MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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 INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of rules to establish standards for chemical dependency educational courses provided by state-approved treatment programs.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF RULES I - IV - Proposed rules for Educational Courses and referral to treatment.

TO: All Interested Persons

1. On October 25, 1985, at 9:00 a.m., a public hearing will be held in the conference room of the Department of Institutions at 1539 11th Avenue, Helena, Montana, to consider the adoption of rules establishing standards for chemical dependency educational courses.

2. The proposed rules are a result of HB 605 which amended Section 53-24-204 MCA and do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I CHEMICAL DEPENDENCY EDUCATIONAL COURSES

(1) The purpose of this chapter is to establish standards for chemical dependency educational courses and the approval of those courses pursuant to 53-24-204 MCA.

(2) Only chemical dependency treatment programs and facilities approved under 53-24-208 MCA and ARM 20.3.201-216 may receive approval for chemical dependency educational courses. Procedures for approval of educational courses will be the same as those specified in ARM 20.3.201-216.

(3) Chemical dependency treatment programs will charge the offender for the educational course utilizing the following:

(a) Educational courses will be self supporting and fees charged will be based on actual course costs.

(b) Initial fees (as of the effective date of this rule) and future fee increases must be reviewed and approved by Alcohol and Drug Abuse Division (ADAD), of the department.

(c) Offenders referred to treatment via the referral process are responsible for the costs of treatment.

AUTH: 53-24-204, 208, 209 MCA IMP: 61-8-714, 722 MCA

RULE II DEFINITIONS

(1) In addition to terms defined in 53-24-103 MCA and ARM 20.3.202, the following are defined:

(a) ACT Program means an assessment, course and/or treatment program which is a three level process designed to assess, educate and/or treat persons convicted of driving under the influence of intoxicating substances.

(b) ACT Curriculum Manual means a manual developed by department of justice, highway traffic safety division which specifically defines the course curriculum for the ACT Program.

(c) Driver Improvement means driver improvement bureau,

motor vehicle division of the department of justice.

(d) DUI means driving under the influence and, for the purpose of these rules, includes violation of an offense under either 61-8-401 or 61-8-406 MCA.

(e) MIP means minors convicted of unlawful possession of intoxicating substances.

(f) MIP Curriculum Manual means a manual developed by ADAD which specifically defines the course curriculum for MIP program.

(g) MIP Program means a process designed to educate minors who have been convicted of unlawful possession of intoxicating substances.

(h) Offender means a person convicted of DUI or MIP and sentenced to complete a chemical dependency educational course and/or treatment provided by a state-approved treatment program.

AUTH: 53-24-204, 208 MCA IMP: 53-24-204, 208 MCA

RULE III EDUCATIONAL COURSE REQUIREMENTS FOR DUI OFFENDERS (ACT PROGRAM)

(1) This program is for persons convicted of a DUI offense and sentenced under 61-8-714 (4) MCA or 61-8-722 (5) MCA to complete an alcohol educational course and/or treatment provided by a state-approved treatment program.

(2) The ACT program is a three level process which includes:

(a) Level I - assessment is the process used to screen, assess and evaluate the offender to determine the extent of chemical use or dependency for referral to levels II or III.

(b) Level II - course is an educational component based on the curriculum contained and explained in Rule III (3) (b) of this rule and further defined in the ACT course curriculum manual.

(c) Level III - treatment is defined in 53-24-103 (11) MCA and standards for treatment are required by 53-24-208 MCA and ARM 20.3.201-216. The need for treatment services must be documented and verified by level I and may be provided by the treatment program conducting the ACT program or through a referral to another treatment program.

(3) The ACT Program will notify the sentencing court and driver improvement if the offender does not enroll (make contact) with the program within ten days or start the course process within thirty days of the program's receipt of the court referral notice. Level I and II of the ACT program will take not less than thirty days and not longer than ninety days to complete. Length of stay for level III (treatment) will be based on the individual offender's treatment needs. The sentencing court and driver improvement must be notified of offender non-compliance.

(4) Required services for the ACT program shall include:

(a) Screening, assessment and evaluation (level I)

(i) a minimum of three assessment/evaluation instruments must be utilized and cross-referenced to assess the DUI

offender. ADAD will maintain a list of suggested instruments.

(ii) a minimum of two individual counseling sessions with a certified or eligible chemical dependency counselor must be documented in the assessment and evaluation process.

(iii) based on the results of the assessment/evaluation process, the offender will be classified as one of the following: misuser/no patterns, abuser, chemically dependent or unidentified. The results of the assessment must be documented in the offender's file.

(iv) evaluations and recommendations must be submitted to the sentencing court in the cases of offender non-compliance and must include the following: offender participation and involvement in the ACT program, assessment/evaluation instruments utilized, results of testing, problem indicators, observations which include the potential for further drinking and driving behavior, assignment to one of the four assessment categories (i.e. misuser/no patterns, abuser, chemically dependent or unidentified), corresponding recommendations; and reasons for non-compliance.

(v) All offenders will receive information regarding laws on drinking and driving.

(b) Course curriculum (level II) shall include the following:

(i) The DUI educational component must include a minimum of four educational sessions totaling at least ten hours.

(ii) The DUI curriculum will include five major topic areas: expectations and attitudes, consequences of drinking and driving, physiological effects of drinking, social and psychological effects of drinking, and self assessment. Specific content of the above topic areas will be explained in the ACT curriculum manual and revised as necessary.

(c) The process for referral, evaluation and recommendation for both initial and repeat offenders shall be as follows:

(i) First time offenders will participate in levels I and II. If the offender is assessed as chemically dependent, recommendations for referral to treatment (level III) should be made. Evaluations and recommendations must be documented in the offender's file and a copy given to the offender.

(ii) Repeat offenders will participate in level I and then transfer to the recommended level (i.e., this may be directly to level III depending on the assessment and evaluation). The evaluation and recommendations must be documented in the offender's file and a copy given to the offender.

(iii) Evaluations and recommendations must be sent to the sentencing court in cases of offender non-compliance with the ACT program. Driver improvement should also be notified of non-compliance with recommendations.

(5) Staff requirements shall include:

(a) Individual counseling sessions included in the course assessment and evaluation process must be provided by a certified or eligible counselor.

(b) Results of assessments and evaluations which recommend treatment (level III) must be approved, signed and dated by a certified counselor.

(c) Staff responsible for the educational course

component (level II), must receive a DUI specific training course within six months from the date of hire and also be certified or eligible in the prevention/education endorsement area or as a chemical dependency counselor as defined in ARM 20.3.401 - 416.

(6) Programs shall develop policies and procedures which address the ACT program required by these rules and shall include:

(a) Services and staff requirements.

(b) Procedures for determining cost and fees charged for the Act program.

(c) Goals and objectives which address required effectiveness indicators shall include, but not be limited to: ACT caseload, completion ratios, numbers of offenders recommended for treatment, numbers of offenders who enter treatment and number of repeat offenders.

(7) Record keeping and reporting requirements specific to the ACT program shall include:

(a) ADAD Admission/Discharge DUI report.

(b) Assessment/evaluation instruments used (with explanation of results).

(c) Documentation of: educational sessions, offender entrance and exit interviews/tracking summary, and counselors' observations and conclusions.

(d) Evaluation and recommendation report.

(e) Court sentencing orders or referral forms.

(f) A signed release of confidential information forms to the sentencing Court and driver improvement upon admission, and others as required.

(g) Referral to or from another ACT program (when applicable).

(h) Fee charges and documentation of ability to pay (if required).

(i) Documentation of non-compliance (where applicable).

AUTH: 53-24-204, 208, 209 MCA IMP: 61-8-714, 722 MCA

RULE IV EDUCATION COURSE REQUIREMENTS FOR MIP OFFENDERS (MIP PROGRAM)

(1) This program is for minors convicted of unlawful possession of intoxicating substance and sentenced under 45-5-624 MCA.

(2) MIP educational course shall educate minors on the legal and personal consequences of chemical use and information to increase their awareness of chemical use and chemical dependency as a disease.

(3) Required services for MIP program shall include:

(a) A curriculum which requires a minimum of six (6) educational sessions.

(b) The MIP curriculum will include six (6) topic areas: expectations and attitudes, physiological effects of chemical use, social and psychological effects of chemical use, self awareness and feelings, values and decision making, and self assessment.

(c) Specific content of the above topic areas will be

explained in the MIP curriculum manual and revised and updated as necessary.

(4) Staff requirements shall include:

(a) Staff responsible for providing the MIP course must be certified or eligible in chemical dependency counseling or prevention and education endorsement areas as defined in ARM 20.3.401 - 416.

(5) Programs shall develop policies and procedures which address the MIP course required by this rule and shall include:

(a) Services and staff requirements.

(b) Procedures for determining course costs and fees charged for the MIP course.

(c) Procedure for recording monthly MIP caseload.

(d) Goals and objectives which address required effectiveness indicators and include: MIP caseload and completion ratios.

(6) Record keeping and reporting requirements specific to the MIP program shall include:

(a) Documentation of educational services via an offender tracking summary form.

(b) Court sentencing orders or referral forms.

(c) Fees charged and documentation of ability to pay (if required).

(d) Documentation of non-compliance (where applicable).

AUTH: 53-24-204, MCA IMP: 45-5-624 MCA

4. The department is proposing these rules to establish standards for chemical dependency educational courses provided by state-approved treatment programs and to permit approval of such courses. The rules also clarify the assessment and referral process to treatment, if necessary, and set certification requirements for course instructors. Further, the department will be better able to determine and ensure consistency and quality of these educational courses statewide.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or argument may also be submitted to Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than October 25, 1985.

6. The Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on Sections 53-24-204, 208, 209 MCA, and the rules implement Sections 53-24-204, 208; 61-8-714, 722 and 45-5-624, MCA.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State September 9, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of New Rule I relating to the) collection of taxes through) offsets.)	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of New Rule I relating to the collection of taxes through offsets.

TO: All Interested Persons:

1. On October 16, 1985, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the adoption of new rule I, relating to collection of taxes through offsets.

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

3. The new rule as proposed to be adopted provides as follows:

RULE I COLLECTION OF DELINQUENT TAXES OR OTHER FUNDS THROUGH OFFSET PROCEDURES (1) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state except wages.

(a) For purposes of these procedures, "wages" are defined as any money due an employee from his employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and shall include bonus, piecework, tips, and gratuities of any kind. Tax refunds are not wages and are therefore excluded by definition.

(b) Contract proceeds subject to offset may include wages due the taxpayer, and such wage portions of the contract proceeds may be excluded from offset upon receipt of a notarized claim signed by the taxpayer setting forth the amount of wages together with all documentation to support and verify the amount, within 30 days of notification of the offset. Should the department dispute the claim, the claim and documentation shall be considered a request for hearing.

(2)(a) Upon determination by the department of revenue of a tax refund or other funds owed by the state to a delinquent taxpayer, the department of revenue may direct the offset of such funds by serving notification of the offset to the taxpayer and providing a copy to the state auditor.

(b) The department shall provide notice of the right to request a hearing pursuant to the Montana Administrative Procedure Act on the matter of the offset action or the department's intent to file a claim on behalf of a taxpayer.

(c) All tax refunds or other funds subject to offset by the department of revenue shall be held pending either the expiration of the 30-day notification period, or the resolution of the taxpayer's hearing, if requested.

(d) The provisions of subsection (2)(a) and (b) also apply to claims for tax refunds submitted on behalf of delinquent taxpayers by the department.

(3) The department may file a claim for state funds on behalf of the delinquent taxpayer if a claim is required before the funds are available for offset.

(4) Claims for tax refunds or other funds which are submitted by the department are based upon a subsequent intent to offset on those funds. Should a hearing be requested by the taxpayer, the issues of such hearing shall be based upon both the claim submitted by the department and the intended offset.

(5) The department may internally issue such offsets or claims upon tax refunds or other funds administered by the department in accordance with the above provisions.

(6) Tax refunds and other funds seized by levy based upon a filed warrant for distraint are not subject to the above provisions.

AUTH: 15-30-305 MCA; IMP: 15-30-310 MCA.

4. The Department is proposing new rule I because Chapter 160, Section 1, Laws 1985, enacted § 15-30-310, MCA, and legislation does not address agency implementation of offset procedures. The rule is required to set forth the offset process for public awareness and clarification. Clarification of wage application and the basis for offset action is not defined in legislation and subject to varying interpretations. The rule is required to define wages exempt from offset action.

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

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 29, 1985.

6. John Maynard, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and implements § 15-30-310, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 9/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rule I relating to social security benefits taxation.	NOTICE OF THE PROPOSED ADOPTION of New Rule I relating to social security benefits taxation.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 14, 1985, the Department of Revenue proposes to adopt new rule I relating to social security benefits taxation.

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

RULE I MONTANA MODIFIED ADJUSTED GROSS INCOME (1) The first step in determining if social security benefits are taxable to Montana is to calculate Montana modified adjusted gross income.

(2) Montana modified adjusted gross income shall be the taxpayer's federal modified adjusted gross income as calculated by using section 86 of the internal revenue code and in addition shall include federal refunds received.

(3) Montana modified adjusted gross income does not include the following:

(a) Montana state refunds;

(b) exempt Montana retirement income;

(c) part-year resident income not earned in Montana; and

(d) any tier one railroad retirement benefits.

(4) Part-year resident's social security benefits will be taxable only for the time they are Montana residents.

(5) The part-year resident's base amount must be prorated according to the percentage of Montana income to the federal income before addition of any taxable social security benefits.

(6) A married person filing separately must claim $16,000 as a base amount.

(7) Nonresident's social security benefits are not taxable. AUTH: 15-30-305 MCA; IMP: 15-30-111 MCA.

3. The Department is proposing new rule I because Chapter 682, Laws 1985, amended § 15-30-111, MCA, and the rule is needed to (1) state that nonresidents will not be taxed on their social security income as it does not have any connection to Montana and that part-year residents will be taxed only on the amount they receive during the period they are a resident of Montana; (2) state how the taxable social security should be reported by the spouses if they file a joint return for federal purposes and a separate return for Montana purposes; and (3) clarify what items are added and subtracted from the federal modified

adjusted gross income to arrive at Montana modified adjusted gross income. This is the beginning step in determining if any social security income is taxable to Montana.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Dawn Sliva
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than October 29, 1985.

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 Dawn Sliva at the above address no later than October 29, 1985.

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

7. The authority of the Department to make the proposed adoption is based on § 15-30-305, MCA, and the rule implements § 15-30-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 9/16/85

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

In the matter of the amendment of Rule 46.10.407 pertaining to AFDC transfer of property	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.407 PEPTAINING TO AFDC TRANSFER OF PROPERTY

TO: All Interested Persons

1. On October 16, 1985, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rule 46.10.407 pertaining to AFDC transfer of property.

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

46.10.407 TRANSFER OF PROPERTY (1) Public assistance shall not be granted to any person who has deprived himself directly or indirectly of any property for the purpose of qualifying for assistance. Any person who has transferred real property or interest in real property within ~~five~~ two years of the date of application without receiving adequate consideration in money or money's worth, shall be presumed to have made such transfer for the purpose of qualifying for assistance.

(a) The applicant or recipient may submit evidence that he did not make the transfer of property for the purpose of qualifying for assistance.

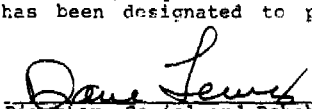
(b) It is the responsibility of the applicant to submit this evidence.

AUTH: Sec. 53-2-601 and 53-4-212 MCA
IMP: Sec. 53-2-601 and 53-4-211 MCA

3. The AFDC transfer of property rule is proposed to be amended to make it consistent with Section 53-2-601 MCA. This section requires the Department to make rules "that raise a rebuttable presumption that any transfer of property for less than fair market value within 2 years of the date of application...was for the purpose of qualifying for public assistance."

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 October 25, 1985.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 16, 1985.

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

In the matter of the adoption of rules pertaining to licensing requirements for community group homes for physically disabled persons.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO LICENSING REQUIREMENTS FOR COMMUNITY GROUP HOMES FOR PHYSICALLY DISABLED PERSONS

TO: All Interested Persons

1. On October 17, 1985, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of rules pertaining to licensing requirements for community group homes for physically disabled persons.

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

RULE I PHYSICALLY DISABLED GROUP HOMES, PURPOSE

(1) The purpose of these rules is to establish licensing requirements for community homes for physically disabled persons.

(2) The purpose of a community home is to provide a family-oriented, home-like residence and related residential services to persons with physical disabilities so as to enable those persons to enjoy a manner of living that is as close as possible to that considered to be normal in the community.

(3) Residents will reside in the least restrictive environment. Intervention will be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting the resident's needs. The resident's needs will be met through domiciliary services, personal-social assistance and program plans and training. Residents will be encouraged to engage in meaningful activity, to develop techniques to become increasingly more independent, and to interact with the community in which they reside.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-101 and 53-19-103 MCA

RULE II PHYSICALLY DISABLED GROUP HOMES, DEFINITIONS

For purposes of this subchapter, the following definitions apply:

(1) "Community home for physically disabled persons" means a family-oriented residence designed to provide residential services for two to eight physically disabled persons that does not provide skilled or intermediate nursing care.

This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of social and rehabilitation services established in section 2-15-2201 MCA.

(3) "Physically disabled person" means a disabled person with a permanent impairment that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by a physician.

(4) "Provider" means the person, corporation or other entity furnishing community home services to physically disabled persons.

(5) "Resident" means a physically disabled person who lives in and receives services from a community home.

(6) "Training" means an organized program for assisting physically disabled persons in acquiring, improving or maintaining particular skills.

(7) "License" means a written document issued by the department that the holder has complied with the applicable rules for a community home for the physically disabled.

(8) "Provisional license" means a written document issued by the department on a time limited basis at the department's discretion or at the initial start-up of a community home if the home is either not in compliance with all licensing requirements but will be in compliance within 6 months. A provisional license includes a temporary or a probationary license.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-102 MCA

RULE III PHYSICALLY DISABLED GROUP HOMES, LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules.

(2) The department will determine based upon a licensing study whether an applicant meets the requirements.

(3) The department will deny a license to any applicant that fails to meet the requirements established by these rules unless the department determines it is appropriate to issue a provisional license.

(4) The department will issue a license annually on the expiration date of the previous year's license if:

(a) the provider makes written application for issuance at least 30 days prior to the expiration date of its current license; and

(b) the provider continues to meet all requirements established by these rules, as determined by the department after a licensing study and upon receipt of certification by the state fire marshal and local health authority.

(5) A community home may be licensed for two through eight residents.

(6) The department may in its discretion issue a provisional license for any period, not to exceed 6 months, to any license applicant that has met all applicable requirements for fire safety and has submitted a written plan approved by the department to comply fully with all minimum requirements established by these rules within the time period covered by the provisional license.

(a) The department may renew a provisional license if the license applicant shows good cause for failure to comply fully with all minimum requirements within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed one year.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-101, 53-19-102 and 53-19-111 MCA

RULE IV PHYSICALLY DISABLED GROUP HOMES, LICENSING PROCEDURES (1) An applicant shall apply for a community home license prior to the operation of such home or to the expiration of a current license. Application shall be made to the department upon forms provided by the department.

(2) The department will upon receipt of the application, conduct a study and evaluation of both the applicant and the facility within 60 days.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the applicant will be notified of the specific deficiencies or errors and shall submit the required or corrected information within 60 days. The department will not issue a license until it receives all required information.

(4) Each applicant shall promptly report to the department changes which would affect the current accuracy of information provided on the application.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-111 MCA

RULE V PHYSICALLY DISABLED GROUP HOMES, LICENSE REVOCATION, DENIAL OR SUSPENSION (1) The department may deny, revoke or suspend a community home license by written notification to the provider if the department determines that:

(a) the facility is not in compliance with fire safety requirements as evidenced in writing by the state fire marshall; or

(b) the program is not in substantial compliance with health rules or any other licensing requirements established by this subchapter; or

(c) the provider has made misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility.

(2) If any violation places a resident in a life threatening situation the license may be immediately revoked.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-111, 53-19-112 and 53-19-113 MCA

RULE VI PHYSICALLY DISABLED GROUP HOMES, FAIR HEARING (1) Any person, corporation or other entity dissatisfied because of either the department's refusal to grant a license or the department's revocation or suspension of a license may request a fair hearing in accordance with ARM 46.2.201 through 46.2.214.

(2) The provider shall cease operation of the community home pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined are imminent life or health endangering situations.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

RULE VII PHYSICALLY DISABLED GROUP HOMES, FIRE SAFETY CERTIFICATION (1) A community home will only be licensed by the department if there is written certification from the state fire marshal's office that the home meets uniform fire code, group R, division 3, of the uniform building code and the following requirements:

(a) Smoke detectors listed by a recognized testing laboratory shall be located at stairways and in any areas requiring separation as set forth in the uniform building code.

(b) A fire extinguisher listed by a recognized testing laboratory with a minimum rating of 2A10BC shall be readily accessible to the kitchen area.

(c) The date and signature of the person(s) checking both the batteries in the smoke detector, monthly, and the fire extinguisher, quarterly, shall be recorded and filed at the home.

(d) Procedures and routes of evacuation shall be readily available in the home.

(e) Training and evacuation drills with residents shall be conducted and recorded at least monthly and, when shift

staff are used, the drills shall be conducted at those hours or to cover each shift every 90 days.

(f) A telephone or other means of notifying the fire department or other emergency services shall be readily accessible in the home.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 and 53-19-113 MCA

RULE VIII PHYSICALLY DISABLED GROUP HOMES, HEALTH AND SAFETY CERTIFICATION

(1) A community home will only be licensed by the department if there is written certification from the local or state health authority that the home meets the following requirements:

(a) For an adequate and potable water supply, a community home must:

(i) connect to a public water supply system approved by the state department of health and environmental sciences (DHES); or

(ii) meet the standards set forth in the appropriate circular listed below if the community home utilizes a non-public water system. The department hereby adopts and incorporates by reference the following circulars prepared by the Montana department of health and environmental sciences (DHES) which set forth the relevant water quality standards. These circulars are available from the Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

(A) circular #11 for springs;
(B) circular #12 for water wells;
(C) circular #17 for cisterns;
(D) community homes using a non-public water supply must submit a water sample for analysis at least quarterly to a laboratory licensed by DHES;

(iii) repair or replace the water system when the supply:
(A) contains microbiological contaminants; or
(B) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water carried waste disposal.

(b) For sewage to be safely disposed of, a community home must:

(i) connect to a public sewage system approved by DHES; or

(ii) meet the standards set by DHES bulletin 332 if a non-public system is utilized. The department hereby adopts and incorporates by reference bulletin 332, prepared by the Montana department of health and environmental sciences, which sets forth standards for sewage disposal. A copy of bulletin 332 may be obtained from the Department of Health and

Environmental Sciences, Cogswell Building, Helena, Montana; and

(iii) repair or replace the sewage system whenever:

(A) it fails to accept sewage at the rate of application;

(B) seepage of effluent from or ponding of effluent on or around the system occurs;

(C) contamination of a potable water supply or state water is traced to the system; or

(D) a mechanical failure occurs.

(c) For solid waste to be safely stored and disposed of, a provider must:

(i) store all solid waste between collections in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof;

(ii) clean all solid waste containers as needed; and

(iii) utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department of health and environmental sciences.

(d) For safety and sanitation a provider must comply with the following structural requirements:

(i) All rooms and hallways must be provided with at least 10 footcandles of light, and bathrooms and areas used for reading must be provided with at least 30 footcandles of light.

(ii) Floors and walls of rooms subject to large amounts of moisture must be smooth and non-absorbent.

(iii) Floor and wall mounted furnishings must be easily moved or mounted in such a way as to allow for easy cleaning.

(iv) Adequate toilet and bathing facilities must be provided:

(A) one toilet and one sink for every four residents;

(B) one tub and shower for every four residents;

(C) drying space for wash cloths and towels; and

(D) bathing facilities and stairs must be provided with anti-slip surfaces.

(v) Food preparation facilities must be equipped with at least the following:

(A) facilities to adequately wash utensils and equipment;

(B) refrigeration equipment capable of maintaining foods at or below 45° F;

(C) cooking facilities;

(D) adequate and clean food preparation and storage areas;

(E) equipment to insure all food is transported, stored, covered, prepared and served in a sanitary manner.

(vi) Separate storage of clean and dirty linen shall be provided.

(vii) Storage space shall be available for the personal belongings of residents and for food, linen, equipment and other household supplies.

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

(e) For adequate housekeeping a provider must insure that:

(i) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;

(ii) the floors, walls, ceilings, furnishings, and equipment are in good repair, free of hazards, clean and free from offensive odors;

(iii) cleaning equipment and supplies are provided in sufficient quantity to meet housekeeping needs of the facility; and

(iv) a maintenance policy and schedule is adhered to which describes the regular maintenance of the home and yard. The maintenance policy shall include type of duties, methods and timelines relating to housekeeping, repairs, and general prevention of accidents and health dangers.

(f) Poisonous compounds shall not be stored in food preparation areas or food storage areas or in any areas where residents may initiate unsupervised contact.

(g) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Outdated and deteriorated drugs and drugs not being used must be removed and disposed.

(h) Use of home canned products other than jams, jellies and fruits is prohibited unless the home is approved as a commercial food processor.

(2) Local health sanitarians are permitted to charge a reasonable fee for their inspection services to the applicant.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 and 53-19-113 MCA

RULE IX PHYSICALLY DISABLED GROUP HOMES, PHYSICAL SITE REQUIREMENTS (1) The community home shall be located to facilitate the use of community resources. If the home is not within walking distance of shopping, recreational and other community services, transportation shall be available either at no cost or at an affordable cost to the resident.

(2) The design, construction and furnishings of the home shall be home-like and encourage a personalized atmosphere for residents.

(3) Each bedroom shall be limited to not more than three persons and shall include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) a minimal clear floor space of 7' x 9' for a single bedroom; 13' x 9' for a double room; and 13' x 17' for a three-bed room. The above space requirements do not include closet space; and

(d) at least one window which can be opened.

(4) Lighting shall be available in all living areas as needed.

(5) A comfortable temperature shall be maintained.

(6) The building exterior and yard shall be in good repair and free from hazards such as protruding sharp objects, uncovered wells and cellars and yard maintenance equipment which may be used inappropriately.

(7) All plumbing fixtures shall be in good repair and properly functioning.

(8) The heating system and hot water tank shall be kept in good working order.

(9) All client accessible areas should be located on the ground level or shall be accessible at ground level by floors, ramps and doorways with a clear unobstructed width of not less than 32 inches.

(10) Community homes shall meet the American National Standards for access by handicapped persons. The department hereby adopts and incorporates by reference the American National Standards: specifications for making buildings and facilities accessible to and usable by physically handicapped people. These standards set forth building specifications for access by physically disabled persons. A copy of the standards is available from the Department of Social and Rehabilitation Services, Community Services Division, 111 Sanders, Helena, Montana 59604.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

RULE X PHYSICALLY DISABLED GROUP HOMES, RESIDENT SUPPLIES AND EQUIPMENT (1) The provider shall provide the following:

(a) a separate bed of proper size and height for the resident;

(b) clean, comfortable mattress and appropriate bedding which shall be changed as needed and at least once a week;

(c) appropriate furnishings for storage of personal belongings, i.e., a chest of drawers;

(d) access to a mirror;

(e) curtains or window shades which provide privacy;

(f) tables, chairs, sofas, lamps and other furnishings in a common living area for family-like comfort and use;

(g) at least two (2) towels and washcloths per resident, which are changed as needed and at least twice a week; and

(h) personal supplies and other hygienic necessities whenever the resident does not have the ability to provide these supplies.

(2) The provider shall insure that clothing purchase and care includes:

(a) clothing which is appropriate to the chronological ages considering personal choice; and

(b) clothing which is of good quality, appropriate size, seasonable and in good repair.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

RULE XI PHYSICALLY DISABLED GROUP HOMES, STAFFING; STAFF RESPONSIBILITIES AND QUALIFICATIONS (1) The provider shall have a sufficient number of appropriately qualified staff to supervise, care for, and train residents.

(a) During the hours of 7:00 a.m. to 10:00 p.m. there shall be a minimum of 1 staff member per every 4 residents.

(b) During the hours of 10:00 p.m. to 7:00 a.m. there shall be a minimum of 1 awake staff member for every 8 residents.

(c) All staff persons caring for residents shall be a minimum of 18 years of age.

(d) There shall be a minimum of one staff person present who is directly responsible for resident care and activities when any resident is alone in the home. This requirement is not applicable if the resident or residents present in the home have been determined by the interdisciplinary team to be competent in self-care in such situations.

(2) There shall be a minimum of one appropriately trained person who is directly responsible for planning, implementing and reviewing each community home service and residents' program.

(3) The provider shall employ no staff person who has impairments to his/her ability to protect the health and safety of the residents or who would endanger the physical or psychological well-being and progress of the residents.

(a) Any applicant, provider or staff person may be required by the department to obtain and release a psychological evaluation or medical examination.

(b) Any applicant, provider or staff person may be required to sign an authorization for the release to the department of the required psychological or medical records.

(4) The provider shall provide an orientation for each new employee during the first week of employment. This orientation shall include familiarization with the residents

and the rules of the home, clients' specific programs, medical concerns of clients and emergency procedures.

(5) The provider shall provide training for each new employee within the first 30 days of employment. This training shall include:

(a) familiarization with the residents and the community home's philosophy, organization, policies, activities, programs, practices and goals;

(b) first aid, emergency procedures and accident prevention techniques;

(c) knowledgeably and tactfully dealing with residents, relatives, guardians and visitors;

(d) meeting needs of residents through care, supervision, and training skills;

(e) attaining skill areas in which the employee has not reached the level of competence for the job;

(f) description of duties, responsibilities, limitations of authority and principal measures of accountability and performances;

(6) The provider annually shall provide or obtain continuing training and education of the information listed in subsections (5)(a) through (f) above for each direct care staff.

(7) The provider shall provide documentation of training and orientation provided for all new and continuing employees. Agendas, general outlines, narratives and other descriptions may be provided to describe the type of content of said training activities.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

RULE XII PHYSICALLY DISABLED GROUP HOMES, RIGHTS

(1) Intervention for the purposes of assisting and training residents shall be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting residential needs.

(2) The residents shall not be subjected to treatment of a manner which:

(a) includes abuse or neglect; or

(b) limits individual rights without due process.

(3) The provider shall adopt a client's rights policy that is agreed to by the department.

(4) The utilization in training of aversive procedures or of procedures infringing upon individual rights must meet the approval of the department and must be presented in writing to the licensing worker.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

RULE XIII PHYSICALLY DISABLED GROUP HOMES, HEALTH CARE (1) The provider shall assure each individual of appropriate health care by providing or arranging for:

(a) a primary physician for each resident to provide for health needs;

(b) at least an annual health check-up;

(c) a primary dentist for each resident for at least annual check-ups;

(d) family planning, counseling, mental health and other consultation when appropriate;

(e) medication administration as authorized by section 53-19-112(3) MCA and as prescribed;

(f) modified and therapeutic diets as prescribed;

(g) procedures for the detection of signs of injury, disease, abuse;

(h) drinking water throughout each day;

(i) a variety of foods which meet the nutritional needs of the residents adjusted for age, sex and activity;

(j) developing, reviewing and recording weekly menus of meals served;

(k) adequate meals in a family style manner, as appropriate to the individual residents, three times a day;

(l) snacks at appropriate times each day;

(m) a shower or tub bath daily at the most independent level possible and with due regard for privacy;

(n) residents to brush their teeth daily; and

(o) written procedures for emergency medical care.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

RULE XIV PHYSICALLY DISABLED GROUP HOMES, RESIDENT'S MONEY AND PERSONAL PROPERTY (1) The provider shall insure that the resident's personal money and personal property is not appropriated or misused by any other person or by the provider and its staff.

(2) The provider is responsible for the accurate preparation and maintenance of a written record of each resident's personal property and personal money.

(3) The provider will keep a current monthly record of each resident's income and sources of income. The monthly expenses, including room and board, for the provider will be determined at the time of admission and will be shown monthly as a deduction from the resident's income received.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

RULE XV PHYSICALLY DISABLED GROUP HOMES, RECORD KEEPING (1) The provider shall maintain a written record at the community home for each resident which shall include detailed administrative, training, and educational data. The resident's record shall include at least the following:

(a) name, sex, birthdate, address, parents/relatives, guardianship, other vital statistics, admission and discharge;

(b) nature of the resident's difficulties;

(c) services needed by the resident and his/her family;

(d) the treatment plan, goals of the plan, and anticipated duration of treatment and training;

(e) measures taken to implement the plan, i.e. individual training programs;

(f) evaluation of the services the resident received;

(g) health records, psychiatric and psychological reports, educational information, assessments, official documentation and financial arrangements including resident's income and expenditures related to services provided to resident;

(h) resident's activities and incident reports;

(2) Other written records kept at the community home shall include:

(a) fire safety requirements and compliance; evacuation of residents and staff; fire safety plans and results of monthly fire drills; and

(b) a list of social service and other service personnel involved with the residents.

(3) The provider administrative file shall be maintained and shall be available upon request of the department. It shall contain at least the following current information and documents:

(a) governing structure including articles of incorporation and by-laws or other legal basis of existence;

(b) name and position of persons authorized to sign agreements of official documentation;

(c) board structure and composition with names, addresses and terms of membership;

(d) existing purchase of service agreements;

(e) insurance coverage;

(f) procedure for notifying parties of changes in facility's policy and programs;

(g) a current organizational chart;

(h) current written job descriptions for all employees, and the names of persons presently employed in those positions;

(i) records of orientation and training for each employee;

(j) personnel and programmatic policies and procedures; and

(k) written grievance procedures which are available to residents and staff.

(4) All entries shall be in ink or indelible pencil, prepared at the time or immediately following the occurrence of the event being recorded, be legible, dated and signed by the person making the entry.

(5) The provider is responsible for the accurate preparation, maintenance and storage of all resident, personal and home records.

(6) The provider shall assure that all resident records are confidential in accordance with all applicable laws and rules and departmental policy.

(7) Records for residents who have been released from the home shall be transferred with the resident or stored by the provider for a period of five years following the release.

(8) When the home ceases operation, the provider shall notify the department in writing as to the location and storage of resident records.

AUTH: Sec. 53-19-112 MCA; AUTH Extension, Sec. 7, Ch. 713, L. 1985, Eff. 10/1/85
IMP: Sec. 53-19-112 MCA

3. The 1985 sessions of the Montana State Legislature passed HB 798. This legislation in part designates the Department of Social and Rehabilitation Services as the state licensing authority for community homes for the physically disabled. It further requires the Department to adopt licensing rules "to govern administration, operation, and health and safety standards of community homes for physically disabled persons in order to protect resident's rights". The proposed rules are submitted in response to this legislation.

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 October 25, 1985.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 16, 1985.

18-9/26/85 MAR Notice No. 46-2-455

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the amendment of 8.28.501 concerning approval of schools	)))	NOTICE OF AMENDMENT OF 8.28.501 APPROVAL OF SCHOOLS

TO: All Interested Persons:

1. On August 15, the Board of Medical Examiners published a notice of proposed amendment, of the above-stated rule at page 1055, 1985 Montana Administrative Register, issue number 15.

2. The board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS
JOHN A. WAYNE, M.D., PRESIDENT

BY: _____
ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, September 16, 1985.

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of rule 10.57.301 Experience Requirement for Counselors	NOTICE OF AMENDMENT OF RULE 10.57.301 EXPERIENCE REQUIREMENT FOR COUNSELORS

TO: All Interested Persons.

1. On June 13, 1985 the Board of Public Education published notice of a proposed adoption concerning experience requirement for counselors 10.57.301 on page 637 of the 1985 Montana Administrative Register, issue number 11.

2. The Board has adopted the rule as proposed.

3. At the public hearing which was held July 22, 1985, one person testified as a proponent, and no written comments were received prior to July 26, 1985, the date on which the board closed the hearing record.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Linda Vaw Dyke

Certified to the Secretary of State September 13, 1985

BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the repeal of rules 10.58.702 School Principals and 10.58.703 School Superintendents, and the adoption of new rule 10.58.704 School Principals and Superintendents	NOTICE OF REPEAL OF RULES 10.58.702 SCHOOL PRINCIPALS, AND 10.58.703 SCHOOL SUPERINTENDENTS, AND ADOPTION OF RULE 10.58.704 SCHOOL PRINCIPALS AND SUPERINTENDENTS

TO: All Interested Persons.

1. On June 13, 1985 the Board of Public Education published notice of a proposed repeal of rules concerning school principals and school superintendents, and the proposed adoption of a new rule concerning school principals and superintendents on page 639 of the 1985 Montana Administrative Register, issue number 11.

2. The Board has adopted the rule as proposed.

3. At the public hearing which was held July 22, 1985, two persons testified as proponents, and no written comments were received prior to July 26, 1985, the date on which the board closed the hearing record.

Ted Hazelbaker

TED HAZELBAKER, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By: Linda Van Dyke

Certified to the Secretary of State September 13, 1985

BEFORE THE DEPARTMENT OF JUSTICE

OF THE STATE OF MONTANA

In the matter of the amendment of 23.3.231, concerning probationary driver's licenses, and the adoption of a rule concerning restrictions on probationary driver's licenses.	) NOTICE OF AMENDMENT OF) 23.3.231 CONCERNING PROBATIONARY DRIVER'S) LICENSES AND ADOPTION OF) A RULE CONCERNING RESTRICTIONS ON PROBATIONARY) DRIVER'S LICENSES.)

TO: All Interested Persons

1. On August 15, 1985, the Department of Justice published notice of the proposed amendment of rule 23.3.231, concerning probationary driver's licenses, and the proposed adoption of a rule concerning restrictions on probationary driver's licenses, at pages 1083 through 1085 of the 1985 Montana Administrative Register, issue number 15.

2. No comments or testimony were received.

3. The Department has amended rule 23.3.231 exactly as proposed. The Department has adopted proposed RULE I as 23.3.232, with the following change:

23.3.232 RESTRICTIONS ON PROBATIONARY LICENSES

(1)-(3) same as proposed.

(4) Licensees holding probationary licenses with the restriction "no recreational driving" are subject to the same driving restrictions as those applicable to licenses restricted to "essential driving only" under subsection (1)(c) above.

4. Subsection (4) was added because the new rule refers to licenses restricted to "essential driving only," whereas prior to adoption of the rule such licenses were restricted to "no recreational driving." Subsection (4) makes it clear that the licensee will be subject to the same restrictions regardless of the particular restrictive phrase on the face of the license.

5. The authority for the amendment and adoption of the rules is section 61-2-302(1), MCA. The rules implement section 61-2-302, MCA.

MIKE GREELY
Attorney General

Certified to the Secretary of State, September 16, 1985.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule interpreting the provisions of the Montana Human Rights Act governing age discrimination in housing accommodations and improved or unimproved property.	NOTICE OF ADOPTION OF A RULE (24.9.1107)

To: All Interested Persons

1. On April 11, 1985, the Montana Human Rights Commission published notice of proposed adoption of a rule interpreting the provisions of the Montana Human Rights Act governing age discrimination in housing accommodations and improved and unimproved property at page 339 of the 1985 Montana Administrative Register, issue number 7.

2. The Commission has adopted the proposed rule with the following changes:

24.9.1107 REAL PROPERTY TRANSACTIONS; AGE DISCRIMINATION (1) Section 49-2-305(1), MCA, which prohibits discrimination in housing on the basis of age shall cover refusal to sell, rent or lease a housing accommodation or improved or unimproved property because of the age of a person residing with the buyer, lessee, or renter.

(2) Restricting sale, rental or lease of a housing accommodation to persons of a certain age group or requiring that persons residing with the buyer, lessee, or renter in the housing accommodation belong to a certain age group when such accommodation is authorized, approved, financed, or subsidized in whole or in part for the benefit of that age group by a unit of the federal government shall not constitute a violation of subsection (1).

(3) Restricting sale, rental, or lease of a housing accommodation with specialized facilities, services, or environment to the specific age group requiring those specialized facilities, services, or environment shall not constitute a violation of subsection (1).

(4) The effective date of this rule is July 1, 1987.

3. The Commission received written comments and testimony at the hearing both in support of the proposed rule and in opposition to the proposed rule. The comments in opposition to the proposed rule are summarized as follows:

(a) Several opponents argued that they should be able to prohibit children from residing in their rental units because children are noisier and cause more damage than other tenants and because to rule that landlords cannot refuse to rent to families with children constitutes

overregulation, interferes with private property rights, and thereby discourages investment by persons who might wish to provide housing accommodations because they will be unable to protect their property from damage.

The Commission overrules these arguments. To the extent that the rule constitutes overregulation or interference with private property rights, it is the belief of the Commission that its interpretation is consistent with the language of the statute. The comments about children being more noisy or destructive than other tenants are nothing more than stereotypical assumptions about children. It is the purpose of the Human Rights Act to prohibit actions based on such stereotypical assumptions about age by persons selling, renting, or leasing housing accommodations or improved or unimproved property in the same manner as actions based on stereotypical assumptions about race, sex, and handicap are prohibited. A landlord who is concerned about excessive noise or damage to rentals may protect his property by using good management practices, such as requiring tenants to provide references. A landlord who requires references, however, should require them of all tenants, not merely those with children.

(b) Several opponents objected to the proposed rule on the ground that elderly individuals sometimes require specialized housing facilities in which the presence of children would be a burden. In response to this comment, and in recognition that the statute provides an exception to the age discrimination prohibition when based on reasonable grounds, the Commission has added subsection (3) to the rule as adopted.

4. After the public hearing, members of the Commission expressed concern about the proposed rule on the ground that this interpretation of the statute by the Commission may not have been intended by the Legislature and may be viewed as such a severe departure from the established practices of many landlords that the rule should be established by specific legislation rather than by administrative rule. The Commission believes that its interpretation of the statute is correct. In deference to these concerns, however, the Commission has added subsection (4) to the rule as adopted, providing for a delayed effective date of July 1, 1987. The delayed effective date will give the 1987 Legislature an opportunity to consider this issue.

5. The Commission had added subsection (2) to the rule as adopted in recognition of the fact that in some instances, the state may be preempted from applying state law.

6. The authority for the rule is section 49-2-204, MCA, and the rule implements 49-2-305, MCA.

HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
Anne L. MacIntyre, Administrator
Human Rights Division

Certified to the Secretary of State September 16, 1985.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE STATE OF MONTANA

In the matter of adoption of new rules concerning licensing requirements for construction blasters.	))))	NOTICE OF ADOPTION OF NEW RULES FOR LICENSING REQUIREMENTS FOR CONSTRUCTION BLASTERS

TO: All Interested Persons

1. On July 25, 1985, the Workers' Compensation Division published notice of the proposed adoption of rules concerning licensing requirements for construction blasters, at page 1001, Issue No. 14, Montana Administrative Register.

2. The Division has adopted the proposed rules except as follows, to be effective October 1, 1985.

24.30.1701 PURPOSE Same as proposed rule.
AUTH: 37-72-201 and 37-72-202, MCA
IMP: 37-72-101, et seq., MCA

24.30.1702 DEFINITIONS Same as proposed rule.
AUTH: 37-72-201 and 37-72-202, MCA
IMP: 37-72-101, et seq., MCA

24.30.1703 CONSTRUCTION BLASTER LICENSE REQUIREMENTS

(1) Same as proposed rule.

(2) The following construction blasters' licenses are issued under section 37-72-303, MCA:

(a) Class ~~A -- all types of blasting.~~ 1 -- Construction -- blasting for all types of construction except demolition (See Class 3).

(b) Class 2 -- Construction -- Restricted -- blasting for construction with blast designs up to millisecond delay systems and single initiation source.

(c) Class 3 -- Demolition -- blasting for reducing, destroying or weakening any residential, commercial or other building or structure.

(d) Class ~~B~~ 4 -- Utility -- blasting not exceeding 10 pounds generally limited to single hole, single shot applications.

(3) Same as proposed rule.

(a) Same as proposed rule.

(b) Same as proposed rule.

(c) Same as proposed rule.

(d) Same as proposed rule.

(e) Same as proposed rule.

(f) duplicate license fee - $2.00

(4) Same as proposed rule.

(a) Same as proposed rule.

(b) Same as proposed rule.

(c) has successfully completed a training program approved by the division ~~of not less than 24 hours for a Class A license, and 8 hours training for a Class B license~~ in accordance with ~~Rule VI;~~ ARM 24.30.1706.

(d) Same as proposed rule.

(e) Same as proposed rule.

(5) Same as proposed rule.

(6) Same as proposed rule.

AUTH: 37-72-201, MCA;
IMP: 37-72-301 to 37-72-306, MCA

24.30.1704 USE OF EXPLOSIVES -- INCORPORATION OF STANDARDS OF NATIONAL ORGANIZATIONS AND FEDERAL AGENCIES Same as proposed rule.

(1) Same as proposed rule.

(a) Same as proposed rule.

(b) Same as proposed rule.

(c) Same as proposed rule.

(2) Same as proposed rule.

AUTH: 37-72-201 and 37-72-202, MCA;
IMP: 37-72-201, MCA

24.30.1705 VARIANCES Same as proposed rule.

AUTH: 37-72-201 and 37-72-202, MCA;
IMP: 37-72-201, MCA

24.30.1706 TRAINING PROGRAMS (1) Training programs in construction blasting must be recognized by the explosives and construction industry and approved by the division. The training program must offer comprehensive instruction in safe use of explosives, methods and purposes of their use, and safety procedures for storage. These training programs shall be at least 24 hours to obtain a class 1, class 2 or class 3 license, and 8 hours to obtain a class 4 license, or be approved by the division based on content and quality of the course.

(2) The following construction blasting training courses are approved by the division:

(a) For ~~Class A~~ 1, 2, and 3 Licenses:

Northwest Laborers Employers Training Program
Laborers AGC Training Program for State of Montana

(b) For ~~Class B~~ 4 License:

Kinepak Blasting Seminar
Dupont Blasting Seminar

(3) Same as proposed rule.

AUTH: 37-72-202, MCA;
IMP: 37-72-302, MCA

24.300.1707 SUSPENSION, REVOCATION, OR REFUSAL TO RENEW CONSTRUCTION BLASTER'S LICENSE Same as proposed rule.

AUTH: 37-72-202, MCA;
IMP: 37-72-203, MCA

3. The division is adopting new rules to carry out the

intent of Senate Bill 194 passed by the 49th Legislature. Sections 9 and 10 of this bill require the adoption of rules governing the use of explosives, implementing training and experience requirements, prescribing the amount of application, license, examination and renewal fees providing for licenses, and providing for conduct of business of the division under this statute.

4. Changes were made as follows:

(a) The number of different licenses under ARM 24.30.2703 was expanded from two classes to four classes to facilitate issuance of licenses to individuals with experience in different types of blasting. Also, license classes were changed from a letter system to a number system for uniformity in computer programming.

(b) The length of training in ARM 24.30.1703 (4) (c) was deleted and inserted in ARM 24.30.1706 for a more appropriate location in the rules. A statement was added allowing for some flexibility in training programs by basing approval on course content and quality.

5. No request for a public hearing was made. The division has thoroughly considered all comments received. A summary of written comments received and the responses are as follows:

COMMENT: Is it necessary for individuals to obtain 24 hours of training prior to October 1, 1985?

RESPONSE: The required training is necessary to obtain a blasters license at any time after October 1, 1985, provided the individual does not already have a blasters license from another state or agency of the United States.

COMMENT: Do the rules provide any waiver of the training requirement for individuals who have many years blasting experience?

RESPONSE: The rules do not provide a waiver of training requirements for any individuals. The statute is clear that training is required for individuals applying for a blasters license that are not licensed by another state or agency of the United States on October 1, 1985.

GARY L. BLEWETT, Administrator

CERTIFIED TO THE SECRETARY OF STATE: September 16, 1985

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of adoption and amendment of rules pertaining to fees for filing documents and issuing certificates.	)))))	NOTICE OF ADOPTION AND AMENDMENT OF RULES 44.5.101 Fees for Filing Documents and Issuing Certificates - Business Corporations; 44.5.103 Fees for Filing Documents and Issuing Certificates - Nonprofit Corporations; 44.5.104 Miscellaneous Charges - Nonprofit Corporations; 44.5.105 Fees Fees for Filing Documents and Issuing Certificates - Limited Partnerships; 44.5.106 Miscellaneous Charges - Limited Partnerships; 44.5.107 Fees for Filing Documents and Issuing Certificates - Assumed Business Names; 44.5.108 - Miscellaneous Charges - Assumed Business Names; 44.5.109 - Fees for Filing Documents and Issuing Certificates - Trademarks; 44.5.110 Miscellaneous Charges - Trademarks

TO: All Interested Persons:

1. On August 15, 1985, the Secretary of State published notice of a proposed adoption and amendment of rules pertaining to fees for filing documents and issuing certificates for business corporations, nonprofit corporations, limited partnerships, assumed business names and trademarks at pages 1116-1122 of the 1985 Montana Administrative Register, issue number 15.

2. The Secretary of State has adopted and amended the rules as proposed.

3. No comments or testimony were received.

4. These rules are effective October 1, 1985 due to the fact that the law does not go into effect until this time.

Dated this 16th day of September, 1985.

JIM WALTERMIRE
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to fees for filing documents.) NOTICE OF ADOPTION OF RULE 44.6.105 Filing Documents - Uniform Commercial Code

TO: All Interested Persons:

1. On August 15, 1985, the Secretary of State published notice of proposed adoption of rules pertaining to fees for filing for uniform commercial code documents at pages 1123-1124 of the 1985 Montana Administrative Register, issue number 15.

2. The Secretary of State has adopted the rule as proposed with the following change:

44.6.105 FEES FOR FILING DOCUMENTS - UNIFORM COMMERCIAL CODE The secretary of state and the county clerk and recorder shall charge and collect for:

44.6.105 (a) through (j) same as proposed.

3. Testimony was received from Sue Bartlett on behalf of the Montana Association of Clerks and Recorders and a letter was received from Lorraine P. Molitor, Clerk and Recorder of Madison County.

4. The Secretary of State considered all comments:

COMMENT: Sue Bartlett, Lewis and Clark County Clerk and Recorder, representing Montana Association of Clerks and Recorders, requested a change in Rule I(1), that the wording "county clerk and recorder" be added so there wouldn't be any confusion as to what the filing fees would be at the county level.

RESPONSE: The Secretary of State agreed and this change has been made.

COMMENT: Sue Bartlett, Lewis and Clark County Clerk and Recorder, representing Montana Association of Clerks and Recorders, and Lorraine P. Molitor, Clerk and Recorder of Madison County requested a change in Rule I(b) that terminations which terminate financing statements filed prior to October 1, 1985, assess a $2.00 filing fee.

RESPONSE: The Secretary of State disagreed. The rule as proposed would simplify the filing fee structure to prevent confusion to the public. Implementation of this suggestion would run counter to this objective.

COMMENT: Sue Bartlett, Lewis and Clark County Clerk and Recorder, representing Montana Association of Clerks and Recorders, requested a change for refiling fees which were adopted in Issue No. 12.

RESPONSE: The Secretary of State disagreed. The fees for refiling liens covering agricultural collateral were adopted under different rulemaking authority. Changes in these fees would require further notice and cannot be accomplished as a part of this rule adoption.

5. These rules are effective October 1, 1985 due to the fact that the law does not go into effect until this time.

Dated this 16th day of September, 1985.

JIM WALTERMIRE
Secretary of State

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

In the matter of the amendment of Rule 46.10.512 pertaining to AFDC day care earned income disregards	)	NOTICE OF THE AMENDMENT OF RULE 46.10.512 PERTAINING TO AFDC DAY CARE EARNED INCOME DISREGARDS

TO: All Interested Persons

1. On August 15, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.512 pertaining to AFDC day care earned income disregards at page 1127 of the 1985 Montana Administrative Register, issue number 15.

2. The Department has amended Rule 46.10.512 as proposed.

3. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 16, 1985.

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

In the matter of the amendment of Rule 46.12.102 pertaining to Medical Assistance, Definitions	)))	NOTICE OF THE AMENDMENT OF RULE 46.12.102 PERTAINING TO MEDICAL ASSISTANCE, DEFINITIONS

TO: All Interested Persons

1. On August 15, 1985, 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 1125 of the 1985 Montana Administrative Register, issue number 15.

2. The Department has amended Rule 46.12.102 as proposed with the following changes:

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (2)(e) remain as proposed.

(i) ~~Experimental--services--or--services,--except--heart transplants,~~ EXCEPT FOR HEART TRANSPLANTS, EXPERIMENTAL SERVICES OR SERVICES which are generally regarded by the medical profession as unacceptable treatment will not be considered medically necessary for the purpose of the medical assistance program. Heart transplants are included as a service until June 30, 1987, unless specifically extended by future legislation.

Subsections (2)(e)(i)(A) through (34) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. The Administrator of the SRS Audit and Program Compliance Division suggested that the proposed amendment to 46.12.102(2)(e)(i) be changed from "Experimental services or services, except heart transplants..." to "Except for heart transplants, experimental services or services ..." This change is necessary to comply with recognized grammatical rules and lessen chances of possible misunderstanding.

4. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 16, 1985.

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

In the matter of the amendment of Rules 46.12.601, 46.12.602 and 46.12.605 pertaining to dental services	)))	NOTICE OF THE AMENDMENT OF RULES 46.12.601, 46.12.602 AND 46.12.605 PERTAINING TO DENTAL SERVICES

TO: All Interested Persons

1. On July 25, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of the Rules as listed above pertaining to dental services at page 1008 of the 1985 Montana Administrative Register, issue number 14.

2. The Department has amended Rules 46.12.601, 46.12.602 and 46.12.605 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: The proposed rules should include the latest standards from the American Association of Oral Maxillo Facial Surgeons. These extensive codes would set fees paid to physicians and dentists that provide the same procedure at equal rates.

RESPONSE: The department disagrees. An updating of state codes is currently routine procedure. Based on administrative rule requirements only specifically listed physician service codes are covered. It would be inappropriate to adopt codes which include services outside the limits of the administrative rules.

COMMENT: The services of denturists do not need to be under the direction of a dentist. 42 USCA 1396d(a)(6) authorizes payment for medical care by state licensed practitioners within the scope of their practice. Since denturists are licensed in Montana, they should be compensated under the special definition of 42 USCA 1396d(a)(6). Since making dentures is within the licensed scope of practice of a denturist, the proposed rules should not require that dentures be prescribed by a dentist.

RESPONSE: 42 USCA 1396d(a) is a list of the medical services that may be provided under the medicaid program. The U.S. Department of Health and Human Services (HHS) has authority to administer this program in a manner to best serve those poor people to whom the program was intended to provide benefits.

In so doing HHS has adopted federal regulations at 42 CFR 440.120(b) which require dentures to be made "by or under the direction of a dentist".

4. The estimated aggregate increase or decrease in expenditures resulting from these changes is unknown at this time. Any change is expected to be minimal as a result of the changes concerning denturists. The controls for the oral surgery amendments were written to minimize any impact or expenditures.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 16, 1985.

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

In the matter of the amendment of Rules 46.13.106, 46.13.107, 46.13.203, 46.13.205, 46.13.206, 46.13.302, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402 and 46.13.403 pertaining to the Low Income Energy Assistance Program	)	NOTICE OF THE AMENDMENT OF RULES 46.13.106, 46.13.107, 46.13.203, 46.13.205, 46.13.206, 46.13.302, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402, AND 46.13.403 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On August 15, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules as listed above pertaining to the Low Income Energy Assistance Program at page 1129 of the 1985 Montana Administrative Register, issue number 15.

2. The Department has amended Rules 46.13.106, 46.13.107, 46.13.203, 46.13.206, 46.13.302, 46.13.303, 46.13.305, 46.13.402 and 46.13.403 as proposed.

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

46.13.205 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) Procedures followed in determining eligibility for low income energy assistance are:

(a) Application is filed by applicant together with all necessary verification for determining financial eligibility and benefit award. An applicant who WILLFULLY fails to provide information necessary for a determination of eligibility within 45 days of the date of initial application shall be determined ineligible but may reapply for assistance. The staff member of the local contractor accepts the application and determines financial eligibility and amount of benefit. The client is notified of the reasons for approval or disapproval of his application. Eligible applicants shall be notified that benefits are computed for heating costs only for the period October 1 through April 30.

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

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.304 INCOME (1) Definitions:

Subsections (1)(a) and (1)(b) remain as proposed.

(c) Medical and dental deductions mean all medical and dental payments for allowable costs, as described in (4), made

by members of the household in the twelve months immediately preceding the month of application. Medical and dental deductions shall not include medical payments by the household which are reimbursable by a third party. Medical deductions can only be subtracted from annual gross income that is BETWEEN 125% AND 150% ~~or less~~ of the 1984~~5~~ U.S. government office of management and budget poverty level for the particular household size. Households meeting the income standards in ARM 46.13.303(2) after this adjustment are eligible for benefits.

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

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES (1) Definitions:

(a) LC means local contractor.

(b) MPC means Montana Power Company.

(c) MDU means Montana-Dakota ~~Utilities--Resources Inc~~ UTILITIES, A DIVISION OF MDU RESOURCES, INC.

(d) GFG means Great Falls Gas Company.

Subsections (1)(e) through (1)(g) remain the same.

(2) The benefit award matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by household income level, (100% if AT OR below 100% of OMB poverty, 75% if between 101% - 125% of OMB poverty level) type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit. Applicants may claim no more bedrooms than household members. The maximum benefit also varies by local contractor districts to account for ~~weather~~ climatic differences across the state.

The maximum benefit award matrices remain as proposed.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: 46.13.205 should be clarified so that persons who are unable to provide information necessary for eligibility determination will not be summarily denied after 45 days.

RESPONSE: The Department agrees and has inserted language to clarify its intent.

COMMENT: 46.13.304 should be clarified to reflect the department's intent on the use of medical deductions.

RESPONSE: The Department agrees and has inserted language to clarify its intent.

COMMENT: 46.13.401(2) has omitted persons at exactly 100% of the poverty level.

RESPONSE: The Department agrees and has inserted clarifying language.

COMMENT: 46.13.401(1)(c) should state the more accurate name, Montana-Dakota Utilities, a division of MDU Resources, Inc.

RESPONSE: The final regulation will do so.

COMMENT: The proposed sliding income scale (46.13.401(2)) adversely affects the working poor and should be replaced with an across the board matrix reduction.

RESPONSE: All of the major proposed reductions affect some persons adversely. As stated in the rationale, this year's LIEAP is several million dollars short of serving its potential clients. A number of reductions had to be considered. The sliding scale, which does adversely affect those from 101-125% of poverty, fully protects the poorest of the program's clients, those below 100% of poverty, and is in line with the federal mandate that the highest benefits go to those with the lowest incomes.

COMMENT: The rule that allows a household to claim no more bedrooms than people (46.13.401(2)) is unfair as the entire home must still be heated. Closing off bedrooms could cause problems with the heating system.

RESPONSE: Persons engaged in SRS' "roundtable" discussions felt that with the serious funding shortfalls facing the program, LIEAP could not continue to pay for heating areas in households which do not, or should not, be using as much energy as bigger families in similarly-sized homes.

The department agrees with the "roundtable" discussions. Bedroom size is used by our matrix to estimate the living area heating requirements of homes. A family of four in a four bedroom home will probably use all four bedrooms and would need LIEAP to help keep their living area warm. A family of one in a four bedroom home could close off the three unused rooms and maintain a comfortable living area.

Testimony heard in support of the rule quotes a letter from the National Appropriate Technology Assistance Service stating that such a technique was "a simple yet effective way to cut down on heating cost...." and that, "it may be possible to save 30% on heating costs and even more".

The Department is aware of the possible effects on the home heating system and will encourage the use of its weatherization program and other efforts such as the Montana Power Company's tune-up program to ensure that furnaces are correctly sized for the heating area they are to cover. In extraordinary circumstances, emergency LIEAP assistance will be authorized.

COMMENT: (1) The proposed recapture of unused benefits (46.13.402(2)(b)) should not allow the $100 carryover.

(2) Any funds so recaptured should be used for problems such as arrearages and large medical bills.

RESPONSE: The $100 carryover is to encourage conservation and try to avoid a "use it or lose it" attitude on behalf of some LIEAP clients. If our matrix is accurate, there should not be extraordinary amounts of credit remaining.

The problem of arrearages, while definitely a significant event, occurs only over long periods of time. We have defined an emergency as that which is unforeseen. We are reluctant to pay amounts above our matrix awards for there will then be no incentive for some persons to pay anything on their utility bills. This would be unfair to those people who use LIEAP as it should be used, as a partial payment on their overall bill.

LIEAP could not, by federal law, be used to pay for medical expenses. It is designed to help households with their heating bills; therefore, it supposedly helps those households to have discretionary spending they otherwise would have been using to meet their heating costs.

COMMENT: The $12,500 resource limit on business equity (46.13.305) should be eliminated.

RESPONSE: Business equity is the difference between what a person's business is worth and what is owed. Members of our review committees have consistently felt that a person having a net worth in excess of poverty levels should be ineligible.

COMMENT: The manner in which subsidized housing is treated is unfair to those clients and in violation of the LIEAP income disregard provision.

RESPONSE: Residents of federally subsidized housing receive either a direct payment for heating costs or their rent is reduced by a comparable amount. LIEAP subtracts that amount from the applicable LIEAP matrix and pays the difference.

This seems fair in that two federal programs will not be duplicating benefits and that LIEAP benefits can be extended to other people who are not fortunate enough to be on a federally subsidized rental program. The income disregard

applies to LIEAP benefits, not Section 8 benefits. The department is not counting LIEAP benefits; it is including Section 8 benefits in its computation.

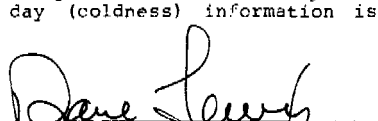
COMMENT: LIEAP eligibility should be based on net income (income minus taxes and social security payments).

RESPONSE: The department disagrees. To do so would increase the number of eligible households and necessitate further cutbacks in the amount of assistance delivered to all.

LIEAP uses the same definition of income as the federal statute. There appears to be no compelling reason to do otherwise.

COMMENT: Why have some matrix benefits levels been reduced?

RESPONSE: The matrix is the result of a formula which includes many factors. A matrix will be reduced, or increased, because the price of a specific fuel has changed or more current heating degrees day (coldness) information is available.



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 16, 1985.

VOLUME NO. 41 OPINION NO. 27

CONSTITUTIONS - Legislature, convening special sessions;
LEGISLATURE - Special sessions, majority of members of Legislature required to convene;
MONTANA CODE ANNOTATED - Sections 5-3-101, 5-3-107;
MONTANA CONSTITUTION - Article V, section 6; article VI, section 8(2); article VIII, section 8; article IX, section 5; article XIV, section 1; article XIV, section 8;
OPINIONS OF THE ATTORNEY GENERAL - 34 Op. Att'y Gen. No. 61 (1972), 35 Op. Att'y Gen. No. 6 (1973).

HELD: Under article V, section 6, of the Montana Constitution, a majority of all of the members of the Legislature is required to request that the Legislature be convened in a special session. A majority of each house is not required to request that a special session be convened.

11 September 1985

The Honorable Jim Waltermire
Secretary of State
Room 225, State Capitol
Helena MT 59620

Dear Mr. Waltermire:

You have requested my opinion on the following matters:

1. May the Legislature call a special session by an affirmative poll reply from a simple majority of the total membership of the Legislature or is a majority of both the house and the senate required?

2. If a majority of each house is required, does section 5-3-107, MCA, nonetheless impose on the Secretary of State a mandatory duty to notify based only upon an affirmative response from a simple majority of legislators?

Article V, section 6 of the Montana Constitution states in pertinent part:

> The legislature may be convened in special session by the governor or at the written request of a majority of the members. [Emphasis added.]

Section 5-3-101, MCA, repeats this language.

Your first question was addressed in an earlier Attorney General's opinion, 35 Op. Att'y Gen. No. 6 at 13 (1973), which held that article V, section 6, requires a written request of a majority of each house of the Legislature to call the Legislature into special session. For the reasons given below, I disagree with and expressly overrule that opinion.

Terms in a constitution must be given the natural meaning in which they are usually understood. Jones v. Judge, 176 Mont. 251, 254, 577 P.2d 846, 848 (1978). Intent of the framers of the constitution is first determined from the plain meaning of the words used, and if that is possible, no other means of interpretation may be applied. State v. Cardwell, 37 St. Rptr. 750, 752, 609 P.2d 1230, 1232 (1980); Haker v. South-Western Railway Company, 176 Mont. 364, 369, 578 P.2d 724, 727 (1978). The pertinent language of article V, section 6, states that "the legislature may be convened in special session ... at the written request of a majority of the members." This language clearly requires requests from a majority of all of the members of the Legislature as a whole. By contrast, the language of article V, section 6, does not require that a majority of the members of each house act, as does the language of certain other constitutional provisions. See art. VIII, § 8 ("No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon"); art. IX, § 5 ("The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature").

Assuming, for the sake of argument, that the intent of the drafters of article V, section 6, cannot be determined from the plain and ordinary meaning of the words used, my opinion is not altered by resorting to

the history of the section. The pertinent language of article V, section 6, was adopted by the delegates to the 1972 Constitutional Convention as part of the legislative article. Subsequently, during a discussion of the executive article, the delegates considered a provision which authorized the convening of a special session of the Legislature when called by the governor or by two-thirds of the members of each house. Tr. 1972 Montana Constitutional Convention, p. 958. The section was amended to require "a majority of the members of each house" rather than "two-thirds of the members of each house." The relevant portions of the debate are quoted as follows:

> DELEGATE AASHEIM: In the Legislative Article, we say this: "The legislature may be convened in special sessions by the governor, or at the written request of a majority of the members." We don't say "a majority of each house", so we're going to be in conflict.
>
> CHAIRMAN GRAYBILL: Mr. Joyce, do you care to straighten this out so that you don't have a substantive issue for Style and Drafting? You could do that by striking the words "of each house."
>
> DELEGATE JOYCE: Also amend.
>
> CHAIRMAN GRAYBILL: All right, in line 17 on page 9--and, anyway, it's in the second sentence of section 11--it should then read: "At the written request of a majority of the members, the presiding officers of both houses may convene the legislature." So many as shall be in favor of this amendment, please say Aye.
>
> DELEGATES: Aye.
>
> CHAIRMAN GRAYBILL: Opposed, No. (No response)
>
> CHAIRMAN GRAYBILL: Now, it seems to me that we've given Style and Drafting only a Style and Drafting problem.
>
> ....

DELEGATE ROEDER: I think you may have been wrong on your statement that we're left with just a Style and Drafting problem, because the way that thing reads in the Legislative Articles that came off the magic typewriters is that the Legislature may be convened in special sessions or at the written request of a majority of the members. So, they're not, in substance, the same.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I think that if I made a motion to recess, that the people involved in this could straighten it out; and when we come back from recess, it would be much easier to present it for the whole floor. So, I move we stand in recess until 3:15 today.

....

(Convention recessed at 3:04 p.m.--reconvened at 3:27 p.m.)

....

CHAIRMAN GRAYBILL: All right, are we ready to adopt Section 11? Members of the committee, you have before you, on the recommendation of Mr. Joyce that when this committee does arise and report, after having had under consideration Section 11, that the same be adopted. The language is, "he may convene the legislature." And the other language: "At the written request of a majority of the members, the presiding officer of both houses shall convene the legislature in special session." So many as are in favor of Section 11, as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Mr. Clerk, will you read Section 12.

Tr. 1972 Montana Constitutional Convention, pp. 960-61.

The above-quoted discussion is consistent with the interpretation of article V, section 6, which reflects the plain meaning of the language, i.e., that a special session may be convened by a majority of all the members of the Legislature, rather than a majority of the members of each house. The debate of the convention delegates indicates that they considered language requiring that a majority of each house act but decided against the inclusion of such language. Rejection of a specific provision indicates an intention not to include the rejected provision in the final version of the law. 2A Sutherland Statutory Construction § 48.18 (4th ed. 1982); Isbister v. Boys' Club of Santa Cruz, 192 Cal. Rptr. 560 (Cal. App. 1983); People for Environmental Progress v. Leisz, 373 F. Supp. 589, 592 (C.D. Cal. 1974). While rejection of specific language may not conclusively control its interpretation, especially where there is no explanation of why the language was deleted, the conscious decision of the drafters to exclude the language, together with the plain and ordinary meaning of the words finally adopted, is compelling. See State v. Crawley, 447 A.2d 565, 568 (N.J. 1982).

The plain meaning of article V, section 6, dealing with the convening of special sessions, is not offensive to the nature of a bicameral Legislature, although that was the reasoning followed in 35 Op. Att'y Gen. No. 6 at 12 (1973). Whereas each house in a bicameral Legislature must act on legislation independently, there are other functions which may be carried out by one house acting alone (art. VI, § 8(2), confirmation of executive appointments by the senate); or by both houses acting as a single unit (art. XIV, § 1, "the Legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend the constitution"; art. XIV, § 8, "amendments to this constitution may be proposed by any member of this legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election"). The discussion of the constitutional convention delegates concerning the latter section

suggests that some delegates believed that a bicameral Legislature requires that each house have veto power over nearly every action of the other (such as when amending the constitution by legislative referendum) and that "to permit one body to outvote the other completely would negate the whole principle." Tr. at 494. The convention, however, expressly rejected the notion that both houses had to give approval in order to amend the constitution by legislative referendum. See Tr. at 493-95 and 522-26, esp. at 524.

In conclusion, the plain and ordinary meaning of the language of article V, section 6, favors the interpretation that a majority of the Legislature, rather than a majority of each house, is required to request that a special session of the Legislature be convened. Even if the history of the provision is considered, the fact that the delegates rejected language that would clearly require that a majority of each house request a special session suggests that the requirement was not intended. Action by a majority of all the members of the Legislature as a whole is not necessarily inconsistent with the nature of a bicameral Legislature and is provided for in other constitutional provisions. The calling of a special session is not an essential function requiring independent approval by each of the two houses, as is the passage of legislation, discussed in 34 Op. Att'y Gen. No. 61 at 283 (1972). For these reasons 35 Op. Att'y Gen. No. 6 at 12 (1973) is overruled.

The answer to your first question makes a response to your second question unnecessary. Section 5-3-107, MCA, which tracks the pertinent language of article V, section 6, of the Montana Constitution, should be interpreted consistent with my interpretation of article V, section 6.

THEREFORE, IT IS MY OPINION:

> Under article V, section 6, of the Montana Constitution, a majority of all of the members of the Legislature is required to request that the Legislature be convened in a special session. A majority of each house is not required to request that a special session be convened.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 28

COUNTIES - No authority to levy separate tax for local air pollution programs;
COUNTY COMMISSIONERS - No authority to levy separate tax for local air pollution programs;
TAXATION AND REVENUE - No authority to levy separate tax for local air pollution programs;
MONTANA CODE ANNOTATED - Sections 7-6-2501, 75-2-301 to 75-2-302;
MONTANA CONSTITUTION - Article XI, section 4;
OPINIONS OF THE ATTORNEY GENERAL - 27 Op. Att'y Gen. No. 37 (1957), 39 Op. Att'y Gen. No. 34 (1980).

HELD: The county commissioners of Yellowstone County may not impose a separate tax levy to fund local air pollution programs.

12 September 1985

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

> May the county commissioners impose a separate tax levy to fund local air pollution programs?

Yellowstone County is a local government with general powers. A local government with general powers has such powers as are provided or implied by law, Mont. Const. art. XI, § 4(1)(b), and its powers are to be liberally construed. Mont. Const. art. XI, § 4(2).

Section 7-6-2501, MCA, establishes a limitation on property taxes levied to finance the general governmental expenses of the county. It does not limit the county's power to levy additional taxes authorized by statute for special purposes. 39 Op. Att'y Gen. No. 34 (1980); 27 Op. Att'y Gen. No. 37 (1957). However, before a governing body may impose a tax, it must have

clear and specific authority providing for the imposition of the tax. Burlington Northern v. Flathead County, 176 Mont. 9, 13, 575 P.2d 912, 914 (1978); Swartz v. Berg, 147 Mont. 178, 182, 411 P.2d 736, 738 (1966).

Sections 75-2-301 to 302, MCA, pertain to local air pollution control programs. Section 75-2-301(1), MCA, provides:

> Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:
>
> (a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-212, and 75-2-402 and rules issued under these sections;
>
> (b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and
>
> (c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program. [Emphasis added.]

There is no indication in the statute that the funds for the local air pollution program may be derived from a special tax levy. Without clear authority in the statute, the county may not impose a separate tax levy.

THEREFORE, IT IS MY OPINION:

> The county commissioners of Yellowstone County may not impose a separate tax levy to fund local air pollution programs.

Very truly yours,

MIKE GREELY
Attorney General

BEFORE THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the matter of the petition for a declaratory ruling that certain lands near Otter Creek in Powder River County, Montana, may not be mined for coal.	))))))	DECLARATORY RULING

INTRODUCTION

On October 4, 1984, the Department of State Lands received from Mr. Michael G. Moses, attorney at law representing Mr. and Mrs. Theodore Fletcher, Gladys Fletcher, D. A. Heidel, Bobby Heidel, Benjamin Heidel, and Camilla Heidel, a petition for a declaratory ruling that 320 acres owned by those persons are on an alluvial valley floor that is irrigated or naturally subirrigated and the mining of which would interrupt, discontinue or preclude farming on the alluvial floor and that the farming that would be interrupted, discontinued or precluded would not be of such small acreage as to be of negligible impact on the farms agricultural production. If the land in question meets the criteria listed above, then under 82-4-227(3)(b) the Department could not allow coal mining to occur on those lands. Based on evidence contained in the petition for declaratory ruling and upon the Department's independent investigation, the Department makes the following Findings of Fact, Conclusions of Law and Declaratory Ruling:

FINDINGS OF FACT

1. That this declaratory ruling pertains to the SW 1/4 SE 1/4 section 6 T6S R46E MPM and the NW 1/4 SE 1/4, E 1/2 W 1/2, and the W 1/2 NE 1/4 of Section 7 T6S R46E MPM, hereinafter referred to as "petition area";

2. That Mr. and Mrs. Theodore Fletcher own the surface of the petition area and Mr. and Mrs. Theodore Fletcher, Gladys Fletcher, D. A. Heidel, Bobby Heidel, Benjamin Heidel, and Camilla Heidel collectively own the mineral interest including the coal in the petition area;

3. That the owners of the surface and mineral of the petition area have petitioned the Department for this declaratory ruling;

4. That Otter Creek flows through the petition area;

5. That Otter Creek as it flows through the petition area is surrounded by unconsolidated streamlaid deposits;

6. That Mr. and Mrs. Theodore Fletcher operate a ranch on which they run on an average of approximately 125 head of cows, 25 to 30 head of yearling replacement heifers, 7 bulls and 3 horses;

7. That the Fletcher ranch includes the petition area;

8. That the Fletchers winter their cattle on their home operation from the end of November until approximately the first of May, feeding the cattle approximately 328 tons of hay during that period;

9. That, of the above referenced 328 tons of hay, approximately 200 tons come from 115 acres of alfalfa contained in seven separate fields along Otter Creek within the petition area;

10. That water from Otter Creek is sufficient for the flood irrigation of the above-referenced seven fields;

11. That the above-referenced fields are flood irrigated by diversion of water from Otter Creek and its tributaries;

12. That the seven above described fields are subirrigated from water occurring naturally in the Otter Creek alluvium;

CONCLUSIONS OF LAW

1. That Otter Creek as it flows through the petition area is contained within an alluvial valley floor, as that term is defined in 82-4-203(2) MCA;

2. That the seven hayfields comprising approximately 115 acres in total contained within the petition area are situated on an alluvial floor, as that term is defined in 82-4-203(2) MCA; and

3. That the seven above-referenced hayfields are flood irrigated and naturally subirrigated within the meaning of 82-4-227(3)(b)(i);

4. That the seven above-referenced fields are not undeveloped rangeland and are significant to agricultural production on the Fletcher operation within the meaning of 82-4-227(3)(b)(i);

DECLARATORY RULING

That, should the Department receive an application pursuant to 82-4-221 for a permit to conduct stripmining operations that would interrupt, discontinue, or preclude farming on the above described seven fields or a portion of those fields that is of more than negligible impact on the agricultural production of the Fletcher operation, the Department would be required by 82-4-227(3)(a)(i) to deny the application or to delete from the permit those fields and any area upon which mining would interrupt, discontinue, or preclude farming on those fields; provided, however, that the Department could allow mining that would preclude

farming on a portion of those fields that is so small so as to be of negligible impact on the agricultural production of the Fletcher operation.

Dated this 4th day of September, 1985.

Dennis Hemmer, Commissioner
Department of State Lands

Certified to the Secretary of State on September 4, 1985.

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend 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

Definitions: Administrative Rules of Montana (ARM) is a looseleaf 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 ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1985. This table includes those rules adopted during the period July 1, 1985 through September 30, 1985, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1985, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1985 Montana Administrative Register.

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