in any such proceeding or investigation under or related to the Act, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of the Act or the regulations, the Commissioner shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

(d) The remedies under this section shall not be construed to be exclusive remedies.

(e) All recipients shall establish and maintain a client tracking system consisting of records on applicants, participants and terminees which will allow for the audit and monitoring of the recipient's programs, particularly with respect to the eligibility of participants and the propriety of participant selection procedures and practices.

(f) Bonding. Every officer, director, agent or employee of a recipient or subrecipient of funds on a cash advance basis, who is authorized to act on behalf of a recipient or subrecipient for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks or other instruments of payment for program costs, shall be bonded to provide protection against loss. The amount of coverage shall be the lower of the following:

- (1) \$100,000; or
- (2) the highest advance received through check during the preceding subgrant year, or for new recipients, the

highest advance through check planned for the present sub-grant year.

(6) Retention of records

(a) All records, reports, documents and files required under these regulations shall be the responsibility of the recipient. Retention of and access to those records, reports, documents and files shall be as follows:

(1) The recipient shall retain all records pertinent to a grant or agreement, including financial and statistical records and supporting documents, for a period of three years.

(2) The retention period will begin on the date of submission by the recipient of the final expenditure report, except that the recipient shall retain records for nonexpendable property acquired with financial assistance awarded by a state agency for a period of three years after final disposition of the property.

(3) If prior to the expiration of the three-year retention period, any litigation or audit is begun or a claim is instituted involving the grant or agreement covered by the records, the recipient shall retain the records beyond the three-year period until the litigation, audit findings, or claim has been finally resolved.

(4) When records subject to retention requirements are transferred to or maintained by the State the three-year retention period shall not apply. The recipient need not retain duplicates of records transferred to or maintained by the State.

(5) The recipient may substitute microfilm copies in lieu of original records after audit.

(6) The recipient shall ensure that the Commissioner and the Legislative Auditor or any duly authorized representatives, have access to any pertinent books, documents, papers, and records of the recipient organization and to records of its subrecipients and contractors to make audits, examinations, evaluations, excerpts, and transcripts.

(7) Public access to records. No agency shall place restrictions which will limit public access to grant or agreement records except that the state agency may impose restrictions if:

(a) Such restrictions are required by applicable federal law; or

(b) The Commissioner or designee determines that certain records should be kept confidential in order to protect personal privacy.

(8) In addition each recipient shall ensure that the following records are maintained for the period described in paragraphs 6.a.(2) and 6.a.(3), and made available to the Commissioner or authorized designee:

(a) Records including books of account for the expenditure of funds to enable the Commissioner to audit and monitor the program. Records shall include information regarding participant eligibility and the propriety of participant selection procedures and practices.

(b) Records concerning each employee and participant involved in a program.

(c) The recipient shall maintain a record of each participant's participation in a program, including dates of entry and termination in each activity; and shall retain such records for each participant for a period of three years from the date of termination from the program.

(d) If a subgrantee, agency or organization ceases to exist, all records that pertain to the subgrant must be turned over to the Commissioner or placed in an agreed upon site of easy access.

(7) Program Income

Program income includes, but is not limited to, income from service fees, sale of commodities, use or rental fees, and royalties on patents and copyrights. The recipient may use program income generated in an approved activity under grants or agreements during the grant or agreement period and for two years thereafter to carry out any activity authorized under the former grant or agreement. The State may require the recipient to account for the expenditure of such income for a period not to exceed two years from the expiration date of the subgrant. After the two-year period, the recipient shall return the balance of any unexpended program income to the State.

(8) Recipient Contracts and Subgrants

(a) Subrecipients are entitled to funding for administrative costs. The amount of such funding will be determined during the development of subgrants.

(b) In the event an agreement or subcontract is cancelled, in whole or in part, the recipient shall develop procedures for ensuring continuity of service to participants.

(9) Property Management Standards

(a) Ownership of title to all equipment purchased with program funds shall remain vested in the Commissioner.

(b) Any purchases of equipment with a value of \$300 or more must have prior written approval from the Commissioner.

(c) Should more than one item (at one time) be purchased that normally has a value less than \$100, but when totaled is equal to or more than \$300, prior written approval must be obtained.

(d) All items falling into any of the above categories, and having a useful life of at least one year, should be considered "Accountable Property". All accountable property must be reported to the State. The subgrantee, contractor, grantee, and/or user will be held responsible for said property until such time that it is turned over to the Commissioner.

(e) Purchases of equipment not directly related to the operation of a program will be disallowed.

(10) Allowable Costs.

(a) To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the program, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of the recipient.

(b) Direct costs. Direct administrative costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to subgrants and other ultimate cost objectives.

(c) Indirect costs. Indirect administrative costs are those:

(1) incurred for a common or joint purpose benefitting more than one cost objective; and

(2) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs", as used herein, applies to costs of this type originating in the subrecipient entity, as well as those incurred by other entities in supplying goods, services, and facilities, to the subrecipient.

(d) Only the indirect cost rate approved by the Commissioner may be used by the subrecipient in determining indirect costs properly chargeable. The rate will be negotiated on the basis of equity, reasonableness, allocability and allowability of costs.

(11) Classification of Costs By Category

(a) To comply with the limitations on certain costs contained in the Act, allowable costs shall be charged against the following cost categories: administration, and participant services.

(b) Costs are allowable to a particular cost category to the extent that benefits are received by such category.

(c) For state-administered programs, the subgrantee is required to plan, control and charge expenditures against the aforementioned cost categories.

(d) The subgrantee is responsible for ensuring that any of their recipients plan, control, and charge expenditures against the aforementioned cost categories.

(e) In assigning costs to the services category pursuant to paragraph a. of this section, the subgrantee shall ensure that:

(1) services costs include: the cost associated with employer outreach necessary to obtain job listings or job training opportunities; salaries, fringe benefits, equipment and supplies of personnel directly engaged in providing training (including remedial education; job related counseling for participants; employability assessment and job development; job search assistance; including preparation for work and labor market orientation); books and other teaching aids; equipment and materials used in providing training to participants; classroom space and utility costs; and tuition and entrance fees that represent instructional costs which have a direct and immediate impact on participants; child care; transportation; health care; financial counseling; temporary shelter; and post-termination services.

(2) Services costs shall not include the direct or indirect costs associated with the supervision and management

of the program, which are administrative costs.

(3) The salaries and fringe benefits of project directors, program analysts, labor market analysts, supervisors and other administrative positions shall not be charged to training. The compensation of individuals who both instruct and supervise other instructors shall be prorated among the training and administration cost categories based on time records or other verifiable means.

(f) In assigning costs to the administrative category pursuant to paragraph a. of this section, the subgrantee shall ensure that:

(1) Administrative costs include: all direct and indirect costs of management programs.

(2) The salaries and fringe of those in executive, fiscal, data collection personnel, legal, audit, procurement, data processing communications, maintenance, supervisors, program analysts and managers, and labor market analysts, shall be charged to administration.

(3) Supplies, equipment, space, and utilities shall be charged to administration.

(12) Reporting Requirements for Subgrantees

Reporting requirements for subgrantees will be set forth separately by the State under a Forms Preparation Handbook.

(a) Reallocation of funds based on nonutilization.

(1) The Commissioner may reallocate any amount of any allocation under the Act to the extent that it is determined that a recipient will not be able to use such amount within a reasonable period of time.

(2) When the Commissioner determines that a reallocation from a subgrantee is appropriate, the subgrantee, and the general public shall be given a notice of proposed action to remove funds from the subgrant. Such notice shall include specific reasons for the action being taken and shall invite the subgrantee and general public to submit comments on the proposed reallocation of funds. These comments shall be submitted to the State within 30 days from the date of the notice. After considering any comments timely submitted, the State shall notify the affected subgrantees of any decision to reallocate funds.

(3) In determining where to reallocate funds, consideration should be given the number of unemployed individuals in the area as well as the ability of the subgrantee to effectively utilize any reallocated funds.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

#### RULE XVI. DISPLACED HOMEMAKER PROGRAM, MANAGEMENT INFORMATION FORMS

(1) Forms

The Commissioner will provide operating forms for each function, along with instructions, training and manuals.

(2) Time Frame

Suitable time frames for reporting, i.e., weekly, monthly, quarterly and fiscal year, will be established prior to startup of each program segment.

(3) Participant File (Reserved)

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

RULE XVII. DISPLACED HOMEMAKER PROGRAM, GRIEVANCES, INVESTIGATIONS AND HEARINGS

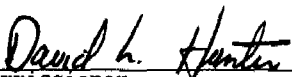
The Commissioner will receive, investigate and resolve grievances, and conduct hearings to adjudicate disputes under the Act.

The authority of the department to adopt the rule is based on 1983 Mont. Laws, Ch. 709 and the rule implements the same.

3. The rationale for the proposed rules is to create a system which fully implements a displaced homemaker program pursuant to Chapter 709, 1983 Montana Laws.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Commissioner, by July 28, 1983.

5. The Department of Labor and Industry, P.O. Box 1728, has been designated to preside over and conduct the hearing.

  
\_\_\_\_\_  
Commissioner

Certified to the Secretary of State June 20th, 1983.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the ADOPTION )	NOTICE OF PROPOSED ADOPTION
OF RULES I-II specifying )	OF RULES CONCERNING
charges for all licenses and )	DEPARTMENT OF LIVESTOCK
permits acquired from or fees )	LICENSES, PERMITS, AND
paid to the Department of )	FEEES
Livestock - all to be con- )	
tinued at present level; and )	
allowing fines for nonrenewal )	
of required licenses )	

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On August 2, 1983, the Board of Livestock proposes to adopt rules specifying the amount to be charged for all licenses and permits acquired from and fees paid to the Department of Livestock; and allowing the imposition of financial penalties on applicants who do not renew required licenses and permits.

2. The proposed rules provide as follows:

RULE I - Department of Livestock License Fees, Permit Fees, and Miscellaneous Fees

The Department of Livestock shall charge:

- (1) for the license of garbage feeder as required by 81-2-502 M.C.A., a fee of \$5;
- (2) for recording a new mark or brand, recording a mark or brand transfer, or recording a mark or brand as required by 81-3-107 M.C.A., a fee of \$25;
- (3) for providing a certified copy of a brand or mark record and a duplicate certificate, a fee of \$2.50;
- (4) for inspection of livestock before removal from a county or before change of ownership as required by 81-3-205 M.C.A., a fee of 25 cents per head for 12 head or less, or \$3 for 12 head to 20 head and 20 cents per head for each head over 20 head;
- (5) for issuance of a market consignment permit or transportation permit before removal from a county as required by 81-3-205 M.C.A., a fee of 25 cents for each permit issued for 12 head or less, 50 cents for each permit for 12 to 30 head and \$1 for each permit issued for over 30 head;
- (6) for issuance of a permanent horse transportation permit as required by 81-3-205 M.C.A., a fee of \$5 per head;

(7) for inspection of livestock before being sold or offered for sale at a licensed livestock market on slaughtered at a licensed slaughterhouse as required by 81-3-205 M.C.A., a fee of 20 cents per head or 10 cents per head if an animal was previously inspected under (5) of this rule;

(8) for releasing an animal for purpose of removal from a licensed livestock market as required by 81-3-205 M.C.A., a fee of 20 cents per head;

(9) for inspection of horses, mules, or asses before removal from a county or before change of ownership as required by 81-3-205 M.C.A., a fee of \$1 per head for the first 10 head, and 50 cents per head for each animal more than 10;

(10) for inspection of horses, mules, or asses before sold or offered for sale at a licensed livestock market as required by 81-3-205 M.C.A., a fee of \$1 per head;

(11) for a copy of an original livestock bill of sale as required by 81-3-205 M.C.A., a fee of \$2.50;

(12) for a permanent horse transportation permit as required by 81-3-211 M.C.A., a fee of \$5;

(13) for an adjoining county transportation permit as required by 81-3-211 M.C.A., a fee of \$5;

(14) for an adjacent state transportation permit as required by 81-3-214 M.C.A., a fee of \$5;

(15) for a sheep removal permit as required by 81-5-202 M.C.A., a fee of 50 cents;

(16) for an aerial hunting permit as required by 81-7-504 M.C.A., a fee of \$50 or portion thereof;

(17) for a permit to operate a livestock market as required by 81-8-256 M.C.A., a fee of \$100;

(18) for a livestock broker or dealer permit as required by 81-8-276 M.C.A., a fee of \$50;

(19) for filing of livestock security interests as required by 81-8-304 M.C.A., a fee of \$15;

(20) for hide inspection as required by 81-9-112 M.C.A., a fee of 25 cents a head;

(21) for a slaughterhouse, meat packing house, or meat depot license as required by 81-9-201 M.C.A., a fee of \$1;

(22) for a rendering or disposal plant license as required by 81-9-301 M.C.A., a fee of \$5;

(23) for a hide dealer or buyer's license as required by 81-9-411 M.C.A., a fee of \$5;

(24) for an egg dealer's license as required by 81-20-201 M.C.A., a fee of \$5 for retail buying and \$20 for wholesale;

(25) for an egg grader's license as required by 81-20-201 M.C.A., a fee of \$5;

(26) for a condensed, evaporated, or powdered milk factory license as required by 81-21-102 M.C.A., a fee of \$50;

- (27) for a fluid milk plant license as required by 81-21-102 M.C.A., a fee of \$50;
- (28) for a dairy license as required by 81-21-102 M.C.A., a fee of \$5;
- (29) for a milk or cream route license as required by 81-22-204 M.C.A., a fee of \$5;
- (30) for a milk or cream tester's license as required by 81-22-205 M.C.A., a fee of \$10;
- (31) for a manufactured dairy products plant license as required by 81-22-208 M.C.A., a fee of \$50;
- (32) for a cream station license as required by 81-22-208 M.C.A., a fee of \$5;
- (33) for a dairy producing milk for manufacturing purposes license as required by 81-22-208 M.C.A., a fee of \$5;
- (34) for a grader-weigher-sampler license as required by 81-22-208 M.C.A., a fee of \$5;
- (35) for a tester license as required by 81-22-208 M.C.A., a fee of \$10;
- (36) for a hauler license as required by 81-22-208 M.C.A., a fee of \$5;
- (37) for a producer, producer-distributor, distributor, or jobber as required by 81-23-202 M.C.A., a fee of \$10.
- AUTH: Sec. 81-1-102, 81-22-102 M.C.A.; IMP Sec. 81-1-102, 81-2-502, 81-3-107, 81-3-205, 81-3-211, 81-3-214, 81-5-202, 81-7-504, 81-8-256, 81-8-276, 81-8-304, 81-9-112, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, 81-22-208, 81-23-202 M.C.A.

RULE II - Penalty Fees for Nonrenewal of Licenses and Permits

If a person or business fails to apply for renewal of any required license or permit issued by the department under Section 81-22-208 M.C.A., a penalty of \$5 per month or fraction of a month after January 31 may be imposed by the department.

AUTH: Sec. 81-22-208 M.C.A.; IMP 81-22-208 M.C.A.

3. RULE I is proposed to be adopted to implement Senate Bill 259 as passed by the 1983 legislature which eliminates the statutory amounts charged by the department for all permits, licenses and fees and replaces them with provisions requiring the department to set the amounts by rule commensurate with costs. RULE II is proposed to be adopted to also implement a portion of Senate Bill 259 which requires the department to set by rule a financial penalty which may be used in cases where a required license or permit is not renewed.

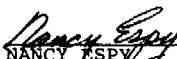
4. Interested parties may submit their data, views or arguments concerning the proposed adoptions in writing to Les Graham, Administrator, Brands-Enforcement Division, or James W. Glosser, D.V.M., Administrator & State

Veterinarian, Animal Health Division, Capitol Station, Helena, MT 59620, no later than August 1, 1983.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Administrator, or James W. Glosser, D.V.M., Administrator & State Veterinarian, no later than August 1, 1983.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having no less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed adoptions is based on Sec. 81-1-102, 81-22-102, 81-22-208 M.C.A.; IMP Sec. 81-1-102, 81-2-502, 81-3-107, 81-3-205, 81-3-211, 81-3-214, 81-5-202, 81-7-504, 81-8-256, 81-8-276, 81-8-304, 81-9-112, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, 81-22-208, 81-23-202 M.C.A.

  
NANCY ESPY

Chairman, Board of Livestock

By:

  
JAMES W. GLOSSER

Administrator & State Veterinarian

Certified to the Secretary of State June 20, 1983.

BEFORE THE BOARD OF OIL  
AND GAS CONSERVATION

In the matter of the amendment	)	NOTICE OF PROPOSED
of Rules 36.22.501 and 36.22.502	)	AMENDMENT OF RULES
pertaining to location limitations	)	36.22.501 SHOT LOCATION
and plugging and abandonment	)	LIMITATIONS AND
procedures for seismic shot holes	)	36.22.502 PLUGGING AND
and the adoption of a rule	)	ABANDONMENT, AND THE
requiring proper identification of	)	ADOPTION OF A NEW RULE
seismic exploration crews.	)	CONCERNING
		IDENTIFICATION.

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1983, the Board of Oil and Gas Conservation (Board) proposes to amend rules 36.22.501 and 36.22.502 pertaining to location limitations and proper plugging and abandonment procedures for seismic shot holes. The Board also proposes to adopt a rule to require proper identification of seismic exploration crews.

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

~~36.22.501 -- SHOT LOCATION LIMITATIONS~~ Without written permission of the surface owner no seismic shot hole shall be drilled closer than 1320 feet (1/4 mile) to any building, structure, water well, or spring; nor closer than 660 feet (1/8 mile) to any reservoir dam ~~without written permission of the surface owner.~~ AUTH: & IMP: 82-1-101 and 82-104 MCA

~~36.22.502 -- PLUGGING AND ABANDONMENT~~ Unless otherwise agreed to between the surface owner and the company, firm, corporation, or individual responsible for the drilling of seismic shot holes, all such holes shall be plugged and abandoned as set forth below:

(1) The seismic company responsible for the plugging and abandonment of seismic shot holes shall notify the Board in writing at its Billings office of its intent to plug and abandon, including the date and time such activities are expected to commence, the location by Section, Township and Range of the holes to be plugged, and the name and telephone number of the person in charge of the plugging operations. A copy of this notice shall be sent to the surface owner at the same time.

(2) All seismic shot holes shall be plugged as soon after being utilized as reasonably practicable; however, in no event shall they remain unplugged for a period of more than 30 days unless, upon application, the Board or its staff grants an extension which may not exceed 90 days. All holes shall be temporarily capped during the period between drilling and final plugging.

(3)(a) When drilling seismic shot holes, and artesian flow is not encountered at the surface, the shot hole shall be filled with bentonite-water slurry by hose injection and displacement upwards from the maximum depth attainable. The slurry mixture shall have a marsh funnel viscosity of 60 seconds or greater per quart (subject to field verification on site) and shall contain a minimum of 28 pounds of commercial plugging bentonite per 42 gallons of water. Except where the addition of cuttings or other solid or coagulating additives to the slurry mixture is required to form an effective plug, cuttings shall not be added to the slurry mixture where the hole is drilled with air. The hole shall be filled in all cases to approximately four feet from the ground surface. A commercial plug shall be set on top of the bentonite at a sufficient depth below the surface of the land to allow cultivation with a permit number or the name of the contractor or plugging subcontractor either imprinted on the plug or on a plastic or metallic tag securely attached to the plug. The remainder of the hole shall be filled with cuttings and soil, and a sufficient mound shall be left over the hole to allow for settling.

(3)(b) Seismic holes that penetrate artesian water deposits shall be stabilized with a cement slurry to a level not higher than four feet below the surface of the ground level. The cement slurry shall be of sufficient density to contain the waters to their native strata. The remainder of the hole shall be filled with native surface material. When alkaline or saline waters are encountered, the hole shall be plugged immediately as set forth in (3)(a) except that a heavier slurry mix must be used with the addition of inorganic drying or stabilizing chemicals such as calcium chloride, sodium bicarbonate, or soda ash to assist in the effective plugging and stability of the bentonite column in the hole.

(3)(c) Seismic shot holes that tend to crater or slough at the surface after being shot shall be plugged as set forth in subsections (3)(a) or (3)(b) insofar as those procedures are reasonably possible. However, deviations for those procedures are permissible as circumstances may dictate, provided the procedures are designed to accomplish the primary

objective of containing waters penetrated by the hole to their native strata and restoring the surface as near as practicable to its original conditions. The Board and surface owner shall be notified of such deviations.

(4) The surface area around each seismic shot hole shall be restored to its original condition insofar as such restoration is practicable and all stakes, markers, cables, ropes, wires, primacord, cement or mud stacks, and any other debris or material not native to the area shall be removed from the drill site and deposited in a convenient sanitary landfill or other approved site or disposed of by an approved disposal method. Appropriate seeds shall be planted when required to restore the surface to its original condition.

(5) A seismic shot hole may be left unplugged at the request of the surface owner for conversion to a fresh water well provided the surface owner executes a release furnished by the Board of Oil and Gas Conservation relieving the party otherwise responsible for the plugging and abandonment of the hole from any liability for damages that may thereafter result from the hole remaining unplugged. This release will cite the date, location, surface elevation, depth to aquifer or gas emitting strata, and any action taken. This information shall be furnished by the geophysical operator. AUTH&IMP. 82-1-101&104.

Proposed New Rule I. IDENTIFICATION. Each unit of mobile equipment utilized in seismic exploration or plugging seismic shot holes shall display on both sides in conspicuous lettering the name of the holder of the geophysical exploration permit by or for whom the work is being done and the telephone number of the person in charge of said crew.

AUTH & IMP: 82-1-101 and 82-1-104, MCA


3. By Chapter No. 116, Laws of Montana, 1983, effective March 17, 1983, the legislature authorized the Board to impose restrictions on the location of seismic shot holes, amended the requirement that said shot holes be filled to four feet from the ground surface and substituted that requirement with a requirement that the plug be set at a sufficient depth below the surface of the land to allow cultivation. The legislature also authorized the Board to require identification of seismic exploration crews. These proposed amendments to the rules and proposed new rule implement that legislation. Proposed amendment to rule 36.22.501 is necessary to prevent damage to structures, wells, springs and dams. Proposed New Rule I is necessary to allow landowners affected by seismic activity to identify the person responsible for said activity.

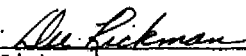
4. Interested parties may submit their data, views, or arguments concerning the proposed amendments to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than July 28, 1983.

5. If a person who is directly affected by the proposed amendments wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than July 28, 1983.

6. If the Board receives requests for a public hearing on the proposed amendments or proposed new rule from either 10% or 25, whichever is less, of the persons directly affected by the proposed amendments or proposed new 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 at least 25 persons based on the Board's determination that there are more than 250 persons whose operations are governed by this rule or persons who are affected by such operations.

7. The authority of the Board to make the proposed amendments is based on Sections 82-1-101 and 82-1-104, MCA, and the rules implement Sections 82-1-101 and 82-1-104, MCA.

  
Richard A. Campbell, Chairman  
Board of Oil and Gas Conservation

  
Dee Rickman  
Assistant Administrator  
Oil and Gas Conservation Division

Certified to the Secretary of State June 20, 1983.

BEFORE THE BOARD OF OIL  
AND GAS CONSERVATION

In the matter of the amendment of )	NOTICE OF PROPOSED
Rules 36.22.1012 and 36.22.1013 )	AMENDMENT OF RULE
pertaining to confidentiality of )	36.22.1012 SAMPLES OF
stratigraphic test hole )	CORES AND CUTTINGS,
information and filing deadlines )	RULE 36.22.1013 FILING
for submitting said information )	OF COMPLETION REPORTS,
to the Board, and Rule 36.22.1242 )	WELL LOGS, ANALYSES,
transferring the duty of collecting )	REPORTS, AND SURVEYS
the oil and gas privilege and )	AND RULE 36.22.1242
license tax assessment to the )	REPORTS BY PRODUCERS
Dept. of Revenue. )	

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1983, the Board of Oil and Gas Conservation (Board) proposes to amend Rules 36.22.1012 and 36.22.1013 which set forth requirements for submitting information, reports and samples on stratigraphic test holes to the Board and Rule 36.22.1242 concerning the producers obligation to file quarterly privilege and license tax assessment reports.

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

36.22.1012 SAMPLES OF CORES AND CUTTINGS (1) Any owner or operator drilling or deepening a well for oil or gas or stratigraphic information shall deliver prepaid to the Board at the office stipulated on the approved Permit to Drill a complete and representative sample of the core chips and cuttings within a period of 6 months after the completion or abandonment of such well. The Board may at its discretion relieve any owner or operator from the obligation to so deliver samples of corechips or cuttings-

(2) A complete and representative sample of cores, chips and cuttings from a stratigraphic well or core hole will be impounded by the Board and not made available to the public for a period of 3 years from the date of abandonment of the well, unless prior consent is obtained from the owner or operator shall be delivered prepaid to the Board at the office stipulated on the approved Permit to Drill within 3 years of the completion of the stratigraphic well.

(3) The Board may at its discretion relieve any owner or operator from the obligation to so deliver samples of core chips or cuttings. AUTH: 82-11-111, MCA; IMP: 82-11-125, MCA

36.22.1013 FILING OF COMPLETION REPORTS, WELL LOGS, ANALYSES, REPORTS, AND SURVEYS (1) Within 30 days after the completion, reworking, or abandonment of any well drilled to known productive horizons within a delineated field, the operator or owner shall transmit to the Board 3 copies of Form No. 4, 4 copies of Form No. 2 and 2 original copies of all well logs, drill stem test survey reports, sample and core description logs, analyses, and reports, water analyses, and all other logs, surveys, and reports run or made.

(2) In the case of a wildcat, or exploratory, or stratigraphic well, or corehole, the owner or operator shall transmit to the Board within 6 months after completion or abandonment 3 copies of Form No. 4, 4 copies of Form No. 2 and 2 original copies of all logs, surveys, reports, and analyses run or made as described in subsection (1). In the case of a stratigraphic well, all said information will shall be impounded by sent to the Board and will not be made available to the public for a period of within 3 years from the date of abandonment, completion unless prior consent is obtained from the owner. AUTH: 82-11-111, MCA; IMP: 82-11-125, MCA

36.22.1242 REPORTS BY PRODUCERS (1) Each producer or owner of an oil or gas well shall file or cause to be filed with the Board on or before the last day of each month succeeding the month in which the producing or taking occurs a report on Form No. 6 containing all information required by said form.

(2) Each producer of oil and each producer of gas shall not later than the last day of each of the calendar months of February, May, August and November of each and every calendar year file with the Board a report on Form No. 12 containing all information required by said form copy of the privilege and license tax assessment report form filed with the Department of Revenue. AUTH: 82-11-111, MCA; IMP: 82-11-131, 132

3. By Chapter No. 248, Laws of Montana, 1983, effective March 28, 1983 the Legislature amended Section 82-11-125 to provide that persons drilling stratigraphic wells need not file reports or deliver samples on said wells for a period of three years from the date of the completion of a stratigraphic well. Proposed changes to rules 36.22.1012 and 36.22.1013 implement that legislation.

By Chapter No. 93 of the Laws of Montana, 1983, effective July 1, 1983 the Montana Legislature transferred the duty of collecting the oil and gas privilege and license tax assessment from the Board to the Department of Revenue. The

proposed change to rule 36.22.1242 implements that legislation.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than July 28, 1983.

5. If a person who is directly affected by the proposed amendments wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Dee Rickman, P. O. Box 217, 25 South Ewing, Helena, Montana 59624, no later than July 28, 1983.

6. If the Board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons 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 at least 25 persons based on the Board's determination that there are more than 250 persons who are either oil or gas producers or who are eligible to drill stratigraphic test holes in Montana.

7. The authority of the Board to make the proposed amendments is based on Section 82-11-111 MCA, and the rules implement Sections 82-11-125, 82-11-131 and 82-11-132, MCA.

Richard A. Campbell

Richard A. Campbell, Chairman  
Board of Oil and Gas Conservation

BY: Dee Rickman

Dee Rickman  
Assistant Administrator  
Oil and Gas Conservation Division

Certified to the Secretary of State June 29, 1983.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of amendment of)	NOTICE OF PUBLIC HEARING ON
rules pertaining to agency )	PROPOSED AMENDMENT OF RULES
filing fees and subscription )	1.2.421 SUBSCRIPTION TO THE
rates to the ARM and MAR. )	CODE - COST; 1.2.423 AGENCY
	FILING FEES.

TO: All Interested Persons.

1. On July 20, 1983, at 10:00 a.m. a public hearing will be held in room 104 of the Capitol, Helena, Montana, to consider the amendment of the above mentioned rules.

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

1.2.421 SUBSCRIPTION TO THE CODE--COST (1) The secretary of state is required by law, (Sections 2-4-312, MCA and 2-4-313, MCA) to distribute copies of the code and register and revisions thereto, free of charge, to certain federal, state and county agencies enumerated therein.

(2) The secretary is also authorized to make available additional copies of the code, register, and revisions thereto to the public at prices fixed to cover publication and mailing costs.

(3) Beginning January-17-1982, August 12, 1983 the costs for the Administrative Rules of Montana and the Montana Administrative Register are as follows:

(a) Administrative Rules of Montana - \$350.00

(b) Four issues of updates to the Administrative Rules of Montana - ~~\$100.00~~ 150.00

(c) Montana Administrative Register - ~~\$170.00~~ 225.00

AUTH: 2-4-313, MCA      IMP: 2-4-313, MCA

1.2.423 AGENCY FILING FEES (1) Beginning January-17-1982 August 12, 1983, all agencies will be required to pay a ~~\$13.50~~ 30.00 per page filing fee for all pages submitted which are applicable to the notice and rule section of the Montana Administrative Register. The secretary of state will bill monthly for all fees incurred by the agency.

AUTH: 2-4-313, MCA      IMP: 2-4-313, MCA

3. The secretary of state's office is proposing the amendment to its rules as a result of the legislative auditor's recommendation that the administrative rules program be funded on a user fee, revolving fund basis rather than through the general fund. This recommendation was strongly endorsed by the voted action of the 1983 legislature. The administrative code committee gave unanimous consent for the fee raise.

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 Clifford Christian, Room 202, Capitol, Helena, Montana, 59620, no later than July 28, 1983.

5. Alan Robertson, Room 202, Capitol, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

  
JIM WALTERMIRE  
Secretary of State

Dated this 20th day of June, 1983.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.5.904,	)	THE PROPOSED AMENDMENT OF
46.5.905 and 46.10.404 per-	)	RULES 46.5.904, 46.5.905
taining to day care for	)	AND 46.10.404 PERTAINING TO
children of recipients in	)	DAY CARE FOR CHILDREN OF
training or in need of	)	RECIPIENTS.
protective services.	)	

TO: All Interested Persons

1. On July 21, 1983, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.5.904, 46.5.905 and 46.10.404 pertaining to day care for recipients in training or in need of protective services.

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

46.5.904 SPECIAL-NEEDS, TITLE-IV-A DAY CARE FOR  
CHILDREN OF RECIPIENTS IN TRAINING OR WORKING IN NEED OF

PROTECTIVE SERVICES In-addition-to-the-basic-AFDC-grant, day care payment will be included made for children of recipients who are attending employment related training or in need of protective services day care unless otherwise provided. AFDC recipients who attend WIN training shall be referred for WIN related day care.

(1) Limitations of special-needs Title IV-A day care:

(a) Title IV-A day care is payments for children of parents who are AFDC recipients working or in training on a full- or part-time basis. Training is includes, but is not limited to: vocational-technical schools, business colleges, junior colleges, university students, or special classes which may be classified as "employment related training." Students who are working to support their education are included under this rule.

(b) Determination as to whether a child is in need of protective services day care will be made by the county social worker.

~~(b)--Day-care-needs-will-be-taken-into-consideration-for-eligibility-determination-of-an-applicant--if-an-applicant-requires-special-needs-day-care, this need will-be-considered-in-addition-to-the-AFDC-grant-amount-to-determine-eligibility.~~

(c) Day care payment shall-be-added-to-the-AFDC-grant-amount; may be made directly to the recipient or payment may be made through vendor or two party payments if the recipient voluntarily agrees, in writing, to a vendor or two party payment.

(d) Day care payment will be paid upon evidence of need-actual cost. Evidence of need actual cost includes verification from the provider of day care services. Evidence of-need-shall Verification includes the signature of the individual provider or his/her designee, the month of services, and the names of the children served.

(e) Title IV-A Day care payment shall not exceed \$154 \$184 per month, per child for children in licensed or registered day care facilities. centers, \$143 per month per child for children in registered group day care homes, and \$132 per month per child for children in registered day care homes. The recipient shall choose his/her day care provider.

(f) The recipient shall choose his day care provider.

(2) Limitations of non-Title IV-A protective services day care:

(a) Non-AFDC protective services day care is payment for day care provided to children who are recipients of child protective services, but whose parent(s) are not AFDC recipients.

(b) Day care payments will be made directly to the day care provider.

(c) Day care payments shall not exceed \$184 per month except in unusual circumstances when additional day care is approved by the department for the protection of the children.

The authority of the agency to amend this rule is based upon Sections 53-4-111 and 53-4-503, MCA and the rule implements Section 53-4-514, MCA.

46.5.905 DAY CARE RATES (1) Full day care services are paid at a rate of ~~\$6.50~~ \$7.00 per day per child in care in day care homes. The maximum rate for group day care homes is ~~\$7.00~~ \$7.50 per child per day of care. The maximum rate for centers is ~~\$7.50~~ \$8.00 per child per day of care. These rate increases shall be paid ~~retroactively~~ beginning ~~July 17, 1982~~ August 16, 1983.

(2) Part-time care is paid at a rate of ~~65¢~~ 70¢ per hour per child in day care homes, ~~70¢~~ 75¢ per hour per child in group day care homes, and ~~75¢~~ 80¢ per hour per child in all centers up to a maximum of a full day or night care rate.

(3) Extra meals are paid at a rate of 60¢ per child per meal. ~~This is subject to upon the written approval of the district-office-social-worker-supervisor-III department.~~

(4) Special child or exceptional child day care is paid at a rate determined by the day care facility, parent of the child, and the social worker up to a maximum of \$8.00 per day or per night care; and upon approval by the ~~district social-worker-supervisor-III department.~~ Part-time care may be provided at a rate of up to a maximum of \$1.00 per hour per child, up to a maximum of a full day or night care special

rate of \$8.00 and subject to the same requirements as applied to the daily rate.

(5) Day care operators will be allowed to claim a day's care only when actually provided to the child, unless the child is enrolled in the center.

The authority of the agency to amend this rule is based upon Sections 53-4-111 and 53-4-503, MCA and the rule implements Section 53-4-514, MCA.

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

TIVE SERVICES (1) Unless otherwise provided, in addition to the basic AFDC grant, day care payment will be provided for children of recipients who are attending employment-related training or in need of protective services day care. AFDC recipients who attend WIN training shall be referred for WIN-related day care. AFDC recipients who are employed shall have their day care expenses deducted from earned income when testing net monthly income and when determining grant amount as provided in ARM 46.10.512.

(2) Limitations to Title IV-A day care:

(a) Title IV-A day care payments are made for children of parents who are AFDC recipients in training on a full- or part-time basis. Training includes, but is not limited to: vocational-technical schools, business colleges, junior colleges, universities, or special classes which may be classified as "employment-related training." Students who are working to support their education are included under this rule.

(b) Determination as to whether a child is in need of protective services day care shall be made by the county social worker.

(bc) Title IV-A day care needs will be taken into consideration for eligibility determination of an applicant. If an applicant requires Title IV-A day care, this need will be considered in addition to the AFDC grant amount to determine eligibility.

(ed) Title IV-A day care payment may be made directly to the recipient or through a vendor or two-party payment. The recipient must volunteer in writing to have the day care payment made through a vendor or two-party payment.

(de) Title IV-A day care payment will be made upon evidence of actual charge or cost. Evidence of actual charge or cost includes verification from the provider of day care services. Verification includes the signature of the individual provider or his designee, the month of service, and names of children served.

(ef) ~~Except as provided in (h) and (i) below, day care payments shall not exceed \$165 per month, or \$7.50 per day, or \$3.75 per half-day per child for children in licensed day care centers; \$184 per month per child except in unusual circumstances when additional day care is approved by the department for the protection of children.~~

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

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

(g) Full day care services are paid at a rate of \$7.00 per day per child in care in day care homes. The maximum rate for group day care homes is \$7.50 per child per day of care. The maximum rate for centers is \$8.00 per child per day of care.

(h) Part time care is paid at a rate of 70¢ per hour per child in day care homes, 75¢ per hour per child in group day care homes and 80¢ per hour per child in day care centers up to a maximum of a full day or night care rate.

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

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

(ii) exceptional child care, as defined in ARM 46.5.903, at a maximum of \$8.00 per day per child for full-time care or \$1.00 per hour per child for part-time care.

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

(j) Title IV-A day care is available for care provided in licensed or registered day care facilities only.

(k) The recipient shall choose his day care provider.

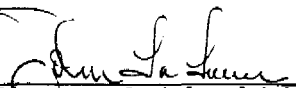
The authority of the agency to amend this rule is based upon Sections 53-4-212 and 53-4-503, MCA and the rule implements Sections 53-4-211 and 53-4-514, MCA.

3. The rules are proposed to be amended to provide for an increase in the day care payment rates consistent with the testimony and legislative history relating to the appropriations contained in HB 447, and to make such other changes as are necessary to achieve uniformity within the rules regulating day care payments.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office

of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than July 29, 1983.

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

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State June 20, 1983.

BEFORE THE FISH AND GAME COMMISSION  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF THE ADOPTION OF AMEND-
amendment of 12.6.106(1)(a)	)	MENT OF ARM 12.6.106(1)(a), REMOVAL
concerning the removal of	)	OF ICE SHELTERS; AND 12.6.901(1)(e)
ice shelters; and 12.6.901	)	CONCERNING COUNTERCLOCKWISE DIRECTION
(1)(e) concerning counter-	)	OF WATER SKIERS; AND 12.6.903(5)
clockwise direction of	)	CONCERNING THE USE OF ELECTRIC MOTORS
water skiers; and 12.6.903	)	ON THE HELENA VALLEY EQUALIZING
(5) concerning the use of	)	RESERVOIR
electric motors on the Helena	)	
Valley Equalizing Reservoir	)	

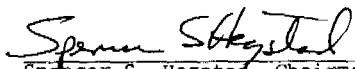
TO: All Interested Persons:

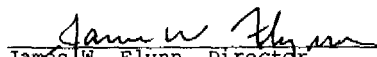
1. On March 31, 1983, the Montana Fish and Game Commission published notice of proposed Rules 12.6.106(1)(a) concerning the removal of ice shelters; 12.6.901(1)(e) concerning counterclockwise direction of water skiers; and 12.6.903(5) concerning the use of electric motors on the Helena Valley Equalizing Reservoir at P. 238-40 of the 1983 Montana Administrative Register, Issue #6.

2. The Montana Fish and Game Commission has adopted the Rules as proposed.

3. No comments or testimony were received.

4. The authority for the Rule is Section 87-1-303, MCA, and the Rule implements Section 87-1-303, MCA.

  
\_\_\_\_\_  
Spencer S. Hegstad, Chairman  
Montana Fish & Game Commission

  
\_\_\_\_\_  
James W. Flynn, Director  
Dept. of Fish, Wildlife & Parks

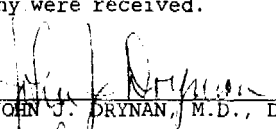
Certified to the Secretary of State June 7, 1983

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

In the matter of the amendment )	NOTICE OF
of rule 16.6.116, setting fees )	THE AMENDMENT OF
for searches of vital statistics )	ARM 16.6.116
records and certified copies of )	
birth, death, and fetal death )	(Fees for Copies
certificates )	and Research)

TO: All Interested Persons

1. On May 12, 1983, the department published notice of a proposed amendment of rule 16.6.116 concerning fees for searches of the vital statistics records, and for copies of birth, death, and fetal death certificates, at page 391 of the 1983 Montana Administrative Register, issue number 9.
2. The department has amended the rule as proposed.
3. No comments or testimony were received.

  
\_\_\_\_\_  
JOHN J. DRYNAN, M.D., Director

By   
\_\_\_\_\_  
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State June 20, 1983

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

In the matter of the amendment )	NOTICE OF
of rules 16.32.101, 16.32.103, )	THE ADOPTION AND
16.32.107, 16.32.108, 16.32.110, )	AMENDMENT OF RULES
16.32.111, 16.32.112, 16.32.114, )	
and 16.32.118, and the adoption )	
of a NEW RULE, relating to the )	
review of certificate of need )	
applications for new )	
institutional health services )	
and facilities )	(Certificate of Need)

TO: All Interested Persons

1. On May 12, 1983, the department published notice of proposed amendment of rules 16.32.101, 16.32.103, 16.32.107, 16.32.108, 16.32.110, 16.32.111, 16.32.112, 16.32.114, and 16.32.118, and the adoption of a NEW RULE, relating to the review of certificate of need applications for new institutional health services and facilities at page 373 of the 1983 Montana Administrative Register, issue number 9.

2. The department has amended the rules and adopted the new rule with the following changes:

16.32.101 DEFINITIONS

(1) - (2) Same as proposed.

(3) ~~"Doctor's offices"~~ means the private offices of a physician or group of physicians, and associated support facilities which are available for use only by those physicians whose offices are located on the premises. Such facilities may include observation beds, but may not include inpatient services. "Offices of private physicians or dentists" means the private offices of a physician or dentist or group of physicians or dentists, and associated facilities which are:

(a) located on the premises of the physician's or dentist's offices;

(b) operated as an integral part of the physician's or dentist's private practice; and

(c) primarily available only to the physicians or dentists whose offices are located on the premises.

Such facilities may include outpatient services and observation beds, but may not include inpatient services.

(4) - (5) Same as proposed.

16.32.103 SUBMISSION OF LETTER OF INTENT

(1) Same as proposed

(2)(a) and (b) Same as proposed.

(c) anticipated methods and terms of financing the proposal;

(d) - (f) Same as proposed.

(3) - (5) Same as proposed.

(6) If an existing health care facility or doctor's office proposes to establish a home health agency, kidney treatment center, long-term care facility, mental health center, rehabilitation center, or hospice, or other service not previously offered by or through the health care facility or doctor's office and which would constitute a health care facility if established independently, such proposal will be reviewed pursuant to 50-5-301(1)(f), MCA.

(7) Any affected person may request an informal hearing before the department to challenge the department's determination regarding applicability of certificate of need review. Such a request must be received by the department within 10 days following the determination. At least 7 days prior notice of the hearing shall be sent to the persons identified in ARM 16.32.112(1)(d). At the hearing, the affected parties or their counsel will be given the opportunity to present written or oral evidence or arguments challenging or supporting the department's determination. Within 7 days following the hearing, the department will issue its decision, in writing, and the reasons therefor, which shall be sent to the persons who received notice of the hearing. If the department determines that the applicant is subject to review, the letter of intent may be assigned to the next appropriate batching period.

#### NEW RULE (16.32.106) BATCHING PERIODS, SUBMISSION OF APPLICATIONS

(1) The following batching periods are established for all categories of service and for all regions of the state:

- (a) January 1 through January 20
- (b) March 1 through March 20
- (c) May 1 through May 20
- (d) July 1 through July 20
- (e) September 1 through September 20
- (f) November 1 through November 20

Except as provided in subsection subsections (3) and (5) below and in section 16.32.103(4), letters of intent will be accepted only during these periods. Letters of intent received at other times will be assigned to the next batching period.

(2) Same as proposed.

(3) The following categories of health services will be batched: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, personal and intermediate care, other. Only proposals in these categories involving new services, new or increased bed capacity, or construction or replacement of health care facilities will be batched.

(4) - (13) Same as proposed.

16.32.107 ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES  
Same as proposed.

16.32.108 INFORMATIONAL HEARING

(1), (2) Same as proposed.

(3) Notice of the informational hearing must be given at last 14 calendar days prior to the informational hearing by the following means:

(a) Written notice must be sent by certified mail to the person requesting the hearing, the applicant, and all other applicants assigned for comparative review with the applicant. The agency qualified as health system agency pursuant to 42 U.S.C. Sec. 3001-, health care facilities, the Department of Social and Rehabilitation Services, rate review agencies, health maintenance organizations in the service area, and contiguous agencies qualifying as health systems agencies pursuant to 42 U.S.C. Sec. 3001, and other persons who have requested notice will be notified by ordinary mail.

16.32.110, 16.32.111, 16.32.112, 16.32.114 and 16.32.118  
Same as proposed.

3. After consultation with representatives of the Montana Medical Association, Montana Hospital Association, Montana Nursing Home Association, Montana Nurses' Association, and the Montana Health Services Association, the foregoing changes were made to the proposed rules. Following are comments for the changes which were made.

16.32.101(3): The new definition includes dentist offices, which share the statutory exemption from review, and somewhat clarifies the limits of the exemption.

16.32.103(2)(c): The exact financing methods are not always known in detail at the time of submission of the letter of intent.

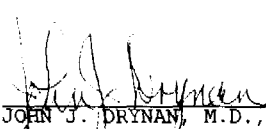
16.32.103(6): Additions of health care facilities to doctor's offices will be reviewed under 50-5-301(1)(f) by virtue of the proposed definition of doctor's office (ARM 16.32.101(3)).

16.32.103 (new subsection (7)): This provides an informal procedure for appealing the department's initial determination that an applicant is (or is not) subject to review.

NEW RULE (16.32.106): The first change exempts projects which do not require batching from the requirement that letters of intent be submitted only during specific times. The second change adds personal care facilities to the list of categories subject to batching.

16.32.108(3)(a): This provides for service of notice of informational hearings to persons who have asked to be placed on a mailing list for that purpose.

4. The Montana Hospital Association commented that proposed section 16.32.103(6) goes too far in eroding the \$100,000 threshold for new services established by the legislature. In response, the department has deleted several of the items from the list. Only those types of facilities which are most likely to require review will be treated as new health care facilities.

  
\_\_\_\_\_  
JOHN J. DRYNAN, M.D., Director

By   
\_\_\_\_\_  
JOHN W. BARTLETT, Deputy Director


Certified to the Secretary of State June 20, 1983


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

In the matter of the adoption	)	NOTICE OF THE ADOPTION
of rules setting fees for tests	)	OF RULES
of air quality and micro-	)	
biological analyses	)	(Laboratory Fees)

To: All Interested Persons

1. On May 12, 1983, the department published notice of a proposed adoption of rules 16.38.301 and 16.38.303 concerning fees for air quality analyses and microbiological tests other than those performed on drinking water at page 393 of the 1983 Montana Administrative Register, issue number 9.
2. The department has adopted the rules as proposed.
3. No comments or testimony were received.

  
\_\_\_\_\_  
JOHN J. DRYNAN, M.D., Director

By   
\_\_\_\_\_  
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State June 20, 1983

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

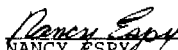
In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ment of ARM 32.3.2001 BRANDS	)	ARM 32.3.2001 BRANDS AND
AND EARMARKS	)	EARMARKS

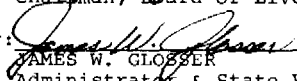
TO: All Interested Persons

1. On April 14, 1983 the Board of Livestock published a notice of proposed adoption of an amendment of ARM 32.3.2001 specifying an additional official brand to designate spayed heifers at page 294 of the Administrative Register, Issue No. 7.

2. No comments or testimony were received.

3. The Board adopted the amendment as proposed.

  
\_\_\_\_\_  
NANCY ESPY  
Chairman, Board of Livestock

By:   
\_\_\_\_\_  
JAMES W. GLOSSER  
Administrator & State Veterinarian

Certified to the Secretary of State June 20, 1983.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

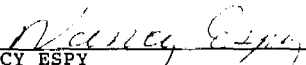
In the matter of the amend-	)	NOTICE OF AMENDMENT OF
ment of ARM 32.15.601 FEES	)	ARM 32.15.601 FEES FOR
FOR FILING NOTICES REGARD-	)	FILING NOTICES REGARDING
ING SECURITY AGREEMENTS,	)	SECURITY AGREEMENTS
raising the required fee.	)	

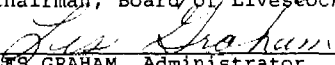
TO: All Interested Persons

1. On April 14, 1983 the Board of Livestock published a notice of proposed adoption of an amendment of ARM 32.15.601 raising the required fee for filing with the department a notice, assignment, renewal or satisfaction of a security interest in branded livestock at page 296 of the Administrative Register, Issue No. 7.

2. No comments or testimony were received.

3. The Board adopted the amendment as proposed.

  
NANCY ESPY  
Chairman, Board of Livestock

By:   
LES GRAHAM, Administrator  
Brands-Enforcement Division

Certified to the Secretary of State June 20, 1983.

BEFORE THE BOARD OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the ADOPTION )	NOTICE OF ADOPTION OF
OF RULES I-III specifying the )	RULES CONCERNING LIVE-
manner of recording and trans- )	STOCK BRANDS
ferring livestock brands and )	RULE I - 32.18.105
of selling branded livestock )	RULE II - 32.18.106
	RULE III - 32.18.107

TO: All Interested Persons

1. On April 14, 1983 the Board of Livestock published a notice of proposed adoption of rules specifying the manner in which a livestock brand may be recorded, and the manner in which livestock bearing a brand may be sold at page 298 of the Administrative Register, Issue No. 7.

2. No comments or testimony were received.

3. The Board adopted the rules as proposed.

Nancy Espy  
NANCY ESPY

Chairman, Board of Livestock

By:

Les Graham  
LES GRAHAM, Administrator

Brands-Enforcement Division

Certified to the Secretary of State June 20, 1983.

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

In the matter of the adoption	)	NOTICE OF THE ADOPTION OF
of Rules 46.4.101, 46.4.102,	)	RULES 46.4.101, 46.4.102,
46.4.105, 46.4.106, 46.4.107,	)	46.4.105, 46.4.106,
46.4.108, 46.4.111, 46.4.112,	)	46.4.107, 46.4.108,
46.4.115, 46.4.116, 46.4.119,	)	46.4.111, 46.4.112,
46.4.120, 46.4.121, 46.4.123	)	46.4.115, 46.4.116,
and 46.4.125 pertaining to	)	46.4.119, 46.4.120,
the administration of the	)	46.4.121, 46.4.123 AND
state plan on aging; services	)	46.4.125 PERTAINING TO THE
for senior citizens	)	ADMINISTRATION OF THE STATE
	)	PLAN ON AGING; SERVICES FOR
	)	SENIOR CITIZENS

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed readoption of Rules 46.4.101, 46.4.102, 46.4.105, 46.4.106, 46.4.107, 46.4.108, 46.4.111, 46.4.112, 46.4.115, 46.4.116, 46.4.119, 46.4.120, 46.4.121, 46.4.123 and 46.4.125 pertaining to the administration of the state plan on aging; services for senior citizens at page 436 of the Montana Administrative Register, issue number 9.

2. The Department has readopted Rules 46.4.101, 46.4.102, 46.4.106, 46.4.107, 46.4.108, 46.4.111, 46.4.112, 46.4.115, 46.4.116, 46.4.119, 46.4.120, 46.4.121, 46.4.123 and 46.4.125 as proposed.

3. The Department has readopted Rule 46.4.105, as proposed with the following changes:

46.4.105 DESIGNATION OF PLANNING AND SERVICE AREAS

(1) The division may designate as a planning and service area:

- ~~(1)~~ (a) any unit of general purpose local government;
- ~~(2)~~ (b) any district or combination of districts; or
- ~~(3)~~ (c) any Indian reservation.

(2) The designation of planning and service areas by the division will be governed by the following criteria:

(a) Planning and service areas will be designated every four years beginning October 1, 1987.

(b) There will be no more than 12 planning and service areas designated in each four year period.

(c) There will be no less than 7 planning and service areas designated in each four year period.


(d) The 11 or 12 planning and service areas that were designated prior to October 1, 1983 will continue to be designated as planning and service areas until October 1, 1987.

(e) The division will accept requests from planning and service areas that the area be divided into two new planning and service areas.

(f) BEFORE OCTOBER 1, 1983 Only one request will be approved by the division creating two planning and service areas out of one. in-the-four-year-period-beginning-October-1, 1983.

4. Rule 46.4.105(f) was modified to clarify that before October 1, 1983, the division will approve only one request from a planning and service area that the area be divided into two new planning and service areas.

5. No written comments or testimony were received.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State \_\_\_\_\_ June 20 \_\_\_\_\_, 1983.

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

In the matter of the repeal	)	NOTICE OF THE REPEAL OF
of Rules 46.5.608 and	)	RULES 46.5.608 AND 46.5.619,
46.5.619, the adoption of	)	THE ADOPTION OF RULES
Rules 46.5.620, 46.5.621,	)	46.5.620, 46.5.621,
46.5.622, 46.5.650, 46.5.651,	)	46.5.622, 46.5.650,
46.5.652, 46.5.653, 46.5.654,	)	46.5.651, 46.5.652,
46.5.655, 46.5.656, 46.5.657,	)	46.5.653, 46.5.654,
46.5.658, 46.5.659, 46.5.660,	)	46.5.655, 46.5.656,
46.5.690, 46.5.691 and	)	46.5.657, 46.5.658,
46.5.692 and the amendment of	)	46.5.659, 46.5.660,
Rules 46.5.601, 46.5.602,	)	46.5.690, 46.5.691 and
46.5.603, 46.5.604, 46.5.605,	)	46.5.692 AND THE AMENDMENT
46.5.606, 46.5.607, 46.5.609,	)	OF RULES 46.5.601, 46.5.602,
46.5.610, 46.5.611, 46.5.612,	)	46.5.603, 46.5.604,
46.5.613, 46.5.614, 46.5.615,	)	46.5.605, 46.5.606,
46.5.616, 46.5.617, and	)	46.5.607, 46.5.609,
46.5.618 pertaining to youth	)	46.5.610, 46.5.611,
care facilities; licensing,	)	46.5.612, 46.5.613,
placement budgets and paren-	)	46.5.614, 46.5.615,
tal contribution.	)	46.5.616, 46.5.617, AND
	)	46.5.618 PERTAINING TO YOUTH
	)	CARE FACILITIES

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rules 46.5.608 and 46.5.619, the adoption of Rules 46.5.620, 46.5.621, 46.5.622, 46.5.650, 46.5.651, 46.5.652, 46.5.653, 46.5.654, 46.5.655, 46.5.656, 46.5.657, 46.5.658, 46.5.659, 46.5.660, 46.5.690, 46.5.691 and 46.5.692 and the amendment of Rules 46.5.601, 46.5.602, 46.5.603, 46.5.604, 46.5.605, 46.5.606, 46.5.607, 46.5.609, 46.5.610, 46.5.611, 46.5.612, 46.5.613, 46.5.614, 46.5.615, 46.5.616, 46.5.617 and 46.5.618 pertaining to youth care facilities; licensing, placement budgets and parental contribution, at page 404 of the Montana Administrative Register, issue number 9.

2. The Department has repealed the rules as proposed.

3. The authority of the Department to repeal the rules is based upon HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rules implement Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

4. The Department has adopted Rules 46.5.620, CHILD CARE AGENCY, RECORDS; 46.5.655, YOUTH GROUP HOME, TRANSPORTATION; 46.5.656, YOUTH GROUP HOME, GUNS AND AMMUNITION; 46.5.658, YOUTH GROUP HOME, PLACEMENT AGREEMENTS; 46.5.659, YOUTH GROUP HOME, CHILDREN'S CASE RECORDS; 46.5.660, YOUTH

GROUP HOME, PAYMENT; 46.5.690, PREPARATION OF PLACEMENT BUDGET; and 46.5.692, PARENTAL CONTRIBUTION COMPUTATION as proposed.

5. The authority of the Department to adopt Rules 46.5.620, 46.5.655, 46.5.656, 46.5.658, 46.5.659 and 46.5.660 is based upon HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rules implement Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA. The authority for Rules 46.5.690 and 46.5.692 remain as in MAR Notice No. 46-2-368.

6. The Department has amended Rules 46.5.601, 46.5.602, 46.5.603, 46.5.604, 46.5.605, 46.5.606, 46.5.607, 46.5.610, 46.5.611, 46.5.612, 46.5.614, 46.5.615, 46.5.616 and 46.5.618 as proposed.

7. The authority of the Department to amend the rules is based upon HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rules implement Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

8. The Department has adopted the rules with the following changes:

46.5.621 CHILD CARE AGENCY, SECLUSION Subsections (1) through (7)(b) remain as proposed.

(c) the placement in seclusion has been approved by a certified mental health professional as defined in SB-214, Ch. 578, L. 1983, authorized by the provider to place children in seclusion; and

(d) the child has been placed in the secure treatment unit of the child care facility as part of the child's treatment program.

(8) Placement in seclusion may not exceed one (1) hour unless specifically authorized by a certified-mental-health professional psychiatrist. In no event may placement in seclusion exceed twenty-four (24) hours. A child who requires seclusion in excess of twenty-four (24) hours shall be transferred to an acute psychiatric care facility.

~~(a)~~ (9) A staff member with no other immediate duties shall continuously monitor the child placed in seclusion by visual or auditory means and shall remain within twenty (20) feet of the room. If continuous monitoring is by auditory means, the staff member shall visually check on the child at least every ten (10) minutes.

(10) Upon the placement of a child in seclusion, the following minimum items shall be recorded, updated and maintained, if applicable:

(a) a written report which states the child's name, date, time of placement, staff member initiating the

placement, qualified mental health professional authorizing placement and narrative describing the following: the precipitating event, child's behavior before placement, and actions taken by staff of a less restrictive nature in an attempt to control, calm or contain the child;

(b) written notation of visual checks at least every ten (10) minutes and notation of behavior and time occurring;

(c) notation regarding opportunity to use toilet facilities once per hour;

(d) notations to when the child had opportunity to exercise;

(e) notation as to medications administered, time given and staff administering;

(f) notation of all staff contact including a description of the resolution of the placement incident which results in the termination of seclusion.

(11) Staff of the intensive treatment facility who monitor or initiate the use of the room shall be trained in the use of seclusion and be specifically authorized by the facility.

The authority of the Department to adopt the rule is based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rule implements Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

#### 46.5.622 CHILD CARE AGENCY, ADDITIONAL REQUIREMENTS

(1) In addition to the preceding standards which apply specifically to child care agencies, a child care agency must also comply with the standards contained in ~~Rule-IV, Rule-V~~ ARM 46.5.653, ARM 46.5.654 (2)-(8), ~~Rule-VI~~ ARM 46.5.655, and ~~Rule-VII~~ ARM 46.5.656.

The authority of the Department to adopt the rule is based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rule implements Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

46.5.650 YOUTH GROUP HOME, ADMINISTRATION (1) The youth group home shall be a nonprofit or for profit corporation registered under the laws of Montana or under direct administration of a unit of state, local or tribal government. Subsections (2) through (4) remain as proposed.

The authority of the Department to adopt the rule is based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rule implements Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

#### 46.5.651 YOUTH GROUP HOME, PROGRAM REQUIREMENTS

Subsections (1) through (1)(b)(vi) remain as proposed.

(c) Education: Each provider shall assure that ~~all each~~ children in its care ~~are-enrolled-and-have-opportunity-to-re-~~  
~~ceive-educational-credit-from-an-accredited-school-unless-oth-~~  
~~erwise-approved-by-the-department~~ is offered an educational  
program that is appropriate to the child's needs and in com-  
pliance with compulsory school attendance laws.

Subsections (1) (d) through (1) (k) remain as proposed.

The authority of the Department to adopt the rule is  
based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA  
and the rule implements Section 53-2-201(1) (b) (ii), MCA, HB  
24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

#### 46.5.652 YOUTH GROUP HOME, PHYSICAL CARE

Subsections (1) through (7) (d) remain as proposed.

(e) Children must not be denied meals, mail or ~~visits~~  
contacts with their families as punishment.

Subsections (7) (f) through (7) (i) remain as proposed.

The authority of the Department to adopt the rule is  
based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA  
and the rule implements Section 53-2-201(1) (b) (ii), MCA, HB  
24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

#### 46.5.653 YOUTH GROUP HOME, ENVIRONMENTAL REQUIREMENTS

Subsections (1) through (6) remain as proposed.

(7) There shall be hot and cold water available in the  
youth group home. Water temperature for hot water must be  
limited to 120° or below.

Subsections (8) through (10) remain as proposed.

The authority of the Department to adopt the rule is  
based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA  
and the rule implements Section 53-2-201(1) (b) (ii), MCA, HB  
24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

#### 46.5.654 YOUTH GROUP HOME, FIRE SAFETY

Subsection (1) remains as proposed.

(2) Smoke detectors approved by a recognized testing  
laboratory shall be located at stairways and in any areas  
requiring separation ~~and-at-stairways~~ as set forth in the uni-  
form building codes.

Subsections (3) through (8) remain as proposed.

The authority of the Department to adopt the rule is  
based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA  
and the rule implements Section 53-2-201(1) (b) (ii), MCA, HB  
24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

#### 46.5.657 YOUTH GROUP HOME, STAFF

Subsections (1) through (4) remain as proposed.

(5) The resident to staff ratio on the premises shall not be more than 6 8 to 1 awake from 7 a.m. to 11 p.m. or 8 to 1 sleeping from 11 p.m. to 7 a.m.

The authority of the Department to adopt the rule is based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rule implements Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

46.5.691 INVESTIGATION OF FINANCIAL STATUS (1) An investigation of the financial status of the parents or guardianship assets of every child in substitute care shall be conducted by the county of responsibility for the purposes of determining the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the child in a youth care facility.

(a) Voluntary placement. If a child enters substitute care under a voluntary placement agreement executed by the parents or guardian, the assessment of financial ability and determination of amount of contribution shall be completed prior to within 30 days of the child entering care.

(b) Involuntary placement. If a child is placed in substitute care on an involuntary basis under an emergency informal adjustment or other court order an investigation of the financial status of the child's parents or the extent of guardianship assets shall be conducted pursuant to the order of the court and a written report including the financial assessment and determination of the recommended amount of parental contribution shall be filed with the court within the time fixed by the court order.

9. The Department has amended the rules with the following changes:

46.5.609 CONFIDENTIALITY OF RECORDS (1) All records maintained by a ~~child-care agency~~ YCF pertaining to an individual child are confidential and are not available to any person, agency or organization except as specified in subsections (2) through (5) of this section below.

(2) All records pertaining to an individual child are available upon request to:

(a) the child's parent, guardian, legal custodian, or attorney;

(b) a court with current continuing jurisdiction over the placement of the child or any court of competent jurisdiction issuing an order for such records;

(c) a mature child to whom the records pertain, absent specific and compelling reasons for refusing specific records; or

(d) an adult who was formerly the child in care to whom the records pertain.

~~{3}--Records-pertaining-to-significant-occurrences-in-re-  
lation-to-a-specific-child-may-be-reviewed-by-the-referral  
agency-~~

{4} (3) All records pertaining to individual children placed by the department are available at any time to the department or its representatives.

~~{5} (4) Records pertaining to individual children not placed by or in the custody of the department are shall be available to the department solely for the purposes of licens-  
ing or relicensing the child-care-agency YCF.7-to-assure-that  
required-records-are-being-kept-for-all-children-in-care.--For  
this-purpose-only-the-department-may-in-its-discretion-accept  
any-evidence-it-finds-appropriate-to-show-the-existence-of  
such-records,-including,-if-necessary,-on-site-access-to-indi-  
vidual-records-by-an-authorized-representative-of-the-depart-  
ment-~~

The authority of the Department to amend the rule is based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rule implements Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

46.5.613 CHILD CARE AGENCY, DEVELOPMENT AND TRAINING

Subsections (1) through ~~{14}~~ (12)(i) remain the same.

(j) Children must not be placed in a locked room- except as provided under ARM 46.5.621.

Subsections (12)(k) through (14) remain the same.

The authority of the Department to amend the rule is based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rule implements Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

46.5.617 CHILD CARE AGENCY, PHYSICAL PLANT

Subsections (1) through ~~{11}~~ (8) remain the same.

Subsections (9) and (10) are deleted in their entirety.

~~{11}~~ (9) Sketches of floor plans of all child care agency facilities giving measurements and purpose of rooms must be submitted to the licensing agent. Any alterations or expansions of existing buildings or construction of new buildings shall require floor plans to be submitted to the licensing agent.

The authority of the Department to amend the rule is based on HB 24, Ch. 465, L. 1983 and Section 53-4-111(1), MCA and the rule implements Section 53-2-201(1)(b)(ii), MCA, HB 24, Ch. 465, L. 1983, and Section 53-4-113(4), MCA.

10. The Department has thoroughly considered all verbal and written comments:

COMMENT: Regarding Rule 46.5.621(8), where would a child go if there was no acute psychiatric care facility in the community, and how would the child be transported?

RESPONSE: The options available vary by facility, community and circumstances and cannot, therefore, be specifically addressed in the rules.

COMMENT: Regarding Rule 46.5.621(7)(c), respondents requested that providers be allowed to determine which professionals in their facility have authority to approve placement in seclusion rather than have staff designated according to the provisions of SB 214.

RESPONSE: After researching SB 214 the Department is in agreement with respondents and has revised the proposed rule accordingly.

COMMENT: A respondent noted that Rule 46.5.621(8), if left as proposed, would certify a mental health professional to authorize seclusion for 24 hours. This removes one of the basic "check and balance" provisions of seclusion requirements proposed by the advisory committee that assisted the Department with the proposed rules. The respondent goes on to say a child who displays "seclusion" behavior needs to be reviewed for placement by a psychiatrist if such behavior continues beyond one hour. Additionally, the seclusion requirements proposed by the advisory committee contain a significant amount of documentation of the entire event, staff performance and potential legal safeguards. Those aspects are deleted in the rule changes. If the recommended more thorough requirements are adopted as rules the Department will find the use of seclusion easier to monitor in a more detailed manner. Lastly, the respondent commented that the use of seclusion requires very specific rules and documentation if it is to be utilized in a professional manner by the two private facilities currently employing seclusion as a treatment practice as well as others who may choose its use.

RESPONSE: The Department has reviewed the proposed policy again and has met with the providers who will be using seclusion. Based upon the comments, review and meetings, the Department is changing the seclusion rules to reflect those rules originally proposed by the advisory committee.

COMMENT: Regarding Rule 46.5.651(1)(c), a respondent indicated that the proposed rule is restrictive because some of the group home residents are school drop outs who will not be returning to school. The provider recommended that the Department require the licensee to involve the youth in some

activity and to comply with state law for compulsory school attendance.

RESPONSE: The rule was proposed to ensure that adequate educational opportunities are offered to each child in care. The change proposed by the provider would do the same and allow more flexibility to accommodate the youth who is not in school. The rule is revised to read: Each provider shall assure that each child in its care is offered an educational program that is appropriate to the child's needs and in compliance with compulsory school attendance laws.

COMMENT: Rule 46.5.622 of the proposed child care agency rules indicates that child care agencies must comply with the standards contained in Rule IV, Rule V(2) through (8), Rule VI and Rule VII. There is no Rule V(2) through (8).

RESPONSE: This sentence was a mistake in the proposed rules and should read: ...child care agencies must comply with the standards contained in Rule VII, Rule VIII(2) through (8), Rule IX and Rule X; now to read Rules 46.5.653, 46.5.654, 46.5.655 and 46.5.656.

COMMENT: Based on the proposed definitions found in ARM 46.5.601 and the wording of Rules 46.5.622 and 46.5.653, it appears the environmental requirements would apply only to youth care facilities with 7 or more residents. The respondents felt the proposed requirements are of concern in all sizes of facilities, including those with less than 7 residents. Therefore, it may be advantageous to have the environmental requirements as submitted by the Food and Consumer Safety Bureau apply to all youth care facilities.

RESPONSE: Rule 46.5.617(4) for child care agencies remains unchanged by the proposed rules. That rule requires that all buildings conform to the regulations of the state department of health and environmental sciences, county or city health department, whichever is applicable as to sanitation. This will include those items mentioned in the environmental requirements submitted by the Food and Consumer Safety Bureau.

Since the proposed rules are only for youth group homes which by definition care for 7 or more children, no consideration was given to regulations for facilities caring for less than 7 at this time.

COMMENT: Rule 46.5.653 deletes several items the respondent felt were important, especially in the areas of structural requirements, housekeeping and maintenance. The respondent

attached a complete set of environmental health guidelines which respondent felt more appropriately address the concerns found in youth care facilities.

RESPONSE: The attached set of environmental health guidelines were used by the Department's advisory committee to arrive at the proposed Rule 46.5.653. The proposed rules are nearly identical to those proposed in the environmental health guidelines. The requirement that water temperature must be limited to 120°F or below was inadvertently omitted in the proposed rules and has been reinstated.

COMMENT: Since child care agency facilities contain 13 or more occupants, the building code requirements are more restrictive for child care agencies than for youth group homes.

The Uniform Building Code contains classifications for such facilities, but the requirements do not appear in the proposed rules.

RESPONSE: The existing Rule 46.5.617(3) which is unchanged by the proposed rules reads:

(3) all buildings used by the child care agency and all new construction or remodeling of existing buildings, shall comply with state and local building codes and shall meet the requirements of existing local zoning ordinances. All new construction or remodeling of existing buildings must comply with state and/or local building codes.

Therefore, all youth group homes must meet the R-3 requirements while those facilities caring for 13 or more must meet the I-2 requirements as they appear in the Uniform Building Codes.

COMMENT: Several providers indicated that the staff ratio of 1:6 as proposed in Rule 46.5.657(5) would cause financial hardship for the facility. While most respondents agree that the 1:6 ratio is better, they felt the Department would not be willing to raise its rates to pay for the extra personnel a 1:6 staffing pattern would require.

RESPONSE: The Department has changed the staffing ratio requirements to 1:8.

COMMENT: The process for licensure renewal, as proposed, requires the provider to make a written request for renewal. One respondent offered suggestions for changes which would have the effect that the old license should remain in effect

until such time as the Department instituted a new licensing study.

RESPONSE: Because it is important to have the provider actively involved in the licensing process, the Department favored the existing system of application for renewal. No change in the existing rule is contemplated.

COMMENT: Define "physically or emotionally damaging" in Rule 46.5.652(7)(a).

RESPONSE: Whether any act is "physically or emotionally damaging" to a particular child is ultimately a finding of fact which must be made through either an administrative or court hearing. The Department investigates reports of abuse in youth care facilities as it investigates all such reports. The statutory definitions contained in 41-3-102 would provide guidelines as to whether discipline undertaken by a youth care facility was physically or emotionally damaging.

COMMENT: Regarding Rule 46.5.652(e), one respondent recommended changing "visits" to "contacts".

RESPONSE: Since "contacts" is a broader term and covers "visits" along with other types of family contact, the Department has adopted the recommended change.

COMMENT: What is meant by "areas requiring separation" in Rule 46.5.654(2)?

RESPONSE: "Separation" in this instance refers to the Uniform Building Code. The rule has been changed and reference added, so the rule now reads: Smoke detectors approved by a recognized testing laboratory shall be located at stairways and in any areas requiring separation as covered in the Uniform Building Code.

Buildings used for different types of occupancy require "separation" between those occupancies. In addition, "separation" of other types may be required within the same occupancy. For example, furnace rooms must be "separated" from bedrooms. Each type of "separation" has accompanying requirements and is covered in the Uniform Building Code.

COMMENT: Rule 46.5.657 request that the age be changed from 18 to 21.

RESPONSE: Since the legal age of adulthood in Montana is age 18 and since the Department cannot find a "compelling reason" which would justify discrimination on the basis of age, no change has been made in the proposed rule. The rule, however,

does not prohibit individual providers from adopting more restrictive requirements for personnel.

COMMENT: In Rule 46.5.657 regarding staff/child ratio, delete the words "on the premises".

RESPONSE: Since the reason for having staff/child ratios is to ensure adequate, safe adult supervision of the residents, the Department feels it is imperative that the adults included in the ratio be "on the premises". No change has been made in the proposed rule.

COMMENT: In Rule 46.5.691(1)(a) change "prior to the child entering care" to read "within 30 days".

RESPONSE: The Department agrees with the proposed change and has revised the rule.

COMMENT: Under Rule 46.5.609 define what is meant by "mature child".

RESPONSE: The determination of a "mature child" is at the discretion of the provider and the placing agency. One child at 15 years of age may have the emotional development to deal with information in the child's record, whereas, another child at 17 years of age may not have the emotional development to deal with the same information. The rule, therefore, remains as proposed.

COMMENT: Regarding Rule 46.5.609, the respondent asked for clarification of (3) related to "significant occurrences" and (4) availability of child's records to the Department.

RESPONSE: (3) has been deleted because it is redundant and is adequately covered by other rules. (4) remains unchanged and requires the provider to make the records of all individual children placed by the Department available to the Department or its representatives.

COMMENT: The Department amended proposed Rule 46.5.650 to include "for-profit" youth group homes as well as non-profit youth group homes.


RESPONSE: This change was necessary because of the need to license all youth group homes including those homes that operate on a "for-profit" basis.

COMMENT: The Department amended Rule 46.5.613(12)(j) to allow the use of seclusion, pursuant to the provisions of the seclusion room standards set forth in Rule 46.5.621.

COMMENT: Is the use of a seclusion room mandatory for all youth group homes?

RESPONSE: The use of seclusion is not mandatory. The use of seclusion is allowed only in child care agencies and must meet the specific requirements as set forth in Rule 46.5.621.

COMMENT: The Department amended Rule 46.5.617 by deleting subsections (9) and (10). The substance of the subsections are covered by Rule 46.5.653(4)(c) and (d) and were, therefore, redundant.

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State June 20, 1983.

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 46.9.602,	)	RULES 46.9.602, 46.9.603,
46.9.603, 46.9.604, 46.9.605	)	46.9.604, 46.9.605 AND
and 46.9.606 pertaining to	)	46.9.606 PERTAINING TO THE
the community services block	)	COMMUNITY SERVICES BLOCK
grants	)	GRANTS

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.9.602, 46.9.603, 46.9.604, 46.9.605 and 46.9.606 pertaining to the community services block grants at page 447 of the Montana Administrative Register, issue number 9.

2. The Department has amended the rules as proposed.

3. The authority of the Department to amend the rules is based on Section 53-2-201, MCA and the rules implement HB 659, Ch. 237, L. 1983.

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

Comment: The Department should not include a county's Indian reservation population in calculating an HRDC's CSBG allotment.

Response: This language is drawn directly from HB 659. Whereas prior state law specifically excluded Indian population, present law contains no such exclusion. It is felt the Department does not have the authority to infer any other legislative intent than what was passed into law.

Only five of the state's reservations receive CSBG funding; averaging \$16,000 per reservation. The CSBG rules allow each HRDC an average of \$100,000 per agency, so duplication of effort does not appear to be a legitimate argument against rule adoption.

Initial calculations reveal that the inclusion of Indian population should affect approximately \$50,000 of the state's \$1,000,000 CSBG allocation, so no HRDC should be significantly affected.

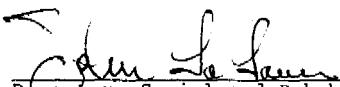
Comment: The Department should allocate its 5% special projects fund within 90 days of receipt of funds.

Response: To the extent practicable, the Department agrees; however, there may be unforeseen circumstances which can only

be met through the use of these funds, and the Department wishes to be as flexible as possible with these very limited funds.

Comment: There appear to be two conflicting regulations concerning plan approval.

Response: The two regulations address different situations. 46.9.605(1) outlines that when an HRDC and a county cannot agree as to the use of funds in that county, the department shall prepare the plan. 46.9.605(4) outlines that even if a county and an HRDC agree, the department shall, if the plan is not approvable and attempts to correct have been unsuccessful, re-allocate the funds to other HRDCs with an acceptable plan.

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State June 20, 1983.

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 46.12.503 and	)	RULES 46.12.503 AND
46.12.506 and the adoption of	)	46.12.506 AND THE ADOPTION
Rules 46.12.504, 46.12.507	)	OF RULES 46.12.504,
and 46.12.509 pertaining to	)	46.12.507 AND 46.12.509 PER-
inpatient and outpatient	)	TAINING TO INPATIENT AND
hospital reimbursement rates	)	OUTPATIENT HOSPITAL REIM-
and services including drug	)	BURSEMENT RATES AND SERVICES
and alcohol treatment ser-	)	
vices	)	

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.503 and 46.12.506 and the adoption of Rules 46.12.504, 46.12.507 and 46.12.509 pertaining to inpatient and outpatient hospital reimbursement rates and services including drug and alcohol treatment services at page 471 of the Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.503 and 46.12.506 as proposed.

3. The Department has adopted Rules 46.12.504, INPATIENT HOSPITAL SERVICES, REQUIREMENTS and 46.12.509, ALL HOSPITAL REIMBURSEMENT, GENERAL as proposed.

4. The Department has adopted Rule 46.12.507 as proposed with the following changes:

46.12.507 OUTPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) These requirements are in addition to those found in ARM 46.12.301-308.

(2) Cardiac rehabilitation exercise programs and other programs primarily educational in nature are not a benefit.

~~(3) Regimens of care programs attached to hospitals for administrative purposes that are excluded in ARM 46.12.502 are not a benefit.~~ Outpatient hospital services are limited to:

(a) emergency room services, and  
(b) services provided in a hospital that would also be covered by medicaid in a non-hospital setting.

5. The Department has thoroughly considered comments received.

COMMENT: Rule 46.12.507(3), as it is proposed, does not limit outpatient hospital services.

RESPONSE: The Department has rewritten Rule 46.12.507 to clearly state that outpatient services are limited to those currently covered as outpatient hospital services.

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

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to the medically needy income standards at page 459 of the Montana Administrative Register, issue number 9.

2. The Department has amended the rule as proposed.

3. No written comments or testimony were received.

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.12.2002 per-	)	RULE 46.12.2002 PERTAINING
taining to medical services,	)	TO MEDICAL SERVICES
physician services require-	)	
ments	)	

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.2002 pertaining to medical services, physician services requirements at page 434 of the Montana Administrative Register, issue number 9.

2. The Department has amended the rule as proposed.

3. No written comments or testimony were received.

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rule 46.12.102 per-	)	RULE 46.12.102 PERTAINING
taining to medical assist-	)	TO MEDICAL ASSISTANCE,
ance, definitions	)	DEFINITIONS

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.102 pertaining to medical assistance, definitions at page 430 of the Montana Administrative Register, issue number 9.

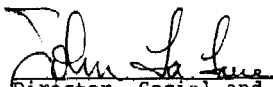
2. The Department has amended the rule as proposed.
3. No written comments or testimony were received.

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.9.301,	)	RULES 46.9.301, 46.9.302,
46.9.302, 46.9.303, 46.9.305,	)	46.9.303, 46.9.305,
46.9.310, 46.9.413 and	)	46.9.310, 46.9.413 AND
46.9.419 pertaining to	)	46.9.419 PERTAINING TO
matching grants-in-aid	)	MATCHING GRANTS-IN-AID

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.9.301, 46.9.302, 46.9.303, 46.9.305, 46.9.310, 46.9.413 and 46.9.419 pertaining to matching grants-in-aid at page 441 of the Montana Administrative Register, issue number 9.

2. The Department has amended the rules as proposed.
3. No written comments or testimony were received.

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State June 20, 1983.

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 46.12.1201,	)	RULES 46.12.1201, 46.12.1202,
46.12.1202, 46.12.1204 and	)	46.12.1204 AND 46.12.1210
46.12.1210 pertaining to	)	PERTAINING TO REIMBURSEMENT
reimbursement for skilled	)	FOR SKILLED NURSING AND
nursing and intermediate	)	INTERMEDIATE CARE SERVICES
care services	)	

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204 and 46.12.1210 pertaining to reimbursement for skilled nursing and intermediate care services at page 452 of the Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.1202 and 46.12.1210 as proposed.

3. The Department has amended Rules 46.12.1201 and 46.12.1204 as proposed with the following changes:

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE  
JANUARY-17-1981 JULY 1, 1982

(1) These rules shall be effective July 1, 1982.

(2) Includable costs for cost reports with ending dates before July 1, 1982, will be determined in accordance with rules for allowable costs then in effect.

(3) Each facility shall be required to submit a cost report for the period from the first day of their 1982 fiscal year through June 30, 1982. Administrative rules in effect on June 30, 1982, shall govern the preparation, submission and audit of this cost report as well as settlement for this period.

(4) Operating and property rates determined in accordance with ARM 46.12.1204 shall be subject to a phase-in process to yield a payment rate. The payment rate is the result of computing the formula:

$R=RO+RP$

$RO=T + ((A-T) \text{ divided by } 3)$ , if A-T is greater than zero, for the period July 1, 1982 through ~~June-30~~ December-31 JUNE 30, 1983, or

$RO=T + (2 \text{ times } ((A-T) \text{ divided by } 3))$ , if A-T is greater than zero, for the period ~~July-17-1983~~ January-17-1984 JULY 1, 1983 through June 30, 1984, or

$RO=A$ , if A-T is greater than zero, for the period July 1, 1984 through June 30, 1985, or

RO=T, if A-T is equal to or less than zero, for the period July 1, 1982 through June 30, 1985, and  
RP=S + ((M-S) divided by 3), if M-S is greater than zero, for the period July 1, 1982 through ~~June 30~~ December 31 JUNE 30, 1983, or

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

RP=6M, if M-S is greater than zero, for the period July 1, 1984 through June 30, 1985, or

RP=S, if M-S is equal to or less than zero, for the period July 1, 1982 through June 30, 1985, where:

R is the payment rate for the respective rate periods,  
S is the interim property rate in effect on June 30, 1982,

T is the interim operating rate plus estimated incentive factor in effect on June 30, 1982,

A is the operating rate effective July 1, 1984, in accordance with ARM 46.12.1204(2), and revised annually in accordance with ARM 46.12.1204(5),

M is the property rate effective July 1, 1984, in accordance with ARM 46.12.1204(3), and revised annually in accordance with ARM 46.12.1204(5).

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

(2) ~~The operating rate is the result of computing the formula:~~ The operating rate A, in dollars per patient-day, is given by:

~~A(1)=B times ((C times ((630.17 + ((654,627 divided by B)) divided by .9)) + E), if T is equal to or greater than the result of computing A(1), or~~

~~A(2)=B times ((C times ((624.69 + ((654,627 divided by B)) divided by .9)) + E), if T is equal to or less than the result of computing A(2), or~~

~~A(3)=T, if T is less than A(1) and greater than A(2), where:~~

~~A(1), A(2), A(3) is the operating rate per day of service,~~

~~A=A(1), if T is equal to or greater than A(1), or~~

~~A=A(2), if T is equal to or less than A(2), or~~

~~A=T, if T is less than A(1) and greater than A(2), where:~~

~~A(1) = B times ((C times ((630.17 + ((654,627 divided by B)) divided by .9)) + E),~~

~~A(2) = B times ((C times ((624.69 + ((654,627 divided by B)) divided by .9)) + E),~~

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

C is 1.0 effective July 1, 1982, ~~1.09~~ 1.06 effective July 1, 1983, and ~~1.1081~~ ~~1.1554~~ 1.1395 effective July 1, 1984, (THE INFLATOR (C) TO BE USED FOR JULY 1, 1984 IS BEING USED TO SET A TARGET RATE FOR FY 1985. THE JULY 1, 1984 INFLATOR WILL BE DISCUSSED BY THE DEPARTMENT AND REPRESENTATIVES OF THE NURSING HOME INDUSTRY PRIOR TO APRIL, 1984).

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

E is the patient care adjustment for a provider,

T<sub>1</sub> is C times the interim operating rate in effect on June 30, 1982, indexed to December 31, 1982.

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

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

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

where:

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

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

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

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

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

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

where:

E is the patient care adjustment for a provider.

J is the provider's average nursing care time,

K is the average nursing care time for all providers.

L is the average nursing care hourly wage including benefits.

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

(a)  $M = (((N \text{ divided by } Z) \text{ times } \$6.09) \text{ times } (O - (P \text{ times } Q))) \text{ divided by } .9$

where:

M is the property rate per day of service,

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

adjusted age of the facility as of 1982 (or as of licensure, for entire facilities built after July 1, 1982), if the facility is of wood-frame construction, or, 30 years minus the adjusted age of the facility as of 1982 (or as of licensure, for entire facilities built after July 1, 1982), if the facility is of non-wood-frame construction.

O is 1.0 effective July 1, 1982, 1.06 effective July 1, 1983 and 1.1236 effective July 1, 1984,

P is .0400 if facility is of wood-frame construction, or .0333 if facility is of non-wood-frame construction,

Q is the rate-year-minus-1983-(number-of-years-the-building-has-aged-since-1983), or the rate-year-minus-the-year-of-licensure-for-facilities-built-after-July-1,-1982- number of years the building has changed in adjusted age since 1983.

Z is 25 years if the facility is of wood-frame construction, or 30 years if the facility is of non-wood-frame construction.

(b) For facilities with additions built subsequent to the initial construction, the age of the facility shall be determined by pro-rating on a square-foot basis. The addition-prorated age of a facility is to be limited to no more than 20 years, for facilities of wood-frame construction, or to no more than 22 years, for facilities of non-wood-frame construction.

(c) For facilities extensively remodeled after July 1, 1982, the actual age of the facility shall be reduced by one year for each \$1,200 per bed of remodeling, to a maximum total reduction for remodeling of ten years. If the facility was at the maximum age of 20 years for wood-frame construction or 22 years for non-wood-frame construction at the time of remodeling, then the reduction for remodeling shall be made to that maximum age, rather than to actual age. a remodeling adjustment to the possibly limited (as described in ARM 46.12.1204 (3)(b)) age of the facility will be allowed, beginning with a given rate year, provided that the remodeling, or the claimed portion thereof, ended during the immediate prior June 1 to May 31 period. The remodeling adjustment consists of reducing the adjusted age of the facility by the lesser of ten years and the integer nearest the quotient formed by dividing the cost of remodeling by the product of \$1,200 and the number of facility beds at completion of the remodeling.

(4) The payment rate to providers of intermediate care facility services for the mentally retarded is the actual includable cost incurred by the provider as determined in ARM 46.12.1207 divided by the total patient days of service during the provider's fiscal year, except that the payment rate will not exceed the interim final rate in effect on June 30, 1982, as indexed to the mid-point of the rate year by 9% per 12-month year.

(a) One month prior to the beginning of the provider's fiscal year, an interim payment rate which is the department's estimate of actual includable cost divided by estimated patient days will be determined.

(b) The difference between actual includable cost prorated for services to medicaid patients as limited in ARM 46.12.1204(4) and the amount paid through the final payment rate will be settled through the overpayment and underpayment procedures set forth in ARM 46.12.1209.

(5) The averages, standard deviations, prorating for additions, and remodeling factors used in the patient care adjustment, area wage adjustment, or property rate are recalculated once a year, using the most currently available data prior to June 1. Revised rates based on the new calculations are issued by July 1 of each year.

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

COMMENT: Does the department have data to indicate that the nursing home industry or Medicaid recipients in nursing homes have changed from July 1, 1982 to the present, so as to necessitate a change in nursing home rates?

RESPONSE: The department is currently evaluating wage components and patient assessment scores as required by the Administrative Rules. Because we have not yet completed our analysis, we cannot be sure of the effect on individual facility rates. However, we do expect some rates to be changed as a result of the analysis. The department's analysis of the inflation rate affecting nursing homes during the period in question shows a substantial change from what was anticipated when the existing rule was developed.

COMMENT: Has the department analyzed nursing home costs in Montana since adoption of the July 1, 1982 rule to determine the need for a change in reimbursement? What did the analysis, if any, reveal?

RESPONSE: The definition of an efficient and economically operated facility is based on historical data taken from cost reports submitted by nursing homes. These costs were then indexed by actual inflation rates to the present. Since the department has only recently received the majority of the facility cost reports for periods under the July 1, 1982 rule, costs analysis have only recently begun.

COMMENT: What factors did the department consider in developing the budget for the 1985 biennium relating to Medicaid reimbursement from the nursing homes?

RESPONSE: The department developed its budget in July, 1982 and was submitted to the Governor's Office of Budget and Program Planning. At that time, Chase Econometric's forecasted inflation for FY83 and FY84 around 9%. It was with this in mind that the department submitted a budget request that would fund nursing homes according to the reimbursement rule which used 9% as an inflation factor. This was also the department's inflator for all other Medicaid services. Secondly, the number of nursing home days was projected, using the most current data available which was the three years ending June, 1982. It was from this data that the department projected the number of nursing home days to be 1,294,245 for FY84 and 1,290,709 for FY85.

COMMENT: Does the department's budget proposal (as expressed in the executive budget) for the 1985 biennium anticipate fully funding the current reimbursement rule?

RESPONSE: Yes. The executive budget anticipated utilizing a 9% annual cost adjustment factor. While we felt that was a justifiable cost factor, it is much higher than required by federal law and significantly higher than supported by legislative appropriation.

Subsequently, however, patient contribution was determined to be less than originally projected. Legislative staff was informed of this additional requirement.

COMMENT: When did the department determine that reductions in nursing home rates were necessary?

RESPONSE: We do not propose to reduce nursing home rates. Our proposal is to modify the rate of increase that nursing homes will receive during the biennium. The final decision to propose altering nursing home rates to more closely correlate to the rate of inflation was made April 2, 1983.

COMMENT: What changes have occurred in nursing homes in Montana in Medicaid nursing home beneficiaries or in the economy between late March, 1983 and early May, 1983 to lead SRS Director LaFaver to propose rate reductions for nursing homes early in May, when in late March he was telling the Legislature that a cost effective system was already in place, and that it should be fully funded?

RESPONSE: Again it needs to be emphasized that rate reductions are not proposed. The nursing homes will receive substantially more revenue under the proposed rates than during the previous biennium. However, the thrust of the question alleges a duplicity on the part of the department director. The representations made by Mr. LaFaver advised the

appropriations subcommittee, the full house appropriations committee and the senate finance and claims committee that the Medicaid budget was inadequate to pay for services to all people eligible under present rules for current services at rates of inflation proposed in the executive budget. On March 20, 1983 before the House Appropriations Committee Mr. LaFaver said, "Medicaid . . . is \$4.2 million short on anticipated expenses for fiscal '84 and '85." Before the Senate Finance and Claims Committee on April 4, Mr. LaFaver pointed out that the so-called contingency fund was \$2.9 million short of cost projections. He went on to explain that provider rates and AFDC rates might have to be frozen or cut during the biennium. In short, the department exhaustively informed the legislature and individual legislators of the funding implications inherent in actions of the finance committees. All that the department is now proposing is to implement a budget consistent with lawful mandates of the Medicaid program and legislative budget restraints, and current economic conditions.

COMMENT: What analysis has the department performed to determine that a six month freeze in rates is appropriate from July 1, 1983 to December 31, 1983; that a 6% inflator in the formula is appropriate from January 1, 1984 to June 30, 1984 and that a 9% inflator in the formula is appropriate from July 1, 1984 through June 30, 1985? What does the department anticipate will occur during each of these periods to necessitate these changes?

RESPONSE: The definition of an efficient and economically operated facility is based on historical cost reports submitted by the nursing homes. It was these historical costs increased according to actual inflation through December 31, 1982, and projected inflation from 1983 to 1984 that has convinced the department that the proposed rule for FY84 equitably reimburses the nursing home industry. Analysis of inflation for the period 1984 to 1985, which will identify the rate of inflation between FY84 and FY85 has not been performed. But, Chase Econometrics forecasts inflation for that period at 6.4%. The department is now proposing an estimation of inflation that will be used to set the inflation factors. The proposal of freezing nursing home rules will be dropped at this time.

The method for calculating the actual rate of inflation between December, 1982 and December, 1983 is the method outlined in the previous cost based rule for determining inflation. This method calculated inflation using the Wage Index, CPI-Urban, food at home, shelter, and food-and-beverage. These factors are weighted 71% for the wage index, 10% for food at home, and 19% for the combination of shelter and food-and-beverage.

COMMENT: Has the department utilized national and other data related to projections of nursing home inflation over the biennium? If so, describe the data and explain what it indicated.

RESPONSE: The national data used is the data elements described above for the period December 31, 1982 to December 31, 1983. For the period 1983 to 1984, the Historical Tables prepared by Chase Econometrics on March 25, 1983, Table 10.1 was used. This is on page c.74.

COMMENT: What does the department project annual inflation for nursing homes to be from July 1, 1983 through June 30, 1985?

<u>RESPONSE:</u> 12/30/82 - 12/30/83	6.5%
1983 - 1984	5.1%
1984 -1985	6.4%

COMMENT: We believe that the SRS proposal yields an operating cost increase to nursing homes of 1.79% for FY84 and a 3.31% average annual operating cost increase for the period 1983 through 1985. Does SRS agree with these figures? If not, what do SRS' calculations yield? If our calculations are correct, does SRS feel that these percentages reflect actual nursing home inflation over the biennium? How was this calculated?

RESPONSE: The department does not agree with these figures. The department figures indicate that nursing homes as a group will receive reimbursement and percentage increases as follows:

	<u>Reimbursement</u>	<u>Increase</u>
FY83	37,250,012	
FY84	39,228,564	+5.3%
FY85	42,064,206	+7.2%

COMMENT: Does SRS have data to support the assumption that there will be no increase in nursing home costs for the period 7/1/83 through 12/31/83?

RESPONSE: SRS' assumptions are those as previously stated in the above answer.

COMMENT: Does SRS have data to support the assumption that there will be a 1.79% increase in operating costs during the period 7/1/83 through 7/30/84?

RESPONSE: As previously stated, the department does not agree with this assumption and, therefore, of course, has no data to support it. Without having the opportunity to review the calculations, the department is unable to comment on its accuracy.

COMMENT: Does SRS have data to support the assumption that there will be a 3.31% compounded average annual operating cost increase in nursing homes for the period 7/83 through 7/85?

RESPONSE: The department has no way of commenting on the accuracy of your calculations without reviewing your data and the methodology you used. If you would care to share these with us, we could answer your question.

COMMENT: What is the rationale for the 9% actual increase to ICF/MR facilities?

RESPONSE: The providers of Intermediate Care for the Mentally Retarded (ICF/MR) will not receive an increase of 9% under the proposed rule. The 9% is a limit to the increase in per diem rate. The ICF/MR facilities are not guaranteed any rate increase at all. Since these facilities are reimbursed on strictly a cost basis, the rate of increase shouldn't be any higher than the rate of inflation. Since the proposed rules provide for nursing home reimbursement at a rate that slightly exceeds the expected inflation rate, nursing homes will probably receive rate increases in excess of the percentage of increase received by ICF/MRs.

COMMENT: A reasoned factually supportable basis for the proposed rule does not exist.

RESPONSE: The proposed rule adjusts the reimbursement system to reflect current measures of inflation. This was the intent of rule and is both reasonable and factual.

COMMENT: The department's rate computation is based solely on budget considerations.

RESPONSE: The department's rule proposal is not based solely on budget considerations. Although it is obvious that any agency must consider its budget when considering future expenditures, the chief reasoning behind the proposal is the dramatic change in inflation compared to what was anticipated when the rule was originally proposed.

COMMENT: Rates computed under the department's proposal will not meet cost increases experienced by facilities.

RESPONSE: The inflation factor used in computing rates is based on inflationary pressures currently experienced by providers. The actual increase in rates to each individual facility will not equal the inflation factor as it was never designed to. Some facilities will receive a substantially higher increase than the inflator while others will experience increases at a lower level, depending upon how the parameters used in the rule effect each facility.

COMMENT: The six month freeze to be implemented by SRS is illegal.

RESPONSE: In examining federal and state rules and statutes, as well as recent case history, we feel that the rate freeze is sound both legally and rationally. However, revisions have been made to the rule proposal eliminating the rate freeze.

COMMENT: The proposed rule sets rates that are not sufficient to meet costs which must be incurred by efficiently and economically operated facilities and thus, violates the Boren Amendment.

RESPONSE: The current rule sets rates based on our analysis of the most recent cost data available which established a rate which met the costs of efficiently and economically operated facilities and, thus, satisfied the criteria of the Boren Amendment. The proposed rule uses current measures of inflation as a component of the rate formula and, as such, does not violate the Boren Amendment in any way.

COMMENT: The department may not implement any proposed rule changes in the present methodology until after it obtains approval of the Secretary of HHS.

RESPONSE: 42 CFR § 447. 256(b) specifically allows the state to submit a plan at any time during the calendar quarter which then may be approved by the federal government and be made retroactive to the beginning of the quarter.

COMMENT: Facilities' costs are not being frozen under the proposed system, only their rate. How is a facility to meet its obligations?

RESPONSE: After reviewing public comments, the department has decided to eliminate the concept of freezing rates. Rates will be set by utilizing an inflator in the formula that closely reflects the current measures of inflation. Such a factor will reflect a rate that will meet the costs of an efficiently and economically operated facility.

COMMENT: The reimbursement system proposed will not adequately reimburse long term care providers and will, therefore, adversely effect quality of care.

RESPONSE: The reimbursement proposal sets rates that adequately reimburse economically and efficiently operated facilities. Therefore, patient care should be unaffected by the rule change.

COMMENT: Lower cost facilities are inequitably affected by a freeze in rates because high cost facilities have a "cushion to fall back on" built into their rate.

RESPONSE: Reimbursement for both low and high cost facilities are based on cost data obtained from prior years. Since these are only allowable costs, neither facility should have a "cushion" built in. However, the lower cost, or more efficient facilities have received rate increases substantially in excess of their costs while the high cost or less inefficient facilities have had little or no increase in rates.

COMMENT: The department's projected increases of 5.3% and 7.2% do not address themselves to operating increases only, but include property increases also.

RESPONSE: The department's projections are not limited to the operating rate. Rate increases must be viewed in the aggregate for the full impact to be perceived. It would not seem appropriate to examine one portion of a rate while ignoring the impact of another. Providers are not prohibited from spending the operating rate on property costs or vice versa.

COMMENT: We request the department calculate the percentage increase in operating rate going to nursing homes under this proposal, based on full operating rate, not just the portion paid by Medicaid.

RESPONSE: The department has calculated the average total rates and the percentage increase. They are as follows:

FY82	35.38	
FY83	39.76	+12.37%
* FY84	40.57	+ 2.03%
FY85	43.35	+ 6.85%

\* FY84 is an average of two rates:

1st 6 months	39.76
2nd 6 months	41.38
	<u>81.14</u> ÷ 2 = 40.57

Please be aware, however, that the rule proposal no longer contains a provision for freezing nursing home rates.

COMMENT: Nursing homes should be compensated for actual operating cost increases expected to occur over the biennium.

RESPONSE: No authority requires that nursing homes be compensated for actual cost increases. Reimbursement is required to compensate economically and efficiently operated facilities. Reimbursing for any and all cost increases would result in rates that would have no relationship to either economy or efficiency.

COMMENT: Department projections are based on the increased share of costs attributable to Medicaid.

RESPONSE: Please refer to projected total rates shown above.

COMMENT: Please calculate the percentage increase in operating rates going to nursing homes on a per patient day basis.

RESPONSE: The department feels it is inappropriate to analyze one portion of the rate while ignoring the impact of another portion. Please see the total rate estimate computed above.

COMMENT: Why is the department lowering the inflator when the 9% inflation factor does not, in fact, yield 9%?

RESPONSE: The inflator in the formula is not expected to yield a 9% increase for all facilities. This inflator is designed to make the formula respond to inflationary pressures. The formula is also impacted by individual factors such as wages, patient assessment and size of facility. Finally, rate increases will be influenced by the facilities' individual rate at June 30, 1982. Thus, some facilities may receive no increase or an increase slightly lower than the inflation rate while others may receive increases far in excess of the inflation rate.

COMMENT: The department erroneously informed the legislature that the impact of the change in nursing home inflation from 9% to 6% for 1984 would be \$329,600 in general fund and \$870,070 in total funds.

RESPONSE: The agency did present to the legislature that \$329,600 general funds and \$870,000 in total funds was needed. This additional amount was needed to return the appropriation to the executive's request. The executive's request was built in June, 1982. Updates to that projection in March, 1983, identified that the executive's request would not fully fund a 9% increase in FY 84 and a 9% increase in FY 85.

COMMENT: Not funding the reimbursement formula with the originally projected inflator in place amounts to a breach of good faith.

RESPONSE: The department is proposing a reimbursement increase consistent with the intent of the rule. This includes an update in the inflation factor to reflect current levels of inflation.


COMMENT: The legislature appropriated money for the nursing home industry at 6% and 9% inflation for the next two years.

It is not fair to combine nursing home money and aid to dependent children in the same budget.

RESPONSE: The legislature did not fund for a 9% and 6% nursing home increase. The use of these inflators in the appropriation was meant as a cap on reimbursement. The agency is not combining AFDC and nursing homes. AFDC will receive no inflationary increase while the nursing homes will be increased by the effect of the inflationary measures of the formula. A second group that will receive no inflationary increases is the fee-based Medicaid providers. Even though these providers are paid from the same appropriation as the nursing homes, they will not receive the inflationary increases that the nursing homes will receive.

COMMENT: Increased nursing home days should not be a factor in a Medicaid budget overrun because Home and Community-based Waiver Services will decrease the nursing home utilization.

RESPONSE: The Home and Community-based Waiver and the nursing homes are funded from the same budget. Thus, the Waiver will not decrease long-term care day utilization. These people will only be served in a home setting.

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State June 20, 1983.

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

In the matter of the adop-	)	NOTICE OF THE ADOPTION OF
tion of Rules 46.2.320,	)	RULES 46.2.320, 46.25.701,
46.25.701, 46.25.702,	)	46.25.702, 46.25.704,
46.25.704, 46.25.705,	)	46.25.705, 46.25.707,
46.25.707, 46.25.709,	)	46.25.709, 46.25.712,
46.25.712, 46.25.713,	)	46.25.713, 46.25.720,
46.25.720, 46.25.721,	)	46.25.721, 46.25.723,
46.25.723, 46.25.726,	)	46.25.726, 46.25.732,
46.25.732, 46.25.738,	)	46.25.738, 46.25.739,
46.25.739, 46.25.745,	)	46.25.745, 46.25.750, and
46.25.750, and 46.25.755	)	46.25.755 PERTAINING TO
pertaining to state public	)	STATE PUBLIC ASSISTANCE
assistance	)	

TO: All Interested Persons

1. On May 12, 1983, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to state public assistance at page 462 of the Montana Administrative Register, issue number 9.

2. The Department has adopted Rules 46.2.320, STATE SUPERVISED OFFICES; 46.25.704, COMPLAINTS AND INQUIRIES; 46.25.709, TRANSFER OF PROPERTY; and 46.25.713, METHOD OF PAYMENT as proposed.

3. The Department has adopted the rules set out below as proposed with the following changes:

46.25.701 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "County office" means the local county office of human services.

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

The authority of the Department to adopt the rule is based on Sections 53-2-201 and 53-3-102, MCA and HB 798, Ch. 651, L. 1983 and the rule implements Sections 53-2-201 and 53-2-301 and HB 798, Ch. 651, L. 1983.

46.25.702 RULE-11 SAFEGUARDING/SHARING INFORMATION

(1) Disclosure of information concerning applicants or recipients of general relief is restricted to purposes directly connected with the administration of such aid. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

(a) Requests for information from a government authority, a court, or a law enforcement agency, under a proper request which relates directly to the administration of the program or investigation of fraudulent applications will be released along with a notification of the confidentiality of the information and the penalty for misuse of such information. Whenever possible, the department county office will attempt to obtain the prior consent from the applicant or recipient, except in emergency situations where notification will be given after the release of information, and in cases where the information is released for legal and investigative actions concerning fraud, collection of support and third party medical recovery.

46.25.705 RULE-IV FAIR HEARINGS (1) Any person who is dissatisfied with action taken on an application, grant status, form or condition of payment, may request a fair hearing as provided in ARM 46.2.202.

(2) It is the responsibility of the department county office to inform every applicant or recipient in writing at the time of application or redetermination or at the time any action affects his eligibility of the right to request a fair hearing.

(3) A fair hearing must be requested within 90 calendar days from the date of notice of adverse action on an eligibility determination or redetermination. Adequate notice shall be considered given when the applicant is mailed a notice of adverse action.

46.25.707 RULE-V FRAUD (1) If a person appears to have received assistance fraudulently, the county department office must report all facts of the matter to the department's program integrity bureau, who will in turn refer the matter to the department of revenue or the county attorney of the county where the recipient resides. ~~for further action.~~

~~(2) If it appears that any person who receives assistance or benefits under general relief is guilty of abusing or misusing said assistance or benefits, any or all of the assistance or benefits, may be discontinued after:~~

(a) an investigation has been made to determine whether assistance was improperly granted;

(b) the recipient has been notified that benefits will be discontinued; and given the opportunity to request a fair hearing; and

(c) if a hearing is held and it is found that assistance was improperly granted, then no further payments shall be authorized for the length of time equal to the time period benefits were received fraudulently.

46.25.712 RULE-VII STANDARDS OF ASSISTANCE (1) Assistance will be granted to individuals who have a demonstrated need in the areas of shelter, utilities, food, transportation and personal needs at a level not to exceed these AFDC standards; ~~as provided in the following schedule:~~

TABLE OF ASSISTANCE STANDARDS

No. of Persons in Household	Shelter	Utilities	Food	Personal Needs	Trans- portation	Maximum Standard
1	\$120	\$-75	\$-75	\$-50	\$-50	\$218
2	163	100	139	70	70	287
3	195	120	199	82	82	342
4	250	153	253	105	105	438
5	294	180	300	124	124	516
6	330	203	360	140	140	581
7	366	225	398	155	155	643
8	402	247	455	170	170	706
9	436	260	512	184	184	766
10	472	290	569	199	199	828
11	507	312	626	214	214	890
12	542	333	683	228	228	951
13	577	354	740	243	243	1,012
14	612	376	797	258	258	1,073
15	647	397	854	272	272	1,135
16	682	419	911	287	287	1,197
1	\$120	\$ 75	\$ 75	\$ 50	\$ 50	\$212
2	160	98	139	67	67	279
3	190	116	199	80	80	332
4	242	149	253	102	102	425
5	285	175	300	120	120	501
6	321	197	360	135	135	564
7	355	218	398	150	150	624
8	390	240	455	165	165	685
9	407	250	512	171	171	744
10	458	281	569	193	193	804
11	492	302	626	207	207	864
12	526	323	683	222	222	923
13	560	344	740	236	236	983
14	594	365	797	250	250	1,042
15	628	386	854	264	264	1,102
16	662	407	911	279	279	1,162

(a) An applicant or recipient of general relief may be eligible for an amount greater than specified in the plan for shelter and utilities if the need is documented and the total payment does not exceed the maximum standard.

Subsection (2) remains as proposed.

46.25.720 RULE-IX APPLICATION FOR GENERAL RELIEF

(1) An individual must apply for general relief at the county welfare office in the county of residence, or, in the

case of ~~an~~ interstate transients and migrants, in the county where present.

Subsections (2) and (3) remain as proposed.

(4) The applicant shall make himself available for an interview and cooperate with the department county office in its investigation.

46.25.721 RULE-X PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS

(1) The following procedures apply to all applicants for general relief:

(a) ~~Verification~~ Verified by the applicant and

documented in all cases will be:

(i) residency, except in the case of interstate transients or migrants;

(ii) property transfers;

(iii) employment or work registration;

(iv) need; and

(v) income and resources.

(2) Eligibility determination will be made within 30 days of the application date and the applicant promptly notified, in writing, of approval or disapproval and the basis for the determination.

(3) General relief payments shall be in the form of warrant, check, ~~cash~~, or vendor payment directly to the client or vendor.

46.25.723 RULE-XI DETERMINATION OF INCOME

Subsections (1) through (1)(b) remain as proposed.

(2) There is no exclusion for income available to the assistance unit and all income and other liquid assets must be used to meet needs before general assistance relief will be made available.

(3) General relief may not be used to duplicate benefits received by a household through any other publicly funded benefit program including but not limited to:

(a) low income energy assistance;

(b) housing subsidies;

(c) food stamps.

(4) When receipt of general relief results in automatic qualification to receive the aforementioned benefits, there is a presumption that the benefits will be received and general relief may not be paid to meet such needs.

46.25.726 RULE-XII DETERMINATION OF RESOURCES

Subsections (1) through (3) remain as proposed.

(4) Exclusions: The following items will be excluded when determining resource eligibility:

(a) home of residence including appurtenant land not exceeding 10 acres;

(b) a vehicle, not to exceed \$1500 equity value;

(c) personal clothing, household furniture, appliances and other essential household items; and

(d) non-liquid assets, not to exceed \$1000.

Subsection (5) remains as proposed.

46.25.732 ~~RULE-XXXX~~ WORK PROGRAM (1) All recipients of general relief, unless excluded elsewhere in this rule, are required to participate in a work program to be reimbursed at the prevailing rate of pay for similar work in the county.

(2) The following persons may be exempt from the work requirement:

(a) caretaker relatives of children under 6 years old;

(b) children under age 16;

(c) persons over 16 who are full time high school students actively pursuing a degree;

(ed) incapacitated or disabled;

(de) persons geographically isolated; and

(ef) persons sixty five years of age or older.

(3) Any recipient who refuses to participate in the work program will lose eligibility for general relief for one (1) week for each refusal.

46.25.738 ~~RULE-XIV~~ STATE ASSUMED-COUNTY MEDICAL ASSISTANCE (1) Medical aid and hospitalization shall be provided to individuals with inadequate income and resources to provide necessary services for themselves in accordance with this subchapter.

(2) Application for state assumed-county medical assistance is as described in Rule-IX ARM 46.25.720 and X 46.25.721 for general assistance relief unless specifically noted in other parts of this rule.

(3) Eligibility is determined based upon income and resources actually or potentially available on the date of application. Payment will not be made for claims accrued more than 90 days prior to application for assistance.

46.25.739 ~~RULE-XV~~ ELIGIBILITY DETERMINATION FOR STATE ASSUMED-~~---~~COUNTY MEDICAL ASSISTANCE (1) Eligibility regarding resources and income is as described in Rule-XI ARM 46.25.723 and XII 46.25.726 for general assistance relief, except that the maximum income available to the household must not exceed the medically needy standards for the same size household. All non-excluded ~~income-and~~ resources must be used to offset medical obligation. Conditional assistance as provided in Rule-XII ARM 46.25.726 is not applicable. The medically needy standards can be found at ARM 46.12.3803.

(2) Income eligibility for state assumed-county medical is as follows:

(a) Countable income is determined prospectively for a six month period using gross income less the applicable appropriate deductions of applicable federal, state and FICA

taxes. Income is as defined in Rule-XI ARM 46.25.723.

(b) An individual or household with countable income between the general assistance relief standards and the medically needy income levels must incur medical obligations equal to the difference between the two standards during the six month prospective period prior to becoming eligible for the medical program (e.g., income multiplied by 6 less applicable general assistance standard multiplied by 6 equals incurment). For applicants with income greater than the general assistance relief standard but less than medically needy standard the department will pay the medical obligation less the amount of incurment.

(c) Payment under the medical program will be made only for those services recognized by the Montana medicaid program and will not exceed the medicaid reimbursement rate.

(d) Except for emergency services, all other medical care must receive prior authorization.

(3) Services under this rule will be provided only after all other available resources have been identified and used. Such resources include, but are not limited to health and accident insurance; veteran's administration and hospital; industrial accident benefits; Montana medicaid program; indian health-services; and other liable third party parties.

46.25.745 RULE--XVI PAYMENT PROCEDURES (1) A health care provider seeking reimbursement for an eligible recipient, including providers that are health care facilities operated by a county, must submit every claim for medical services to the county department office of the county which is-financially-responsible-for-the-case has authorized the service.

(2) Each claim must be submitted to the county department office on an individual claim form.

(3) The appropriate county department office must approve every claim prior to payment.

(4) A provider that is a health care facility operated by a county must follow the foregoing billing procedures in the submission of claims for approval to the county department office and may not use an internal accounting write-off procedure for the purpose of paying the claims.

(5) A provider of medical services must be qualified and eligible to provide services according to the requirements of the Montana medicaid program pursuant to title 46, chapter 12, administrative rules of montana.

46.25.750 RULE-XVII SUPPLEMENT TO OTHER ASSISTANCE PROGRAMS (1) General assistance relief payments may be provided to recipients of other public assistance programs only when the individual has been temporarily deprived of all or a portion of their regular assistance through theft, loss, non-delivery or exploitation.

(2) Documentation of all the circumstances must be provided to the county office.

(3) Any payment made as a result of this rule is subject to the prior approval of the department appropriate division administrator (economic assistance and/or community services) or designee.

46.25.755 RULE--XV#111 EMERGENCY ASSISTANCE Subsection (1) remains as proposed.

(2) Emergency general assistance payments are limited to \$250 per assistance unit per year unless an exception to this rule is granted by the appropriate division administrator (economic assistance and/or community services) or designee.

(3) Total funds expended for emergency general assistance per county per fiscal year will not exceed the department's budgeted allocation for that county.

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

COMMENT: There needs to be a definitions rule to clarify department and county throughout the chapter.

RESPONSE: A definitions rule has been added.

COMMENT: Proposed rules conflict with federal regulations regarding Indian Health Service being a prior resource to County Medical.

RESPONSE: The final rules do not use Indian Health Services (Contract Care) as a prior resource to County Medical.

COMMENT: "Prior authorization" should be clearly defined to prevent unnecessary visits to the County Office and to ensure consistent service delivery to all applicants.

RESPONSE: Except in emergency situations, prior authorization is necessary in order to control costs of the program. Procedures to be developed for operation of the program will address consistency of services and minimize return visits to the county office for authorizations.

COMMENT: Why don't General Assistance applicants have freedom of choice of doctors?

RESPONSE: The Federal Medicaid Program mandates freedom of choice, whereas the State Medical program does not. Some counties have contracted or hired county medical staff and they will be utilized in order to control costs. The Department has not currently contracted with medical providers in all counties. The Department is working with the Montana

Foundation for Medical Care to develop a utilization control system.

COMMENT: Payment during transition is not addressed in the rules.

RESPONSE: Any services provided prior to July 1, will be paid by the county. After that date payment will be made by the Department.

COMMENT: LIEAP should be excluded as a resource.

RESPONSE: LIEAP is not considered as a resource for eligibility determination. General Assistance, as a need-based program, will provide only for shelter or utility costs not provided elsewhere. Any necessary costs over and above LIEAP and other federal subsidies may be met up to the maximum.

COMMENT: How do allocated funds compare with past expenditures?

RESPONSE: The allocated funds are the Department's estimate based on past expenditures and future expectations.

COMMENT: Will adequate staff be provided to administer the program?

RESPONSE: Because of the current legislative appropriations, the Department does not anticipate any additional staff.

COMMENT: Will benefits continue during a Fair Hearing request?

RESPONSE: Procedures will be consistent with other State administered programs. Benefits will continue through the eligibility period during the review process if a fair hearing is requested on a timely basis.

COMMENT: What is the chain of command?

RESPONSE: The chain of command is: County Director, Field Supervisor, Division Administrator, Department Director.

COMMENT: What services will be available under the medical and general assistance programs?

RESPONSE: In the state medical program only those services included under the scope of Medicaid services will be allowed per the statement of Legislative Intent. Payment for these services will be at the established Medicaid rate. Under the

general assistance program only those needs identified will be met and total payment will not exceed AFDC standards.

COMMENT: What are the eligibility spans for General Relief?

RESPONSE: Eligibility for General Assistance is based on a thirty (30) day time span as the program is need based and not intended as a maintenance program.

County Medical is based on a six (6) month eligibility period in order to more accurately reflect income to the household.

COMMENT: The administrative period to act on applications is too long.

RESPONSE: Procedures will be developed to assess emergency needs in the County. In other situations a reasonable time frame is necessary in order to allow the county worker to establish eligibility.

COMMENT: The potential income clause is unfair and could lead to abuse.

RESPONSE: The Department is concerned about the fairness and equitability in determining potential income. Procedures have been developed to reconsider income at the end of the six (6) month span to correct inaccurate estimates.

COMMENT: Can cash be used as first priority other than disbursing orders?

RESPONSE: When practical checks will be used as payment of first choice except in cases where cash would negatively affect the participant's benefits through the Food Stamp Program.

COMMENT: Why aren't you covering migrant workers?

RESPONSE: Migrant workers have been included as an eligible group.

COMMENT: The transfer of property rule is unclear.

RESPONSE: The proposed rule is consistent with other State administered assistance programs. A rebuttable presumption clause is included for use of the participants.

COMMENT: The rules do not distinguish between intentional program violations and inadvertent misuse or administrative error.

RESPONSE: Intentional misuse of funds would cause a reassessment of method of payment, but is not to be construed as fraud. The procedural administration of the program should prevent administrative errors. Inadvertent errors by a recipient will be handled on a case-by-case basis.

COMMENT: A "good cause" clause and high school children should be added as exemptions from workfare.

RESPONSE: The Department has added the additional exemption of full-time high school students and feels that there are sufficient exclusions included.

COMMENT: Payment should be provided prior to completion of the work assignment.

RESPONSE: The Department would be at risk for prior payment, however, the Department will work with the appropriate vendors to arrange for payment procedures for clients with emergent needs.

COMMENT: The rules do not address contracting for administration of the work program.

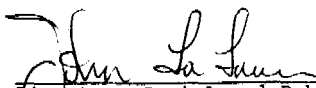
RESPONSE: Internal procedures will address the responsibility of administration of the work program in individual counties.

COMMENT: The proposed rule does not address whether workfare recipients will be paid at prevailing or minimum wage. Recommend using prevailing wage.

RESPONSE: The final rule provides for payment at prevailing wage.

COMMENT: What about co-payments in County Medical?

RESPONSE: There is no provision for co-payments in the County Medical Program.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 20, 1983.

VOLUME NO. 40

OPINION NO. 13

ELECTIONS - Length of term of office of district judges elected in 1983;

JUDGES - Length of term of office for district judges elected in 1983;

MONTANA CODE ANNOTATED - Sections 1-2-102, 3-1-1014, 3-5-203, 13-1-104(2), 13-1-107(2), 13-14-112;

MONTANA CONSTITUTION - Article VII, section 7(2);

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 2 (1983);

1983 MONTANA LAWS - Senate Bill 26.

HELD: 1. The length of term of office for new district judges elected at the 1983 general election as provided for in Senate Bill 26 is six years.

2. Sections 13-1-104(2), 13-1-107(2), and 13-14-112, MCA, are applicable to those elections held in 1983 for the purpose of filling new judgeships created by Senate Bill 26.

13 June 1983

Harold F. Hanser, Esq.  
Yellowstone County Attorney  
Room 508  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have asked my opinion on the length of term of office for a judge elected under the recently enacted legislation that creates new judgeships in certain judicial districts in the State. Senate Bill 26, signed into law on March 30, 1983, increases the number of judgeships in several judicial districts and provides that the new judgeships may be initially filled at either the 1983 or 1984 general election. The relevant provisions read:

Section 3. Selection of new judges.  
(1) Except as provided in subsection (2), the judgeships created by this act shall be

initially filled at the 1984 general election, and the individuals elected shall take office on the first Monday of January, 1985.

(2) A judgeship created by this act may be initially filled at the 1983 general election if a majority of the county commissioners in each county within the judicial district where the judge will be elected agree to conduct the election. The individual elected shall take office on the first Monday of January, 1984.

The length of term of a district court judge is six years as set forth in article VII, section 7(2) of the Montana Constitution. The statutory provision is found at section 3-5-203, MCA. Neither the Montana Constitution nor the statute relating to the length of term of a district judge was altered by Senate Bill 26.

The original version of Senate Bill 26, as it was introduced, did provide that the terms of office of judges elected between the 1983 and 1988 general elections, including those individuals who were initially elected to fill the newly created judgeships, would all expire on January 2, 1989. Thus, under the terms of the original bill, the first group of judges elected to fill the newly created positions would not serve full six-year terms. According to the minutes of the Senate Judiciary Committee of February 2, 1983, the provision for shortened terms was deleted by a unanimous vote. The record reflects that the reasons for the deletions were the apparent conflict with article VII, section 7(2), of the Montana Constitution, as well as foreseeable problems with effective dates and the assignment of holdover judges.

During the period that Senate Bill 26 was under consideration, an Attorney General's opinion was issued regarding the shortening of terms of state senators. 40 Op. Att'y Gen. No. 2 (1983). The opinion concluded that where the length of terms of state senators was set by the Montana Constitution and no authority had been established for changing the length of those terms, the terms could not be shortened. Similarly, there is no authority for shortening the terms of the newly elected district judges. It has been suggested that the first election for the new judgeships be compared to the filling of vacancies in office, the terms of which all

expire in 1989. However, there is no indication that the Legislature intended this result, and such an interpretation would require the creation of fictional judgeships which supposedly existed before the passage of Senate Bill 26. Moreover, to consider the new judgeships as vacancies in previously existing offices begs the question of when the first terms expire. Under section 3-1-1014, MCA, persons who are elected to fill a vacancy hold office for the remainder of the unexpired term. Since not all of the terms of currently existing district judgeships expire in the same election year, it would be arbitrary to choose 1989 as the year in which the terms of the new "vacant" offices expire. The Legislature considered and rejected the idea of providing new judges with terms less than six years. I am not empowered to achieve through an attorney general's opinion a result which the Legislature rejected. See Murray Hospital v. Angrove, 92 Mont. 101, 116, 10 P.2d 577, 583 (1932). I therefore conclude that judges elected in 1983 pursuant to Senate Bill 26, section 3(2), serve six-year terms as provided in the Montana Constitution article VII, section 7(2) and section 3-5-203, MCA.

You have also asked whether sections 13-1-104(2) and 13-1-107(2), MCA, are applicable where counties have opted to fill a newly created judgeship at the 1983 general election. Section 13-1-104, MCA, provides the times for holding general elections. Subsection (1) sets forth the schedule for general elections held in even-numbered years, and lists those offices for which such an election is to be held, including the office of district court judge. Subsection (2) provides the time for holding general elections in odd-numbered years, and its list of officers to be elected includes:

[M]unicipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law. (Emphasis added.)

The language of subsection 1, concerning general elections held in even-numbered years, specifically

refers to the office of district court judge, and thus seems to be in conflict with section 3(2) of Senate Bill 26, which provides for the election of district court judges in an odd-numbered year. However, in light of the express authority granted in Senate Bill 26 to elect certain district court judges in odd-numbered years, the underlined language of subsection 2 of section 13-1-104, MCA, is applicable. In Montana, when a general statute is in conflict with a specific act, the specific statute will take precedence. § 1-2-102, MCA; In re Coleman's Estate, 132 Mont. 339, 317 P.2d 880 (1957).

Generally, where statutes irreconcilably conflict, the latest statute supersedes the prior enactment. Dolan v. School District No. 10, Deer Lodge City, 38 St. Rptr. 1903, 1907, 636 P.2d 825, 828 (1981). In this case, under the more recently enacted Senate Bill 26, those counties who opt to fill a newly created judgeship at the 1983 general election would follow the schedule for an election held in an odd-numbered year under section 13-1-104(2), MCA. Likewise, the statute that provides the time for holding a primary election preceding a general election held in an odd-numbered year is applicable. § 13-1-107(2), MCA.

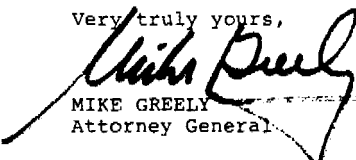
Finally, you ask whether section 13-14-112, MCA, applies to those individuals who run for one of the newly created judgeships under Senate Bill 26, section 3(2). Section 13-14-112, MCA, requires the filing of declarations for nominations of nonpartisan candidates, including candidates for judicial office. Senate Bill 26 does not affect these requirements and they remain operable for all judicial candidates. Every new act takes its place as a component part of an extensive system of existing law. 2A Sutherland, Statutes and Statutory Construction 53.01 (4th ed. 1973).

THEREFORE, IT IS MY OPINION:

1. The length of term of office for new district judges elected at the 1983 general election, as provided for in Senate Bill 26, is six years.
2. Sections 13-1-104(2), 13-1-107(2), and 13-14-112, MCA, are applicable to those elections held in 1983 for the purpose of

filling new judgeships created by Senate Bill  
26.

Very truly yours,



MIKE GREELY  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- |                               |  |
|-------------------------------|--|
| Known Subject Matter          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.  |
| Department                    | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.<br>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 the 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.   |

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The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1983. This table includes those rules adopted during the period April 1, 1983 through June 30, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1983, this table and the table of contents of this issue of the MAR.

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