MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the adoption of rules pertaining to Voluntary Payroll Deductions	))))	NOTICE OF PROPOSED ADOPTION OF RULES PERTAINING TO VOLUNTARY PAYROLL DEDUCTIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 29, 1986, the State Auditor and Commissioner of Insurance proposes to adopt the above-stated rules.

2. These rules as proposed by the State Auditor are reasonable and necessary to effectuate the purposes of Section 17-1-121(1), MCA, to control the use of payroll deductions. The rules establish the terms by which automatic deductions from payroll warrants other than those mandated by law can be implemented.

3. The text of the proposed rules is as follows:

RULE I DEFINITIONS For purposes of these rules pertaining to voluntary payroll deductions, the following definitions apply:

(1) The term "financial institutions" means commercial banks, savings and loan associations, and credit unions.

(2) The term "investment programs" means annuities, bonds, retirement programs and other legitimate investment opportunities.

(3) The term "State Auditor" means the State Auditor, Deputy State Auditor or other designated individual.

(4) The term "voluntary payroll deductions" means automatic deductions requested by a state employee to be withheld from his state payroll warrant which are not otherwise provided for by federal or state law, rule or regulation.

(5) The term "charitable non-profit organization" means any charitable, educational or scientific organization which qualifies under federal tax law as an organization able to receive tax deductible contributions.

(6) The term "insurance" means the products offered by insurance companies admitted to conduct business in this state and that have been approved by the insurance commissioner pursuant to the applicable provisions of the laws governing the filing of insurance rates and forms.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

RULE II TYPES OF VOLUNTARY PAYROLL DEDUCTIONS The State Auditor may establish the following types of voluntary payroll deductions in the central payroll system:

(1) The purchase of insurance;
(2) The deposit or payment of money into financial institutions and investment programs; and
(3) Contributions to charitable non-profit organizations.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

RULE III PROCEDURE FOR OBTAINING APPROVAL FOR VOLUNTARY PAYROLL DEDUCTIONS

(1) All requests for voluntary payroll deductions must be in writing to the State Auditor, signed by the authorized representative of the firm or organization. The following information should be provided to the State Auditor:
(a) The purpose of the deductions;
(b) The nature of the deduction;
(c) An agreement not to solicit state employees during normal working hours unless authorized by the appropriate supervisor;
(d) An agreement to remit, upon telephone notice by the State Auditor's office, any corrected balance due the State of Montana by placing a check in the mail within 24 hours; and
(e) Forms for voluntary payroll deduction for approval by the State Auditor.
(f) The name, address and telephone number of the responsible contact person representing the firm or organization.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

RULE IV PAYROLL DEDUCTION APPROVAL

(1) If the purpose of the deduction is for the purchase of insurance the firm or organization offering the insurance program shall have a minimum of 100 state payroll employees enrolled before requesting approval for a deduction. If the purpose of the deduction is for the deposit or payment of money into a financial institution, investment program or contribution to a charitable non-profit organization the firm or organization shall have a minimum of 50 state payroll employees enrolled before requesting approval for a deduction. If at any time the number of employees requesting a deduction falls below the established number, the deductions may be discontinued by the State Auditor.
(2) Approval of voluntary payroll deductions shall be within the discretion of the State Auditor. In considering applications for payroll deduction the State Auditor shall consider the following:
(a) Compliance with all federal and state regulatory requirements;
(b) Applicants may have no on-going consumer investigations;
(c) Any other relevent factors.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

RULE V CONDITIONS FOR REVOCATION OF APPROVAL

(1) The State Auditor may revoke approval for a voluntary payroll deduction if:

(a) The number of state employees authorizing the voluntary payroll deduction falls below 100 for insurance or 50 for financial or charitable non-profit organizations the State Auditor may discontinue the deduction. The State Auditor shall send immediate notice to the authorized representative for the voluntary payroll deduction that the deduction has fallen below the minimum requirement and that the firm or organization has 30 days to meet the requirement; or

(b) There was solicitation of state employees during normal working hours without proper authorization; or

(c) There was noncompliance with any of the factors listed in Rule IV(2)(a), (2)(b), or (2)(c).

(2) If the discontinuation action is taken under Rule V(1)(a) and if the firm or organization does not meet the requirement within 30 days, the deduction may be discontinued. If the discontinuation action by the State Auditor is based on Rule V(1)(b) or V(1)(c), the firm or organization may request a hearing pursuant to the procedures outlined in Section 33-1-701 et seq., MCA. The decision of the State Auditor will be final only when the hearings procedure is complete.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

RULE VI NOTICE OF REVOCATION OF APPROVAL

If the decision is made to revoke approval of a voluntary payroll deduction, the State Auditor shall send immediate notice of the revocation by certified mail to the contact person responsible for the payroll deduction and by interoffice or regular mail to all state agencies.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

RULE VII EFFECTIVE DATE OF REVOCATION OF APPROVAL

Thirty days after notice of the revocation of approval of a voluntary payroll deduction is sent to all state agencies, the State Auditor shall remove the payroll deduction from the central payroll system.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

RULE VIII GRACE PERIOD

Firms or organizations currently holding payroll deduction codes have until May 1, 1986 to comply with Voluntary Payroll Deduction Rules.

AUTH: 17-1-122(3), MCA IMP: 17-1-121(1), MCA

4. These rules are proposed to guide the State Auditor in supervising the fiscal concerns of the state as authorized under Section 17-1-121(1), MCA.

5. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing no later

than January 25, 1986 to:

Richard Gilbert
Deputy State Auditor
State Auditor's Office
Room 270, Mitchell Building or P. O. Box 4009
Helena, MT 59620 Helena, MT 59604-4009

6. If a party who is directly affected by the proposed rules wishes to express data, views and arguments orally or in writing at a public hearing; he must make a written request for a hearing and submit this request along with any written comments he has to Richard Gilbert at the above address no later than January 25, 1986.

7. If the state auditor receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected, by the administrative code committee, by a governmental agency or subdivision or by an association having not fewer than 25 members who will be directly affected by the proposed rules, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the agency to adopt the proposed rules is based on Section 17-1-122(3), MCA, and the rules implement Section 17-1-121(1), MCA.

Andrea "Andy" Bennett
Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 16 day of December, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ATHLETICS

In the matter of the proposed amendments of 8.8.2802 concerning definitions and 8.8.2803 concerning prohibitions	NOTICE OF PROPOSED AMENDMENTS OF 8.8.2802 DEFINITIONS and 8.8.2803 PROHIBITIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 27, 1986, the Board of Athletics proposes to amend the above-stated rules.

2. The proposed amendment of 8.8.2802 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-251, Administrative Rules of Montana)

"8.8.2802 DEFINITIONS (1) through (5) will remain the same.

(6) 'Mud wrestling' is interpreted by the board to include wrestling in jello, natural dirt and water, polyurethene, synthetic, or other unnatural or foreign substances."

Auth: 2-4-304, 405, MCA Imp: 23-3-404, 405, MCA

3. The reason for the amendment is to provide an interpretation of the general term "mud wrestling" to include the substances used in the exotic wrestling event.

4. The proposed amendment of 8.8.2803 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-251, Administrative Rules of Montana)

"8.8.2803 PROHIBITIONS (1) through (4) will remain the same.

(5) ~~Wrestling in mud, polyurethene, synthetic substances, or other natural or unnatural foreign substances is prohibited.~~ Any exotic form of activity which is advertised as a form of wrestling and which involves recognition, a prize, or a purse, or a purse at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, will be interpreted by the board of athletics as a form of wrestling subject to regulation by the state and requiring that the participants be licensed."

Auth: 2-4-304, 405, MCA Imp: 23-3-404, 405, MCA

5. The reason for the amendment is it is the board's interpretation that mud wrestling should be regulated in the interests of safety, because most mud wrestling is conducted in establishments serving alcoholic beverages, whose facilities do not provide for adequate space for the ring or separation of spectators from the wrestling participants.

Spectators often enter the ring freely in the absence of safety barriers. Until now participants have not been required to take physical examinations. There have been no referees present to conduct a fair match. There have not been licensed physicians at ring side. Application to promote mud wrestling events have never been received by the board. No licenses have been requested or issued. Mud wrestling has not been an acceptable sport because it has not adequately provided for the health and safety of the participants or the safety of the spectators. However, mud wrestling events have been advertised. Admission fees have been charged. Recognition, prizes and purses have been awarded. Prior language deleted at the request of the Legislative Council as not being in compliance with Title 23, Chapter 3, MCA.

6. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Athletics, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 23, 1986.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Athletics, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 23, 1986.

8. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF ATHLETICS
JOHN R. HALSETH, M.D.
CHAIRMAN

BY: _____
ROBERT J. WOOD, COUNSEL
DEPARTMENT OF COMMERCE

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

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the proposed amendment of 8.24.405 concerning examinations	)))	NOTICE OF PROPOSED AMENDMENT CONCERNING 8.24.405 EXAMINATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 27, 1986, the Board of Landscape Architects proposes to amend the above-stated rule.

2. The proposed amendment of 8.24.405 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-789, Administrative Rules of Montana)

"8.24.405 EXAMINATIONS (1) through (6) will remain the same.

(7) The board will accept proof of passage of the Uniform National Examination (UNE) in another jurisdiction as satisfactorily meeting the requirements of this section, providing the applicant for licensure submits official verification from the state in which they took the UNE, that they successfully took the UNE within the last five (5) years from the date of application."

Auth: 37-66-202, MCA Imp: 37-66-305, MCA

3. The reason for this change is because the Board of Landscape Architects gives the Uniform National Examination, which is given throughout the United States. As the examination given in Montana is the same examination and in the apparent absence of any statutory constraint to the contrary, the Board wishes to adopt this rule in which it accepts proof of passage of the UNE in another jurisdiction in satisfaction of section 37-66-305, MCA. The Board does not believe the statutes or rules mandate that the UNE must be taken in Montana, the statutes and rules only mandate that the examination taken for licensure must be the UNE.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 23, 1986.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than January 23, 1986.

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

the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directed affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF LANDSCAPE ARCHITECTS
ESTHER HAMEL, CHAIRMAN

BY: _____
ROBERT M. WOOD, COUNSEL
DEPARTMENT OF COMMERCE

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

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

In the matter of the amendment of rules 16.28.201, defining who must report a communicable disease, and 16.28.202, stating what diseases are reportable and setting reporting requirements.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.28.201 AND 16.28.202 (Communicable Diseases-AIDS)

TO: All Interested Persons

1. On January 15, 1986, at 1:30 p.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.28.201, stating who must report cases of communicable disease to the state or local health departments, and 16.28.202, which lists reportable diseases and specifies reporting requirements for each.

2. The proposed amendments replace present rules 16.28.201 and 16.28.202 found in the Administrative Rules of Montana. The proposed amendments would eliminate an obsolete reference to the Preventive Health Services Bureau, add AIDS or exposure to the AIDS-causing virus to the list of reportable diseases, specify the type of information to be reported in each case, require the reports to be submitted by any physician or laboratory either diagnosing AIDS or performing a test to determine whether a person has been exposed to the AIDS-causing virus, and require confirmation of the test or diagnosis by the department's laboratory.

3. The rules as proposed to be amended provide as follows (matter to be stricken is interlined, new material is underlined):

16.28.201 REPORTERS (1) A person, including but not limited to a physician, dentist, nurse, medical examiner, other practitioner, administrator of a health care facility, public school superintendent, or headmaster or administrator of a private school, who knows or has reason to believe that a category A, B, C, or D reportable disease, as specified in ARM 16.28.202, exists shall report as required in ARM 16.28.202 to a local health officer or the department.

(2) A person administering a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopic, cultural, immunological, serological, or other evidence indicative of a disease listed in subsection (2)(c) of this rule shall notify the local health department or the department.

(a) A notification must include the name, date and result of the test performed; the name and age of the person from whom the specimen was obtained; and the name and address of the physician for whom the test was performed. Notifica-

tion may be by telephone, submission of a legible copy of the laboratory report, or submission of a department reporting form which may be obtained from the ~~Preventive Health Services Bureau~~ department.

(b) A laboratory notification submitted in accordance with this rule is confidential and is not open to public inspection.

(c) The diseases subject to notification under subsection (2) of this rule are:

Brucella
Chancroid
Diphtheria
Gonorrhea
Granuloma inguinale
Hepatitis A or B
Leptospirosis
Lymphogranuloma venereum
Rubella (non-immune persons only)
Salmonellosis
Shigellosis
Syphilis
Tuberculosis
Typhoid or Paratyphoid Fever or any other disease listed in ARM 16.28.202(1) through (4).

(3) A physician who diagnoses a case of acquired immune deficiency syndrome (AIDS) must submit to the department and the local health officer the report required by ARM 16.28.202(5)(c).

(4) A physician or laboratory performing a blood test which shows the presence of the antibody to the human T-lymphotropic virus type III must:

(a) submit to the department the report required by ARM 16.28.202(5)(d); and

(b) obtain, if possible, and submit to the department laboratory a second blood specimen in order to confirm the test results.

(5) The administrator of a laboratory in which a test of blood is made to determine whether the antibody to the human T-lymphotropic virus type III is present must submit to the department by the 15th day following the month in which the test was performed a report on a form supplied by the department indicating the number of tests with negative results for that antibody which were done during that month.

AUTHORITY: 50-1-202, 50-17-103, 50-18-105 MCA
IMPLEMENTING: Sec. 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106 MCA

16.28.202 REPORTABLE DISEASES Reportable communicable diseases include:

(1) - (4) Same as existing rule.

(5)(a) Category E diseases and conditions are:

(i) Acquired immune deficiency syndrome (AIDS)

(ii) Potential AIDS, as indicated by the presence of the human T-lymphotropic virus type III antibody.

(b) A category E disease or condition must be reported to the department and, in the case of AIDS, the local health officer of the county from which the report is made by 5:00 p.m. Friday of the week in which the diagnosis of AIDS is made or the test showing potential AIDS is performed.

(c) The report for AIDS must include the information required by the department's communicable disease confidential case report form available from the department.

(d) The report of potential AIDS must include:

(i) the date the test identifying the antibody was performed;

(ii) the name and address of the reporter; and

(iii) the initials of the person tested.

(e) The name of any category E case and the name and street address of the reporter of any such case are confidential and not open to public inspection.

AUTHORITY: Sec. 50-1-202, 50-17-103, 50-18-105, 50-18-106 MCA
IMPLEMENTING: Sec. 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106 MCA

4. The Department is proposing these amendments to the rules because AIDS is a relative new-comer to the United States and has not, therefore, been listed before as a reportable communicable disease, yet should be because of the profound threat to public health it represents. Development of a cure for this as-yet fatal disease and minimization of its spread while the search for a cure continues requires nationwide collection of data from those who develop AIDS (medical history, life style, age, sex, etc.) and those who have been exposed to the virus. A large body of knowledge on the subject has already been developed, but the search for more definitive information must continue. Only the inclusion of AIDS or exposure to the AIDS-causing virus in the list of communicable diseases which must be reported to public health authorities allows the department to collect the Montana data needed to develop adequate control measures. In addition to the primary amendments, a minor one is made correcting the reference to the Preventive Health Services Bureau, which no longer exists.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., no later than January 24, 1986.

6. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the department to make the proposed amendments is based on sections 50-1-202, 50-17-103, 50-18-105, and 50-18-106, MCA; and the rules implement sections 50-1-202, 50-2-118, 50-17-103, 50-18-102, and 50-18-106, MCA.

John J. Drynan MD

JOHN J. DRINAN, M.D., Director

By William J. Opitz

William J. Opitz, Deputy Director

Certified to the Secretary of State December 16, 1985

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules for the certification of mental health professional persons.	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On Wednesday, January 16, 1986, at 9:00 a.m., a public hearing will be held in the Conference room of the Central Office of the Department of Institutions at 1539 11th Avenue, Helena, Montana, to consider the adoption of rules for the certification of mental health professional persons.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana, but are proposed in conjunction with the Department of Social and Rehabilitation Services rules regarding certification of professional persons found in Title 46, Chapter 8, Sub-Chapter 7 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I PROFESSIONAL PERSON CERTIFICATION (1) The purpose of this chapter is to:

(a) adopt a procedure whereby persons may be certified as mental health professional persons as authorized in 53-21-106 MCA,

(b) set forth specific conditions and qualifications which must be met before certification can be obtained, and

(c) set limits of authority and responsibility for persons who have obtained full certification and for persons who have obtained limited certification.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE II EXEMPTIONS Medical doctors who are licensed to practice in Montana by the Board of Medical Examiners are designated mental health professional persons by 53-21-102, MCA and are therefore exempt from the provisions of the following rule.

AUTH: 53-21-106, MCA IMP: 53-21-102, MCA

RULE III DEFINITIONS (1) Professional person means a mental health professional person as defined in 53-21-102(10)(b), MCA.

(2) Full mental health certification means a level of certification which qualifies the person so certified to act as a mental health professional person in all areas described in Title 53, Chapter 21, MCA.

(3) Limited mental health certification means a level of certification which qualifies the person so certified to act as a mental health professional person only in those areas

described in Rule XI of this chapter.

(4) Accredited college or university means a college or university which is accredited by a regional accreditation organization recognized by the Montana board of regents.

(5) Clinical mental health experience means work experience providing direct mental health treatment to a caseload which includes persons who are seriously impaired due to mental illness. Such experience must take place in an agency, organization, or unit within an organization in which the primary purpose is the treatment of mental disorders.

(6) Certification committee means the committee established to rule on applications for certification. The committee consists of two members appointed by the director of the department of institutions, two members appointed by the director of the department of social and rehabilitation services and a chairman appointed by the governor. At least one member of the committee must have full mental health certification and at least one member must have full developmental disabilities certification.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE IV APPLICATION PROCESS (1) Application for professional person certification will be made on forms provided by the department of institutions.

(2) An applicant must submit documentation of academic training, documentation of clinical mental health experience, letters of reference testifying to clinical competence, and an endorsement by a professional person with full mental health certification indicating that the applicant fully understands the responsibilities of a professional person. In addition, an applicant for mental health certification must successfully complete a written examination covering knowledge of Title 53, Chapter 21, MCA and the mental health services in the state.

(3) The certification committee will meet as necessary, but no fewer than four times per year, to review applicants. Applicants will be notified in writing of the decision of the committee. The certification committee may grant certification, deny certification, or request additional information from the applicant.

(4) The certification committee has the authority to rule on the relevancy, adequacy and appropriateness of the educational and experiential backgrounds of applicants.

(5) Any denial of certification may be appealed pursuant to Rule VII.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE V EXPIRATION AND RENEWAL OF CERTIFICATION (1) Professional person certification will expire three years from the date of certification.

(2) The professional person will be notified at least 30

days prior to the expiration date and will be provided a renewal form to record the information required by the certification committee.

(3) The certification committee will renew certification upon submission of proof that the individual continues to perform satisfactorily in direct treatment of mentally ill persons or direct supervision of mental health treatment programs.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE VI REVOCATION OF CERTIFICATION (1) The certification committee may revoke an individual's certification for any of the following reasons:

(a) misrepresentation of professional person authority;

(b) exercising professional person authority regarding the treatment of a patient without personal knowledge of the patient and/or situation;

(c) conduct in violation of patient rights as cited in Title 53, Chapter 21, Part 1, MCA.

(2) The certification committee will investigate any allegations against a professional person which falls into one of the above categories and give the professional person an opportunity to rebut the allegations prior to making a decision regarding revocation of certification.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE VII APPEAL PROCESS (1) Any action of the certification committee concerning certification denial or revocation may be appealed to the director of the department of institutions. All findings and actions of the director shall be binding on the certification committee.

(2) The notice of appeal shall be directed to the director of the department of institutions who may appoint a hearings officer.

(3) The appeal shall be in writing setting forth the nature of the grievance and arguments supporting the grievance and actions desired. The appealing party may also present oral argument before the director or hearings officer.

(4) All parties to the appeal shall be notified in writing ten days prior to the hearing. The written notice shall contain as a minimum, the date, day, time and location of the hearing.

(5) The guidelines for conducting the hearing shall be established by the director.

(6) If any party to the appeal is dissatisfied with the written decision of the director, he may appeal to the appropriate district court.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE VIII REQUIREMENTS FOR FULL MENTAL HEALTH CERTIFICATION (1) Applicants for full mental health certification must demonstrate successful performance as mental health clinicians, a thorough understanding of the statutory responsibilities of a mental health professional, person and knowledge of the full range of mental health services in Montana. In addition, to obtain full mental health certification a professional person must meet one of the following minimum qualifications:

(a) Doctoral degree from an accredited college or university in a field of study which is clearly identified as preparing the student for the clinical treatment of mentally ill persons plus at least six months of full time clinical mental health experience following receipt of the doctoral degree; or

(b) Master's degree in social work from an accredited college or university including at least three courses in therapeutic techniques for treating mentally ill persons plus at least one year of full time clinical mental health experience following receipt of the master's degree.

(c) Master's degree in clinical or counseling psychology from an accredited college or university plus at least one year of clinical mental health experience following receipt of the master's degree.

(d) Master's degree in psychiatric nursing from an accredited college or university plus at least one year of clinical mental health experience following receipt of the master's degree.

(e) Master's degree in a human services field other than social work, clinical psychology, counseling psychology, or psychiatric nursing from an accredited college or university with a preponderance of course work and practicum experience in a clinical mental health area plus at least two years of full time clinical mental health experience following receipt of the master's degree.

(f) Registered nurse with a bachelor's degree in nursing from an accredited college or university plus five years of full time clinical mental health experience following receipt of the bachelor's degree.

(g) Applicants with a master's degree in a field which is relevant to some aspect of treatment of the mentally ill plus at least 5 years of clinical mental health experience may be granted full mental health certification based upon a special review by the certification committee of the individual's clinical mental health experience and letters of reference. Such applicants must demonstrate a degree of competence and knowledge which is, in the opinion of the certification committee, equivalent to that of individuals with the training and experience listed above.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE IX PRIVILEGES OF FULL MENTAL HEALTH CERTIFICATION (1) A professional person with full mental health certification is qualified to:

(a) approve applications for voluntary admissions to mental health facilities.

(b) participate as a mental health professional person in involuntary commitments and recommitments to mental health facilities.

(c) concur in the emergency detention of a person believed to be seriously mentally ill.

(d) supervise treatment plans of inpatients.

(e) authorize restrictions of patients' rights when such restrictions are necessary to achieve treatment goals.

(f) authorize restraint or isolation.

(g) supervise non-professional staff.

(h) order the discharge of a patient during, or at the end of, the initial commitment period.

(i) request a court-ordered release to alternative treatment.

(j) request a conditional release from a mental health facility.

(k) request the readmission of a conditionally released patient.

(l) review and initial, within 24 hours, summaries of extraordinary incidents involving patients.

(2) Mental health facilities may impose stricter standards than those in Rule VIII when defining staff privileges.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE X REQUIREMENTS FOR LIMITED MENTAL HEALTH CERTIFICATION (1) Applicants for limited mental health certification must demonstrate successful performance as mental health clinicians, and a thorough understanding of the statutory responsibilities of a professional person with limited mental health certification. In addition, a professional person with limited mental health certification must meet one of the following minimum qualifications:

(a) Doctoral degree from an accredited college or university in a field of study which is clearly identified as preparing the student for the clinical treatment of mentally ill persons plus at least 3 months of full time clinical mental health experience following receipt of the doctoral degree; or

(b) Master's degree in social work from an accredited college or university system including at least three courses in therapeutic techniques for treating mentally ill persons plus at least 3 months of full time clinical mental health experience following receipt of the master's degree; or

(c) Master's degree in clinical or counseling psychology from an accredited college or university plus at least 3

months of full time clinical mental health experience following receipt of the master's degree; or

(d) Master's degree in psychiatric nursing from an accredited college or university plus at least 3 months of full time clinical mental health experience following receipt of the master's degree; or

(e) Master's degree in a human services field other than social work, clinical psychology, counseling psychology or psychiatric nursing from an accredited college or university with a preponderance of course work and practicum experience in a clinical mental health area plus at least 3 months of full time clinical mental health experience following receipt of the master's degree; or

(f) Master's degree from an accredited college or university in a human services field which is relevant to some aspect of treatment of the mentally ill plus three years of full time clinical mental health experience following receipt of the master's degree; or

(g) Registered nurse plus one year of full time clinical mental health experience following licensure as a nurse, or

(h) Bachelor's degree in psychology or social work from an accredited college or university plus at least three years of full time clinical mental health experience following receipt of the bachelor's degree, or

(i) Bachelor's degree from an accredited college or university in a field, other than psychology or social work, which is relevant to some aspect of treatment of the mentally ill plus at least five years of full time clinical mental health experience.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

RULE XI PRIVILEGES OF LIMITED MENTAL HEALTH CERTIFICATION (1) A professional person with limited mental health certification is qualified to:

(a) supervise treatment plans of inpatients.

(b) authorize restriction of a patients rights when such restrictions are necessary to achieve treatment goals.

(c) authorize restraint or isolation.

(d) supervise non-professional staff.

(2) mental health facilities may impose stricter standards than those in Rule X when defining staff privileges.

RULE XII CONTINUATION OF CERTIFICATION Persons who are certified mental health professional persons under ARM 46.8.701-704 as of the date of final adoption of these rules will maintain full mental health certification until the expiration of their certification. They will be notified at least 30 days prior to the expiration date and given an opportunity to request renewal of certification. The credentials of those individuals wishing to maintain

certification will be reviewed by the certification committee and full or limited certification will be granted based upon the credentials. Individuals dissatisfied with this determination may appeal pursuant to Rule VII.

AUTH: 53-21-106, MCA IMP: 53-21-106, MCA

4. The department is proposing the rules to comply with 53-21-106, MCA establishing a procedure for certifying mental health professional persons, setting qualifications and conditions for certification, and establishing an appeals process.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than January 23, 1986.

6. Legal Counsel, 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 section 53-21-106, MCA, and the rules implement section 53-21-106, MCA.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State December 13, 1985.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new rules for voluntary admissions to Montana State Hospital	)))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On January 16, 1986, at 2:00 p.m., a public hearing will be held in the conference room of the central office of the Department of Institutions at 1539 11th Avenue, Helena, Montana, to consider the adoption of proposed new rules for voluntary admissions to Montana State Hospital.

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

3. The proposed rules provide as follows:

RULE I VOLUNTARY ADMISSION PROCEDURE, MONTANA STATE HOSPITAL (1) The purpose of this chapter is to assure that voluntary admissions to Montana state hospital comply with the procedure established by Chapter 603, 1985 Legislative Session, to assure that persons are not admitted to Montana state hospital if adequate treatment is available to them in the mental health region, and to establish a procedure whereby persons may be refused admission if the requirements of Chapter 603, 1985 Legislative Session are not met.

AUTH: 53-21-111 and 53-1-203, MCA, IMP: 53-21-111, MCA

RULE II DEFINITIONS (1) Department means the department of institutions.

(2) Professional person means a medical doctor, or a person who has been certified as a professional person by the department pursuant to 53-21-106 MCA.

(3) Hospital means Montana state hospital, Warm Springs campus.

(4) Superintendent means the superintendent of Montana state hospital.

(5) Region means a mental health region as described in 53-21-204 MCA.

(6) Center means a comprehensive community mental health center as described in 53-21-201 MCA.

(7) Director means the person appointed by a regional mental health corporation board to administer a comprehensive mental health center.

(8) Designee means a professional person, employed by the center who is appointed by the director to act on his/her behalf for the purposes of this chapter.

(9) Applicant means a person at least 18 years of age who is seeking voluntary admission to the Montana state hospital.

AUTH: 53-21-111 and 53-1-203, MCA IMP: 53-21-111, MCA

RULE III APPLICATION PROCEDURE (1) The following form

shall be completed by the applicant, or by an interested person on behalf of the applicant, and must be signed by the applicant in the presence of a witness.

APPLICATION FOR VOLUNTARY ADMISSION

(a) I, _____, hereby voluntarily apply for admission to the Warm Springs campus, Montana state hospital, in order that my mental condition may be examined, tested, observed, and treated in accordance with Title 53, Chapter 21, Montana Code Annotated.

(i) I was born on _____ / _____ / _____
month day year

(ii) I live at _____
address city state

(iii) My occupation is _____

(iv) I have completed _____ years of education

(v) I am [ ] single [ ] married [ ] separated

(vi) I am [ ], am not [ ], a veteran.

(vii) My social security number is _____

(viii) I believe I need psychiatric treatment because:

_____

_____

_____

_____

(ix) My nearest relative is _____
name

_____
address city state zip

(b) I understand that I may make a written request to be released from the hospital at any time, and that the hospital has the right to detain me for no more than five days, excluding weekends and holidays, after receiving my request for release. I understand that a petition to involuntarily commit me may be filed if the hospital's professional staff believe I should not be released when I request it.

I also understand that the cost of my transportation to the hospital will be provided by myself, my parents/guardians (if applicable,) or by the welfare department of the county in which I reside.

DATED this ____ day of _____, 19 __ at _____, Montana.

_____ _____
WITNESS VOLUNTARY APPLICANT

_____ _____
Witness Address City State

(2) The witness shall attest to the fact that the

applicant voluntarily signed the form.

(3) If the witness is not a professional person, the mailing address of the witness shall be provided on the form to assure the authenticity of the applicant's signature.

(4) An applicant shall not be refused admission simply because the form required in (1)(a) and (b) of this rule is not totally complete, so long as the applicant's signature and the signature of the witness is affixed.

(5) The following form shall be completed by a professional person and the director or his/her designee, who may also serve as the professional person.

(a) CERTIFICATE

APPLICATION FOR VOLUNTARY ADMISSION

I, _____, a mental health professional person, certify that:

(i) the applicant is suffering from a mental disorder;

(ii) the mental health region in which the applicant resides is unable to provide adequate facilities for the evaluation and treatment of the applicant; and,

(iii) the applicant requires inpatient treatment.

(b) I wish to make the following remarks concerning the applicant's mental and physical condition:

_____

_____

_____

_____

DATED this ___ day of _____, 19 __ at _____, Montana.

_____

PROFESSIONAL PERSON/CERTIFICATE NUMBER

(c) CONFIRMATION

I, _____, the regional mental health director, or his/her designee or region number _____, in which the applicant resides confirm that facilities are not available in this region at which the applicant can be adequately evaluated and treated.

_____

Signature Date

AUTH: 53-21-111 and 53-1-203, MCA IMP: 53-21-111, MCA

RULE IV CONFIRMATION (1) Each director shall appoint designees as required to assure that an applicant's geographical location within the region does not prevent the prompt confirmation required in 5(c) of rule III.

(a) A list of authorized designees shall be provided to the hospital and to all professional persons within the region, and the director shall keep the list current.

(b) The hospital shall maintain a current list of professional persons, and a current list of authorized designees at appropriate locations within the hospital.

(c) Professional persons attempting to admit an applicant to the hospital shall provide the following information to the designee.

(i) patient's age
(ii) psychiatric diagnosis
(iii) patient's symptoms
(iv) recommended treatment or evaluations
(v) relevant medical/psychiatric history

(d) The designee may request an evaluation of the applicant to determine whether adequate resources are available in the region to treat the applicant.

(e) Such private and public resources include, but are not limited to:

(i) outpatient psychotherapy
(ii) outpatient medication therapy
(iii) day treatment services
(iv) transitional living/group home placement
(v) short term local hospitalization

(f) If the designee determines that appropriate services are available in the region, he/she shall inform the referring professional person and shall assist in making proper arrangements.

(g) If the designee determines that appropriate services are not available in the region, he/she shall inform the professional person, in which case the professional person may:

(i) contact another region if he/she believes appropriate services are available in that region, or

(ii) process the voluntary admission form and arrange for transportation to the hospital.

(h) If the confirmation is obtained from the designee by phone, which prevents the designee from signing the voluntary admission form, the professional person shall provide the designee's name and the date of confirmation.

AUTH: 53-21-111 and 53-1-203, MCA IMP: 53-21-111, MCA

RULE V DIRECT APPLICATION (1) Applicants who apply in person for admission to the hospital must be:

(a) at least 18 years of age, and
(b) suffering from a mental disorder, and
(c) in the opinion of a hospital professional person either

(i) an immediate threat to himself or others, or
(ii) in need of treatment and security available only at the hospital.

(2) If the conditions described in (1)(a), (b), and (c) are met, a hospital professional person may certify the applications as required and the applicant may be admitted.

(3) If only the conditions described in (1) (a), and (b) are met and the hospital staff determines that the

applicant requires mental health treatment more appropriately provided by a center, the applicant may be treated until appropriate accommodations are made.

(4) If the hospital staff determines that the applicant does not require mental health treatment, the applicant may be refused admission.

(a) A written record of each such refusal must be maintained by the hospital detailing the reasons for the refusal and signed by a professional person.

AUTH: 53-21-111 and 53-1-203, MCA IMP: 53-21-111, MCA

RULE VI INCOMPLETE APPLICATION (1) An applicant who is transported to the hospital accompanied by the signed completed form required in Rule III (1)(a)(b) but lacking the certification or confirmation required by Rule III (5)(a) (b) and (c) shall be subject to the provisions of Rule (V), (1), (2), (3) and (4). AUTH: 53-21-111 and 53-1-203, MCA IMP: 53-21-111, MCA

4. The department is proposing these rules to establish a voluntary admission procedure to comply with Chapter 603, 1985 Legislative Session assuring persons are not admitted to Montana state hospital if adequate treatment is available to them in the mental health region, and establishing a procedure to refuse admission if requirements are not met.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Legal Counsel, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than January 23, 1986.

6. Legal Counsel, 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 section 53-1-203, MCA, and the rules implement section 53-21-111, MCA.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State December 16, 1985.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules setting forth an admission policy for the Center for the Aged and REPEAL OF 20.14.101, 20.14.102, and 20.14.103.	))))))	NOTICE OF PROPOSED ADOPTION OF RULES FOR ADMISSION TO MONTANA CENTER FOR THE AGED AND REPEAL OF 20.14.101, 20.14.102, AND 20.14.103. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 1, 1986, the department of institutions proposes to adopt the above stated rules.

2. The proposed rules replace sections 20.14.101, 20.14.102 and 20.14.103 currently found in the Administrative Rules of Montana. ARM 20.14.101, 20.14.102, and 20.12.103 are proposed to be repealed.

3. The proposed rules provide as follows:

RULE I MISSION STATEMENT (1) The Montana center for the aged is a licensed residential facility for the long term care and treatment of persons 55 years of age or older, who have chronic mental disorders associated with the aging process, and who require a level of care not available in the community, but who cannot benefit from the intensive psychiatric treatment available at Montana state hospital. The center is not established as a transitional mental health facility because of the chronic nature of its residents' mental disorders. However, the center may discharge residents who can function in, or benefit from, community settings.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

RULE II DEFINITIONS (1) Mental disorder means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(2) Professional person means a person as defined in 53-21-102 (10) MCA.

(3) Center means the Montana center for the aged.

(4) Superintendent means the superintendent of the center for the aged.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

RULE III ADMISSION CRITERIA (1) Eligibility for admission to the Montana center for the aged is determined without regard to race, color, sex, culture, social origin or condition, political or religious ideas, or ability to

pay for the cost of care.

(2) To be eligible for admission a person must:

(a) be in need of long term care,

(b) have a chronic mental disorder associated with the aging process,

(c) be 55 years of age or older, and

(d) meet the following criteria:

(i) The person's mental disorder renders him/her unable to function in the community of residence or in appropriate and available services elsewhere in Montana;

(ii) The person does not require acute hospital care, and/or psychiatric treatment as provided by Montana state hospital;

(iii) The person's mental health status has been stable and active treatment is not needed;

(iv) The person does not require skilled nursing care and is ambulatory or, if confined to a wheelchair, is able to assist in transfer to and from the wheelchair;

(v) The person must have received a comprehensive medical evaluation within 60 days prior to application. The medical evaluation must include a complete blood count, urinalysis, serum multichemistry, thyroid function, chest x-ray, and an EKG;

(vi) The person must have received a mental health evaluation and recommendation for admission by a professional person within 60 days prior to application;

(vii) The person must not be persistently combative or assaultive;

(viii) The person must be admitted on a voluntary basis by self or a legally appointed guardian. If there is a question of competency, the person must have a legal guardian prior to admission.

(e) Patients referred from Montana state hospital who meet the above criteria will be given priority for admission to the center.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

RULE IV APPLICATION PROCEDURES (1) To be considered for admission, the applicant must submit to the superintendent of the center;

(a) A completed admissions packet;

(b) A medical history including the results of a comprehensive medical evaluation completed no more than 60 days prior to the date of application;

(c) A verification that a mental health evaluation by a professional person has been completed no more than 60 days prior to the date of application.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

RULE V ADMISSIONS PROCEDURES (1) The superintendent will review all application materials and determine the applicant's eligibility for admission.

(2) The superintendent or his/her designee will notify the applicant, in writing, of the decision regarding eligibility.

(3) The eligible applicant will be admitted immediately if there is a bed available which is appropriate for a person of the applicant's sex.

(4) If there is no bed immediately available, the applicant will be placed on a waiting list.

(5) Except for priority admissions as described in Rule III (2)(e), the center will admit applicants from the waiting list on the basis of the date of determination of eligibility for admission as beds become available.

(6) The superintendent may waive the use of the waiting list if:

(a) The location of an available bed requires that the next person admitted be of a particular sex, or

(b) There is an applicant whose current living conditions require that he or she be admitted immediately.

(7) When two or more applicants have equal priority on the waiting list, the person with the longest documented Montana residence will be admitted first.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

RULE VI TREATMENT (1) Treatment provided at the center focuses on maintaining the resident's physical and mental functioning to the extent possible. Residents will be provided medical, nursing, dietary, recreation and social services through an individualized care plan for each resident. The center may utilize the services of the regional mental health center when individual residents might benefit from such services.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

RULE VII TRANSFER AND DISCHARGE CRITERIA (1) The superintendent or his/her designee may authorize the transfer of a center resident to a licensed hospital in a medical emergency without the resident's consent.

(2) The director of the department of institutions, may authorize the transfer of a center resident to Montana state hospital for a period not to exceed 10 days.

(3) Residents of the center may be voluntarily admitted to Montana state hospital pursuant to 53-21-111 MCA, or involuntarily committed pursuant to 53-21-114 through 53-21-127 MCA.

(4) A legally competent resident will be discharged from the center within five days following a written request from the resident. If guardianship for the health care of the resident has been established, the written request must be made by the guardian.

(5) The superintendent may also discharge a resident after making proper arrangements if:

(a) The resident consistently displays behavior which violates other residents' rights;

(b) The resident's behavior poses a consistent and/or serious danger to other residents, staff or visitors.

(c) The resident requires specialized care or treatment not available at the center;

(d) The resident is able to function in a setting requiring greater independence;

(e) The resident purposefully refuses to follow rules, regulations and/or prescribed treatment plans.

AUTH: 53-21-411, MCA IMP: 53-21-412 and 53-21-413, MCA

RULE VIII APPEAL PROCEDURE (1) Applicants who are denied admission, or residents who are involuntarily discharged may appeal by submitting, in writing, their reasons for appealing the decision to the Director of the Department of Institutions, 1539 11th Avenue, Helena, MT 59620 within 30 days of the denial of admission.

(2) The director will respond to the appeal, in writing, within 30 days of receipt of the appeal.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

RULE IX APPLICATION MATERIALS (1) Application packets are available by writing to:

(a) The superintendent of the Montana Center for the Aged, 800 Casino Creek Drive, Lewistown, Montana 59457.

AUTH: 53-21-411, MCA IMP: 53-21-411, MCA

4. These proposed rules are being adopted to comply with the admission and eligibility requirements of 53-21-411, MCA. The rules will specify the eligibility requirements, the admission process and appeals to the Montana center for the aged at Lewistown.

5. Interested parties may submit their data, views, or arguments in writing to the Legal Unit, Department of Institutions, 1539 11th Ave, Helena, MT 59620, No later than January 28, 1986.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than January 28, 1986.

7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 17 of the 173 residents of Montana center for the aged as of this date.

CARROLL V. SOUTH, Director
Department of Institutions

Certified to the Secretary of State December 16, 1985.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of a rule regarding a relative value fee schedule for medical, chiropractic, and paramedical services under Section 39-71-704, MCA	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE PERTAINING TO A RELATIVE VALUE FEE SCHEDULE FOR MEDICAL, CHIROPRACTIC, AND PARA-MEDICAL SERVICES UNDER SECTION 39-71-704, MCA

TO: All Interested Persons.

1. On January 16, 1986, at 10:00 o'clock a.m., a public hearing will be held in Room 201 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of a rule pertaining to a relative value fee schedule for medical, chiropractic, and paramedical services under Section 39-71-704, MCA.

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

RULE I RELATIVE VALUE FEE SCHEDULE

(1) A relative value fee schedule for medical, chiropractic and paramedical services, excluding hospital services, shall be established annually by the division, and become effective in January of each year. The Montana Relative Value Fee Schedule may be referred to as MRVS. An insurer is not obligated to pay more than the maximum fee calculated from the schedule for the particular services rendered.

(2) The relative value fee schedule shall be established containing maximum fees for the following specialties:

(a) Medicine
(b) Anesthesia
(c) Surgery
(d) Radiology--Professional Component
(e) Radiology--Total
(f) Pathology
(g) Dental

(3) The Division adopts by reference, for the use of procedure codes and relative values contained therein, the following documents:

(a) The Official Medical Fee Schedule for Services Rendered under the California Worker's Compensation Laws, hereafter referred to as OMFS, for use with the medicine, surgery, radiology--professional component, radiology-- total, and pathology groups. Copies of this

document are available from the California Workers' Compensation Institute, 120 Montgomery Street, Suite 715, San Francisco, California, 94104, or from the Montana Division of Worker's Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601.

(b) Any OMFS procedure by code number, or procedural definition added, revised, modified, or deleted in the fourth edition of the Physician's Current Procedural Terminology, hereafter referred to as CPT, published by the American Medical Association in 1985, which will take precedence over procedures or procedural definitions in the OMFS. Copies of this document may be obtained from the American Medical Association, Order Department OP-341-5, P. O. Box 10946, Chicago, Illinois, 60610, or the Montana Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601.

(c) The Anesthesia section of the 1985 edition of the Relative Value Guide, hereafter referred to as ASA, published by the American Society of Anesthesiologists, for use with the Anesthesia group. Copies of this document may be obtained from the American Society of Anesthesiologists, 515 Busse Highway, Park Ridge, Illinois, 60068, or the Montana Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601.

(d) The dental code section of the 1985 Health Care Procedure Coding Schedule, hereafter referred to as HCPCS, published by the Health Care Financing Administration of the U. S. Department of Health & Human Services for use with the dental group. Copies of this document (Doc. No. 01-060-00168-2) are available from the Superintendent of Documents, U. S. Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401, or the Montana Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601.

(4) The conversion factor of the fee schedule and relative values not established in the documents adopted by reference in (3) shall be based on the median fees billed to the State Compensation Insurance Fund during the year preceding the adoption of the schedule and calculated by the following means:

(a) The general method for determining the median of billed medical fees shall be:

(i) determine the procedure within each specialty group with the most billings.

(ii) determine if the procedure with the most billings meets statistical validity tests.

(iii) calculate the median value for the procedure.

(b) A 95 percent level of confidence will be maintained in computing each relative unit value or determinant of relativity.

(c) Analysis will not be conducted on a specialty group having less than four procedures or on a procedure having

less than four billings. If a specialty group has less than four procedures, it will be grouped with another compatible specialty group. If another compatible group is not determined, the specialty group will be published as "Relativity Not Established" (RNE).

(d) The manipulation or imputation of data for any specific procedure will be permitted when statistically valid.

(5) Unless otherwise provided herein, insurers shall use instructions, definitions, and explanations contained in the OMFS, CPT, ASA or HCPCS when determining procedures for payment of fees.

(a) The maximum fee is calculated by multiplying the procedure's relative unit value by the procedure group's conversion factor. A conversion factor applicable to one procedure group is not applicable to any other procedure group (i.e., a surgical conversion factor cannot be used with a procedure in the medical group).

(b) Procedures listed in the division fee schedule as "Relativity Not Established" (RNE) or newly developed procedures for which the division has not established a relative unit value will be paid on a case-by-case basis.

(c) The value of procedures whose relativity is identified as "By Report" (BR) or "Individual Consideration" (IC) will be determined individually upon billing because the service is too unusual or variable to be assigned a standard unit value.

(d) Bills for procedures whose relativity is identified as "Service" (SV) must designate the specific procedures included therein.

(e) Chiropractic procedures listed in OMFS should be limited to the following codes: 90000, 90010, 90040, 97000, 97050, 72040, 72050, 72052, 72070, 72100, 72110, 72114, 72220, 73000, 73010, 73020, 73060, 73070, 73100, 73120, 73500, 73550, 73560 and 73590.

(f) The following medicine group procedure codes may be used only when appropriate skills and time warrant use of such procedures and billings for such procedures must be accompanied by detailed examination and operative notes: 90015, 90020, 90026, 90060, 90070, 90080, 90085, 90220, 90330, 90270, 90610, 90620, 90625, and 90630. Definitions for such procedures must be based on CPT.

(g) Follow-up days in OMFS for the surgery group must be used when determining acceptable levels of service after surgery.

AUTH: 39-71-203, MCA; IMP: 39-71-704, MCA

3. Section 39-71-704, MCA, as amended by the Legislature in 1985, requires the Division to establish a relative value fee schedule for medical, chiropractic, and paramedical services, excluding hospital services, provided for in Chapter 71, of Title 39, MCA. This schedule is to be established annually and become effective in January of each

year. Medical fees are to be based on the median fees billed to the State Compensation Insurance Fund during the year preceding the adoption of the schedule. The statute requires the Division to adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees based on the California Relative Value Studies. These rules are proposed in order to comply with the specific mandate of Section 39-71-704, MCA.

4. Interested persons may present their data, views and arguments either orally or in writing at the hearing. Written arguments, views or data may also be submitted to the Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than January 24, 1986.

5. Mr. Harold Wilcox, Administrative Officer of the Division, has been designated to preside over and conduct the hearing.

6. The authority of the Division to adopt the proposed rules is based on Section 39-71-203, MCA, and implements Section 39-71-704, MCA, as amended by Chapter 422 of the Laws of 1985.

GARY L. BLEWETT,
Administrator
Div. of Workers' Compensation

Certified to the Secretary of State December 16, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I through VI relating to net proceeds reporting requirements for new production of oil and gas.	NOTICE OF PUBLIC HEARING on the Proposed Adoption of New Rules I through VI relating to net proceeds reporting requirements for new production of oil and gas.

TO: All Interested Persons:

1. On January 15, 1986, at 9:00 a.m., a public hearing will be held in the Third Floor Conference Room, Mitchell Building, Fifth & Roberts Streets, Helena, Montana, to consider the adoption of new rules I through VI, relating to net proceeds reporting requirements for new production of oil and gas.

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

3. The new rules as proposed to be adopted provide as follows:

RULE I NEW PRODUCTION REPORTING REQUIREMENT (1) Effective July 1, 1985, an operator must report production from an oil or gas lease on a quarterly basis if that lease has not had production during the 5-year period immediately preceding the first month of production in the quarter for which the production is reported. The quarterly report must be submitted to the department on or before the last day of October, January, April, and July. If production from a lease is required to be reported on a quarterly basis, such reporting requirement shall remain in effect throughout the duration of the lease. If a well is drilled on a currently producing lease, production from that well is not considered new production. For purposes of this rule, the definitions of lease and unit shall be those set forth in ARM 42.22.1201.

AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-602 MCA, and Sec. 2, Ch. 695, L. 1985.

RULE II NET PROCEEDS COMPUTATION - QUARTERLY FILINGS (1) Net Proceeds for purposes of new production from an oil or gas lease are the equivalent of gross proceeds without a deduction for excise taxes on the product yielded from such lease for the period covered by the statement. There shall be deducted from the gross proceeds, the value of petroleum and other mineral or crude oil or cubic feet of natural gas produced and used in the operation of the lease from which the petroleum or other mineral or crude oil or natural gas was produced. The gross value shall not include the value of natural gas exempt from taxation under 15-23-612, MCA, nor the value of governmental royalties from oil

and gas production which are exempt under 15-6-201, MCA.
AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-603 MCA, and Sec. 3, Ch. 695, L. 1985.

RULE III COMMENCEMENT OF NEW PRODUCTION (1) In determining whether production from a lease is deemed new production, the 5-year period of inactivity shall be calculated from the last day of the calendar month immediately preceding the month in which either:

(a) natural gas is placed into a natural gas distribution system, or

(b) a pumping unit begins production from a crude oil well, or

(c) in the case of a free flowing well, a flow restriction device is installed.

AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-601 MCA, and Sec. 1, Ch. 695, L. 1985.

RULE IV UNITIZED LEASES - NEW PRODUCTION DETERMINATION (1) A unitized or communitized or pooled lease will be deemed to have existing production and will not qualify under the provisions of 15-23-601(2), MCA, if the lease involved has had production attributed to it from the unit or communitized or pooled area. A unitized or communitized or pooled lease need not have a well located on its surface to be considered to have existing production. If a lease is included within a unit, community, or pool but has not had production attributed to it from the unit, community, or pool for the previous 5 years, any production from that lease will be deemed to be new production.
AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-601 MCA, and Sec. 1, Ch. 695, L. 1985.

RULE V PRODUCTION FROM NEW FORMATION OF CURRENTLY PRODUCING LEASE (1) Any production occurring on or attributable to a lease within the last 5 years will disqualify that lease from having the new production classification. Production from a new formation which has not produced oil or gas, but is on a lease that has had production during the preceding 5 years will not qualify as new production.
AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-601 MCA, and Sec. 1, Ch. 695, L. 1985.

RULE VI CHANGES IN LEASES (1) The lease cannot be changed by subdividing or recombining so as to make land, formerly part of a producing lease, become part of a nonproducing lease and thereby qualify it for the new production classification. Once a particular parcel of land is part of a producing lease, a lease containing such land cannot qualify for the new production classification unless production on the original lease has ceased for 5 years.
AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-601 MCA, and Sec. 1, Ch. 695, L. 1985.

4. The proposed new rules implement Chapter 695, Laws 1985, sections 1 through 3 which amended §§ 15-23-601, 15-23-602, and 15-23-603, MCA. This law provides a uniform net proceeds tax rate and the quarterly filing of net proceeds tax returns for new oil and gas production.

Proposed new Rule I clarifies the effective date of these rules and reporting requirements for new production.

Proposed new Rule II clarifies the definition of the gross value of new production for tax reporting purposes.

Proposed new Rule III clarifies the calculation of the 5-year period of nonproduction which is necessary for oil and gas production to qualify as new production.

Proposed new Rule IV clarifies how new production will be determined when a lease has been unitized.

Proposed new Rule V clarifies the definition of new production as that definition relates to production of oil or gas from different formations.

Proposed new Rule VI is necessary to prevent changes in leases solely to qualify oil or gas production from the lease for the new production classification.

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 January 23, 1986.

6. Allen B. Chronister, 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 § 15-23-108, MCA, and § 22, Ch. 695, L. 1985, and implement §§ 15-23-601, 15-23-602, 15-23-603, and §§ 1 through 3, Ch. 695, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rule requiring a written request for a refund below a certain amount before refund will be sent out and an exception to this rule.	)))))	NOTICE OF ADOPTION OF RULE I 2.4.200 MINIMUM REFUNDS RULE II 2.4.201 EXCEPTIONS TO MINIMUM REFUND RULE

TO: All Interested Parties.

1. On October 31, 1985, the Department of Administration published notice of proposed rules concerning minimum refunds due from state agencies at pages 1598-1599 of the Montana Administrative Register, issue number 20.

2. The Department of Administration has adopted the rules as proposed.

3. No comments or testimony have been received.

4. The authority for the rules is 17-1-102, MCA, and they implement 17-8-203, MCA.

Ellen Feaver

Ellen Feaver, Director
DEPARTMENT OF ADMINISTRATION

Certified to the Secretary of State December 16, 1985

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to probation for state employees	)	NOTICE OF THE ADOPTION OF ARM 2.21.3801 THROUGH 2.21.3803, 2.21.3807 THROUGH 2.21.3812 AND 2.21.3822 RELATING TO THE ADMINISTRATION OF PROBATION FOR STATE EMPLOYEES

To: All Interested Persons.

1. On August 15, 1985, the department of administration published notice of the proposed adoption of ARM 2.21.3801 through 2.21.3803, 2.21.3807 through 2.21.3812 and 2.21.3822 relating to the administration of probation for state employees at page 1043 of the 1985 Montana Administrative Register, issue number 15.

2. The rules have been adopted with the following changes:

2.21.3803 DEFINITIONS (1) - (6) Same as proposed rule.

(7) "Promotion" means the assignment of an employee or a position to a higher grade~~,~~. ~~except where the position moves to a higher grade as the result of reclassification.~~

(8) - (11) Same as proposed rule.

2.21.3809 EXTENSION OF PROBATIONARY PERIOD (1) An agency may extend the length of a probationary period ~~up to an additional~~ for a maximum of 6 additional and consecutive calendar months. ~~The agency may not extend a probationary period more than 6 calendar months.~~

(2) - (3) Same as proposed rule.

2.21.3811 PROMOTED OR REASSIGNED EMPLOYEES ~~WITH PERMANENT STATUS~~ (1) An employee who has attained permanent status and who is internally promoted, ~~or internally~~ reassigned or whose position is reclassified shall retains permanent status in the new position, as provided in ~~Rule IV,~~ ARM 2.21.3807, ~~with the following exception~~, unless the employing agency has adopted a policy in compliance with ARM 2.21.1205, providing for a trial period as described in (2) below.

(2) ~~An employee who is internally promoted shall serve a probationary period, as provided in Rules V and VI, only~~

~~for purposes of evaluating whether to retain the employee in the promoted position or to return the employee to the previous position or another position equivalent to the previous position.~~ An agency may adopt a policy providing for a trial period upon promotion, reassignment, or reclassification. The agency policy shall provide that:

(a) A trial period may be established upon promotion, reassignment or reclassification to be used to determine if the employee will be retained in the new position or returned to the former or an equivalent position. This trial period shall comply with all provisions of ARM 2.21.3808 (Rule V).

(b) During the trial period, an employee who has attained permanent status in the former position shall upon promotion, reassignment or reclassification retain all rights extended by virtue of having attained permanent status, except that, the agency may return an employee to the former or an equivalent position without following the provisions of the discipline handling policy, ARM 2.21.6505. et seq., the grievance policy, ARM 2.21.8001 et seq., and the reduction-in-work force policy, ARM 2.21.5005 et seq., (These policies may also be found in the Montana operations manual, volume III, policies 3-0130, 3-0125, and 3-0155.)

(c) Adoption of such a policy does not obligate the agency to return the employee to the former or an equivalent position in lieu of other personnel actions which could be taken consistent with the discipline handling, grievance and reduction-in-force policies.

~~(3) Provisions of the discipline handling policy, ARM 2.21.6505, et seq., the grievance policy, ARM 2.21.8001, et seq., and the reduction in work force policy, ARM 2.21.5005, et seq., do not apply to a decision by the agency to return the employee to the previous position or another position equivalent to the previous position during the probationary period following promotion.~~ An agency may require an employee who has not attained permanent status and who is promoted or reassigned within the agency to successfully complete a full probationary period in the new position.

~~(4) Provisions of the discipline handling policy, ARM 2.21.6505, et seq., the grievance policy, ARM 2.21.8001, et seq., and the reduction in work force policy, ARM 2.21.5005, et seq., do apply to any other personnel action which might be taken during the probationary period following promotion.~~

3. A public hearing was conducted on September 5, 1985, to receive comments on the proposed rule adoption. The following comments were received during the comment period.

COMMENT: In ARM 2.21.3801(7) (Rule III), use the same definition for promotion which is used in the pay plan rules to be consistent.

RESPONSE: The department agrees.

COMMENT: In ARM 2.21.3808, (Rule V), all steps in a probationary procedure must be documented. The words 'in writing' need to be added to Rule V, Subsection 3. An employee is entitled to know the length of the probationary period and it could be documented in the letter of hire.

RESPONSE: There was extensive discussion with the agencies which must implement these rules regarding the degree of detail on procedures which the administrative rules should contain. While the agencies are in agreement that informing an employee of the length of the probationary period in writing and at the time of hire may be the best method of conveying this information, the agencies did not want this to be absolutely required by administrative rule. A number of agencies indicated it already is or would be their agency procedure to provide this information in writing. The department disagrees with this comment.

COMMENT: In ARM 2.21.3808, (Rule V), a six-month probationary period is more than sufficient time to judge an employee's ability to handle a specific type of work. The extension should only occur if it is mutually agreed by both the affected department head and affected individual. Reasons for an extension should be made known to the employee. A probationary period should only be extended once and a one-time extension should be in the policy. A seasonal employee's probation should equal the six-month period or the first employment period with the state.

RESPONSE: Providing for the extension of a probationary period provides protection for the employee, as well as the agency. Any number of events may occur which prevent the agency from being able to adequately assess a permanent or seasonal employee's "ability to perform job duties; to assess the employee's conduct on the job, and to determine if the employee should be retained beyond the probationary period and attain permanent status." (See ARM 2.21.3808(6) - The definition of a probationary period). To limit the probationary period to six months or the first employment season, could result in the discharge of employees who, with additional time on the job, could have been retained. The department disagrees with this comment. The rules provide for a limited extension of the probationary period.

COMMENT: In ARM 2.21.3809 (Rule VI), extension of probationary period, Subsection 2, an employee needs to know why the probationary period is being extended and what needs to be done to correct the problem.

RESPONSE: The department responds in the same manner as it did on the procedural issues raised in the comment on ARM 2.21.3808. The agencies agree this is the best practice, but

did not want the requirement to be part of the administrative rule and the department agrees with the agencies.

COMMENT: Revise ARM 2.21.3809(1) (Rule VI (1)) to read, "An agency may extend the length of the probationary period for a maximum of six additional and consecutive months."

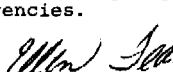
RESPONSE: The department agrees.

COMMENT: In ARM 2.21.3810, (Rule VII), define "reasonable steps," so everyone follows exactly the same guidelines.

RESPONSE: "Reasonable steps" will need to be determined on a case-by-case basis by the agency which discharges the employee. The agencies which will administer these rules did not want this term more closely defined and understand that this places the responsibility on the agency of acting in a way which is reasonable, given the facts of the situation.

COMMENT: In ARM 2.21.3811 (Rule VIII), as originally proposed, the department received three formal comments and a number of informal comments that the language used in the rule did not clearly implement the intent.

RESPONSE: The department drafted amended language and informally consulted all those known to be interested in these rules to determine if the new language clearly implemented the intent of the rule. All those responding agreed the intent of the rule as now amended is clear. One comment opposed the adoption of the rule. The department has amended the catch phrase for the rule, because paragraph (3) has been added at the request of the agencies.

By 
Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State December 16, 1985.

DEPARTMENT OF ADMINISTRATION
BEFORE THE TEACHERS' RETIREMENT DIVISION
OF THE STATE OF MONTANA

In the matter of the Adoption of a Rule specifying the procedure to allow a retired member to designate a different beneficiary and select a different retirement option	)))))	NOTICE OF ADOPTION RULE I 2.44.512 CHANGE OF BENEFICIARY AND/OR CHANGE OF RETIREMENT OPTION

TO: All Interested Persons.

1. On November 14, 1985, the Teachers' Retirement System published notice of a proposed rule concerning the change of beneficiary and/or change of retirement option at pages 1670-1671 of the Montana Administration Register, issue number 21.

2. The Teachers Retirement System has adopted the rule as proposed.

3. No comments or testimony have been received.

4. The authority for the rule is 19-4-201, MCA, and the rule implements 19-4-702, MCA.

TEACHERS' RETIREMENT DIVISION

BY F. Robert Johnson
F. ROBERT JOHNSON
ADMINISTRATOR

Certified to the Secretary of State December 16, 1985.

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance	))))))	NOTICE OF ADOPTION OF RULES

TO: All Interested Persons

1. On October 17, 1985, the State Auditor and Commissioner of Insurance published notice of public hearing in the proposed adoption of Rules I through X (subchapter 20, 6.6.2001 through 6.6.2010), pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance at page 1450 of the 1985 Montana Administrative Register, Issue Number 19.

2. The State Auditor and Insurance Commissioner has adopted the rules with the following changes:

RULE I 6.6.2001 PURPOSE AND APPLICABILITY

(1)(a)-(d) same as proposed rules.

(e) ~~increase~~ Increasing the opportunity for agents to ~~freely~~ compete~~,~~ freely.

(2) ~~[Rule I-X]~~ 6.6.2001 through 6.6.2010 shall apply to ~~all~~ those forms of insurance ~~which are subject to Section 33-1-501, MCA,~~ defined in Section 33-1-206, MCA and in Section 33-1-210, MCA except to the extent these rules conflict with statutory cancellation requirements. The statutory requirements would prevail.

(3) same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE II 6.6.2002 DEFINITIONS

As used in ~~[Rules I through X]~~ 6.6.2001 through 6.6.2010 the following definitions apply unless the context requires otherwise.

(1)-(9) same as proposed rules.

(10) "Renewal" means any agreement whereby an insurer and insured agree to an extension of 90 days or more or continuation of an existing insurance policy.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

RULE III 6.6.2003 MID-TERM CANCELLATION

(1) same as proposed rules.

(a) same as proposed rules.

(b) Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract; ~~or~~

(c) Substantial breaches of contractual duties, conditions or warranties~~.~~;

(d) Determination by the Commissioner that continuation of the policy would place the insurer in violation of the Montana Insurance Code;

(e) Financial impairment of the insurer; or

(f) Such other reasons that are approved by the Commissioner.

(2) same as proposed rules.

(3) Subsections (1) and (2) do not apply to any newly issued insurance policy ~~that has not been previously renewed~~ if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this subsection is effective until at least 10 days after the 1st class mailing or delivery of a written notice to the policyholder.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

~~RULE IV~~ 6.6.2004 ANNIVERSARY CANCELLATION AND ANNIVERSARY RATE INCREASES~~.~~

(1)-(2) same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

~~RULE V~~ 6.6.2005 NON-RENEWAL

(1) A policyholder has a right to reasonable notice of non-renewal so coverage may be procurred elsewhere. Unless otherwise provided by statute, at least 30 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date must be mailed or delivered to the policyholder~~.~~ by the insurer with a copy to the agent.

(2) With respect to payment of renewal premium, notice shall be given not more than ~~45~~ 60 days nor less than 10 days prior to the due date of the premium which states clearly the effect of nonpayment of premium by the due date.

(3) same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

~~RULE VI~~ 6.6.2006 RENEWAL WITH ALTERED TERMS

(1) General. Subject to subsection (2), if the insurer offers or purports to renew the policy but on less favorable terms or at higher rates, and/or higher rating plan, the new terms or rates and/or rating plan may take effect on the renewal date provided the insurer has sent by 1st class mail or delivered to the policyholder notice of the new terms or rates and/or rating plan at least 30 days prior to the expiration date. If the insurer has not so notified the policyholder the policyholder may elect to cancel the renewal policy within the 30 day period after receipt or delivery of such notice. ~~Earned premium for period of coverage, if any shall be calculated pro rate.~~ Once notice is provided by the insurer the named insured shall have not less than 30 days after mailing or delivery of such notice to elect

to continue or to eliminate coverage. If the insured elects to terminate the policy within the 30 day period, earned premium shall be calculated pro rata based upon the prior policy's rate. The new rate shall be effective only after the proper 30-day notification period. If the insured does not terminate the policy, the premium increase and other changes shall be effective the day following the prior policy's expiration or anniversary date.

(2)(a)-(b) same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

~~RULE VII~~ 6.6.2007 INFORMATION ABOUT GROUNDS

(1) If a notice of cancellation or nonrenewal under [Rule III or Rule V] does not state with reasonable precision the facts upon which the insurer's decision is based, the insurer must~~, upon request,~~ mail or deliver such information within ~~5~~ 15 working days~~,~~ of receiving written request from the insured. No such notice is effective unless it contains adequate information about the policyholder's right to make the request.

(2) same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

~~RULE VIII~~ 6.6.2008 HOMEOWNERS INSURANCE AFFECTED BY BUSINESS PURSUITS

(1) Any insurer transacting homeowners insurance shall not deny homeowners insurance to an applicant therefor, or terminate any homeowners insurance policy covering a dwelling located in this state, whether by cancellation or nonrenewal, for the principal reason that an insured under such policy is engaged ~~business pursuits, including~~ in the operation of a day-care facility~~,~~ (defined in Section 53-4-501(1)(b), MCA) which satisfies the requirements of Sections 53-4-508 and 53-4-509, MCA, at the insured location.

(2) same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

~~RULE IX~~ 6.6.2009 UNFAIR TRADE PRACTICES

(1)-(2) same as proposed rules.

~~(3) Block cancellations or renewals of entire lines of insurance and/or withdrawal of classes of business are presumed to be unfairly discriminatory and constitute an unfair trade practice under Section 33-18-1003, MCA.~~

~~(4) Termination of an appointed agent, or attempt of such termination, solely to achieve block cancellation or nonrenewal of entire lines of insurance or other such instant reunderwriting of an agency book of business shall be presumed to constitute an unfair trade practice and detrimental to free competition under Section 33-18-1003, MCA.~~

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

~~RULE-X~~ 6.6.2010 SEVERABILITY
Same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-18-1003, MCA

3. The Commissioner received written comments and testimony at the hearing both in support of and in opposition to the proposed rules. The comments, and the Commissioner's responses to them, are summarized as follows:

(a) Several commenters argued that the rules as proposed completely lack statutory basis, that the Montana constitution vests the power to make laws in the legislature, and that administrative agencies such as the Insurance Commissioner may issue rules to implement a statutory directive only where the rules are based on and implement a specific statutory enactment. The commenters argued further that the Commissioner promulgated these rules under the authority found in the Undefined Unfair Trade Practices Section of the Unfair Trade Practices Act which contemplates that an undefined trade practice will be found only after notice, hearing, a report of findings, and the institution of an action to enjoin and restrain the specific conduct of a particular insurer. They contended that the Undefined Trade Practice section does not provide the Commissioner authority to promulgate these rules.

The Insurance Commissioner rejects these comments. Section 33-1-313(1), MCA authorizes the Insurance Commissioner to make reasonable rules necessary or as an aid to effectuate any provision of the Insurance Code. Pursuant to this authority, the Insurance Commissioner has proposed these rules to implement Section 33-18-1003(1), MCA, which authorizes the Insurance Commissioner to proceed when she believes that any person in the insurance business is engaging in undefined unfair trade practices in Montana and that it would be in the public interest for her to proceed. The Undefined Unfair Trade Practices Section of the Insurance Code is meant to provide the Insurance Commissioner with authority to protect the public from unfair practices not specifically prohibited by the Insurance Code. The Undefined Unfair Trade Practices Section requires notice and hearing before a specific person engaging in the insurance business is prohibited from continuing certain, specific practices. The proposed rules, however, are not directed to specific individuals engaged in specific practices but to a statewide problem of mid-term cancellation and non-renewal. The rules are meant to guide persons engaged in the business of casualty or property insurance in advance as to what the Commissioner will consider unfair trade practices.

(b) Hiram Shaw, representing the Division of Workers' Compensation, asserted that proposed Rules III(1), IV(1), and V(1) conflict with the 20-day notification of cancellation requirement of Section 39-71-2205, MCA, of the Workers' Compensation Act. The proposed rules will not conflict with Section 39-71-2205, MCA, because Rule I(2) provides that statutory cancellation requirements will prevail where the rules conflict with them. Therefore, the Commissioner de-

clines to amend the rules to reflect this comment.

(c) Edward J. Zimmerman, representing American Council of Life Insurance, recommended rewording Rule I(2) as follows: "(2)[Rule I-X] shall apply to those forms of insurance defined in Section 33-1-206, MCA and in Section 33-1-210, MCA except to the extent that these rules conflict with statutory cancellation requirements. The statutory requirements would prevail." This recommended wording would delete the reference to the general form filing requirement statute (Section 33-1-501, MCA) and substitute the definition of "casualty insurance" (Section 33-1-206, MCA) and "property insurance" (Section 33-1-210, MCA). The Commissioner agreed with these comments and amended the rules as adopted to reflect the change.

(d) Several commenters recommended that Rule I(2) exempt from the scope of the rules personal lines insurance, particularly private passenger automobile insurance and homeowners insurance. The commenters claimed that personal lines have remained highly competitive and have not been the principle subject of insurer practices which might be regarded as unfair to the consumer. The Insurance Commissioner rejects this recommendation on the ground that the purpose of the proposed rule is to protect all members of the public, including those purchasing personal lines insurance.

(e) Several commenters objected to the definition of "renewal" contained in proposed Rule II, contending that the definition should exclude those situations where an insurer extends an existing policy for less than 90 days. The Insurance Commissioner agreed with this objection and amended the rule as adopted to reflect the change.

(f) Glen Drake, representing the American Insurance Association, recommended amending Rule I(2) to exempt multi-state location risks, policies subject to retrospective rating plans, and excess or umbrella policies. The Insurance Commissioner rejects this recommendation on the ground that the purpose of the rule is to protect the public, including those persons who have policies covering multi-state location risks, policies subject to retrospective rating plans, and excess or umbrella policies.

(g) Several commenters recommended amending Rule III(1) by adding to the list of permissible grounds for mid-term cancellation "loss of, reduction in, or change in reinsurance." The Insurance Commissioner rejects this recommendation on the grounds that loss of, reduction in, or change in reinsurance basically stems from a change in an insurer's internal situation. When an insurer issues a policy, it is in a more knowledgeable position than its policyholders regarding its reinsurance situation. The Insurance Commissioner does not believe that policyholders should suffer the consequences of an insurer's internal problems.

(h) Glen Drake, representing the American Insurance Association, recommended amending Rule III(1) by adding to the list of permissible grounds for mid-term cancellation "activities or omissions on the part of the named insured which increases the hazard." He recommended further that the

exemptions specificially include within that exemption "a failure on the part of the insured to comply with loss control recommendations". The Insurance Commissioner rejects this recommendation on the ground that Rule III(1)(a), permitting mid-term cancellations based upon material misrepresentations, includes activities or omissions on the part of the named insured which increase the hazard and that Rule III(1)(b), permitting mid-term cancellations based upon substantial change in the risk assumed, includes failure on the part of the insured to comply with loss control recommendations.

(i) Glen Drake, representing the American Insurance Association, recommended amending Rule III(1) by adding to the list permissible grounds for mid-term cancellation determination by the Commissioner that continuation of the policy would place the insurer in violation of the Insurance Code. Several commenters recommended adding as a permissible ground for mid-term cancellation "involving such other reasons that are approved by the Commissioner". Several commenters recommended amending Rule III(1) by adding to the list permissible grounds financial impairment of the insurer. The Insurance Commissioner agreed with these recommendations and amended the rules as adopted to reflect the change.

(j) Bonnie Tippy, representing the Alliance of American Insurers, recommended amending Rule III(1) by adding to the list of permissible grounds suspicion by insurer that arson may be imminent or determination that conditions of constructive abandonment exist. The Insurance Commissioner rejects this recommendation on the ground that adopting the recommendation would permit insurers to cancel policies mid-term indiscriminately since "imminent" is a term that does not lend itself to definition capable of uniform enforcement.

(k) Bonnie Tippy, representing the Alliance of American Insurers, recommended that Rule III(1) be amended by adding to the list of permissible grounds violations by insured of any fire, health, safety, building or construction regulation or ordinance. The Insurance Commissioner rejects this recommendation on the grounds that the insurer may include compliance with fire, health, safety, building, or construction regulations or ordinances as a contractual duty, the breach of which constitutes a permissible ground for mid-term cancellation pursuant to Rule III(1)(c).

(l) Roger McGlenn, representing Independent Insurance Agents of Montana, contended that the language "has not been previously renewed" in Rule III(3) is confusing in that it is unclear whether the language refers to a newly issued policy or to a policy that has gone past the renewal date without prior notice of renewal. The Commissioner agreed with this comment and amended the rule as adopted to reflect the change.

(m) Gayle R. Voller, representing Firemen's Fund Insurance Company, contended that Rule IV should make clear that anniversary cancellations are not governed by Rule III. The Insurance Commissioner rejects this comment on the grounds that mid-term cancellation (Rule III) is inherently different from anniversary cancellation (Rule IV); anniver-

sary cancellations, therefore, are clearly governed only by Rule IV.

(n) Don Hamann, representing U.S.F. & G., recommended amending Rule V to require that notice of non-renewal be sent to the agent rather than to the policyholder. The Insurance Commissioner rejects this recommendation on the grounds that the purpose of the notice of non-renewal is to allow the policyholder reasonable time to procure coverage elsewhere. If notice is sent to the agent rather than to the policyholder, the policyholder may have less than 30 days to procure substitute coverage which the Commissioner believes is insufficient time.

(o) Gail R. Voller, representing Firemen's Fund Insurance Company, contended that the 30-day notice of non-renewal requirement of Rule V(1) should be reduced to 20 days to allow insurers ample time to gather underwriting data and to avoid forcing insurers lacking adequate underwriting data to non-renew. The Insurance Commissioner rejects this recommendation on the grounds that the purpose of the rule is to allow policyholders adequate time to procure coverage elsewhere, and a notice of less than 30 days is not adequate.

(p) Roger McGlenn, representing Independent Insurance Agents of Montana, recommended adding the language "by the insurer with a copy to the agent" to the last sentence of Rule V(1). The Insurance Commissioner agreed with this recommendation and amended the rule as adopted to reflect the change.

(q) Melvin (Pete) Hoiness, representing Hoiness LaBar FBS Insurance Montana, objected to Rule V(1), arguing that it is not clear (1) whether the insurer or the agent delivers the notice of non-renewal, (2) how the notice must be delivered, and (3) who is responsible for a failure to notify a policyholder. The Insurance Commissioner responds that the rule as amended makes clear that the insurer delivers the notice to the policyholder with a copy to the agent. The insurer is responsible for any failure to notify a policyholder of non-renewal.

(r) Melvin (Pete) Hoiness, representing Hoiness LaBar FBS Insurance Montana, contended that failure to comply with Rule V should result in the imposition of a set penalty and that fines are an improper penalty because they do not serve the policyholder. He recommended as a better penalty, extending the existing policy 30 days so the agent and policyholder can determine whether coverage can be obtained elsewhere. The Insurance Commissioner rejects these comments. The rule requires that a 30-day notice be given. If the 30-day notice is given and the policy is extended for that time period, there is no violation and no penalty will be assessed.

(s) Les Jensen, representing Hoiness LaBar FBS Insurance Montana, objected to Rule V(2), contending that it is ambiguous as to intent. The Insurance Commissioner rejects this contention because the rule applies only to straight renewals with no altered terms and no premium increases.

(t) Rosalind Ann Phillips, representing Government Employees Insurance Company (GEICO), contended that prohibiting notice of more than 45 days in advance of due date of premium in Rule V(2) is disadvantageous to personal lines policyholders and recommended deleting or increasing the 45-day limit. Gayle R. Voller, representing Firemen's Fund Insurance Company, noted that the 45-day maximum renewal notice of rule V(2) would create problems because lienholders typically require a 60-day notice of renewals. He noted further that reference to notice of non-payment of premium is duplicative. The Insurance Commissioner accepted these recommendations and amended the rule as adopted to reflect the change to a 60-day limit.

(u) Les Jensen, representing Hoiness LaBar FBS Insurance Montana, asked whether the notice required for renewal with altered terms by Rule VI(1) is to the agent by the insurer. Notice is not to the agent but to the policyholder since the rule clearly provides that renewal with altered terms takes effect provided the insurer sends or delivers notice to the policyholder.

(v) Several commenters asked that the Insurance Commissioner clarify whether "earned premium" in Rule VI(1) is based on expiring terms or altered terms. To clarify the meaning of "earned premium", Glen Drake, representing the American Insurance Association, recommended adding the language "Once notice is provided by the insurer, the named insured shall have not less than 30 days after mailing or delivery of such notice to elect to continue or to eliminate coverage." He further recommended adding language "If the insured elects to terminate the policy within the 30 day period, earned premium shall be calculated pro rata based upon the prior policy's rate. If the insured does not terminate the policy, the premium increase and other changes shall be effective the day following the prior policy's expiration or anniversary date." The Insurance Commissioner agreed that the rule should be clarified and amended the rule as adopted to reflect the change.

(w) Gayle R. Voller, representing Firemen's Fund Insurance Company, objected to Rule VI(1), arguing that pre-renewal advice on price and condition changes is unnecessary. The Insurance Commissioner rejects this contention on the grounds that such advice is necessary to protect the public.

(x) Bonnie Tippy, representing the Alliance of American Insurers, objected to Rule VI(1), arguing that it is impossible to set rates accurately 30 days before renewal because insureds often do not provide necessary information regarding policy changes until 5 to 10 days before renewal. She added that the rule may create instability and uncertainty in the insurance business because it forces insurers to give exact quotes 30 days before renewal and limit insurers' options to two: (1) to set rates as high as possible, or (2) to automatically non-renew policies and instead issue new policies after the policy period has ended. The Insurance Commissioner rejects these comments because it is the insurer's duty to obtain the necessary underwriting criteria

in advance.

(y) Les Jensen, representing Hoiness LaBar FBS Insurance Montana, objected to Rule VII(1), arguing that the 5-day response period contained in the rule is unclear. He asked whether the insurer must mail or deliver its reasons for non-renewal 5 days after receiving written notice from the insured. The Insurance Commissioner agreed that Rule VII(1) is unclear and amended the rule as adopted to reflect the change.

(z) Several commenters objected to the 5-day response period contained in Rule VII(1), arguing that it is onerous and impossible to meet. These commenters suggested that a response period of 10 to 20 days would be more reasonable. The Insurance Commissioner agreed with this comment and amended the response period to 15 days.

(aa) Glen Drake, representing the American Insurance Association, objected to Rule VII(1), arguing that the proposed rules do not restrict non-renewals and that it, therefore, makes no sense to require insurance companies to provide the insured with reasons for non-renewal. The Insurance Department rejects this argument on the ground that Rule V of the proposed rules regulates non-renewal. Mr. Drake suggested that an insurance company should be required to give reasons for cancellation only if the insured agreed to release the company from liability that might arise from providing the reasons for cancellation or for conducting investigations to see whether grounds for cancellation exist. The Insurance Commissioner rejects this recommendation because the Insurance Information and Privacy Protection Act, particularly Section 33-19-33, MCA, affords sufficient protection to the insurer.

(bb) Several commenters suggested either deleting Rule VIII or at least limiting its application to instances where 3 or fewer children were cared for in the home. The Insurance Commissioner rejects these suggestions as unreasonable. Specific comments to Rule VIII are addressed below.

(cc) Robert L. Zeman, representing National Association of Independent Insurers, objected to Rule VIII, restricting an insurer's ability to cancel, non-renew, or deny home owners coverage due to the insured's operation of a day-care facility or other business pursuit at the insured's location, arguing that since Montana does not require the filing or approval of underwriting guidelines, this restriction on underwriting clearly exceeds the Insurance Department's statutory authority. The Insurance Commissioner rejects these comments on the ground that title 33, chapter 16, particularly Section 33-16-204, MCA, affords her the authority to review an insurer's underwriting rules as they may be applied to an individual insured.

(dd) Gayle R. Voller, representing Firemen's Fund Insurance Company, objected to Rule VIII, arguing that the rule does not appear to be within the ambit of the balance of the rules and that it would more appropriately be addressed separately, preferably by statute. He recommended that, at the very least, the effective date of this rule should be

extended to allow insurers to develope exclusions to address such risks. The Insurance Commissioner disagrees that this rule is not within the ambit of the remaining rules on the grounds that it addresses cancellation or non-renewal as do the other rules.

(ee) Several commenters argued that the business pursuits exclusion contained in Rule VIII(2) (allowing homeowners insurers to exclude liability or property losses arising out of business pursuits) does not adequately protect insurers because courts faced with interpreting it are likely to find that a particular loss was not caused by a business pursuit but rather by an activity only "incidental" to the business. The Insurance Commissioner rejects this argument because it is based on speculation about future court decisions.

(ff) Several commenters recommended that Rule VIII be deleted, arguing that individuals running businesses out of their own homes are best served by commercial liability policies. The Insurance Commissioner rejects this recommendation because individuals with business pursuits in the home, carrying commercial liability coverage, need homeowner's protection as well.

(gg) Roger McGlenn, representing Independent Insurance Agents Association, recommended that if the Insurance Department adopted proposed Rule VIII, the language should be changed to relate specifically to existing language on exclusions and limitations under most homeowners contracts. Mr. McGlenn further recommended that the Insurance Department clearly define "day-care facility" if proposed Rule VIII were adopted. The Insurance Commissioner agreed to limit the applicability of Rule VIII to day-care facilities and amended the rule to reflect this change. The Insurance Commissioner accepted the recommendation to clearly define "day-care facility" and amended the rule as adopted to reflect the change.

(hh) Several commenters recommended deleting any reference to unfair trade practices and Section 33-18-1003 in proposed Rule IX. The Insurance Commissioner rejects this recommendation on the ground that the public is best served by having unfair trade practices defined.

(ii) Glen Drake, representing the American Insurance Association, objected to any reference to unfair trade practices in the rules and argued that the penalty for non-compliance with cancellation and non-renewal rules should be only that an insurance company continue on the risk until it provides the notice required by the rules. The Insurance Commissioner rejects this recommendation on the ground that the public is best served by having unfair trade practices defined.

(jj) Several commenters recommended deleting Rule IX(3) (providing that block cancellations or nonrenewals on entire lines of insurance and/or withdrawal of classes of business are unfair trade practices) because the regulation of block cancellations is adequately covered by restricting the reasons for cancellation in Rule III. These commenters suggested that the Insurance Department require companies to

withdraw or non-renew entire classes of business only upon prior notice to the Department. The Insurance Commissioner agreed that block cancellations are prohibited by Rule III and deleted Rule IX(3).

(kk) John Hamman, representing U.S.F. & G., argued that the language "withdrawal of classes of business" contained in Rule IX(3) is unclear. He asked whether re-underwriting is the same as withdrawal. Because the Insurance Commissioner has deleted Rule IX(3), no response is necessary.

(ll) Ralph A. Peat, representing National Farmers Union Insurance Companies, recommended deleting Rule IX(4) (providing that termination of or attempt to terminate an appointed agent solely to achieve block cancellations or non-renewal of entire lines of insurance or other reunderwriting of an agency book of business is an unfair trade practice) on the ground that the rule would severely restrict insurance companies' ability to make sound business decisions for overall profitability of the company and for the protection of the insuring public. The Insurance Commissioner agreed with the recommendation and deleted Rule IX(4). Rule III adequately prohibits the conduct prohibited by proposed Rule IX(4).

(mm) Gayle R. Voller, representing Firemen's Fund Insurance Companies, argued that the language "or other such instance re-underwriting of an agency book of business" contained in Rule IX(4) is imprecise and ambiguous. Because the Insurance Commissioner has deleted Rule IX(4), no response is necessary.

(nn) Glen Drake, representing the American Insurance Association, recommended that the rules apply prospectively and only to policies with effective dates after the effective date of the rules since applying the rules to policies in force (which permit cancellation without restriction) may impair the obligations of contract and since statutory authority for the Insurance Department to promulgate the rules is not pursuasive. He recommended further that the rules not take effect until 30 days after publication. The Insurance Commissioner rejects this recommendation. Policyholders, like the weaker party in a contract of adhesion, have previously been denied a realistic choice as to terms when entering into insurance contracts permitting cancellation without restriction. The rules do not impair the obligation of contract. They instead protect policyholders from unregulated cancellatons and non-renewals. In addition, Section 33-1-313, MCA provides the Insurance Commissioner sufficient authority to promulgate these rules. There is no reason to delay the effective date of these rules.

4. The authority for these rules is Section 33-1-313, MCA, and the rules implement Section 33-18-1003, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State December 16, 1985.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the adoption of new rules concerning dental procedures involving the administration of anesthetics, training and monitoring requirements, and inspecting and approving dental practice facilities in which anesthetics are administered (Rules I - IX, now 8.16.901 through 8.16.909)	NOTICE OF ADOPTION OF NEW RULES CONCERNING PROHIBITION, PERMIT REQUIRED, MINIMUM QUALIFYING STANDARDS, MINIMUM MONITORING STANDARDS, FACILITY STANDARDS, ON-SITE INSPECTION OF FACILITIES, REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA, REPORTING ADVERSE OCCURRENCES AND FEE SCHEDULE

TO: All Interested Persons:

1. On November 14, 1985, the Board of Dentistry published a notice of proposed adoption of the above-stated new rules at pages 1672 through 1679, 1985 Montana Administrative Register, issue number 21.

2. On December 5, 1985, at 1:00 p.m., at Jorgenson's Holiday Motel, Room 56, Helena, Montana, a public hearing was held to consider the adoption of new rules concerning anesthesia. The Board took comments under consideration at its Board Meeting on December 6, 1985, and decided that proposed rules should be adopted as herein amended. Amendments to Rule II (2), (3), Rule III (1), (2), (2) (a), (2) (b), (3), Rule IV (1), (2), (3), Rule V (1), (2), (3), and Rule VI (1), (2), (3), (4), are all form and style changes made at the suggestion of participants at the hearing and the staffs of the Department of Commerce, Secretary of State, and Legislative Code Committee. These changes are form only and not substantive changes. Amendments to Rule III (3)(a) and Rule X (10), (11), (12) are based on House Bill 235, which provides that nitrous oxide/oxygen sedation is not included in the term general anesthetic. Therefore, a permit requirement for this function will not be adopted. Rule VII is deleted at this time because of the uncertainty over transmitting AIDS disease. Rule VII is amended to delineate continuing education requirements for conscious sedation and general anesthesia.

Based on the comments received, the Board is adopting the rules as proposed with the following exceptions: (New matter underlined, deleted matter interlined)

Rule (I) 8.16.901 Adopted as proposed;

8.16.901 PROHIBITION (1) Dentists licensed in this state may not apply general anesthesia or conscious sedation techniques, unless and until they have met all of the requirements set forth in these rules.

(2) Violation of these rules shall constitute grounds for disciplinary actions as provided in sections 2-4-631 (3), 37-1-136, and 37-4-321, MCA.

(3) Performing anesthetic procedures after the effective date of this rule without an appropriate permit or at a nonqualified facility will be interpreted by the Board as unprofessional conduct under ARM Rule 8.16.722 (1)(e). This is an interpretive subsection."

8.16.902 PERMIT REQUIRED (1) In order to administer general anesthesia or conscious sedation a dentist must possess a permit from the Board to do so. Such a permit must be renewed every year.

(2) In order to obtain a permit the dentist makes application on a form provided by the Board and must meet specific minimum ~~training and educational~~ qualifying standards as set forth in the rules.

(3) Permits may be limited as to facilities in which the permit holder may administer general anesthesia or conscious sedation."

8.16.903 MINIMUM ~~TRAINING AND EDUCATIONAL~~ QUALIFYING STANDARDS ~~(1) No dentist shall be permitted to administer or monitor general anesthesia during a dental procedure or dental-surgical procedure unless he or she:~~

~~(a) has a minimum of one year of postgraduate training in the administration of anesthesia and related subjects; or~~

~~(b) is a diplomat of the American Board of Oral and Maxillofacial Surgery or has completed an American Dental Association approved residency in Oral and Maxillofacial Surgery; or~~

~~(c) is a fellow of the American Dental Society of Anesthesiology; or~~

~~(d) employs or works in conjunction with a physician who is licensed to practice medicine in Montana and who has completed an American Medical Association approved residency in Anesthesiology; or~~

~~(e) employs or works with a Montana licensed and certified registered nurse anesthetist.~~

(1) With respect to general anesthesia, no dentist shall be permitted to administer or monitor general anesthesia during a dental procedure or dental-surgical procedure unless and until he or she satisfies the qualifications set forth in section 37-4-511(1), MCA.

(2) With respect to conscious sedation, ~~,~~ no dentist shall administer drugs to achieve the state known as conscious sedation during a dental procedure or a dental-surgical procedure unless he or she ~~(a)~~ has received formal training in conscious sedation techniques from an institution, organization, or training course approved by the

Board consisting of a minimum of forty (40) clock hours of didactic instruction and twenty (20) clock hours of additional patient contact. The dentist must furnish evidence of having completed this training.

~~(b)~~ (a) A dentist licensed to practice in Montana who can demonstrate competence and skill in administering conscious sedation by virtue of experience or comparable alternative training shall be permitted by the Board to use conscious sedation. Applicants under this rule, must have experience in using conscious sedation for the prior three (3) years on a routine basis and without significant anesthetic complications.

~~(c) this requirement does not apply to the administration of an oral drug for the purpose of dispensing or prescribing a light relaxant drug, provided that the drug dosage is appropriate for the age, physical status and physical condition of the patient.~~

(b) This requirement does not apply to the administration of an oral drug for the purpose of providing mild relaxation, regardless of the agent used or the route of administration, when the intended or probable effect is a level of depression greater than mild relaxation. Otherwise all requirements for the use of conscious sedation or general anesthesia will apply as indicated.

(3) With respect to nitrous oxide/oxygen sedation~~.~~, ~~No person~~ dentist shall use nitrous oxide/oxygen on a patient unless he has completed a course of instruction of at least fourteen (14) clock hours of didactic and clinical ~~experience~~ training. This instruction must include didactic and clinical ~~experience~~ instruction in an accredited dental school, hospital, or dental society sponsored course, and must ~~have~~ included instruction in safety and management of emergencies.

(a) ~~A~~ dentist who practices dentistry in Montana who can ~~show~~ provide satisfactory evidence of competence and skill in administering nitrous oxide/oxygen sedation by virtue of experience and/or comparable alternative training shall be presumed by the Montana Board of Dentistry to have appropriate credentials for the use of nitrous oxide/oxygen sedation. ~~in applying for an exemption the dentist must confirm experience in using nitrous oxide/oxygen sedation for the prior one (1) year on a routine basis without significant complications.~~"

8.16.904 MINIMUM MONITORING STANDARDS (1) Minimum standards for monitoring patients for general anesthesia shall include the following:

(a) preoperative:

(i) Vital signs - to include blood pressure, pulse and respiratory rate. Temperature may be necessary, and

(ii) Electrocardiac ~~Cardiac~~ monitoring.

(b) intraoperative:

(i) Vital signs - to include blood pressure, pulse and respiratory rate to be taken and recorded every five (5) minutes, and

(ii) Precordial stethoscope used to monitor respiratory rate and pulse rate, and

(iii) Continuous electrocardiac ~~cardiac~~ monitoring, and

(iv) An intravenous line, and

(v) Continuous monitoring of skin and mucosal color, and

(vi) Additional monitoring devices as indicated.

(c) postoperative:

(i) Vital signs - to include blood pressure, pulse, respiratory rate recorded at the completion of the procedure and prior to discharge, and

(ii) ~~Level of consciousness - t~~The patient must not leave the recovery area until the cardiovascular and respiratory stability are assured and the patient is awake and oriented.

(2) The minimum standards for monitoring conscious sedation patients shall include the following:

(a) preoperative:

(i) Vital signs to include blood pressure, pulse and respiratory rate,

(ii) ~~Only appropriate b~~Blood pressure monitoring for pediatric patients ~~need be recorded~~ only as indicated.

(b) intraoperative:

(i) Monitoring need not be applied to the fully-awake and alert patient.

~~(i)~~ (ii) Vital signs - to include blood pressure, pulse and respirations to be monitored and recorded at appropriate intervals. Only appropriate blood pressure monitoring for pediatric patients need be recorded,

~~(ii)~~ (iii) A precordial stethoscope used to continually monitor respiration and pulse rate, and

~~(iii)~~ (iv) continuous monitoring skin and mucosal color.

(c) postoperative:

(i) Vital signs, blood pressure, pulse and respirations should be taken at completion of the procedure and prior to discharge,

(ii) Only appropriate blood pressure monitoring for pediatric patients need be recorded,

(iii) ~~Level of consciousness~~ - Prior to discharge ~~the~~ cardiovascular and respiratory ~~stability~~ systems must be ~~checked~~ adequate. ~~The patient must have returned closely to his or her pre-sedation level of consciousness and responsiveness.~~

(3) Minimum standards for monitoring nitrous oxide/oxygen sedation shall include the following:

(a) When the dentist who administers the nitrous oxide/oxygen is not in the operatory there must be a dental auxilliary who remains with the patient and provides direct observation. The dental auxilliary must have ~~had special~~ specific instruction in the observation of ~~the~~ nitrous oxide/oxygen sedated patients and shall monitor the patient until discharged."

8.16.905 FACILITY STANDARDS (1) A general anesthesia facility under these rules must contain a minimum of equipment, supplies and drugs, including, but not limited to, the following:

(a) a positive pressure oxygen delivery system;

(b) stethoscope and sphygmomanometer;

(c) laryngoscope, endotracheal tubes and a Magill forcep;

(d) oral pharyngeal and/or nasopharyngeal airways;

(e) electrocardiac ~~cardiac~~ monitor and defibillator;

(f) appropriate drugs for emergencies to include drugs to provide Advanced Cardiac Life Support;

(g) a precordial stethoscope; and

(h) suction devices.

(2) A conscious sedation facility under these rules must contain a minimum of equipment supplies, and drugs, including, but not limited to, the following:

(a) a positive pressure oxygen delivery system;

(b) precordial stethoscope;

(c) stethoscope and sphygmomanometer;

(d) oral pharyngeal and/or nasopharyngeal airways;

(e) appropriate drugs for emergencies ~~including cardiac arrest~~; and

(f) suction devices.

(3) During dental procedures the facility must be staffed by supervised monitoring personnel which are capable of handling procedures, problems, and emergency incidents and ~~is~~ be certified in basic life support;

(a) With respect to a ~~deep~~ full general anesthesia facility, in addition to the dentist and dental assistant, there must be at least one person present to monitor vital signs. That person, must be either:

(i) An anesthesiologist licensed to practice medicine in the State of Montana; or

(ii) A certified registered nurse anesthetist recognized in that specialty by the Montana Board of Nursing; or

(iii) A trained health professional who has received at least one year of postgraduate training in the administration of general anesthesia.

(b) With respect to light general anesthesia, ~~r~~ ~~I~~in addition to the dentist and dental assistant, there must be one person present whose duties are to monitor vital signs. This person must be certified in Bbasic Llife

~~S~~support and have been examined by the ~~Montana~~ Board ~~of Dentistry~~ or its agent in life support skills and have demonstrated a ~~satisfactory~~ level of proficiency ~~as~~ satisfactory to ~~established by~~ the Board.

(c) When ~~oral~~ conscious sedation ~~or light levels of parental conscious sedation are~~ is used, the dentist should be qualified and permitted to administer the drugs and appropriately monitor the patient.

(4) A ~~nitrous oxide/oxygen facility must contain:~~ A facility in which nitrous oxide/oxygen is administered must contain a minimum of equipment and supplies appropriate to meet emergencies.

~~(a) positive pressure oxygen;~~

~~(b) stethoscope and sphygmomanometer;~~

~~(c) oral or nasopharyngeal airways;~~

~~(d) suction;~~

~~(e) appropriate drugs for emergencies including Cardiac Arrest.~~"

8.16.906 ON-SITE INSPECTION OF FACILITIES (1) Each facility where conscious sedation or general anesthesia is to be provided shall be inspected by a team appointed by the Board prior to the initial issuance of any permit to administer anesthesia on the premises, and at intervals not to exceed five (5) years. Adequacy of the facility and competency of the anesthesia team will be evaluated by the inspection team. The inspection team shall consist of at least two (2) individuals~~, one of whom shall be a dental practitioner who is permitted to use general anesthesia and another of whom shall be a practitioner of the same specialty as the practitioner being inspected. When a general dentist's office is to be inspected, a general dentist who holds the appropriate permit will be on the inspection team.~~ Any dentist whose facility is to be inspected shall be notified at least 30 days prior to the inspection and the names of the inspection team shall be provided to him.

(2) The on-site inspection shall include a test of the applicant and his staff ~~in recognition and management of~~ on their abilities to recognize and manage complications likely to occur considering the techniques being used. Early recognition of complications will be emphasized. The facility must be inspected for the presence of drugs and equipment appropriate for the level of sedation or anesthesia to be provided. Monitoring assistants shall be examined for their knowledge of their respective roles in normal operating procedures and in various emergency situations. The inspection team shall evaluate office staff in proficiency in handling emergency procedures. The inspection team ~~should~~ shall evaluate the accuracy of anesthesia record keeping.

(3) If the on-site inspection team finds deficiencies present in the inspected office, the facility shall be given

thirty (30) days to comply with the recommendations of the inspection team. If, at the completion of this thirty (30) day period, the deficiencies have not adequately been rectified, the Board will limit the practitioner's permit to apply general anesthesia or conscious sedation only in qualifying facilities.

(4) If serious life-threatening deficiencies are found by the on-site inspection team, the Board will immediately limit the practitioner's permit by refusing to permit the administration of general anesthesia or conscious sedation on the premises."

~~"VII. BASIC LIFE SUPPORT INSTRUCTION (1) All dentists licensed to practice dentistry who practice in the state of Montana must have successfully completed a course in Basic Life Support as provided by the American Red Cross or American Heart Association, and submit a copy of their card to the Montana Board of Dentistry each year when applying for annual renewal. Exception to this rule is if the practitioner is physically incapable of providing cardiopulmonary resuscitation. If an exemption is granted there shall be a BLS certified individual in the office any time treatment is being rendered. It shall be the responsibility of each dentist holding a general anesthesia, conscious sedation, or nitrous oxide/oxygen permit to make sure each member of the anesthesia team is BLS certified at all times."~~

8.16.907 REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) All dentists holding permits to provide general anesthesia ~~or conscious sedation~~ must submit evidence of having attended a minimum of twenty (20) clock hours of continuing education every ~~two~~ three years, in order to qualify ~~to have their permits renewed~~ for renewal of their permits. All dentists holding permits to provide conscious sedation must submit evidence of having attended a minimum of twelve (12) clock hours of continuing education every three years, in order to qualify for renewal of their permits. The education must be in one or more of the following fields:

(a) general anesthesia;
(b) conscious sedation;
(c) physical evaluation;
(d) medical emergencies;
(e) monitoring and the use of monitoring equipment;
(f) pharmacology of utilized drugs;
(g) advanced cardiac life support~~.~~
(h) basic life support."

8.16.908 REPORTING ADVERSE OCCURRENCES (1) All dentists engaged in the practice of dentistry in the State of Montana must submit written reports to the Board within seven

(7) days of any incident, injury, or death resulting in temporary or permanent physical or mental disability, or death involving the application of general anesthesia, conscious sedation, or nitrous oxide/oxygen sedation administered to any dental patient for whom said dentist, or any other dentist, has rendered any dental or medical service. Routine hospitalization to guard against postoperative complications or for patient comfort need not be reported where complications do not thereafter result in injury or death as herein before set forth. The report required by this rule shall include, but not be limited to, the following information:

(a) a description of the dental procedure;

(b) a description of the physical condition of the patient unless Class I (as defined by the American Society of Anesthesiologists);

(c) a list of drugs and dosages administered and routes of administration;

(d) a detailed description of techniques used in the administration of the drugs utilized;

(e) a description of the adverse occurrences;

(f) a description in detail of symptoms of any complications, including, but not be limited to, onset of problems and symptoms of the patient; and

(g) a description of the patient's condition upon termination of any procedure undertaken."

8.16.909 FEE SCHEDULE

(1)	~~Deep~~ Full General Anesthesia Application Fee	$ 50.00
(2)	~~Deep~~ Full General Anesthesia Original Permit Fee	$ 15.00
(3)	~~Deep~~ Full General Anesthesia Permit Renewal Fee	$ 10.00
(4)	Light General Anesthesia Application Fee	$ 50.00
(5)	Light General Anesthesia Original Permit Fee	$ 15.00
(6)	Light General Anesthesia Permit Renewal Fee	$ 10.00
(7)	Conscious Sedation Application Fee	$ 50.00
(8)	Conscious Sedation Original Permit Fee	$ 15.00
(9)	Conscious Sedation Permit Renewal Fee	$ 10.00
~~(10)~~	~~Nitrous Oxide/Oxygen Application Fee~~	~~$ 10.00~~
~~(11)~~	~~Nitrous Oxide/Oxygen Original Permit Fee~~	~~$ 10.00~~
~~(12)~~	~~Nitrous Oxide/Oxygen Permit Renewal Fee~~	~~$ 10.00~~

~~(13)~~ (10) Initial Inspection Fee $100.00

~~(14)~~ (11) Reinspection Fee $ 50.00"

3. No other comments or testimony were received.

BOARD OF DENTISTRY
DR. BYRON J. GREANY
PRESIDENT

BY: _____
ROBERT J. WOOD, COUNSEL

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

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

In the matter of the amendment of rule 12.6.902(2) relating to the use of boats and other craft on Castle Rock Reservoir	))))	NOTICE OF ADOPTION OF AMENDMENT TO RULE 12.6.902(2)

TO: All interested persons

1. On September 12, 1985, the Montana Fish and Game Commission published a notice of proposed amendment to Rule 12.6.902(2) relating to the use of boats and other craft on Castle Rock Reservoir.

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

3. No comments or testimony were received.

4. The amendment has been reviewed and approved as to public health and sanitation by the Department of Health and Environmental Sciences.

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

Certified to the Secretary of State Nov. 18, 1985.

Reviewed and Approved:

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

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

In the matter of the adoption of rules regarding the certification of wood stoves or other combustion devices for tax credit purposes	))))	NOTICE OF THE ADOPTION OF RULES 16.8.1601 AND 16.8.1602 (Combustion Device Tax Credit)

To: All Interested Persons

1. On October 17, 1985, the department published notice of a proposed adoption of rules 16.8.1601 and 16.8.1602 concerning certification of low emission wood or biomass combustion devices for eligibility for a tax credit at page 1477 of the 1985 Montana Administrative Register, issue number 19.

2. The department has adopted the rules with the following changes:

16.8.1601 CERTIFICATION AND TESTING STANDARDS (1) Any stove, furnace, or catalytic converter added to a stove or furnace which burns wood or another nonfossil biomass fuel is eligible for the tax credit provided for in 15-32-201, MCA, if it is:

(a) Purchased and installed during the period from January 1, 1985, through December 31, 1992;

(b) Tested according to the criteria and procedures set out in Sections 340-21-100 through 340-21-190 of the Oregon Administrative Rules; and

(c) Certified by either the Oregon Department of Environmental Quality or the Montana Department of Health and Environmental Sciences as emitting less than 6 grams per hour (weighted average) of particulate when tested according to the procedures referred to in (b) above.

(2) A catalytic converter is eligible for the tax credit only if the converter and the particular model and brand of stove or furnace to which it is attached have been tested and certified together as meeting the emission limit cited in (1)(c) above.

(3) The department hereby adopts and incorporates by reference Sections 340-21-100 through 340-21-190 of the Oregon Administrative Rules, which set criteria and procedures for testing emissions from wood stoves. Copies of OAR Section 340-21-100 through 340-21-190 may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

16.8.1602 CERTIFIED STOVES (1) As of ~~October 7~~ November 26, 1985, the following stoves meet the certification standards of 16.8.1601 and qualify for a tax credit:

	Model	Design Number	Manufacturer
(a)	Blaze King 'King'	KEJ-1101	Woodcutters Mfg.
(b)	Fisher	TECH IV	CESCO Industries
(c)	Pellefier	FS-1	Collins Bio-Energy Co.
(d)	Timber Eze	477	Timber Eze, Inc.
(e)	Vista	640	Stack Mfg. Co., Ltd.
(f)	Arrow ATS-II	5000	Arrow Tualatin, Inc.
(g)	Earth Stove 1000C	E.S.01	The Earth Stove, Inc.
(h)	The Whitfield Stove		Pyro Industries
(i)	Turbo 10	T-10WC	Burning Log, Ltd.
(j)	Collins Hopper	4000	Collins Enterprises, Inc.

(2) A current list of all stoves, furnaces, and catalytic converters which, including and in addition to those listed in (1) above, meet the certification standards of 16.8.1601 and qualify for a tax credit is available from the department's Air Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 (phone: 444-3454).

3. Comments and responses are summarized herein.

Comment Several commentors requested that the rules be modified to allow the department to review test data and to certify wood burning devices as low emission combustion devices.

Response The department did not originally adopt this idea since it was our goal to provide for the simplest method of certification; that is, to only certify those stoves which have received Oregon approval. The commentors, however, have raised an important issue. They note that there may be manufacturers who want to have their stoves listed by Montana, but have no reason to be certified in Oregon since it may be outside of their market area. The department agrees with the suggestion of the commentors and has included this suggestion of allowing the department to review and certify low emission devices in the final rules.

Comment Several commentors wanted to be certain that a type of pellet stove will be listed by Montana. One commentor provided specific language which would allow this class of device to appear on the list.

Response The department has determined that the pellet fired device can operate as a low emission combustion device below the 6 gram limit. Therefore the device is included on the list of stoves, furnaces or catalytic converters which meet the certification standards of the rules. The low emission combustion devices which have been added to the list above have been recently certified.

Comment Some comments were made about increasing the permissible emission level or changing the testing procedures

of Oregon to conform with national standards.

Response These types of changes may be appropriate through legislative action.

Comment Statements were made about consumer tampering, improper use of catalytic combustion devices or deterioration of the combustion devices through normal use. Concern was expressed about the need for periodic testing to ensure that the devices continue to operate below the permissible 6 gram limit.

Response The department believes these points are well taken. While the present statute authorizing the department to issue rules regarding certification of low emission combustion devices does not address these questions of regulating improper care of low emission combustion devices or periodic testing, consumers are advised to follow operating instructions carefully.

John J. Drynan MD
JOHN J. DRYNAN, M.D., Director

By William J. Opitz
William J. Opitz, Deputy Director

Certified to the Secretary of State December 16, 1985

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

In the matter of the adoption of rules I through XV [to be codified 16.10.801-16.10.815] setting health and sanitation standards for youth camps	NOTICE OF THE ADOPTION OF RULES (Youth Camps)

TO: All Interested Persons

1. On May 16, 1985, the department published notice of proposed adoption of rules I through VII setting health and sanitation standards for youth camps, at page 454 of the 1985 Montana Administrative Register, issue number 9. In response to requests for more time to comment and for fairly substantial rule changes, the department published notice of a comment period extension and a revised rule package, which responded to the comments to date, proposing adoption of Rules I through XIV at page 889 of the 1985 Montana Administrative Register, issue number 13.

2. The department has adopted the rules with the following changes and the addition of new rule XV:

(Text of rules with matter stricken interlined and new matter underlined; Rule XV is new in this notice but is not underlined)

16.10.801 (RULE I) DEFINITIONS Same as proposed

16.10.802 RULE II) PRECONSTRUCTION REVIEW Same as proposed

16.10.803 (RULE III) USE BY NON-LICENSEE -- LICENSEE RESPONSIBILITY Same as proposed

16.10.804 (RULE IV) HOUSEKEEPING, MAINTENANCE, AND LAUNDRY Same as proposed

16.10.805 (RULE V) PHYSICAL REQUIREMENTS A youth camp must meet the following physical standards:

(1) Same as proposed

(2) Floors ~~and walls~~ in any room or enclosure subject to large amounts of moisture, such as a toilet or bathing room, a laundry room, or janitorial closet, must be smooth and non-absorbant. Shower floors must be sloped to drain.

(3) Same as proposed

16.10.806 (RULE VI) WATER SUPPLY SYSTEM Same as proposed

16.10.807 (RULE VII) SEWAGE TREATMENT AND DISPOSAL Same as proposed

16.10.808 (RULE VIII) SOLID WASTE Same as proposed

16.10.809 (RULE IX) FOOD SERVICE Same as proposed

16.10.810 (RULE X) SWIMMING AND BATHING AREAS Same as proposed

16.10.811 (RULE XI) TOILETS Same as proposed

16.10.812 (RULE XII) SAFETY Same as proposed

16.10.813 (RULE XIII) ILLNESS OR INJURY The operator of the camp must:

(1) Do the following, if a child develops symptoms of illness while at camp:

(a) Isolate the child immediately in a room or area segregated for that purpose.

(b) As soon as possible, contact, ~~and~~ inform, and consult with a parent or guardian of the child about the illness and ~~request that person to pick up the child~~ take one of the following actions:

(i) Request that the child be picked up and taken home immediately;

(ii) If the parent or guardian agrees, observe the child for a reasonable time and, if the symptoms do not pass, request that the child be taken home; or

(iii) If the parent or guardian agrees, call a physician and follow the physician's instructions.

(c) The same day a suspected case of communicable disease is discovered, report it by telephone to the local health officer or as soon as possible thereafter if no contact can be made the same day.

(2)-(4) Same as proposed

16.10.814 (RULE XIV) INSECT, RODENT, AND WEED CONTROL Same as proposed

16.10.815 (RULE XV) NONCOMPLYING PREEXISTING CAMPS; CORRECTION PLAN

(1) A youth camp which is in existence on December 27, 1985, but which fails to meet one or more of the requirements of this sub-chapter may be licensed if:

(a) a plan of correction, including a date by which the camp will be in full compliance with this sub-chapter, is prepared by the operator of the youth camp and accepted by the department and local health authority; and

(b) an interim plan to protect the health of campers until the plan of correction is completed is accepted by the department and local health authority as providing adequate

protection and is immediately implemented.

(2) If the plan of correction is not completed by the approved date, the department will take action to cancel the license pursuant to Sections 50-52-205 and 50-52-207, MCA.

AUTHORITY: Sec. 50-52-102, MCA
IMPLEMENTING: Sec. 50-52-102, 50-52-103, 50-52-201, 50-52-205, 50-52-206, 50-52-207, 50-52-208, MCA.

3. Comment: Several local sanitarians pointed out that strict and immediate application of these rules to the state's existing youth camps would prevent them from licensing most of the camps they inspected, and felt that a grace period should be allowed during which such camps would be licensed and operating, so long as they had developed an acceptable plan of correction and implemented interim measures mitigating the hazard resulting from the deficiency.

Response: The department agrees and adopted new Rule XV (ARM 16.10.815) to deal with preexisting camps.

Comment: Ms. Jennifer Cote, Executive Director of the Ponderosa Council of Camp Fire, had made several comments on the prior proposed version of these rules (as contained in the notice beginning on page 454, issue 9, of the 1985 Montana Administrative Register); the department acknowledged those comments in the July notice proposing the current version of the rules, but deferred responding to them until now. Subsequent correspondence from Ms. Cote expressed general satisfaction with the revised version of the rules, so the department feels it unnecessary to respond further to her original comments. However, in the later correspondence, she did make two suggestions relevant to the current set of rules -- first, that they be reevaluated 3-5 years from now to eliminate defects and evaluate the rules' effectiveness, and, second, to allow an apparently sick child to stay at camp, with concurrence of his/her parents, under observation to see if symptoms will pass, rather than to send symptomatic children home in all cases.

Response: The department agrees with the latter comment and revised Rule XIII (ARM 16.10.813) accordingly. As for reevaluation of the rules, the suggestion is a good one but rule reevaluation is already mandated by the Administrative Procedure Act.

Comment: Armand Ball, Executive Vice President of the American Camping Association, made comments which were apparently based on the original rule proposal, rather than the second version, and recommended that youth camps, being primarily for the purpose of providing youth with educational and rustic living experience, should not have to meet the requirements meant for hotels, motels, etc. He also felt the Centers for Disease control's model regulations would be a

useful guide and that the suggestion by prior commentors that American Camping Association Standards be used as licensure requirements was an inappropriate use of those standards, since no camp was meant to meet all of them.

Response: The department, in its second version of these rules, addressed the above concerns and therefore made no further changes.

Comment: Several camp operators questioned Rule V(2)'s standard requiring the walls of moisture-prone rooms to be "smooth and non-absorbent", pointing out that, due to the rustic nature of their camps (including, for example, outdoor showers with rough board walls), they did not in all cases meet the standard of Rule V(2), yet no mildew, etc. was apparently building up, especially in the out-door facilities.

Response: After personally visiting some of the camps, the department decided to amend Rule V to require only the floors, rather than the walls as well, to be smooth and non-absorbant and to require the floor to be sloped to drain so dirty water would not accumulate, relying on Rule IV(1)'s requirement that every camp structure be maintained in safe and sanitary condition as an enforcement tool to ensure that any accumulation on walls be eliminated; this standard will be reconsidered and reevaluated, particularly during the first year of application of the rules, to see if it adequately protects public health and if a return to the more stringent standard is necessary.

Comment: Richard Menger, Fallon and Carter County Sanitarian, expressed strong support for the revised version of the rules published in July and felt there would be no compliance or enforcement problems.

John J. Drynan MD

JOHN J. DRYNAN, M.D., Director

By William J. Opitz

William J. Opitz, Deputy Director

Certified to the Secretary of State December 16, 1985

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 ADOPTION OF NEW) RULES I - IV, (20.3.501) through 20.3.504) FOR EDU-) CATIONAL COURSES AND REFER-) RAL TO TREATMENT

TO: All Interested Persons

1. On September 26, 1985, the Department of Institutions gave notice of proposed adoption of new rules I through IV (20.3.501 through 20.3.504) establishing standards for chemical dependency educational courses, on page 1371 of the Montana Administrative Register, issue number 18.

2. A public hearing was conducted by the Department of Institutions on the proposed rules on October 25, 1985.

3. A written comment was received from John Albrecht, Attorney at Law, on Rule I questioning whether or not educational programs should be self-supporting and the fees based upon actual costs and if it conflicted with Section 53-24-108(5) MCA, concerning ability to pay. The agency response was that the proposed rules go beyond just what is referenced in the statute and deals with education, not just treatment. Concern was not well taken as there was no evidence before the hearings officer that such court schools will not try to work with the client if there is an indigent problem. Rule I was adopted as proposed as 20.3.501.

4. An oral comment was received from John MacMaster, Staff Attorney at the Legislative Council, on Rule II concerning the reference to the division of motor vehicles. Rule II has been changed to address this concern.

5. John MacMaster gave oral comment on Rule III regarding using only the statute and not the subsections in the rule. This change was also made in the rule.

The controversy in this rule has to do with (3) where the Department indicated that Level I and Level II of the ACT program will take not less than 30 days and not more than 90 days. Two written comments were received which support a one day, eight hour session as being sufficient and necessary for rural areas to achieve the course school. However, five written comments and two oral statements were made to the hearings officer to support the four sessions with a maximum of eight hours spread over a minimum of 30 days. Testimony supports the idea that the one day session should not be implemented. The agency response is that they support the idea of a greater time period for completion of the course. It is the recommendation of the hearings officer that the 30 day minimum for the program be adopted, however in certain select areas where it is clearly demonstrated to the Department of Institutions that one day sessions are necessary due to the rural nature of the community, its isolation, and great driving distance for clients to travel to complete the school, the agency may allow programs to offer one day court schools. This

is with the provision that a minimum of 30 days and a maximum of 90 days for completion of Levels I and II remain the same.

The agency indicated that Rule 3(4)(b)(i) be changed from ten hours to eight hours. Rule III is adopted with these changes.

No adverse written or oral comments were received concerning Rule IV.

3. Based on the foregoing, the Department hereby adopts the proposed rules with the following changes:

Rule II 20.3.502 DEFINITIONS (1) (a) and (b) remain the same.

(c) Driver Improvement means driver improvement ~~bureau~~ function, ~~motor-vehicle-division~~ of the department of justice.

(d) through (h) remain the same.

RULE III 20.3.503 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. An exception to the 30-day minimum may be granted by ADAD based only on justified geographical considerations. 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 through (a)(4) remain the same.

(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~~ eight hours. Rule IV 20.3.504 EDUCATION COURSE REQUIREMENTS FOR MIP OFFENDERS (MIP PROGRAM) Rule IV is adopted as proposed.

CARROLL SOUTH, ~~Director~~
Department of Institutions

CERTIFIED TO THE SECRETARY OF STATE December 16, 1985

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

IN THE MATTER of amendment of rules regarding Public Service Commission requirement that Interstate Carriers file evidence of Insurance.	))))	NOTICE OF AMENDMENT OF RULES 38.3.201(f), 38.3.202(d), 38.3.701(1)(2), 38.3.702(1), 38.3.705

TO: All Interested Persons

1. On September 12, 1985 the Department of Public Service Regulation published notice of proposed amendment of rules pertaining to the filing of evidence of insurance by Interstate Carriers.

2. The Commission has amended the rules as proposed:

38.3.201 INTRASTATE CARRIERS

38.3.202 INTERSTATE AND FOREIGN CARRIERS

38.3.701 EVIDENCE OF INSURANCE REQUIRED

38.3.702 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

3. The Commission has amended the rules with the following changes:

38.3.705 FORMS FOR CERTIFICATE OF INSURANCE (1) No change.

~~1.~~ (a) Form 1. Class A And B Motor Carrier Merchandise Or Commodity (Cargo) Liability Certificate Of Insurance, Stock Form No. 126.

~~2.~~ (b) Form 2. Common And Contract Motor Carrier Automobile Bodily Injury Liability And Property Damage Liability Certificate Of Insurance, Stock Form No. 125.

4. No comments or testimony were received.

CLYDE JARVIS, CHAIRMAN

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 16, 1985.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.15.116) relating to net operating loss computations.	NOTICE OF THE ADOPTION of Rule I (42.15.116) relating to net operating loss computations.

TO: All Interested Persons:

1. On October 17, 1985, the Department published notice of the proposed adoption of Rule I (42.15.116) relating to net operating loss computations at pages 1504 through 1507 of the 1985 Montana Administrative Register, issue no. 19.

2. The Department has adopted rule I (42.15.116) as proposed.

3. A public hearing was held on November 6, 1985, to consider the proposed adoption of this rule. No persons appeared to oppose the proposed adoption. Harley Warner of the Income Tax Division appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is 15-30-305, MCA, and § 2, Chapter 142, L. 1985, and the rule implements 15-30-117, MCA, and § 1, Chapter 142, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.16.106) relating to the collection of taxes through offsets.	NOTICE OF THE ADOPTION of Rule I (42.16.106) relating to the collection of taxes through offsets.

TO: All Interested Persons:

1. On September 26, 1985, the Department published notice of the proposed adoption of Rule I (42.16.106) relating to the collection of taxes through offsets at pages 1376 and 1377 of the 1985 Montana Administrative Register, issue no. 18.

2. The Department has adopted the rule with the following changes:

RULE I (42.16.106) COLLECTION OF DELINQUENT TAXES OR OTHER FUNDS THROUGH OFFSET PROCEDURES (1) and (1)(a) remain the same.

(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.~~ Taxpayers may exclude wages from offset on contract proceeds by submitting a claim to the department of revenue within 30 days of notification of the offset. The claim must set forth the amount of wages and include documentation to support the claimed wage exclusion. 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)~~ (a) 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)~~ (b) 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)~~ (c) The provisions of subsection (2) ~~(a)~~ and (2)(a) ~~(b)~~ also apply to claims for tax refunds submitted on behalf of delinquent taxpayers by the department.

(3) through (6) remain the same.

AUTH: 15-30-305 MCA, Sec. 4, Ch. 160, L. 1985; IMP: 15-30-310 MCA, Sec. 1, Ch. 160, L. 1985.

3. The above changes to new rule I (42.16.106) are to clarify the intent of the language only and are being made at the suggestion of David Bohyer, Staff Researcher for the Legislative Council. The changes made in subsection (2) are to correct the rule format only.

A public hearing was held on October 16, 1985, to consider the proposed adoption of the rule. Chuck Wowereit, Income Tax Division, and R. Bruce McGinnis, Tax Counsel, Office of Legal Affairs, appeared on behalf of the Department. No persons appeared to oppose the proposed adoptions. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rule changes "submitted as drafted".

4. The authority for the rule is 15-30-305, MCA, and § 4, Chapter 160, L. 1985, and the rules implement 15-30-310, MCA, and § 1, Chapter 160, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through IV (42.18.101) through (42.18.104), Rules V through VIII (42.18.201) through (42.18.204), and Rule IX (42.18.211) relating to the Montana Appraisal Plan.	NOTICE OF ADOPTION of Rules I through IV (42.18.101) through (42.18.104), Rules V through VIII (42.18.201) through (42.18.204), and Rule IX (42.18.211) relating to the Montana Appraisal Plan.

TO: All Interested Persons:

1. On October 17, 1985, the Department of Revenue published notice of the proposed adoption of new rules I (42.18.101) through IV (42.18.104), rules V (42.18.201) through VIII (42.18.204), and rule IX (42.18.211) relating to the Montana Appraisal Plan at pages 1537 through 1547 of the 1985 Montana Administrative Register, issue number 19.

2. The Department has adopted I through IX as proposed.

3. The Department of Revenue held two public hearings on the proposed new rules. No persons appeared in opposition to the proposed rules to offer public comment. Furthermore, no written comments were received in opposition to the rules as proposed. The Department of Revenue adopts these Administrative Rules in order to directly implement 15-7-111, MCA. The requirement to adopt the Montana Appraisal Plan is clearly set forth in **Patterson v. Department of Revenue,** 171 Mont. 168, 557 P.2d 798 (1976).

4. The authority of the Department to make the proposed rules is based on 15-1-201, MCA, and the rules directly implement 15-7-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I (42.20.102), II (42.20.103), IV (42.20.104), V (42.20.105), and VI (42.20.205) relating to the valuation of real property.	NOTICE OF THE ADOPTION of Rules I (42.20.102), II (42.20.103), IV (42.20.104), V (42.20.105), and VI (42.20.205) relating to the valuation of real property.

TO: All Interested Persons:

1. On October 17, 1985, the Department of Revenue published notice of the proposed adoption of rules I (42.20.102), II (42.20.103), IV (42.20.104), V (42.20.105), and VI (42.20.205) relating to the valuation of real property at pages 1526 through 1532 of the Montana Administrative Register, issue number 19.

2. The Department of Revenue has adopted rules I (42.20.102), V (42.20.105), and VI (42.20.205) as proposed. The Department of Revenue will not adopt Rule III.

3. The Department has adopted Rules II (42.20.103) and IV (42.20.104) as proposed except as follows:

RULE II (42.20.103) TAX BENEFITS FOR THE REMODELING, RECONSTRUCTION, OR EXPANSION OF EXISTING BUILDINGS OR STRUCTURES

(1) through (3) remain the same.

(4) "Construction Period" means a period of time that commences with the issuance of a building permit and which concludes when the county appraiser determines that the structure is substantially completed. If more than one building permit is issued, the date on the earliest building permit issued will constitute the commencement of the construction period. In those cases where building permits are not issued, the commencement of the construction period is that time determined by the county appraiser to be the start of construction. That determination will coincide with the date the contract is let, the date the application is approved by the governing body, or when site work begins, whichever occurs first. For purposes of determining the eligibility for tax benefits, the construction period for a specific project may not exceed 12 months with the following exception. If it is determined to the satisfaction of all affected local governing bodies that the construction period for a specific project will exceed 12 months, an extension may be granted, at the time of application, by approval of all affected local governing bodies. The length of the extension granted must be indicated on the application form.

(5) through (10) remain the same.

AUTH: 15-1-201 MCA and § 2, Ch. 439, L. 1985; IMP: 15-24-1501 MCA and § 1, Ch. 439, L. 1985.

~~RULE III VALUATION OF LEASEHOLD IMPROVEMENTS ON COMMERCIAL PROPERTY--(1)--The department of revenue will employ the following appraisal and assessment methodology for the valuation of lease hold improvements located on commercial property:~~

~~(a)--The entire commercial property including the leasehold improvements located thereon shall be appraised using accepted appraisal techniques and the cost replacement manuals identified in ARM 42.19.101.~~

~~(b)--The total appraised value for the entire commercial property, including leasehold improvements located thereon, shall be assessed to the owner of record/commercial property owner. The owner of record shall be solely responsible for any valuation and tax allocation between and among the lessees in their property. The department of revenue will assist in the allocation process, whenever possible.~~

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

RULE IV (42.20.104) COMPARABLE PROPERTY (1) through (3) remain the same.

(3) (a) Single family residences with ancillary improvements are comparable to ~~residential property~~ other single family residences with ancillary improvements.

(b) Duplexes, ~~triplexes, fourplexes, and condominiums of 2 or more units~~ are comparable only to ~~one another~~ other duplexes; triplexes are comparable only to other triplexes; fourplexes are comparable only to other fourplexes.

(c) through (i) remain the same.

(j) Owner occupied condominiums of a similar number of units are comparable to other owner occupied condominiums of a similar number of units.

(k) Condominiums owned and operated for income producing purposes can only be compared to other condominiums held for the same purpose and which have a similar number of units.

(l) Industrial improvements are comparable only to other industrial improvements.

(m) Industrial land is comparable only to other industrial land.

(4) For any property not enumerated in (3) above, the department will rely on the definition of comparable property contained in 15-1-101(1)(e).

AUTH: 15-1-201 MCA, and § 10, Ch. 743, L. 1985; IMP: 15-1-101(e), MCA, and § 1, Ch. 743, L. 1985.

4. The Department of Revenue held public hearings on the proposed rules on November 14 and 15, 1985. No persons appeared at those hearings in opposition to any of the proposed rules. The Department of Revenue did not receive any adverse comment relating to the rules as proposed. The Department of Revenue has elected to adopt the rules for the reasons specified hereinafter.

RULE I (42.20.102) - The Department of Revenue adopts Rule I as proposed. In the past, there has been some dispute regarding the proper processing of property tax exemption applications.

Since the Department of Revenue is setting forth a general methodology by which it proposes to administer the property tax exemption statutes, this rule is being adopted. It sets forth the time requirements, the proof which must be submitted in connection with the application, and it advises the tax exemption applicant of the criteria which the Department of Revenue will employ in connection with the exemption processing.

RULE II (42.20.103) - During the 49th Session, the Legislature substantially amended 15-24-1501, MCA, providing for certain tax benefits for remodeling of structures. In order to implement the changes enacted by the last Legislature, the Department of Revenue is proposing these rules for purposes of applying the statute. During the public comment period, the Department of Revenue received suggestions from the community of Glendive relating to the time parameters set forth for the construction period. Those persons suggested that the length of the construction period was entirely too short, in that major construction projects are not always accomplished within twelve months. Accordingly, they suggested lengthening the construction period to twenty-four months. The Department of Revenue acknowledges that there will be occasions when the construction period may exceed 12 months. As a result, the Department has amended the proposed rule to allow the affected local government body to extend the construction period at the time of application. The length of the construction period extension will be at the discretion of the affected local government body.

RULE III - The Department of Revenue withdraws its proposed Rule III.

RULE IV (42.20.104) - The Department of Revenue adopts proposed Rule IV because it has been statutorily directed by House Bill 240 (codified as 15-6-141, MCA) to define in an administrative rule the doctrine of comparable property. The rule is adopted as modified in the rules hearing.

RULE V (42.20.105) - The Department of Revenue adopts proposed rule V in order to implement Chapter 452, Laws of Montana, 1985. The rule is adopted for the purpose of advising taxpayers of the manner which the Department of Revenue will employ in order to appraise condominium projects.

RULE VI (42.20.205) - The Department of Revenue adopts proposed Rule VI in order to implement Title 15, chapter 7, part 3, MCA. The Realty Transfer Act provides the Department of Revenue with a valuable source of sales data in order to value property for ad valorem tax purposes. Frequently, however, taxpayers are inclined to resist the filing of realty transfer certificates in connection with the real estate transactions. This rule sets forth the procedures for filing realty transfer certificates and the effects of failure to file the realty transfer certificates.

5. The authority of the Department to make the proposed rules is based on §§ 15-1-201 and 15-7-306, MCA, § 5, Ch. 452, L. 1985, § 2, Ch. 439, L. 1985, § 3, Ch. 463, L. 1985, § 3, Ch. 583, L. 1985, § 7, Ch. 681, L. 1985, and § 10, Ch. 743, L. 1985. The rules implement §§ 15-1-101, 15-6-201, 15-7-103, 15-7-301 through 15-7-311, 15-8-111, 15-8-511, 15-8-512, 15-6-141, and

15-24-1501, MCA, § 1, Ch. 439, L. 1985, §§ 1 and 2, Ch. 452, L. 1985, § 2, Ch. 463, L. 1985, § 1, Ch. 583, L. 1985, § 5, Ch. 681, L. 1985, and §§ 1 and 4, Ch. 743, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.20.113, 42.20.114, 42.20.141, 42.20.142, 42.20.143, and 42.20.146 relating to the valuation of agricultural and timberland	NOTICE OF AMENDMENT of Rules 42.20.113, 42.20.114, 42.20.141, 42.20.142 42.20.143, and 42.20.146 relating to the valuation of agricultural and timberland.

TO: All Interested Persons:

1. On October 17, 1985, the Department of Revenue published notice of the proposed amendment of rules 42.20.113, 42.20.114, 42.20.141, 42.20.142, 42.20.143, and 42.20.146 relating to the valuation of agricultural and timberland at pages 1513 through 1518 of the 1985 Montana Administrative Register, issue number 19.

2. The Department of Revenue has adopted the rules as amended with the following changes:

42.20.142 GRAZING LAND (1) remains the same.

(2) ~~About four~~ Four range ewes with lambs are considered the equivalent of a 1000 lb. steer. Calves are ~~usually~~ not considered until weaned, and four yearling steers or heifers are considered as equivalent to three 1000 lb. steers. A dry cow is considered the equivalent of a 1000 lb. steer. A range cow with calf is considered the equivalent of a 1000 lb. steer.

AUTH: 15-1-201 MCA; IMP: 15-7-103 MCA.

3. The Department of Revenue did not receive any oral comment relating to the proposed amendment of the rules during the hearing on November 7, 1985, in Havre, Montana. The only oral testimony pertaining to the proposed amendment of rules was offered by Senator Elmer Severson during the public hearing in Missoula, Montana, on November 12, 1985. Senator Severson's comments were directed at 42.20.142 Grazing Land, subsection (2). He suggested that any reference to a 1000 pound steer be changed to read a cow. The Department of Revenue feels the several equivalent determinations mentioned in the amended rule adequately clarify the rule and also deal with Senator Severson's comments. The Department of Revenue adopts this rule as amended.

The Department of Revenue adopts 42.20.113, 42.20.114, 42.20.141, 42.20.143, and 42.20.146 as amended, since there was no adverse public comment received during the period of public comment.

4. The authority of the Department to make the proposed amendments is based on § 15-1-201, MCA, § 3, Ch. 583, L. 1985, § 7, Ch. 681, L. 1985, § 2, Ch. 705, L. 1985, and § 4, Ch.739, L. 1985, and implement §§ 15-6-133, 15-7-103, 15-7-201, and

15-8-111, MCA, § 1, Ch. 583, L. 1985, §§ 1 and 6, Ch. 681, L. 1985, § 1, Ch. 705, L. 1985, and § 1, Ch. 739, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I (42.20.133) through VIII (42.20.140), IX (42.20.147) through XI (42.20.149), and XII (42.20.157) through XIV (42.20.159) relating to the valuation of land beneath agricultural improvements and timberlands.	NOTICE OF THE ADOPTION of Rules I (42.20.133) through VIII (42.20.140), IX (42.20.147) through XI (42.20.149) and XII (42.20.157) through XIV (42.20.159) relating to the valuation of land beneath agricultural improvements and timberlands.

TO: All Interested Persons:

1. On October 17, 1985, the Department of Revenue published notice of the proposed adoption of rules I (42.20.133) through VIII (42.20.140), IX (42.20.147) through XI (42.20.149), and XII (42.20.157) through XIV (42.20.159) relating to the valuation of land beneath agricultural improvements and timberlands at pages 1519 through 1525 of the 1985 Montana Administrative Register, issue number 19.

2. The Department has adopted rules I (42.20.133) through III (42.20.135), V (42.20.137), VII (42.20.139), IX (42.20.147) through XI (42.20.149), XIII (42.20.158) and XIV (42.20.159) as proposed.

3. The Department has amended rules IV (42.20.136), VI, (42.20.138), VIII (42.20.140), and XII (42.20.157) as proposed, except as follows:

RULE IV (42.20.136) RESIDENCE DEFINED (1) The term "residence" includes all conventionally constructed ~~improvements~~ homes as well as all mobile homes and manufactured housing. AUTH: 15-1-201 MCA; IMP: Ch. 463, L. 1985.

RULE VI (42.20.138) AGRICULTURAL IMPROVEMENTS AND IMPROVEMENTS ON TIMBERLAND LOCATED ON DISPARATE LAND OWNERSHIPS (1) Remains the same.

(2) If agricultural improvements and the land beneath the agricultural improvements are not in common ownership, the improvements ~~and the land will not be eligible for class 14 tax treatment~~ that are used exclusively for agricultural purposes will be eligible for class 14 tax treatment. The land and residences located on disparate land ownerships will not be eligible for class 14 tax treatment.

(3) Remains the same.

(4) If improvements on timberland and the land beneath the improvements on timberland are not in common ownership, the improvements ~~and the land will not be eligible for class 14 tax treatment~~ that are used exclusively for agricultural purposes will be eligible for class 14 tax treatment. The land and the

residences located on disparate land ownerships will not be eligible for class 14 tax treatments.
AUTH: 15-1-201 MCA; IMP: Chapter 699, L. 1985.

RULE VIII (42.20.140) DEFINITION OF TERMS (1) The term contiguous parcels of land means separate land acreages in the same ownership that are adjacent and physically touching ~~along all or most of one side~~.

(2) The term noncontiguous parcels of land means land acreages in the same ownership that ~~do not physically touch and that are~~ meet one of the two following standards:

(a) Acreages that do not touch but that are each an integral part of the operation of a bona fide agricultural operation, or

(b) Acreages that would meet the definition of contiguous contained in (1) above were the acreages not separated by one or more of the following features only:

~~(a)~~ (i) federal, state, or county roads and highways, or

~~(b)~~ (ii) navigable rivers and streams, or

~~(c)~~ (iv) county line boundaries, or

~~(d)~~ (v) school district boundaries, or

~~(e)~~ (vi) railroads, or

(vii) federal or state land that is leased from the federal or state government by a taxpayer whose land ownership is contiguous to the federal or state land.

(3) ~~For the purposes of this rule, all land acreages separated by a feature not enumerated in paragraph (2) above shall not be included within the definition of "noncontiguous parcels of land". For purposes of determining eligibility for agricultural land classification, such land acreages must individually meet the eligibility criteria set forth in 15-7-202, MCA, and rules IX through XII.~~ Land acreages that do not meet the definitions of either contiguous or noncontiguous parcels of land in (1) and (2) above must individually meet the eligibility criteria set forth in 15-7-202, MCA, and 42.20.147 through 42.20.149, and 42.20.157, ARM, to gain agricultural land classification.
AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

RULE XII (42.20.157) FILED AND PLATTED SUBDIVISIONS (1) Contiguous and noncontiguous ~~lots~~ parcels in the same ownership in a filed and platted subdivision must be an integral part of a bona fide, agricultural operation, be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. ~~For purposes of this subsection, noncontiguous parcels are lots or separately described parcels of land that do not physically touch and are separated by one or more of the following physical boundaries only:~~

~~(a) federal highways and roads, or~~

~~(b) state highways and roads, or~~

~~(c) navigable rivers and streams, or~~

~~(d) railroads.~~

~~(2) All land acreages separated by features not included in item (1) above shall not be considered "noncontiguous" for purposes of determining eligibility for agricultural land classification in those instances each separate land acreage or lot must individually meet the eligibility test enunciated in 15-7-201, MCA, and rules III through XII, to gain agricultural land classification.~~ Noncontiguous parcels, for the purpose of this rule, means parcels or separately described acreages of land in the same ownership that meet one of the following two standards:

(a) The parcels or separately described acreages of land do not touch but are each an integral part of the operation of a bona fide agricultural enterprise, or

(b) The parcels or separately described acreages of land would be contiguous were they not separated by one or more of the following features only:

(i) federal highways and roads, or

(ii) state highways and roads, or

(iii) navigable rivers and streams, or

(iv) railroads.

(3) Separate land acreages or parcels that are neither contiguous or noncontiguous must individually meet the eligibility test of 15-7-201, MCA, and 42.20.135 - 42.20.140, 42.20.147 - 42.20.149, and 42.20.157 - 42.20.159, ARM, to gain agricultural land classification.

(4) If the provisions of this part are used to evade taxation, the department will proceed under 15-8-306, MCA.

AUTH: 15-1-201 MCA; IMP: 15-7-201 through 15-7-216 MCA.

4. On November 7, 1985, a public hearing was held regarding the Department's proposed action on these rules at Havre, Montana. On November 12, 1985, a public hearing was held regarding the Department's proposed action on these rules in Missoula, Montana. Chris Tweeten, Agency Legal Services, presided over and conducted the hearings. He prepared a report of hearing officer which was submitted to the Department and which the Department has considered in taking its action on these rules. Mr. Gregg Groepper and Mr. Randy Wilke appeared on behalf of the Department as the principal proponents thereof. During the Missoula hearing, several persons appeared to express public comment relating to the proposed rules. Those persons and several other interested parties have submitted written comments relating to the rules. All oral testimony, as well as the written comments, have been fully considered by the Department in connection with the adoption of these rules.

The oral testimony and the written comment which was received relating to the various rules will be addressed with respect to each rule.

RULE I (42.20.133) - The Department adopts Rule I as proposed. The rule directly implements Senate Bill 431 as enacted during the 49th Session of the Legislature. That Bill required the Department of Revenue to adopt Rules which would set forth the method for determining whether or not land is actively devoted to agricultural use. The law also required the

Department of Revenue to value one acre beneath residential improvements on agricultural land and on timberland at their respective market values. Written comment was submitted by Jo Brunner on November 7, 1985. She appeared to generally support the Department of Revenue's implementation of Senate Bill 431 by requiring a percentage income test in order to qualify for agricultural land tax classification. Dennis Burr appeared on behalf of the Montana Stockgrower's Association and offered the opinion that one acre of land beneath improvements on timberland cannot be valued at its market value because that is beyond the legislative intent as expressed in Senate Bill 431. Mr. Burr also offered the opinion that valuing the improvements situated upon timberland at 80% of their market value would be unlawful because the intention of the Legislature as expressed in Senate Bill 431 was not to afford a tax benefit for such improvements, but only to afford a benefit for improvements situated upon agricultural land. The Department of Revenue has taken these comments into consideration in adopting this rule and it concludes that the intention of the Legislature was to afford a benefit for improvements situated upon timberland as well as those improvements situated upon agricultural land for purposes of affording class 14 property tax treatment. In addition, the intention of the Legislature was to value a one acre homesite beneath an improvement situated upon timberland at its market value, as well as a one acre homesite situated upon agricultural land.

RULE II (42.20.134) - The Department of Pevenue adopts this rule as proposed. Mrs. Brunner suggests that the language appearing in paragraph (2)(a) and (b) is simply unnecessary and that the Department rely exclusively upon the definition set forth in paragraph (2). Mr. Burr expressed an opinion that the definition of residence in the Rule was too broad and ambiguous. He was concerned that the definition of residence could be misconstrued to include temporary residential structures such as bunkhouses. He therefore suggested that the Department of Revenue tighten the definition of residence. Mrs. Brunner suggests that the determination of what is "many miles from a suburban area" is a vague and ambiguous determination for an appraiser to make. She suggests that the language can be construed in various fashions by various persons, depending upon which portion of the state they reside in. The Department of Revenue adopts Rule II as proposed. The Department has no intention of valuing bunkhouses or sheepherders residences as residential property for purposes of applying the rule. Furthermore, in the event that the one acre homesite property is far removed from an urban area, the Department of Revenue must have some guideline with which to determine the manner in which a market value will be assigned to the homesite acre. These definitional guidelines will give appraisers working in the field some consistent definition as to what they must look to in terms of securing comparable sales for valuation purposes.

RULE III (42.20.135) - The Department adopts Rule III as amended in response to comments provided at the hearing.

RULE IV (42.20.136) - The Department of Revenue adopts Rule IV as amended in the hearing process. The Department did not receive any adverse comment relating to the rule as presented at the hearing.

RULE V (42.20.137) - The Department of Revenue adopts Rule V as proposed, in that it did not receive any adverse comment during the period of public comment.

RULE VI (42.20.138) - The Department of Revenue adopts Rule VI as proposed. The Department did not receive any adverse comment relating to the rule as proposed.

RULE VII (42.20.139) - The Department of Revenue adopts Rule VII as proposed. Mrs. Brunner appeared concerned that the rule authorizes a local appraiser to conduct a field evaluation of the property in order to determine whether a true agricultural use has been made out. She suggests that this particular practice has been unworkable and perhaps administratively abused in the past. The Department of Revenue believes that any visual confirmation of the use of the property by the appraiser can only serve to strengthen the administrative determination process and to insure that a correct determination is made as to the classification of the property.

RULE VIII (42.20.140) - The Department of Revenue adopts Rule VIII as amended. This rule engendered a good deal of public comment. Mr. Burr suggested that the definition of contiguous should be simply that which appears in the dictionary - meaning simply touching or adjoining. Representative Swift suggested that all definitions relating to contiguous and noncontiguous be abandoned and that all noncontiguous parcels of property which met the $1,500 income test should be classified as agricultural in nature. He felt this would be consistent with legislative intention during the last session and that it would prove more workable in terms of administration of the new tax law. Senator Farrell was opposed to the Department of Revenue's distinction between contiguous and noncontiguous parcels because he didn't feel that the legislature intended each noncontiguous parcel to be required to yield $1,500 of annual gross income in order to be classified as agricultural property. He also felt that complying with the $1,500 income test by an owner who had several noncontiguous parcels would be a great burden. Senator Severson was opposed to the Department of Revenue's definition of the word contiguous because, in his opinion, it simply conflicted with the common meaning of the word. He also suggested that the Legislature intended that all agricultural operations consisting of a number of noncontiguous parcels should be qualifying as agricultural lands under Senate Bill 431. The Department of Revenue believes that its amended definitions respond to concerns about bona fide agricultural enterprises, but reflect clear legislative intent as expressed in Senate Bill 431.

RULE IX (42.20.147) - The Department of Revenue adopts the rule as proposed. Mr. Burr expressed an opinion that the Department of Revenue had deviated from the expressed language of the statute in setting forth the $1,500 income test within

the rule. Mrs. Brunner stated that Rule IX as proposed was consistent with legislative intent as she discerned it during the past legislative session. Representative Swift suggests that the $1,500 income test under subsection (3) of the rule will be subject to periodic market fluctuations. He suggests using a $1,500 gross value annually and employing current market pricing. The rule as adopted by the Department of Revenue requires clear proof of $1,500 worth of gross income yielded directly from the land which is claimed to be agricultural in nature. This test directly implements the thrust of Senate Bill 431 and it is therefore appropriate.

RULE X (42.20.148) - The Department of Revenue adopts Rule X as proposed. Since the Department did not receive any adverse public comment, the rule is adopted to directly implement the language within 15-7-202(1)(b), MCA.

RULE XI (42.20.149) - The Department of Revenue adopts Rule XI as proposed. Mrs. Brunner stated that this rule was consistent with legislative intention as she discerned it during the last legislative session.

RULE XII (42.20.157) - The Department of Revenue adopts Rule XII with amendments. This rule was subject to the same adverse public comment which rule VIII was subject to. Those persons were concerned about the definitions of contiguous and noncontiguous, as applied in the rule. Mr. Tucker Hill appeared on behalf of the Montana Wood Products Association and offered a dictionary definition of the word contiguous. Changes similar to those made in Rule VIII are being made in this rule and for the same reasons.

RULE XIII (42.20.158) - The Department of Revenue adopts Rule XIII as proposed. There was some concern expressed by Mrs. Brunner that production of Christmas trees be deemed agricultural land use. Mr. Steve Larson of the Montana Extension Service also was concerned about the treatment of Christmas trees in connection with agricultural land classification. The Department of Revenue explained during the rule making hearing that Administrative Rule 42.20.113(7) was being added to clearly reflect that the growing and cultivation of Christmas trees would be considered an agricultural land usage. Since the Department of Revenue has responded to the concerns of the public, the rule appears to be consistent with the expression of the Legislature with respect to enactment of Senate Bill 431.

RULE XIV (42.20.159) - The Department of Revenue adopts Rule XIV as proposed, since there was no adverse public comment received during the period of public comment.

5. The authority of the Department to make the proposed rules is based on 15-1-201, MCA, § 3, Ch. 699, L. 1985, § 3, Ch. 463, L. 1985, § 3, Ch. 583, L. 1985, § 6, Ch. 681, L. 1985, and § 2, Ch. 705, L. 1985, and the rules implement §§ 15-7-201 through 15-7-216, 15-7-103, 15-8-111, and 15-6-144, MCA, §§ 1 and 2, Ch. 699, L. 1985, § 1, Ch. 463, L. 1985, § 1, Ch. 583, L. 1985, § 6, Ch.681, L. 1985, and § 1, Ch. 705, L. 1985.

John D. LaFaver, Director
Department of Revenue

Certified to the Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rules 42.21.101, 42.21.123, 42.21.138, 42.21.154, 42.21.155, and 42.21.156, and the Repeal of Rule 42.21.104 relating to the valuation of personal property.	NOTICE OF AMENDMENT of Rules 42.21.101, 42.21.123, 42.21.138, 42.21.154, 42.21.155, and 42.21.156, and the Repeal of Rule 42.21.104 relating to the valuation of personal property.

TO: All Interested Persons:

1. On October 17, 1985, the Department of Revenue published notice of the proposed amendments of rules 42.21.101, 42.21.123, 42.21.138, 42.21.154, 42.21.155, and 42.21.156, and the repeal of rule 42.21.104 relating to the valuation of personal property at pages 1508 through 1512 of the 1985 Montana Administrative Register, issue number 19.

2. The Department of Revenue has amended the rules as proposed.

3. During the hearing on November 6, 1985, several persons appeared to offer oral comment. Representatives of United Industries of Billings suggested that the high and low hour adjustment for the valuation of aircraft within A.R.M. 42.21.101 should not be deleted. They commented that the use of an airplane engine will have an effect upon its value and it ought to be taken into account when valuing property for ad valorem tax purposes. They suggested that in the event the Department of Revenue is unable to uniformly assess aircraft in this fashion, the county assessors ought to be corrected. The Department of Revenue responded that by deleting high and low aircraft hours, it was assuming a more uniform approach to the valuation of aircraft, since a subjective variable was being removed from the valuation process. Another gentleman was interested in whether all motorcycles, including both off the road and those designed for on the road use had been removed from the ad valorem system. The Department of Revenue is of the opinion that all motorcycles, regardless of their design or proposed use, have been removed from the ad valorem system and that they will be subject to the fee schedule which was adopted by the 1985 Legislature. Senator Gage appeared to offer comments with respect to the amendment of A.R.M. 42.21.138. He suggested that a rule ought to be proposed so as to insure that all property below the wellhead would be exempt from taxation. He offered the opinion that this was the intention of the Legislature during the last session. He also suggested that all water producing wells and all other types of well related property ought to be exempt from taxation, as is all downhole equipment. The Department of Revenue cannot administratively expand upon the scope of the statute beyond that which has been prepared by the Legislature. In this

case, the Legislature expressed an intention to exempt only downhole equipment. It did not address the matter of water producing wells or any other type of oil and gas field machinery or equipment. Consequently, all other types of property must remain taxable pursuant to 15-6-101, MCA. A representative of the Montana Bankers Association inquired why a new category of depreciation was being set forth in A.R.M. 42.21.155. The Department of Revenue explained that the property being addressed within paragraph 7 of the rule had a specific economic age life which should be specifically recognized. Accordingly, it was being afforded a 5 year economic age life for purposes of computing ad valorem depreciation.

4. The authority of the Department to make the amendments is based on 15-1-201, MCA, § 49, Ch. 516, L. 1985, § 3, Ch. 583, L. 1985, and § 10, Ch. 743, L. 1985, and the amended rules implement §§ 15-6-138, 15-6-139, 15-6-213, 15-7-103, MCA, § 4, Ch. 516, L. 1985, §§ 1 and 2, Ch. 583, L. 1985, and § 3, Ch. 743, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I (42.22.116) and II) (42.22.117) and the Amendment) of Pule 42.22.112 relating to) the valuation of centrally) assessed property.)	NOTICE OF THE ADOPTION of Rules I (42.22.116) and II II (42.22.117), and the Amendment of Rule 42.22.112 relating to the valuation of centrally assessed property.

TO: All Interested Persons:

1. On October 17, 1985, the Department of Revenue published notice of the proposed adoption of rules I (42.22.116) and II (42.22.117) and the proposed amendment of rule 42.22.112 relating to the valuation of centrally assessed property at pages 1533 through 1536 of the 1985 Montana Administrative Register, issue number 19.

2. The Department has amended rule 42.22.112 as proposed.

3. The Department has adopted rules I and II as proposed, except as follows:

RULE I (42.22.116) DETERMINATION OF TAX RATE FOR CLASS 15 PROPERTY (1) Remains the same.

(2) The department of revenue has developed a form which will be employed in order to solicit information regarding the taxable value and the market value for all commercial and industrial property from the county assessors. That form will be dispatched annually to the county assessors on January 1. The county assessors shall have up to and including the 15th day of May of each taxable year in which to return the form to the property assessment division. A copy of the form is available to taxpayers upon request.

(3) and (4) remain the same.

(5) In the event that a county assessor should fail to return the solicited information form ~~in a timely fashion~~, to the department of revenue by the 15th day of May of each taxable year, the department of revenue will estimate the taxable value for all commercial and industrial property within that particular county. This estimation process will take place only if the county assessor should fail to return the form by ~~in a timely fashion~~ the deadline referred to hereinabove.

(a) The department of revenue will use the reported taxable and market value for all commercial and industrial property for the previous tax year in estimating the total taxable and market value of all commercial and industrial property for the present tax year for nonreporting counties.

(b) Remains the same.

(c) If the department of revenue should receive the information which was initially solicited from the county assessors relating to the total taxable and the total market value of all commercial and industrial property within that county after May

15 of the tax year, the department of revenue will recompute the overall tax rate set forth in 15-6-145, MCA. In the event that the total tax rate should be determined to be not less than nor more than 5% of the estimated rate, no further adjustment of the tax rate will be made for that particular tax year. In the event that the recomputed tax rate should be less than or greater than 5% of the estimated tax rate, the department of revenue will recompute the overall tax rate for the state of Montana and it will issue revised assessments to the affected property taxpayers pursuant to 15-8-601, MCA.
AUTH: 15-1-201 MCA; IMP: 15-6-145 MCA.

RULE II (42.22.117) METHODOLOGY FOR PREPARATION OF SALES ASSESSMENT RATIO STUDY (1), (2), and (3)(a) remain the same.

(b) ~~The department of revenue shall not employ a general system of sales confirmation in order to determine whether the sale was truly an arms length transaction.~~ The department will rely upon the sales confirmation process which is set forth in the document entitled sales assessment ratio study preparation (1980).

(3)(c), (4), (5), (6), and (7) remain the same.
AUTH: 15-1-201 MCA; IMP: Title 15, chapter 16, part 1 MCA.

4. During the hearing on the proposed rules, four persons appeared, although none of them chose to offer any oral comment. Subsequently, the Department of Revenue did receive written comments from affected taxpayers. The operating airlines in the State of Montana suggested that market value information should be collected and that a deadline should be established for the return of the market value and taxable value information which is to be solicited from the county assessors. The Department of Revenue believes that the comments are well taken and has modified the proposed rule to include market value and a deadline. The airlines also contend that particular criteria should be set forth within paragraph 3(a) of Rule II in order to determine whether a particular sale is suitable for inclusion in the study. Since the Department of Revenue has adopted the document entitled "Sales Assessment Ratio Study Preparation" (1980) for purposes of sales assessment ratio study preparation, it will rely upon the criteria and matters set forth within that document in order to determine whether particular sales should be included within the ratio study. Accordingly, to set forth the conditions or criteria within the rule would be simply a duplication of the matter which is reflected in that publication. A further comment was offered that paragraph 3(b) of Rule II should be modified so as to clarify its meaning. The Department of Revenue has modified the proposed rule to reflect that a program of sales confirmation will be required before the sales are forwarded to Helena for inclusion in the study. The county appraiser shall be expected to follow the criteria for sales confirmation which are set forth in the document entitled "Sales Assessment Ratio Study Preparation", which is being adopted by reference. The airlines also suggest that a deadline should be

established within paragraph 5 of Rule II in order to reflect the date when the sales ratio study is expected to be published. The Department of Revenue believes that this type of deadline is largely unnecessary because there are statutory deadlines set forth in Chapter 23 of Title 15 which the Department of Revenue must comply with. Accordingly, the ratio study will have to be prepared by the Department prior to the time that the value for centrally assessed companies is apportioned to the various counties according to law.

Written comments were also received from the Burlington Northern Railroad relating to the adoption of new Rules I and II. It commented that the rules implement a statute which it believes to be unlawful. The Department of Revenue has no control over the enactment of various laws. Accordingly, the rule implements what the Department of Revenue presumes to be a lawful statute. The railroad also commented that the Department of Revenue should solicit market value information for purposes of preparing the annualized tax rate. That comment has already been addressed in response to the airlines' written comments. The railroad comments further that more specificity is required with respect to the market values for class 1 and class 2 properties which are to be included within the formula set forth in 15-6-145, MCA. The Department of Revenue cannot expand upon the definitional parameters for class 1 and class 2 property beyond that which has been set forth by the Legislature. 15-8-111, MCA, sets forth the appropriate taxable values for proceeds from mines. The Department of Revenue must adhere to that direction with respect to the market and taxable values of gross and net proceeds from mines. It is suggested by the railroad that the estimation procedure set forth in Rule I, paragraph 5(c), should be modified so as to require an adjustment in final taxable value in the event that the estimation is 5% or less. The Department of Revenue believes that any estimation procedure which is within 5% of the actual computed taxable value is certainly appropriate. With respect to Rule II, the railroad comments that the use of a value weighted mean in order to determine central tendency within the sales assessment ratio study is erroneous. Instead, it opts for the use of a median ratio for such purpose. The Department of Revenue believes that the document sets forth the proper measure of central tendency for sales assessment ratio study preparation and it will be employed. The railroad has also suggested that the sales to be included within the ratio study should be confirmed in some fashion prior to their inclusion into the study. The Department of Revenue has also addressed that particular concern in responding to the comments of the operating airlines.

5. The authority of the Department to make the proposed rules is based upon §§ 15-1-201 and 15-7-103, MCA, § 3, Ch. 583, L. 1985, and § 10, Ch. 743, L. 1985, and the rules implement

§§ 15-23-201 and 15-6-145, MCA, and § 5, Ch. 743, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE CORRECTION of the Adoption of Rule 42.28.502 relating to liquified petroleum gas.	NOTICE OF CORRECTION of Rule 42.28.502 relating to liquified petroleum gas.

TO: All Interested Persons:

PLEASE NOTE: The Department of Revenue's adoption notice published at page 1636, 1985 Montana Administrative Register, issue number 20, adopted a new rule, Definition of Liquified Petroleum Gas. This rule was numbered 42.28.501. It should have been numbered 42.28.502.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/16/85

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of a rule pertaining to scheduled dates - Montana Administrative Register.	))))	NOTICE OF THE AMENDMENT OF ARM 1.2.419

TO: All Interested Persons.

1. On November 14, 1985, the Secretary of State published notice of a proposed amendment to rule 1.2.419 concerning the filing, compiling, printer pickup and publication for the Montana Administrative Register, at page 1708 of the Montana Administrative Register, issue number 21.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

JIM WALTERMIRE
Secretary of State

Dated this 16th day of December, 1985.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of rules relative to the use of the Computer Election Systems Optech I Voting Device	)))	NOTICE OF ADOPTION OF RULES FOR THE USE OF THE COMPUTER ELECTION SYSTEMS OPTECH I VOTING DEVICE

TO: All Interested Persons

1. On November 14, 1985, the secretary of state published notice of the proposed adoption of rules relative to the use of the Computer Election Systems Optech I Voting Device. The notice was published at page 1700 of the Montana Administrative Register, Issue No. 21.

2. No public hearing was contemplated and no request for a public hearing was received. Public comments were accepted until December 12, 1985. No public comments were received.

3. The agency has adopted rules 44.3.1781 thru 44.3.1787 as proposed.

4. The authority for the rules is 13-17-107(2), MCA and the rules implement 13-17-107(2), MCA.

JIM WALTERMIRE
Secretary of State

Dated this 16th day of December, 1985.

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

In the matter of the adoption of rules; the repeal of Rule 46.5.912; and the amendment of Rules 46.5.902, 46.5.908, 46.5.909, 46.5.910, 46.5.913, 46.5.914, 46.5.915, 46.5.916, 46.5.917, 46.5.918, 46.5.919, 46.5.920, 46.5.921, 46.5.922, 46.5.923, 46.5.924, 46.5.930, 46.5.931, 46.5.933, 46.5.935, 46.5.936, 46.5.937, 46.5.938, 46.5.943, 46.5.944 and 46.5.946 pertaining to day care facilities	NOTICE OF THE ADOPTION OF RULES (I) 46.5.911A, (III) 46.5.914A, (V) 46.5.918A AND (IV) 46.5.923A; THE REPEAL OF RULE 46.5.912; AND THE AMENDMENT OF RULES 46.5.902, 46.5.908 THROUGH 46.5.910, 46.5.913 THROUGH 46.5.924, 46.5.930, 46.5.931, 46.5.933, 46.5.935 THROUGH 46.5.938, 46.5.943, 46.5.944 AND 46.5.946 PERTAINING TO DAY CARE FACILITIES

TO: All Interested Persons

1. On November 14, 1985, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I through V, the amendment of rules as listed above and the repeal of Rule 46.5.912 pertaining to day care facilities at page 1726 of the 1985 Montana Administrative Register, issue number 21.

2. The Department has adopted Rules 46.5.911A, DAY CARE FACILITIES, JOINT PROGRAMS; 46.5.914A, DAY CARE CENTERS, RECORDS; and 46.5.923A, DAY CARE CENTERS, SAFETY REQUIREMENTS as proposed.

3. The Department has repealed Rule 46.5.912 as proposed.

4. The Department has amended Rules 46.5.909, DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES; 46.5.910, FAMILY DAY CARE HOME AND GROUP DAY CARE HOME REGISTRATION SERVICES PROVIDED; 46.5.914, DAY CARE CENTERS, PROGRAM REQUIREMENTS; 46.5.915, DAY CARE CENTERS, DISCIPLINE; 46.5.916, DAY CARE CENTERS, SCHEDULING; 46.5.917, DAY CARE CENTERS, SPACE; 46.5.918, DAY CARE CENTERS, SUPPORT SERVICES SPACE AND EQUIPMENT; 46.5.919, DAY CARE CENTERS, MATERIALS AND EQUIPMENT; 46.5.920, DAY CARE CENTERS, AFTER-SCHOOL CARE; 46.5.921, DAY CARE CENTERS, NIGHT CARE; 46.5.923, DAY CARE CENTERS, PARENT INFORMATION; 46.5.924, GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS; 46.5.930, GROUP DAY CARE HOMES, PROGRAM REQUIREMENTS; 46.5.931, GROUP DAY CARE HOMES, HEALTH CARE REQUIREMENTS; 46.5.933, GROUP DAY CARE HOMES, NUTRITION; 46.5.936, GROUP DAY CARE HOMES, PARENT INVOLVEMENT; 46.5.938, FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS; and 46.5.944, FAMILY DAY CARE HOMES, HEALTH CARE REQUIREMENTS as proposed.

5. The Department has adopted Rule (V) 46.5.918A as proposed with the following changes:

RULE V DAY CARE CENTERS, TRANSPORTATION Subsections (1) and (2) remain as proposed.

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

(4) WITH THE EXCEPTION OF PUBLIC TRANSPORTATION OR RENTED OR LEASED BUSES WHICH ARE NOT REQUIRED BY LAW TO BE EQUIPPED WITH SAFETY RESTRAINTS, Nno vehicle shall begin moving until all children are seated and secured in age appropriate safety restraints, which must remain fastened at all times the vehicle is in motion.

Subsections (5) and (6) remain as proposed.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

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

46.5.902 DEFINITIONS ~~AND--STANDARDS~~ Subsections (1) through (13) remain as proposed. (14) deleted as proposed.

(~~15~~14) "Full day care" FOR STATE PAID DAY CARE means care given to a child~~ren~~ in a ~~center,--group--day--care--home-or family~~ day care ~~home~~ facility licensed or registered by the ~~agency--for--such,--and--provided~~ department which is provided for a continuous period of not less than 56 hours per day to 10 hours per day. ~~This-care-includes-one-main-meal,-which-may be-breakfast,-lunch,-or-dinner/supper,-and-two-snacks-during the-period-of-care.~~

(~~16~~15) "Part-time care" FOR STATE PAID DAY CARE means care given to a child in a ~~center--or-home~~ day care facility licensed or registered by the ~~agency,--whether--day--or--night care,--and--provided~~ department which is provided for a period of less than 56 hours per day~~,--paid-on-an-hourly-basis.~~ PAID ON AN HOURLY BASIS.

~~(17)--Drop-in--care--program---a--family-day--care-program providing-care-to-any-child-for-less-than-5-consecutive-hours.~~

(16) "Overlap care" means care provided at a day care facility and approved by the department for a designated period of time not to exceed two hours per day when the number of children in care may exceed the ~~authorized-capacity-of-the facility.~~ NUMBER OF CHILDREN REGISTERED FOR CARE ON THE REGISTRATION CERTIFICATE.

Subsection (17) remains as proposed.

(~~18~~18) "Infant" means a child ~~6-weeks-to~~ under the age of ~~24~~ ~~18~~ 24 months of age.

Subsections (19) through (21) remain as proposed.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-501 and 53-4-504 MCA

46.5.908 ~~FAMILY-DAY-CARE-HOME-AND-GROUP-DAY-CARE-HOME REGISTRATION-SERVICES,~~ DAY CARE CENTER FACILITIES, REGISTRATION OR LICENSING APPLICATION ~~SERVICES, PROCEDURES-FOR-OBTAINING-SERVICES~~

Subsections (1) through (3)(f) remain as proposed.

~~(g)--evidence-of-compliance-with-local-zoning-ordinances, if-applicable;~~

Subsections (h) through (j) remain as proposed but will be recategorized as (g) through (i).

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

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 and 53-4-507 MCA

46.5.913 DAY CARE CENTERS, LICENSING SERVICES PROVIDED

(1) The department ~~will~~ may WILL provide the following:

Subsections (1)(a) through (3) remain as proposed.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504, 53-4-508 and 53-4-511 MCA

46.5.922 DAY CARE CENTERS, STAFFING REQUIREMENTS

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

(2) Qualifications of staff.

(a) The director shall have an associate degree in a related field plus one year experience in child care or child development associate certification (CDA) or three years experience in child care. ~~Existing directors employed before April, 1982 are exempt from this requirement.~~ If the director also acts as a caregiver, he must meet the qualifications of a primary caregiver.

Subsections (2)(b) through (8) remain as proposed.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504, 53-4-506 and 53-4-508 MCA

46.5.935 GROUP DAY CARE HOMES, SPECIAL PROGRAM REQUIREMENTS Subsections (1) through (2) remain as proposed.

~~(ba) No more than a two-hour overlap period of more than the number of children for which a facility is registered. This is to allow the home to care for children during after school hours. At no time during the hours of drop in shall the number of children in a group day care home exceed sixteen.~~ There may be situations, such as before and after school, when the number of children in care over two (2) years

of age would exceed for a short period of time the licensed or registered capacity.

(i) Overlap of children under two (2) years of age shall not be permitted. ~~The number of children in care, in these overlap situations, shall never be more than one quarter (¼) over the number authorized by the registration certificate.~~

(ii) Overlap care shall not exceed two (2) hours total in any child-care day.

(iii) GROUP DAY CARE HOMES THAT ARE REGISTERED TO CARE FOR NINE (9) OR FEWER CHILDREN MAY CARE FOR UP TO THREE (3) ADDITIONAL CHILDREN DURING THE APPROVED OVERLAP TIME. GROUP DAY CARE HOMES THAT ARE REGISTERED TO CARE FOR TEN (10) OR MORE CHILDREN MAY CARE FOR UP TO FOUR (4) ADDITIONAL CHILDREN DURING THE APPROVED OVERLAP TIME.

(iv) DAY CARE FACILITIES PROVIDING 24-HOUR CARE MAY BE GRANTED TWO HOURS OF OVERLAP CARE FOR EACH TWELVE HOURS OF CONTINUOUS CARE UPON THE WRITTEN APPROVAL OF THE SOCIAL WORKER SUPERVISOR III.

(b) If a provider wishes to ~~have an~~ PROVIDE overlap ~~situation~~ CARE, the provider shall file with the department a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(c) Overlap care shall not occur until the provider has received written approval of this plan from the department.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

46.5.937 GROUP DAY CARE HOMES, ADDITIONAL REQUIREMENTS ~~(1) Provider/child ratio.~~

Subsections (1) and (2) remain as proposed.

~~(a)~~3) ~~The provider shall provide opportunities for the parent(s) to participate in activity planning and individual meetings. In cases where the parents cannot or will not participate, documentation of written notification of meetings and activities must be placed in the child's records.~~ The provider may not ~~accept admission of~~ PROVIDE CARE FOR a child if ~~the~~ CARING FOR THAT child's ~~admission~~ would ~~require~~ CAUSE the provider to exceed the number of children the provider is authorized REGISTERED to care for on the registration certificate.

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

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

46.5.943 FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS

Subsections (1) through (3) remain as proposed.

(4) The provider may not ~~accept--admission--of~~ PROVIDE CARE FOR a child if ~~the~~ CARING FOR THAT child's ~~admission~~ would ~~require~~ CAUSE the provider to exceed the number of children the provider is ~~authorized~~ REGISTERED to care for on the registration certificate.

(5) Television watching during the hours children are in care shall be limited to child-appropriate programs.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

46.5.946 FAMILY DAY CARE HOMES, ~~DROP-IN~~ OVERLAP CARE

~~(1)--Drop-in-care-program.~~

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

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

(1) There may be situations, such as before and after school, when the number of children in care over two (2) years of age would exceed for a short period of time the registered capacity.

(i) Overlap of children under two (2) years of age shall not be permitted. ~~The-number-of-children-in-care,-in-these overlap-situations,-shall-never-be-more-than-one-quarter-(1) over-the-number-of-children-authorized-by-the-registration certificate.~~

(ii) Overlap care shall not exceed two (2) hours total in any child-care day.

(iii) FAMILY DAY CARE HOMES THAT ARE REGISTERED TO CARE FOR FOUR (4) OR FEWER CHILDREN MAY CARE FOR ONE (1) ADDITIONAL CHILD DURING THE APPROVED OVERLAP TIME. FAMILY DAY CARE HOMES THAT ARE REGISTERED TO CARE FOR FIVE (5) OR SIX (6) CHILDREN MAY CARE FOR TWO (2) ADDITIONAL CHILDREN DURING THE APPROVED OVERLAP TIME.

(iv) DAY CARE FACILITIES PROVIDING 24-HOUR CARE MAY BE GRANTED TWO (2) HOURS OF OVERLAP FOR EACH TWELVE CONTINUOUS HOURS OF CARE UPON THE WRITTEN APPROVAL OF THE SOCIAL WORKER SUPERVISOR III.

(2) If a provider wishes to ~~have-an~~ PROVIDE overlap ~~situation~~ CARE, the provider shall file a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(3) Overlap care shall not occur until the provider has received written approval of this plan from the department.

AUTH: Sec. 53-4-503 MCA
IMP: Sec. 53-4-504 MCA

7. The Department has thoroughly considered all comments received:

COMMENT: The Department of Health and Environmental Sciences commented that Rule II duplicates its own rules regarding regulation of day care centers. Since the Department of Health and Environmental Sciences is responsible for enforcing health requirements in day care centers, there is no need for Rule II.

RESPONSE: The Department agrees and Rule II will be deleted.

COMMENT: Testimony was received on the transportation rule (Rule V) for day care centers. One person indicated that emergency medical personnel object to persons having all doors locked on moving vehicles. Emergency medical persons are unable to get into the vehicle in an emergency if all doors are locked. Other testimony pointed out that public transportation and school buses do not have safety restraints for each seat as required by the proposed rules. Some centers use city buses and school buses.

RESPONSE: Rule V (3) has been changed to read, "All passenger doors on vehicles must be locked whenever the vehicle is in motion". Rule V (4) has been changed to add, "With the exception of public transportation or rented or leased buses which are not required by law to be equipped with safety restraints".

COMMENT: Two respondents questioned the Department's definition change for full-time and part-time care. [46.5.902(14) & (15)] The change involves making part-time care "less than 6 hours per day" instead of "less than 5 hours". One of these respondents thought the change involved licensing and/or registration.

RESPONSE: The definitions of full-time and part-time care [46.5.902(14) & (15)] apply only to state-paid day care and are not a part of the licensing registration requirements. For clarification, the statement "for state-paid day care" has been added.

COMMENT: Several persons responded to the "overlap" rules (46.5.935 & 946) for family and group day care homes. Some felt the definition was confusing, while others objected to the use of fractions in determining the number of children that could be counted in "overlap".

RESPONSE: For clarity, a change has been made in the definition and the fraction has been changed to actual numbers.

COMMENT: Others comments regarding overlap care raised the question as to whether the two hour period must be taken at one time or whether it could be for one hour before school and one hour after school. Also, there was a question as to whether it was to be applied as two hours for every 24 hours or for 2 hours per every 10 hours.

RESPONSE: The department's interpretation of this rule allows for the provider to designate any two hours out of a child care day as the overlap period. These hours could be split to include one hour before and one hour after school. Day care facilities which provide 24 hour care may be granted one overlap period every 12 hours of continuous care upon approval of the SWS III.

COMMENT: Several comments were received regarding the change in the definition of infant. Commenters felt the definition should not be changed and that the existing definition should continue to assure quality care for very young children in terms of staff ratio and total numbers of children.

RESPONSE: The department agrees and the proposed amendment to the definition of infants has been deleted.

COMMENT: One comment was received concerning ARM 46.5.937 concerning the providers responsibility not to accept children in care if to do so would cause the provider to exceed the amount of children authorized on the registration certificate. The comment requested clarification of whether this referred to the amount of children enrolled or an actual count of children in care.

RESPONSE: The department intended the provision to refer to an actual count of children in care. Changes have been made to better clarify the rule.

COMMENT: One respondent suggested that the sentence, "Directors employed before April, 1982 are exempt from this requirement" be dropped from the day care center staffing requirements. Those directors employed before April, 1982 would now meet the qualifications because they have 3 years of experience in child care.

RESPONSE: The Department agrees and has deleted the sentence.

COMMENT: Comment was received regarding ARM 46.5.908(3)(g) which requires the provider to submit evidence of compliance with local zoning ordinances. It was felt that this was an unnecessary duplication of existing zoning ordinances. Because compliance with zoning ordinances is required to obtain a city license to operate, it was felt it was unnecessary

to require the provider to submit this information to the department.

RESPONSE: The department agrees and 46.5.908(3)(g) has been deleted.

COMMENT: Comments were received regarding the proposed amendment to ARM 46.5.913 regarding the services which the department will provide to day care facilities. The commenter felt the department should leave the rule as written which would require the department to provide the services listed to the providers.

RESPONSE: The department agrees and the proposed amendment to the rule has been deleted.

COMMENT: The Early Childhood Project recommended that the definition section be expanded to include five categories of age groups for children from infant to school age.

RESPONSE: Since the department has determined to keep the definition of infant at 0 to 24 months, further categorization of age groups is not necessary at this time. All infant requirements will apply to children 0 to 24 months.

COMMENT: The Early Childhood Project objected to the existing rule stating that aides may be 16 years old to be including the child staff ratio. The Project recommended that aides should be at least 18 years of age.

RESPONSE: It is required that aides be supervised by an adult caregiver; therefore, no change has been made. Because the proposed rules did not comtemplate a change in this section, the department has determined that this section should not be changed without allowing opportunity for comment through proposed rulemaking. The department will investigate the potential impact of a change in this rule and will consider whether the rule should be changed at a later date.

COMMENT: 46.5.938 - The proposal requiring providers to attend basic day care orientation or its equivalent is a good proposal. The equivalency language may be dropped as long as some type of in-person orientation is given.

RESPONSE: The Department will leave the rule as proposed. The phrase "or equivalent" is not deleted because there are a number of providers living in rural areas who do not have an opportunity to attend "orientation"; however, it can be arranged for these providers to get "equivalent" training.

COMMENT: 46.5.922 - It is unclear what this appeal process is if a day care mixes age groups and does not fit the usual staffing requirements.

RESPONSE: The procedure for granting exceptions to licensing requirements in unusual circumstances is a matter of Division policy within the Department. Requests for exceptions are made by the provider to the licensing worker. Exceptions for unusual circumstances may be approved, at this time, only by the Social Worker Supervisor III in the SRS District Office.

COMMENT: The proposed rule that the provider may not accept more children than the number authorized on the registration certificate is unclear. What is it we are authorized to do? How do we count the children, by head count or by names on a roster?

RESPONSE: The rule has been reworded for clarification. The provider is "authorized" to care only for the number of children registered for care on the registration certificate. This is determined by the number of children actually in care on a given day (head count). Some providers keep a roster that may contain the names of several children more than the number registered on the registration certificate. The Department is not concerned with the number of children on the roster, but we are concerned with the number of children actually in care. This rule is the same for both family homes and group homes.

COMMENT: 46.5.902(16) - The proposed overlap rules are going to cause a problem for the food program because it will be difficult to determine what is authorized overlap? Is SRS going to provide appropriate forms?

RESPONSE: The new "overlap" rule should make it easier for the child care food program to determine the number of eligible meals. The provider will have approval for "overlap" during specific hours of the day. The Department will notify food program sponsors of the overlap approval.

COMMENT: The Billings Special Care Center offers opportunities for children and developmentally disabled adults to interact safely in an environment free from isolating the DD adults from the children based on theories of age appropriateness or protecting the child.

RESPONSE: The proposed rule is necessary to provide the Department with some assurances that persons (in any other program operated in conjunction with a day care program) do not pose any threat to the health, safety and well-being of the children in day care. It would be a contradiction for the

Department to ask for assurances that employees are not a threat to the children while ignoring another group of adults who are frequently in the center.

COMMENT: 46.5.935(2)(b) - The rule should stipulate a faster process for reviewing and approving the written plan. People often need expedited written approval and SRS owes it to the public as a public agency.

RESPONSE: The changes to the rule for overlap care will require that the Department give a quick response to the request for "overlap hours", but we do not expect this to be a problem. Most providers will know at application which hours they choose to do overlap care and for how many children. The application form will provide a space for designating overlap hours.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 16, 1985.

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

In the matter of the amendment of Rule 46.12.3803 pertaining to the medically needy income standard for one person	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.3803 PERTAINING TO THE MEDICALLY NEEDY INCOME STANDARD FOR ONE PERSON

TO: All Interested Persons

1. On November 14, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to the medically needy income standard for one person at page 1710 of the 1985 Montana Administrative Register, issue number 21.

2. The Department has amended Rule 46.12.3803 as proposed.

3. No written comments or testimony were received.

4. The Department has amended this rule because the regulation for the Medically Needy Program found at 42 CFR 435.812(b)(1) mandates that our medically needy income standard for one (1) must at least equal the highest amount paid for a related cash assistance program. That related cash assistance program is Supplemental Security Income (SSI). The cash assistance maximum for SSI increases January 1, 1986. Based on this mandate, the Department has raised its medically needy income level for one (1).

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 16, 1985.

VOLUME NO. 41 OPINION NO. 38

COUNTY COMMISSIONERS - Regularly scheduled meetings between board of county commissioners and staff;
COUNTY OFFICERS AND EMPLOYEES - Regularly scheduled meetings between board of county commissioners and staff;
OPEN MEETINGS - Regularly scheduled meetings between board of county commissioners and staff;
RIGHT TO KNOW - Regularly scheduled meetings between board of county commissioners and staff;
MONTANA CODE ANNOTATED - Sections 2-3-202, 7-5-2122;
MONTANA CONSTITUTION - Article II, section 9.

HELD: A regularly scheduled meeting between the board of county commissioners and its staff is a meeting within the terms of the open meetings law.

10 December 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:

> When the board of county commissioners has regularly scheduled meetings with its staff, are such meetings "open meetings" under the laws and the Constitution of Montana?

You advise me that the Yellowstone County Board of Commissioners meets with its staff at a particular time one day a week. During these meetings various matters are discussed ranging from the most trivial matter of internal management to matters upon which the board will eventually take final action. The current practice is to exclude the public from these meetings.

The starting point for any consideration of open meetings in this state is Article II, section 9 of the Montana Constitution, denominated the "right to know":

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The plain meaning of this section is that the public has a very broad right to observe the proceedings which occur in government agencies.

The Legislature has given further guidance to this constitutional provision by enactment of a statute called the "Open Meetings" law. Tit. 2, ch. 3, MCA. The term "meeting" as defined in the open meetings law is as follows:

> As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency ... to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

§ 2-3-202, MCA.

It is clear from this definition that meetings are not limited to official, final action on a proposal. The reach of this statute is quite broad when it refers to matters about which the agency can "hear, discuss, or act" and upon which it "has supervision, control, jurisdiction, or advisory power." A limitation of this definition is that it applies to a meeting where a quorum of the "constituent membership of a public agency" is present. Applied to this case where there is a board of county commissioners, it would require the presence of at least two commissioners.

I conclude that a regularly scheduled meeting between the board of county commissioners and its staff is a meeting within the terms of the open meetings law. This conclusion is not based on judicial interpretation of the statute, because there is none in Montana, but upon

the plain meaning and fair intendment of the statute itself. In order to protect the public's right to know, the open meeting provisions must be liberally construed.

The Montana Supreme Court has held that there must be notice of a public meeting in order to give effect to the open meetings law. Board of Trustees v. Board of County Commissioners, 186 Mont. 148, 606 P.2d 1069 (1980). Justice Daly, for the Court, said:

> It is difficult to envision an open meeting held without public notice that still accomplishes the legislative purpose of the Montana "open meeting" statutes. Without public notice, an open meeting is open in theory only, not in practice.

186 Mont. at 155-56.

This notice requirement need not be an onerous one, particularly when dealing with regularly scheduled meetings. Section 7-5-2122, MCA, requires the board of county commissioners to establish a regular meeting date by resolution. Publication of this resolution then serves as continuing notice. Special notice would only be required for a meeting not held at the regular date. See Board of Trustees v. Board of County Commissioners, supra. While there have been no court interpretations it is reasonable to conclude that the sufficiency of the notice in an emergency situation would be judged in light of the emergency.

Like any other public meeting, there may be instances in which the meeting between the county commissioners and their staff could be closed. The test, however, is a narrow one and is contained in the Constitution which refers to situations where "the demand of individual privacy clearly exceeds the merits of public disclosure." Mont. Const. art. II, § 9.

THEREFORE, IT IS MY OPINION:

> A regularly scheduled meeting between the board of county commissioners and its staff is a meeting within the terms of the open meetings law.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 39

COUNTIES - Crediting fines and costs;
COUNTY OFFICERS AND EMPLOYEES - Treasurer: crediting fines and costs;
FINES - Crediting fines and costs;
MONTANA CODE ANNOTATED - Sections 20-7-504, 20-9-331(2)(c), 20-9-332, 46-18-235, 46-18-603, 53-9-109.

HELD: The fines and costs collected in justice court and paid to the county treasurer by the justice of the peace should be credited to the county general fund pursuant to section 46-18-235, MCA.

12 December 1985

William E. Berger
Petroleum County Attorney
Petroleum County Courthouse
Winnett MT 59087

Dear Mr. Berger:

You have requested my opinion on the following question:

> Whether the fines and costs collected in justice court and paid to the county treasurer by the justice of the peace should be credited to the county general fund pursuant to section 46-18-235, MCA, or to equalization of the elementary district foundation program pursuant to section 20-9-331(2)(c), MCA.

Section 46-18-603, MCA, provides that all fines and forfeitures collected in any court except city courts must be applied first to defray the costs of the case in which the fine or forfeiture arose and then deposited in the county treasury "credited as provided by law." There are other statutes which specifically provide for the payment of portions of certain fines and costs to other accounts. See, e.g., §§ 20-7-504, 20-9-332, 53-9-109, MCA. I assume your question refers to the

money remaining after those specific allocations are made.

Section 20-9-331(2)(c), MCA, enacted in 1971, provides that all money in the county treasury resulting from fines or violations of law and the use of which is not otherwise specified by law shall be used for the equalization of the elementary district foundation programs of the county. Section 46-18-235, MCA, enacted in 1981, provides that the money collected by a court as a result of the imposition of fines and assessment of costs in felony or misdemeanor cases shall be paid to the county general fund of the county in which the court is held.

When the language of a statute is plain and unambiguous, the statute speaks for itself and there is nothing left to construe. Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). Section 20-9-331(2)(c), MCA, provides a use for money collected as fines when its use is not otherwise specified by law. Section 46-18-235, MCA, specifies another use: The fines and costs paid to the justice of the peace are to be paid to the county general fund. Funds in the county general fund are used to pay the general operating expenses of the county.

THEREFORE, IT IS MY OPINION:

> The fines and costs collected in justice court and paid to the county treasurer by the justice of the peace should be credited to the county general fund pursuant to section 46-18-235, MCA.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a 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 the 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 statutes 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 list 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 September 30, 1985. This table includes those rules adopted during the period October 1, 1985 through December 31, 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 September 30, 1985, this table and the table of contents of this issue of the MAR.

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