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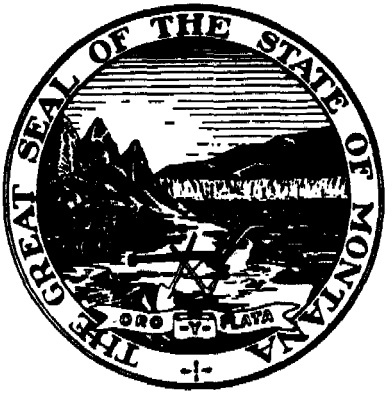

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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

In the matter of the adoption of the proposed new rules concerning sulfur dioxide emission controls) NOTICE OF PUBLIC HEARING FOR THE PROPOSED ADOPTION OF NEW RULES (Air Quality)

To: All Interested Persons

1. On January 16, 1987, at 9:00 a.m. or as soon thereafter as may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of one of three sets of rules pertaining to sulfur dioxide emission controls. Each set is mutually exclusive from the other sets. The Board of Health and Environmental Sciences will choose the most acceptable set.

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

3. The proposed rules provide as follows:

ALTERNATIVE #1: SULFUR DIOXIDE EMISSION STANDARDS THROUGH A ROLL-BACK METHOD

RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Existing" means in existence on January 1, 1970.

(2) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an existing sulfur recovery facility, oil refinery, or fossil-fuel-fired steam generation unit.

(3) "Sulfur recovery facility" means a process unit or facility which recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

(4) "Oil refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking or reforming of unfinished petroleum derivatives.

(5) "Fossil-fuel-fired steam generation unit" means a furnace or boiler used in the process of burning fossil fuel for the purpose of creating electricity by producing steam through heat transfer.

(6) "Emission level occurring in study year" means the sulfur dioxide emissions which occurred during the period beginning October 1, 1981 and ending September 30, 1982. This emission level may be prorated to a full year for facilities which did not operate for the entire 12-month period. The prorated emissions may not include periods of maintenance or malfunctions.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE II STANDARDS FOR SULFUR DIOXIDE FOR OIL REFINERIES (1) No owner or operator of an existing oil refinery may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of the emission limit provided below:

Emission Limit = (emission level occurring in study year) (.70)

(2) The provisions of this rule do not apply to any existing oil refinery whose normal processing of crude oil charge is less than 10,000 barrels per day.
AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE III STANDARDS FOR SULFUR DIOXIDE FOR SULFUR RECOVERY FACILITIES (1) No owner or operator of an existing sulfur recovery facility may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of the emission limit provided in Rule II.

(2) The provisions of this rule do not apply to any sulfur recovery facility owned or operated by an existing oil refinery which is otherwise subject to Rule II.
AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE IV STANDARDS FOR SULFUR DIOXIDE FOR FOSSIL-FUEL-FIRED POWER PLANTS (1) No owner or operator of an existing fossil-fuel-fired steam generation unit may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of the emission limit provided in Rule II.

(2) The provisions of this rule do not apply to any fossil-fuel-fired steam generation unit whose gross output rating is less than 100 megawatts.
AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE V COMPLIANCE DETERMINATION AND EFFECTIVE DATES (1) The emission limits of Rule II through Rule IV shall become effective on January 1, 1992.

(2) An owner or operator subject to Rule II, Rule III, or Rule IV shall submit to the department by August 1, 1987 a detailed plan which describes the actions to be taken by the owner or operator which shall achieve compliance with the applicable emission limit. The plan shall include a determination of the emission level occurring during the study year and the applicable emission limit in tons per year. The plan shall also include construction dates and significant dates for achievement of compliance.

(3) The plan described in section (2) above must be approved in writing by the department. The department shall approve the plan if, in the opinion of the department, the plan demonstrates compliance with the applicable emission limit and

otherwise complies with all air quality rules of this chapter.

(4) An owner or operator subject to Rule II, Rule III, or Rule IV may reduce or increase emissions from any emission unit within its facility in order to achieve compliance with the applicable emission limit. Compliance with this rule shall be determined on a plant-wide basis unless specifically prohibited by other rules of this chapter.

(5) Compliance with the applicable emission limit shall be determined on a daily basis. It shall be a violation if the emissions in any one day (midnight to midnight) exceed one three-hundred-and-sixty-fifth (1/365) of the applicable emission limit.

(6) Emissions in excess of the applicable emission limit during periods of startup and shutdown shall not be considered a violation of Rules II, Rule III, or Rule IV, as appropriate. All owners or operators shall maintain records of the occurrence and duration of any startup or shutdown and shall make such records available to the department upon request.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE VI MONITORING AND REPORTING (1) An owner or operator subject to Rule II, Rule III, or Rule IV shall submit by January 1, 1988 to the department a detailed emission monitoring program including monitoring procedures, monitoring frequency, and any other vital information deemed necessary by the department. In the case of non-flare sources, the program must include provisions for continuous in-stack emission monitoring for all emission points which exceeded 250 tons per year of sulfur dioxide in 1985. The continuous emission monitoring (CEM) must meet the provisions of 40 CFR Part 60, Appendix B, Performance Specification 2, July 1, 1986. For any flare source which emitted more than 100 tons of sulfur dioxide in 1985, the emission monitoring program must include provisions to measure the volume and sulfur content of the gas to the flare.

(2) The monitoring program must be approved in writing by the department. The department shall approve the monitoring program if, in the opinion of the department, the program meets Performance Specification 2 above and all other provisions of section (1) of Rule VI and the owner or operator provides for reports to be submitted to the department on a quarterly basis in a format and substance compatible with department data handling equipment and procedures.

(3) For purposes of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 60, Appendix B, Performance Specification 2, which is a federal rule setting forth testing requirements and procedures for the continuous monitoring of emissions of sulfur dioxide within industrial facilities. A copy of this material may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE VII AMBIENT AIR QUALITY MONITORING (1) Each owner or operator of an existing oil refinery and fossil-fuel-fired steam generation unit shall install, operate, maintain, calibrate, audit, and repair one ambient sulfur dioxide monitoring station at a location to be chosen by the department. Such a station shall include a sulfur dioxide ambient monitor, wind speed and direction, shelter and climate controls, chart recorder, and computerized data acquisition system. The installation, operation, maintenance, calibration, audit, and repair of this equipment shall be conducted in accordance with the provisions of the Montana Quality Assurance Manual and subchapter 8 of these rules.

(2) Each monitoring station must be installed and operational no later than January 1, 1988.

(3) Each owner or operator may pool its resources and operate its respective air monitoring stations in conjunction with other individuals or groups to accomplish the ambient air quality monitoring described in section (1) above.

(4) The provisions of this rule are not applicable to any oil refinery whose mean crude oil throughput is less than 10,000 barrels per day or any fossil-fuel-fired steam generation unit whose gross output rating is less than 100 megawatts.

(5) For purposes of this rule, the board hereby adopts and incorporates by reference the Montana Quality Assurance Manual, which is a department manual setting forth sampling and data collection, recording, analysis, and transmittal requirements. A copy of this manual may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

ALTERNATIVE #2: PERFORMANCE STANDARDS

RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Existing" means in existence on January 1, 1970.

(2) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an existing sulfur recovery facility, oil refinery, or fossil-fuel-fired steam generation unit.

(3) "Sulfur recovery facility" means a process unit or facility which recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

(4) "Oil refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking or reforming of unfinished petroleum derivatives.

(5) "Fossil-fuel-fired steam generation unit" means a furnace or boiler used in the process of burning fossil fuel for the purpose of creating electricity by producing steam through heat transfer.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE II STANDARDS FOR SULFUR DIOXIDE FOR OIL REFINERIES (1) No owner or operator of an existing oil refinery that refined less than 14 million barrels of oil in 1985 may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of 1.0 pound of sulfur dioxide per barrel of crude oil throughput.

(2) No owner or operator of an existing oil refinery that refined more than 14 million barrels of oil in 1985 may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of 0.43 pounds of sulfur dioxide per barrel of crude oil throughput.

(3) The provisions of this rule do not apply to any existing oil refinery whose normal processing of crude oil charge is less than 10,000 barrels per day.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE III STANDARDS FOR SULFUR DIOXIDE FOR FOSSIL-FUEL-FIRED POWER PLANTS (1) No owner or operator of an existing fossil-fuel-fired steam generation unit may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of 1.2 pounds of sulfur dioxide for each million BTU of heat input.

(2) The provisions of this rule do not apply to any existing fossil-fuel-fired steam generation unit whose gross output rating is less than 100 megawatts.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE IV COMPLIANCE DETERMINATION AND EFFECTIVE DATES (1) The emission limits of Rule II and Rule III shall become effective on January 1, 1992.

(2) An owner or operator subject to Rule II or Rule III shall submit to the department by August 1, 1987 a detailed plan which describes the actions to be taken by the applicable owner or operator which shall achieve compliance with the applicable emission limit. The plan shall also provide for a determination of the emission limit in tons per year and include construction dates and significant dates for achievement of compliance.

(3) The plan described in section (2) above must be approved in writing by the department. The department shall approve the plan if, in the opinion of the department, the plan demonstrates compliance with the applicable emission limit and otherwise complies with all air quality rules of this chapter.

(4) An owner or operator subject to Rule II or Rule III may reduce or increase emissions from any emission unit within the facility in order to achieve compliance with the applicable emission limit. This trading of emissions also applies to sulfur recovery facilities located both inside or outside of each oil refinery. Increases at off-site sulfur recovery

facilities must be offset by corresponding decreases at the oil refinery in order to demonstrate compliance with the applicable emission limit and section (2) above.

(5) Compliance with the applicable emission limit shall be determined on a daily basis. It shall be a violation of this rule if the emissions in any one day (midnight to midnight) exceed the applicable emission standard in Rule II or Rule III.

(6) Emissions in excess of the applicable emission limit during periods of startup and shutdown shall not be considered a violation of Rule II or Rule III, as appropriate. All owners or operators shall maintain records of the occurrence and duration of any startup or shutdown and shall make such records available to the department upon request.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE V MONITORING AND REPORTING (1) An owner or operator subject to Rule II or Rule III shall submit by January 1, 1988 to the department a detailed emission monitoring program including monitoring procedures, monitoring frequency, and any other vital information deemed necessary by the department. In the case of non-flare sources, the program must include provisions for continuous in-stack emission monitoring for all emission points which exceeded 250 tons per year of sulfur dioxide in 1985. The continuous emission monitoring (CEM) must meet the provisions of 40 CFR Part 60, Appendix B, Performance Specification 2, July 1, 1986. For flare sources, the program must include provisions for the measurement of volume gases to the flare and measurement of sulfur-bearing gases for all emission points which exceeded 100 tons per year of sulfur dioxide in 1985.

(2) The monitoring program must be approved in writing by the department. The department shall approve the monitoring program if, in the opinion of the department, the program meets Performance Specification 2 above and all other provisions of section (1) of Rule V and the owner or operator provides for reports to be submitted to the department on a quarterly basis in a format and substance compatible with department data handling equipment and procedures.

(3) For purposes of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 60, Appendix B, Performance Specification 2, which is a federal rule setting forth testing requirements and procedures for the continuous monitoring of emissions of sulfur dioxide within industrial facilities. A copy of this material may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE VI AMBIENT AIR QUALITY MONITORING (1) Each owner or operator of an existing oil refinery and fossil-fuel-fired steam generation unit shall install, operate, maintain,

calibrate, audit, and repair one ambient sulfur dioxide monitoring station at a location to be chosen by the department. Such a station shall include a sulfur dioxide ambient monitor, wind speed and direction, shelter and climate controls, chart recorder, and computerized data acquisition system. The installation, operation, maintenance, calibration, audit, and repair of this equipment shall be conducted in accordance with the provisions of the Montana Quality Assurance Manual and subchapter 8 of these rules.

(2) Each monitoring station must be installed and operational no later than January 1, 1988.

(3) Each owner or operator to which this rule applies may pool its resources and operate its respective air monitoring stations in conjunction with other individuals or groups to accomplish the ambient air quality monitoring described in section (1) above.

(4) The provisions of this rule are not applicable to any oil refinery whose mean crude oil throughput is less than 10,000 barrels per day or any fossil-fuel-fired steam generation unit whose gross output rating is less than 100 megawatts.

(5) For purposes of this rule, the board hereby adopts and incorporates by reference the Montana Quality Assurance Manual, which is a department manual setting forth sampling and data collection, recording, analysis, and transmittal requirements. A copy of this manual may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

ALTERNATIVE #3: SELECTIVE REDUCTION

RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Existing" means in existence on January 1, 1970.

(2) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an existing sulfur recovery facility, oil refinery, or fossil-fuel-fired steam generation unit.

(3) "Sulfur recovery facility" means a process unit or facility which recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

(4) "Oil refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking or reforming of unfinished petroleum derivatives.

(5) "Fossil-fuel-fired steam generation unit" means a furnace or boiler used in the process of burning fossil fuel for the purpose of creating electricity by producing steam through heat transfer.

(6) "Emission level occurring in study year" means the sulfur dioxide emissions which occurred during the period

beginning October 1, 1981 and ending September 30, 1982. This emission level may be prorated to a full year for facilities which did not operate for the entire 12-month period. The prorated emissions may not include periods of maintenance or malfunctions.
AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE II STANDARDS FOR SULFUR DIOXIDE FOR OIL REFINERIES (1) No owner or operator of an existing oil refinery whose emissions for 1985 were greater than 10,000 tons of sulfur dioxide may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of the emission limit provided below:

Emission Limit = (emission level occurring in study year) (X)

where X means the value of 0.70

(2) No owner or operator of an existing oil refinery whose emissions for 1985 were less than 5,000 tons of sulfur dioxide may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of the emission limit provided in section (1) above, except that in determining the emission limit, X = 0.85.

(3) No owner or operator of an existing oil refinery whose emissions for 1985 were greater than 5,000 but less than 10,000 tons of sulfur dioxide may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of the emission limit provided in section (1) above, except that in determining the emission limit, X = 0.925.

(4) The provisions of this rule do not apply to any oil refinery whose normal processing of crude oil charge is less than 10,000 barrels per day.
AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE III STANDARDS FOR SULFUR DIOXIDE FOR FOSSIL-FIRED POWER PLANTS (1) No owner or operator of an existing fossil-fuel-fired steam generation unit may cause the emission into the outdoor atmosphere of sulfur dioxide in excess of the emission limit provided in section (2) of Rule II except that in determining the emission limit, X = 0.30.

(2) The provisions of this rule do not apply to any existing fossil-fuel-fired steam generation unit whose gross output rating is less than 100 megawatts.
AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE IV COMPLIANCE DETERMINATION AND EFFECTIVE DATES (1) The emission limits of Rule II and Rule III shall become effective on January 1, 1992.

(2) An owner or operator subject to Rule II and Rule III shall submit to the department by August 1, 1987 a detailed

plan which describes the actions to be taken by the applicable owner or operator which shall achieve compliance with the applicable emission limit. The plan shall include a determination of the emissions occurring during 1985 and the emission limit. The plan shall also provide for a determination of the emission limit in tons per year and include construction dates and significant dates for achievement of compliance.

(3) The plan described in section (2) above must be approved in writing by the department. The department shall approve the plan if, in the opinion of the department, the plan demonstrates compliance with the applicable emission limit and otherwise complies with all air quality rules of this chapter.

(4) An owner or operator subject to Rule II or Rule III may reduce or increase emissions from any emission unit within the facility in order to achieve compliance with the applicable emission limit. This trading of emissions also applies to sulfur recovery plants located both inside and outside of each oil refinery. Increases at sulfur recovery plants must be offset by corresponding decreases at the oil refinery in order to demonstrate compliance with the applicable emission limit and section (2) above.

(5) Compliance with the applicable emission limit shall be determined on a daily basis. It shall be a violation of this rule if the emissions in any one day (midnight to midnight) exceed the applicable emission standard in Rule II or Rule III.

(6) Emissions in excess of the applicable emission limit during periods of startup and shutdown shall not be considered a violation of Rule II or Rule III, as appropriate. All owners or operator shall maintain records of the occurrence and duration of any startup or shutdown and shall make such records available to the department upon request.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE V MONITORING AND REPORTING (1) An owner or operator subject to Rule II or Rule III shall submit by January 1, 1988 to the department a detailed emission monitoring program including monitoring procedures, monitoring frequency, and any other vital information deemed necessary by the department. In the case of non-flare sources, the program must include provisions for continuous in-stack emission monitoring for all emission points which exceeded 250 tons per year of sulfur dioxide in 1985. The continuous emission monitoring (CEM) must meet the provisions of 40 CFR Part 60, Appendix B, Performance Specification 2, July 1, 1986. For flare sources, the program must include provisions for the measurement of volume gases to the flare and measurement of sulfur-bearing gases for all emission points which exceeded 100 tons per year of sulfur dioxide in 1985.

(2) The monitoring program must be approved in writing by the department. The department shall approve the monitoring program if, in the opinion of the department, the program meets

Performance Specification 2 above and all other provisions of section (1) of Rule V and the owner or operator provides for reports to be submitted to the department on a quarterly basis in a format and substance compatible with department data handling equipment and procedures.

(3) For purposes of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 60, Appendix B, Performance Specification 2, which is a federal rule setting forth testing requirements and procedures for the continuous monitoring of emissions of sulfur dioxide within industrial facilities. A copy of this material may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

RULE VI AMBIENT AIR QUALITY MONITORING (1) Each owner or operator of an existing oil refinery and fossil-fuel-fired steam generation unit shall install, operate, maintain, calibrate, audit, and repair one ambient sulfur dioxide monitoring station at a location to be chosen by the department. Such a station shall include a sulfur dioxide ambient monitor, wind speed and direction, shelter and climate controls, chart recorder, and computerized data acquisition system. The installation, operation, maintenance, calibration, audit, and repair of this equipment shall be conducted in accordance with the provisions of the Montana Quality Assurance Manual and subchapter 8 of these rules.

(2) Each monitoring station must be installed and operational no later than January 1, 1988.

(3) Each owner or operator to which this rule applies may pool its resources and operate its respective air monitoring stations in conjunction with other individuals or groups to accomplish the ambient air quality monitoring described in section (1) above.

(4) The provisions of this rule are not applicable to any oil refinery whose mean crude oil throughput is less than 10,000 barrels per day or any fossil-fuel-fired steam generation unit whose gross output rating is less than 100 megawatts.

(5) For purposes of this rule, the board hereby adopts and incorporates by reference the Montana Quality Assurance Manual, which is a department manual setting forth sampling and data collection, recording, analysis, and transmittal requirements. A copy of this manual may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-2-111 and 75-2-203, MCA
IMPLEMENTING: 75-2-203, MCA

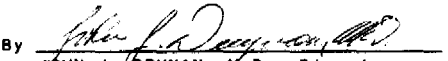
4. The board is proposing these sets of rules because it determined in its meeting on May 16, 1986 that emission control standards were necessary to implement the Montana ambient air quality standards.

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, Hearing Officer, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than January 26, 1987.

6. Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

JOHN F. McGREGOR, M.D., Chairman

By 

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

Certified to the Secretary of State December 15, 1986.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the application of the Department of Social and Rehabilitation Services for a declaratory ruling as to the applicability of Section 49-3-205, MCA, to its child adoption service	Case No. 8710003165 NOTICE OF HEARING

TO: The Montana State Department of Social and Rehabilitation Services and all interested persons:

PLEASE TAKE NOTICE that on February 4, 1987 at 10:00 a.m. at 1236 Sixth Avenue, Helena, Montana, the petition of the Montana Department of Social and Rehabilitation Services for a declaratory ruling as to whether the reasonable demands of the screening and selection of adoptive parents requires consideration of the race, sex, religion, age, marital status and physical and mental handicap of the applicant parents without violating Section 49-3-205, MCA. You have the right to be represented by counsel at the hearing. A copy of the petition is attached to this notice. James W. Zion, hearing examiner for the Commission will preside over and conduct the hearing.

Any person or organization may petition to intervene in this proceeding by petitioning to intervene and making a showing of their interest, for the purpose of generally addressing the application or expressing a particular point of view concerning it.

A prehearing conference on the application to settle hearing procedure will be conducted on January 9, 1987 at 2:00 p.m.

DATED December 15, 1986.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS DIVISION

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the application of:	)	No. 8710003165
THE MONTANA DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES for a declaratory ruling.	)	PETITION FOR DECLARATORY RULING

1. Petitioner is the Montana Department of Social and Rehabilitation Services, 111 N. Sanders, Helena, Montana.

2. Petitioner is the state department responsible for the administration of child welfare services, including the identification, approval and selection of adoptive homes for children who are placed in the permanent legal custody of the department.

3. The statute as to which petitioner requests a declaratory ruling is section 49-3-205, MCA, which requires every state agency to perform all services without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin.

4. The department collects information concerning race, religion, sex, age, marital status and physical and mental handicap regarding all persons seeking to be approved as prospective adoptive parents for children in the permanent legal custody by the department.

5. These criteria are used to eliminate persons unsuitable as adoptive parents and are considered in the selection of the best adoptive placement for the child from among the approved adoptive parents.

6. The question presented for declaratory ruling by the Commission is whether under the above statute, the reasonable demands of this particular government service would require consideration of the above listed factors in approving adoptive parents and selecting adoptive parents for individual children.

7. Petitioner requests that the Commission rules that it may consider race, religion, age, sex, marital status and physical and mental handicap in approving prospective adoptive parents and selecting adoptive parents for a particular child.

8. The case currently certified for hearing entitled Joan and John Wheeler v. Montana Department of Social and Rehabilitative Services, Case No. ReAMsRtGs85-2599 will be affected by the Commission's ruling on this Petition. Petitioner requests that the hearing concerning this Petition for Declaratory Ruling be consolidated with the above-named case.

DATED: October 10, 1986.

s/Leslie C. Taylor
LESLIE C. TAYLOR, Attorney for
Montana Department of Social
and Rehabilitation Services
Office of Legal Affairs
111 N. Sanders
P.O. Box 4210
Helena, MT 59604

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

In the Matter of the Amendment of Attorney Fee Rule ARM 24.29.3801.	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 24.29.3801

TO: ALL INTERESTED PARTIES:

1. On January 21, 1987, at 10:00 a.m. a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed amendment of Rule ARM 24.29.3801 concerning attorney fee regulation by the Division of Workers' Compensation. The Rule as proposed to be amended provides as follows:

24.29.3801 ATTORNEY FEE REGULATION (1) An attorney representing a claimant on a workers' compensation claim shall submit to the division within thirty days of undertaking representation of the claimant, in accordance with section 39-71-613, MCA, on forms supplied by the division, a contract ~~or copy of a contract~~ of employment stating specifically the terms of the fee arrangement. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the administrator of the division of workers' compensation. The administrator or his designee shall return the contract to the attorney along with a notification that the contract has been approved or disapproved.

(2) An attorney representing a claimant on a workers' compensation claim and who plans to utilize contingent fee arrangement to establish the fee arrangement with the claimant, may not charge a fee above the following amounts:

(a) For cases that have not gone to a hearing before a hearings officer, the workers' compensation judge, or other tribunal, ~~a fee above twenty-five~~ twenty percent ~~(25%)~~ (20%) of the amount of compensation payments the claimant receives due to the efforts of the attorney.

(b) For cases that go to a hearing before a hearings officer, the workers' compensation judge, or other tribunal, ~~thirty-three~~ twenty-five percent ~~(33%)~~ (25%) of the amount of additional compensation payments the claimant receives from an order of the hearings officer, ~~workers' compensation~~ judge, or other tribunal.

~~(c) For cases that are appealed to the Montana supreme court, forty percent (40%) of the amount of~~

~~compensation payments the claimant receives based on the order of the supreme court.~~

(3) The following benefits shall not be considered as a basis for calculation of attorney fees:

~~(3)~~(a) The amount of medical and hospital benefits received by the claimant ~~shall not be considered in calculating the fee,~~ unless the workers' compensation insurer has denied all liability, including medical and hospital benefits, ~~in the claimant's case,~~ or unless the insurer has denied the payment of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.

(b) Benefits received by the claimant with the assistance of the attorney in filling out initial claim forms only.

(c) Any undisputed portion of impairment benefits received by the claimant based on an impairment rating.

(d) Benefits initiated or offered by the insurer when such initiation or offer is supported by documentation in the claimant's file and has not been the subject of a dispute with the claimant.

(e) Any other benefits not obtained due to the actual, reasonable and necessary efforts of the attorney.

~~(4) For good cause shown, the division may allow contingent fees in excess of the maximum set forth in subsection (2). Such a variation from the maximum contingent fee schedule must be approved by the division before a final fee contract is entered into between the attorney and the claimant.~~

~~(5)~~(4) The fee schedule set forth in subsection (2) does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate not exceeding $75.00 per hour, but the total fee charged may not exceed the schedule set forth in subsection (2). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.

~~(6)~~(5) The contingent fee schedule set forth in subsection (2) is a maximum schedule, and nothing prevents an attorney from charging a contingent fee below the maximum contingent fee schedule. The division encourages attorneys to review each workers' compensation claim on a case by case basis in order to determine an appropriate fee. An attorney may also reduce the attorney's fee from what was originally established in the fee contract, without the approval of the division.

~~(7)~~(6) Attorneys' compensation shall be determined solely by the approved fee arrangement and shall be paid out of the funds received in settlement or recovery or other funds available to the claimant. Upon the occurrence of a hearing before a hearings officer, the ~~workers' compensation~~ court or other duly constituted

tribunal, that hearings officer, court or other tribunal shall have exclusive jurisdiction for the award of attorney's fees on the claim against the insurer or employer which shall be credited to the fee due from the claimant.

~~(6)~~(7) In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claims, ~~the administrator~~, upon request of either the claimant or the attorney or upon notice of any party of a violation of this rule, the administrator or his designee shall review the matter and issue his order resolving the dispute pursuant to procedures set forth in ARM 24.29.201, et seq. The fee contract shall clearly identify the rights granted by this subsection.

~~(9)~~(8) This rule constitutes the administrator's regulation of the amount of attorney fees in any workers' compensation cases as permitted by section 39-71-613, MCA.

3. The rationale for amending ARM 24.29.3801 is to establish a reasonable limit to the attorney fees which may be charged a workers' compensation claimant by his attorney. The rule as proposed to be amended also more clearly sets forth those benefits upon which an attorney fee may be based. The proposed amendment of this rule is authorized by 39-71-203, MCA, and implements 39-71-613, MCA.

4. Steven J. Shapiro, Chief Legal Counsel of the division acting as hearing examiner has been designated to preside over and conduct the hearing.

5. Interested parties may submit their data, views and arguments either orally or in writing at the hearing. Written argument, views or data may also be submitted to Steven J. Shapiro, Chief Legal Counsel, Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than January 30, 1987.

ROBERT J. ROBINSON,
Administrator

CERTIFIED TO THE SECRETARY OF STATE: 12/15/86

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the adoption Rules I through XXII relating to the Montana State Veterans Cemetery.	)))))	NOTICE OF PUBLIC HEARINGS of Rules I through XXII relating to the Montana State Veterans Cemetery. TEN PUBLIC HEARINGS CONTEMPLATED

TO: All interested Persons:

1. On the following dates times, and locations, public hearings will be held to consider the adoption of new rules I through XXII relating to the Montana State Veterans Cemetery.

Great Falls
Date: January 27, 1987
Time: 4:00 P.M.
Place: 600 Central Plaza
(Lower level conf. room.)
Great Falls, MT

Miles City
Date: January 31, 1987
Time: 1:00 P.M.
Place: V.F.W. Hall
Miles City, MT

Havre
Date: January 28, 1987
Time: 7:00 P.M.
Place: V.F.W. Hall
Havre, MT

Kalispell
Date: January 27, 1987
Time: 4:00 P.M.
Place: Nat'l Guard Armory
Kalispell, MT

Butte
Date: January 26, 1987
Time: 4:00 P.M.
Place: Navy Reserve Center
Wall and Florence
Butte, MT

Bozeman
Date: January 27, 1987
Time: 4:00 P.M.
Place: Am. Leg. Hall
225 E. Main
Bozeman, MT

Billings
Date: January 28, 1987
Time: 6:00 P.M.
Place: Am. Leg. Hall
(Yellowstone Rm)
1540 Broadwater Ave.
Billings, MT

Missoula
Date: January 27, 1987
Time: 4:00 P.M.
Place: Nat'l Guard Armory
(Large Classroom)
2501 Reserve St.
Missoula, MT

Wolf Point
Date: January 16, 1987
Time: 7:00 P.M.
Place: V.F.W. Post #1705
Wolf Point, MT

Helena
Date: January 27, 1987
Time: 4:00 P.M.
Place: Nat'l Guard Armory
Helena, MT

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

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

RULE I ELIGIBILITY OF VETERAN (1) Any veteran who received any discharge, other than a dishonorable discharge, from the armed forces of the United States is eligible for burial in the cemetery.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE II NON-VETERAN SPOUSE ENTITLEMENT (1) Any non-veteran spouse of an eligible veteran may also qualify for burial in the state's veterans' cemetery providing that the interment of the qualifying non-veteran spouse is in the same burial plot as that provided for the veteran.

(2) The non-veteran spouse will be charged an opening and closing fee.

(3) The non-veteran spouse will be required to provide a like headstone comparable to that of the veteran.

(4) If the veteran has been buried in a plot designated for cremated human remains, the non-veteran spouse must also choose a burial designed for cremated human remains.

(5) The burial for the non-veteran spouse and/or the eligible veteran must be prearranged prior to the interment of the first spouse buried.

(6) The non-veteran spouse must comply with all rules applicable to the burial of the veteran spouse.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE III PAYMENT OF TRANSPORTATION COSTS (1) All transportation costs shall be paid by the veterans family or private funds.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE IV PREPARATION FOR BURIAL (1) All bodies shall be prepared for burial, and services conducted by licensed mortuaries, and morticians in and for the state of Montana, under the rules and regulations of the state of Montana, board of morticians.

(2) Each family shall have the right to select their own mortuary firm for arrangements.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE V VAULTS (1) A vault acceptable to the director of the state veterans cemetery shall be provided. This shall include cremated human remains.
AUTH: 10-2-602, MCA. IMP: 10-2-602,MCA

RULE VI CREMATED REMAINS (1) Cremated human remains must be provided in a container acceptable to the director.
AUTH: 10-2-602,MCA. IMP: 10-2-602, MCA

RULE VII GRANITE MARKERS (1) Only flat granite markers will be acceptable for the plot marker.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE VIII BURIAL SERVICES (1) All burial services will be conducted in the service area.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE IX BURIAL PLOTS (1) Burial plots will be provided on a first come first served basis as the need arises.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE X PLOT CHARGES (1) There will be no charge for any burial plot.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XI VISITING HOURS (1) Visiting hours all year: 8:00 A.M. to 5:00 P.M. daily. (Note:Personnel may not be on duty on weekends.)
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XII RESTRICTIONS (1) The cemetery may not be used as a picnic ground.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XIII FRESH CUT FLOWERS (1) Fresh cut flowers may be placed on graves at any time. Only temporary metal flower containers are permitted. Floral items will be removed from graves when they become faded or unsightly.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XIV ARTIFICIAL FLOWERS (1) Artificial flowers may be placed on graves during the period of October 10th and April 15th.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XV PERMANENT PLANTINGS (1) Permanent plantings will not be permitted on graves at any time. Potted plants and/or artificial flowers will be permitted on graves during the period 10 days before and 10 days after Easter Sunday and/or Memorial Day.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XVI CHRISTMAS FLOWERS (1) Christmas wreaths or blankets are permitted on graves during the Christmas season and will be removed by February each year.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XVII COMMEMORATIVE ITEMS (1) Statues, vigil lights, glass objects of any nature and any other commemorative items are not permitted on the graves at any time.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XVIII DECORATING WITH FLAGS (1) All graves will be decorated on the work day immediately preceding Memorial Day and Veterans' Day with small United States flags, which will be

removed on the first work day after those holidays. Flags are not permitted on graves at any other time.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XIX REMOVAL OF DECORATIVE ITEMS (1) During lawn mowing and ground maintenance season all floral items will be removed from graves on the first and third Mondays of each month.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XX DEPOSITING MONIES (1) 10% of all monies received shall be deposited in a perpetual maintenance account.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XXI APPOINTMENT OF DIRECTOR (1) The director of the state veterans cemetery shall be appointed by the board of veterans affairs.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

RULE XXII SETTING OF FEES (1) The fees assessed veteran spouses may be set by the board of veterans affairs at its first annual meeting of each calendar year.
AUTH: 10-2-602, MCA. IMP: 10-2-602, MCA

4. The department is proposing new rules I through XXII because the 1985 legislative session enacted house bill No. 513 which established a state veterans cemetery and gives rule making authority to the department of military affairs.

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:

Rich Brown, Administrator
Department of Military Affairs
Veterans Affairs Division
P.O. Box 5715
Helena, Montana 59604

until January 31, 1987.

6. Each Service Officer in the given locations has been designated to preside over and conduct the hearing.

JAMES W. DUFFY,MG
The Adjutant General
Department of Military Affairs

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

In the matter of the amendment of Rule 46.12.1005 pertaining to transportation and per diem	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.1005 PERTAINING TO TRANSPORTATION AND PER DIEM

TO: All Interested Persons

1. On January 15, 1987, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rule 46.12.1005 pertaining to transportation and per diem.

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

46.12.1005 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

(1) The department will pay the lowest of the following for transportation and per diem not also covered by medicare: the provider's actual (submitted) charge for the service or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for transportation and per diem which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in the rule.

0-A-0170 personal or non-commercial ground vehicle mileage ..... current rate for state employees
0-A-0150 regularly scheduled, air ..... usual & customary fee
0-A-0110 regularly scheduled, ground, including taxis and limousine service ..... usual & customary fee
0-A-0180 breakfast (12:01 a.m. to 10:00 a.m.) $2.75
0-A-0190 lunch (10:01 a.m. to 3:00 p.m.) $3.30
0-A-0200 dinner (3:01 p.m. to 12:00 a.m.) $6.60
0-A-0210 per diem, including lodging $22.44

(2) Per diem costs are reimbursed at actual expenses up to the maximum rates contained in this rule.

~~(2) Reimbursement for common carrier will be paid on the basis of usual and customary charges.~~

~~(3) Reimbursement for transportation by private vehicle will be at the current state rate for state employees.~~

~~(4) Reimbursement for per diem when lodging expenses are necessary shall be actual expenses incurred up to a maximum of $22.44 per recipient and $22.44 per attendant, when necessary. When lodging expenses are not necessary, medicaid payment for meals shall not exceed the following rates:~~

~~Morning (12:01 a.m. to 10:00 a.m.) $2.75~~
~~Mid-day (10:01 a.m. to 3:00 p.m.) $3.30~~
~~Evening (3:01 p.m. to 12:00 midnight) $6.60~~

(53) Reimbursement for non-regularly scheduled air transportation ~~private air charter~~ shall be $1.22 per ~~nautical~~ statutory mile for the round trip, except as allowed below.

(a) Reimbursement of transportation by pressurized aircraft is limited to transporting recipients whose physical health would be endangered if non-pressurized aircraft were used. Reimbursement shall be $1.40 per statutory mile for the round trip.

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

3. These rule amendments are necessary: (1) to change the reimbursement base for aircraft from nautical to statutory miles. This will correct an unintentional reduction of fees which occurred when the Department changed fiscal intermediaries. The rule will now accurately reflect the fees paid over the past six years; (2) to cover pressurized aircraft in cases where non-pressurized aircraft would endanger the patient's physical health. In the past, the Department has been compelled to pay for this service as a hospital service. This procedure is certainly irregular and may be improper. This rule change will bring pressurized aircraft clearly under the transportation rule.

The rule change to ARM 46.12.1005 is not expected to have a substantial budget impact. It is anticipated that the amendment of ARM 46.12.1005 will increase payments 1.151% or about $128.62. Copies of the proposed rule changes are available at local county welfare offices throughout Montana.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than January 26, 1987.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 15, 1986.

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

In the matter of the amendments of 8.24.405 concerning examinations and 8.24.409 concerning fees	)))	NOTICE OF AMENDMENTS OF 8.24.405 EXAMINATIONS and 8.24.409 FEE SCHEDULE

TO: All Interested Persons:

1. On November 14, 1986, the Board of Landscape Architects published a notice of amendments of the above-stated rules at pages 1856, 1986 Montana Administrative Register, issue number 21.

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

3. No comments or testimony were received.

BOARD OF LANDSCAPE ARCHITECTS
JACK ERVIN, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, December 15, 1986.

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

In the matter of the Amendment of Rule ARM 24.29.803, regarding payment of compensation	NOTICE OF AMENDMENT OF RULE ARM 24.29.803

TO ALL INTERESTED PERSONS:

1. On October 16, 1986, the Division of Workers' Compensation published Notice of Proposed Amendment of Rule (No Hearing Contemplated) on the proposed amendment of ARM 24.29.803 at page 1671 of the 1986 Montana Administrative Register.

2. The notice advised that a hearing would be held if the Division received requests for a public hearing from 25 persons who are directly effected by the proposed amendment or 10% of the population of the State of Montana, from the Administrative Code Committee of the Legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly effected. The Division did not receive sufficient requests, so a public hearing was not held but written comments were received.

3. The Division amends the rule as follows:

24.29.803 COMPENSATION TO BE PAID

(1) Same as proposed amendment.

(2) EACH INSURER SHALL MAINTAIN A COMPLETE RECORD OF EACH PAYMENT OF COMPENSATION AND reports of compensation benefits status for any purpose shall be furnished the division OR CLAIMANT on request.

(3) Same as proposed amendment.

4. The rationale for amending ARM 24.29.803 is to simplify the process and reduce paperwork in the documentation of payment of compensation benefits under Section 39-71-740, MCA. This rule is authorized by 39-71-203, MCA, and implements 39-71-740, MCA.

5. The Division has thoroughly considered all comments received on the proposed rule. Following is a summary of the comments received from the public and the Division's responses.

COMMENT: The amendment would render the requirement of payment of compensation every fourteen (14) days a nullity when there is no independent means of determining compliance, and insurers will not pay timely every fourteen (14) days.

RESPONSE: The best and most common means for the Division to initiate action on late payments is by

complaint of a claimant which usually gets more prompt attention than routine review of the voluminous compensation advice forms.

COMMENT: By removing the enforcement mechanism of the rule, the Division leaves claimants without any independent means of determining whether they have received their proper benefits.

RESPONSE: Claimants may request the Division independently to investigate any allegations of improper or inadequate payments.

COMMENT: The insurer should be required to give a claimant a compensation advice form with every compensation check and keep a copy for review on request of the Division.

RESPONSE: The Division agrees that the insurer should maintain a payment record available to the Division or claimant and the rule will be so amended. Sending a compensation form with each check is unnecessary paperwork.

ROBERT J. ROBINSON
Administrator
Div. of Workers' Compensation

CERTIFIED TO THE SECRETARY OF STATE: December 9th, 1986.

BEFORE THE MONTANA STATEHOOD CENTENNIAL OFFICE
OF THE STATE OF MONTANA

In the matter of the adoption of Rules 30.3.101 through 30.3.109 relating to sanctioning official centennial commemorative products and projects	NOTICE OF THE ADOPTION OF RULES 30.3.101 through 30.3.109

TO: All Interested Persons:

1. On August 28, 1986 the Montana Statehood Centennial Office published notice of a proposed adoption of rules concerning sanctioning of official centennial commemorative products and projects at pages 1437-42 of the 1986 Montana Administrative Register, issue number 16.

2. The Montana Centennial Office has adopted the rules with the following changes:

30.3.101 (RULE I) PURPOSE (1) The general purposes of the Montana statehood centennial office and commission (hereinafter "office" and "commission") as set out in 2-89-105 and 2-89-107, MCA include fostering community, statewide and regional activities; assuring active citizen involvement and diversity of the presentation of topics; and focusing national and international attention on Montana "while reminding Montanans what Montana has been, is and hopes to become."
(2) through (5), same as the proposed rule.

30.3.102 (RULE II) USES OF THE LOGO Same as proposed rule.

30.3.103 (RULE III) OFFICIAL COMMEMORATIVE PRODUCTS (1) No product may be held out or advertised as a sanctioned product or a product benefiting the commission or office until office has issued a license applied for in a form provided by office and licensee has paid appropriate fees.
(2) through (7) same as proposed rule.

30.3.104 (RULE IV) OFFICIAL COMMEMORATIVE PROJECTS
(1) through (3) same as proposed rule.
(4) Except for a minimal registration fee to recover costs of processing, no standard charge will be assessed for official commemorative projects. For sanctioned events where an admission fee is collected, office may ~~negotiate~~

for require a contribution of a percentage of the proceeds. For other programs, events or services, sponsors at the time of application shall propose funding plans, including any dedication of proceeds for local or state centennial activities.

AUTH: 2-89-106, MCA; IMP: 2-89-101, 2-89-105, 2-89-107, MCA

30.3.105 (RULE V) SCHEDULE (1) Office intends to make application forms for the sanctioning program available no later than January 1, in February, 1987. Office does not intend to act on any applications before February 27, March 31, 1987. At any time of application, prospective licensees shall indicate the intended schedule of product or project; generally, products should be available no later than November 8, 1988.

AUTH: 2-89-105, 106 MCA, IMP: 2-89-101, 2-89-102, 2-89-107, MCA.

30.3.106 (RULE VI) PERSONAL ENDORSEMENTS Same as proposed rule.

30.3.107 (RULE VII) INFORMATION ACCESS Same as proposed rule.

30.3.108 (RULE VIII) DURATION AND ENFORCEMENT Same as proposed rule.

30.3.109 (RULE IX) WAIVERS Same as proposed rule.

3. Public hearings on the proposed rules were held in Billings, Glasgow, Great Falls, and Missoula. Testimony that was received was positive in favor of the rules and demonstrated reasonable necessity for these rules. Suggestions for amendments were as follows:

(a) Commission member James Haughey of Billings, expressed concern regarding how offers to contribute to the Centennial as a means of product promotion would be handled. Rule III 30.3.103 (1) has been amended to reflect Haughey's concern by requiring products benefitting the commission to be licensed.

(b) Rule I (i), (30.3.101) is amended to also reference 2-89-105, MCA, concerning the powers and duties of the Montana statehood centennial office.

(c) Rule IV (4) (30.3.104) is amended to provide that the commission may require, rather than may try to

negotiate, a contribution of proceeds raised from an official commemorative event.

(d) Rule V (1) (30.3.105) is amended to extend the time period for the office to make sanctioning program application forms available and for the office to begin to act upon the applications.

(e) An attorney from the Legislative Council corrected several citations of the authority and implementing statutes in Rules V (30.3.105), VI (30.3.106), VII (30.3.107), and VIII (30.3.108).

4. The authority for the rules is 2-89-106 MCA and rules implement 2-89-101, 2-89-105 and 2-89-107 MCA.

MONTANA STATEHOOD CENTENNIAL OFFICE

BY 
LIEUTENANT GOVERNOR GEORGE TURMAN
Statehood Centennial Commission Chairman

Certified to the Secretary of State, December 12, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through IV (42.6.201) through 42.6.204) relating to child support debt tax offsets.)	NOTICE OF THE ADOPTION of Rules I through IV (42.6.201 through 42.6.204) relating to child support debt tax offsets.

TO: All Interested Persons:

1. On November 14, 1986, the Department published notice of the proposed adoption of Rules I through IV (42.6.201 through 42.6.204) relating to child support debt tax offsets on pages 1864 through 1866 of the 1986 Montana Administrative Register, issue no. 21.

2. The Department has adopted these rules as proposed.

3. A public hearing was held on December 8, 1986, to consider the proposed adoption of these rules. No persons appeared to oppose the proposed adoptions. John C. Koch, attorney for the Department of Revenue, appeared on behalf of the Department. No other comments or testimony were received. Therefore, the Hearing Examiner deemed the rules be adopted as drafted.

4. The authority to adopt the rules is 17-4-110 and 40-5-226, MCA, and § 2, Ch. 679, L. 1985, and the rules implement 17-4-105, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42.17.105 relating to computation of withholding taxes.	NOTICE OF THE AMENDMENT of Rule 42.17.105 relating to computation of withholding taxes.

TO: All Interested Persons:

1. On November 14, 1986, the Department published notice of the proposed amendment of Rule 42.17.105 relating to computation of withholding taxes at pages 1867 through 1869 of the 1986 Montana Administrative Register, issue no. 21.

2. The Department has adopted these rules as proposed.

3. The Department received comments from Thomas P. McGree, Government Relations Manager, Mountain Bell, Helena, Montana, agreeing with the intent of the revision to the rule. Mr. McGree requested the effective date of the rule be changed from January 1, 1987 to April 1, 1987, because of the short time the employees would have to complete W-4's should the January date be implemented. The Department has considered this change but believes the change is not necessary. The W-4 filing deadline, set by the Federal Government, is in October, 1987, not January. Employees have time to meet this deadline. In addition, the filing of new W-4's to adjust exemption is not necessary for state withholding purposes like it is for the Federal Government. State withholding rates are established on the basis of average deductions by taxpayers for families of a given size. The withholding rates in this rule are adjusted, in part, because of changes in average deductions taken on returns. This approach to withholding minimizes the need for employees to change withholding exemptions on an annual basis. Finally, if the rules were delayed to April 1st, the rates would need to be recalculated for the remaining nine months of 1987 so that amounts withheld approximate the tax liability of employees for all of 1987.

No requests for hearing or comments were received.

4. The authority for the amendment of the rule is 15-30-305, MCA, and the rule implements 15-30-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.21.159) relating to commercial personal property audits.	NOTICE OF THE ADOPTION of Rule I (42.21.159) relating to commercial personal property audits.

TO: All Interested Persons:

1. On October 30, 1986, the Department published notice of the proposed adoption of Rule I (42.121.159) relating to commercial personal property audits at pages 1784 and 1785 of the 1986 Montana Administrative Register, issue no. 20.

2. The Department has adopted these rules as proposed.

3. A public hearing was held on November 20, 1986, to consider the proposed adoption of this rule. No persons appeared to oppose the proposed adoption. Gregg Groepper and Randolph Wilke, Property Assessment 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 15-1-201, MCA, and § 10, Ch. 743, L. 1985, and the rule implements 15-8-104, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through III (42.21.160 through 42.21.162); the AMENDMENT of 42.21.101, 42.21.102, 42.21.106, 42.21.107, 42.21.113, 42.21.114, 42.21.123, 42.21.131, 42.21.137 through 42.21.140, 42.21.151, 42.21.155; and the REPEAL of 42.21.109 through 42.21.111 relating to personal property taxes.	NOTICE OF ADOPTION of Rules I through III (42.21.160 through 42.21.162); AMENDMENT of 42.21.101, 42.21.102, 42.21.106, 42.21,107, 42.21.113, 42.21.114, 42.21.123, 42.21.131, 42.21.137 through 42.21.140, 42.21.151, 42.21.155; and the REPEAL of 42.21.109 through 42.21.111 relating to personal property taxes.

TO: All Interested Persons:

1. On October 30, 1986, the Department published notice of the proposed adoption of Rules I through III (42.21.160 through 42.21.162); amendment of 42.21.101, 42.21.102, 42.21.106, 42.21.107, 42.21.113, 42.21.114, 42.21.123, 42.21.131, 42.21.137 through 42.21.140, 42.21.151, 52.21.155; and the repeal of 42.21.109 through 42.21.111 relating to personal property taxes at pages 1786 through 1805 of the 1986 Montana Administrative Register, issue no. 20.

2. The Department has adopted rules I through III (42.21.160 through 42.21.162) as proposed.

ARM 42.21.102, 42.21.106, 42.21.107, 42.21.113, 42.21.114, 42.21.123, 42.21.137 through 42.21.139, 42.21.151, and 42.21.155 are adopted as proposed.

ARM 42.21.109, 42.21.110, and 42.21.111 are repealed.

ARM 42.21.101, 42.21.131, and 42.21.140 are adopted with the following changes:

42.21.101 AIRCRAFT (1) The average market value of aircraft shall be the average wholesale value as computed from the "Aircraft Price Digest". The average wholesale value shall be determined by adding the "Average Equipped Inventory" to the "Average Equipped Marketable" value for each model as contained in the "Aircraft Price Digest" and dividing the sum by two. **~~No adjustments will be made for low or high engine hours or for extra equipment.~~** The Winter Edition applicable to the year of assessment of the "Aircraft Price Digest", Aircraft Appraisal Association of America, Inc., Will Rogers Airport, Box 59977, Oklahoma City, Oklahoma 73159, will be used. This book may be reviewed in the department or purchased from the publisher.

(2) The department of revenue will consider an adjustment for high and low engine hours and for the presence of additional equipment on the aircraft in the event that the taxpayer submits

an affidavit within 30 days after receipt of a supplemental assessment list from the county assessor. The affidavit must contain the following information:

(a) a statement of the hours accrued on the aircraft engine as of January 1 of the assessment year for which the adjustment is sought;

(b) a complete delineation of the additional equipment for which an adjustment is sought for the assessment year; and

(c) a statement that the affidavit is made with the understanding that if the information about the aircraft is false or misrepresented, the penalty assessment under 15-8-306, MCA, can be applied by the department.

(3) The department of revenue reserves the right to implement 15-8-306, MCA, by assessing a penalty against any taxpayer who is determined to have asserted false, misleading, erroneous, or untruthful information in any affidavit called for by subsection (2).

~~(2)~~ (4) Remains the same, but will be renumbered.

~~(3)~~ (5) For all aircraft which cannot be valued under subsection (1), the department of revenue or its agent shall try to ascertain the original f.o.b. through old aircraft valuation guidebooks. If an original f.o.b. cannot be ascertained, the department of revenue or its agent may use trending to determine the f.o.b. The f.o.b. or "trended" f.o.b. will be used in conjunction with the depreciation tables indicated in subsection ~~(2)~~ (4) to arrive at a value which approximates wholesale value. The trend factors are contained in the January 1, 1987, Marshall Valuation Service Manual. The Marshall Valuation Service Manual published by "Marshall and Swift Publication Company", 1617 Beverly Boulevard, P. O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

~~(4)~~ (6) Remains the same, but will be renumbered.

~~(5)~~ (7) Remains the same, but will be renumbered.

~~(6)~~ (8) Remains the same, but will be renumbered.

AUTH: 15-1-201 MCA, and Sec. 49, Ch. 516, L. 1985; IMP: 15-6-138 MCA.

42.21.131 HEAVY EQUIPMENT (1) through (5) remain the same.

(6) This rule is effective for tax years beginning after December 31, 1986, and applies to all heavy equipment not listed in ARM 42.21.139.

AUTH: 15-1-201 MCA; IMP: 15-6-135, 15-6-138, and 15-6-140 MCA.

42.21.140 OIL DRILLING RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of oil drilling rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below for oil drilling rigs, there will be ~~2~~ two replacement cost categories. One category will represent current replacement cost of a mechanical rig and the second category will represent current replacement cost of an electric rig. Each rig as it is assessed will be placed in a value category based on its depth.

DEPTH CATEGORIES

Class	Depth Capacity
1	0 to 3,000 ft.
2	3,001 ft. to 5,000 ft.
3	5,001 ft. to 7,500 ft.
4	7,501 ft. to 10,000 ft.
5	10,001 ft. to 12,500 ft.
6	12,501 ft. to 15,000 ft.
7	15,001 ft. to 20,000 ft.
8	20,001 ft. and over

MANUFACTURER'S DEPTH RATING	ELECTRICAL ~~SERVICE~~ RIG R.C.N.	MECHANICAL ~~WORKOVER~~ RIG R.C.N.
0 - 3,000		285,209
3,001 - 5,000		432,135
5,001 - 7,500	868,250	654,750
7,501 - 10,000	1,167,210	998,750
10,001 - 12,500	1,363,845	1,221,225
12,501 - 15,000	1,788,575	1,601,575
15,001 - 20,000	2,103,275	
20,001 and over	2,262,275	

The depth capacity for drilling rigs will be based on the "Manufacturers Depth Rating". These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in subsection (2).

(2) through 5 remain the same.

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

3. A public hearing was held on November 20, 1986, to consider the proposed adoptions, amendments, and repeals of these rules. Gregg Groepper and Randolph Wilke appeared on behalf of the Department.

Several parties appeared at the hearing and several interested persons submitted written comments. The testimony and comments have been considered by the Department for purposes of the amendment of ARM 42.21.101.

A number of comments were received reflecting that aircraft owners preferred a fee in lieu of a tax to the present ad valorem tax system. The Department has no authority to depart from the Legislature's direction that aircraft shall be subject to an ad valorem property tax rather than a fee in lieu of a tax. Consequently, the Department of Revenue cannot implement the proposals of that group of taxpayers.

A group of students pursuing aviation science study at Flathead High School submitted letters concerning the amendment of the rule. The general thrust of those letters was that the Department should not tax aircraft; should adopt a fee in lieu

of a tax; promote the interest of aviation in the State; and that the Department was forcing people to register aircraft outside the State of Montana. These are matters of law and cannot be changed by rules. The Legislature has determined that aircraft are subject to ad valorem taxation in Montana and the Department has been directed to use a national appraisal guide for that purpose in assessing the value of the aircraft. In the event that the interested parties are desirous of changing the law, they must seek that change through the political processes.

Persons appearing at the hearing were generally concerned that the Department of Revenue was not taking into account high and low hours on an aircraft engine and the presence of additional equipment on the aircraft for purposes of valuation. The Department has taken those remarks into account and it has adjusted the ARM 42.21.101 so that those adjustments will be available to taxpayers.

The Hearing Examiner's report reveals that the Department of Revenue has the authority to adopt the rules and that several comments in opposition to ARM 42.21.101 were made at the hearing. The Hearing Examiner found no bar to the adoption of ARM 42.21.101 from his perspective.

ARM 42.21.131 was amended adding the language "and applies to all heavy equipment not listed in ARM 42.21.139" in order to clearly establish that the heavy equipment being valued under ARM 42.21.131 did not include any workover or service rigs. There was a concern expressed at the hearing that the Department was confusing the assessment of workover and service rigs with all other oil rigs. Consequently, the clarifying language was added in ARM 42.21.131.

In addition, the clarifying language in ARM 42.21.140 pertaining to the "electric rig RCN" and "mechanical rig RCN" was added to make it clear that the Department was valuing oil drilling rigs only in ARM 42.21.140 and that it was not considering or valuing any service or workover rigs within that rule. Service and workover rigs are valued according to the procedure set forth in ARM 42.21.139.

No other comments were made in reference to the remainder of the rules.

4. The authority for the adoptions, amendments, and repeals of these rules is based on 15-1-201, MCA, § 49, Ch. 516, L. 1985, § 3, Ch. 583, L. 1985, and § 10, Ch. 742, L. 1985, and the rules implement 15-6-135, 15-6-136, 15-6-138, 15-6-139, 15-6-140, 15-6-146, 15-8-201, 15-8-402, 15-8-404, 15-8-408, 15-8-409, and 15-24-301, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) and TRANSFER of 42.22.1101) through 42.22.1103 and) 42.22.1111 through 42.22.1119) (42.25.1101 through 42.25.1103) and 42.25.1111 through) 42.25.1119) respectively) relating to net proceeds tax) on miscellaneous mines.)	NOTICE OF THE AMENDMENT and TRANSFER of Rules 42.22.1101 through 42.22.1103 and 42.22.1111 through 42.22.1119 (42.25.1101 through 42.25.1103 and 42.25.1111 through 42.25.1119) respectively relating to net proceeds tax on miscellaneous mines.

TO: All Interested Persons:

1. On October 30, 1986, the Department published notice of the proposed amendment and transfer of rules 42.22.1101 through 42.22.1103 (42.25.1101 through 42.25.1103) and 42.22.1111 through 42.22.1119 (42.25.1111 through 42.25.1119) relating to net proceeds tax on miscellaneous mines at pages 1762 through 1769 of the 1986 Montana Administrative Register, issue no. 20.

2. The Department has amended and transferred these rules as proposed.

3. No comments or testimony were received.

4. The authority for the rules is 15-23-108, MCA, and the rules implement 15-23-102, 15-23-501, 15-23-502, 15-23-503, 15-23-505, and 15-23-507, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) and TRANSFER of 42.22.1201) through 42.22.1208 and) 42.22.1211 through 42.22.1217) (42.25.1001 through 42.25.1008) and 42.25.1011 through) 42.25.1017) respectively) relating to net proceeds tax) on oil and gas production.)	NOTICE OF THE AMENDMENT and TRANSFER of Rules 42.22.1201 through 42.22.1208 and 42.22.1211 through 42.22.1217 (42.25.1001 through 42.25.1008 and 42.25.1011 through 42.25.1017) respectively relating to net proceeds tax on oil and gas production.

TO: All Interested Persons:

1. On October 30, 1986, the Department published notice of the proposed amendment and transfer of rules 42.22.1201 through 42.22.1208 (42.25.1001 through 42.25.1008) and 42.22.1211 through 42.22.1217 (42.25.1011 through 42.25.1017) relating to net proceeds tax on oil and gas production at pages 1770 through 1778 of the 1986 Montana Administrative Register, issue no. 20.

2. The Department has amended and transferred these rules as proposed.

3. No comments or testimony were received.

4. The authority for the rules is §§ 15-1-201, 15-23-108, MCA, and § 3, ch. 642, L. 1985, and the rules implement §§ 15-8-601, 15-23-116, 15-36-121, MCA, and Title 15, ch. 23, part 6, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I and II (42.22.1311) and 42.22.1312) relating to) industrial machinery and) equipment trend factors and) depreciation schedules.)	NOTICE OF THE ADOPTION of Rules I and II (42.22.1311 and 42.22.1312) relating to industrial machinery and equipment trend factors and depreciation schedules.

TO: All Interested Persons:

1. On October 30, 1986, the Department published notice of the proposed adoption of Rules I and II (42.22.1311 and 42.22.1312) relating to industrial machinery and equipment trend factors and depreciation schedules at pages 1779 through 1783 of the 1986 Montana Administrative Register, issue no. 20.

On November 28, 1986, the Department published an Addendum Notice to MAR Notices 42-2-327 and 42-2-329 at page 1956 of the 1986 Montana Administrative Register, issue no. 22.

2. The Department has adopted these rules with the following changes:

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) The department of revenue will utilize the machinery and equipment trend factors which are set forth on the following tables. The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Industries with similar trending factors are grouped. The schedules in the rule reflect an average of trend factors for each industry group. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.

(2) The application of the trend factors set forth in subsection (1) will be as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed:

1. Determine the economic life of the subject industry.
2. Acquire a set of reasonable trends for that economic life.

3. Acquire the original installed cost (direct and indirect) for the subject equipment.

4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).

5. Depreciate the RCN on the basis of age to arrive at sound value.

Example:

Industry - Sawmill
Economic Life - 10 years
1986 Table - Table 6 (Subsection 1)

Case	I	II
Equipment - Motor		
Original Installed Cost	$ 200	$ 100
Year Installed	1980	1972

Case I		Case II	
Cost	$ 200	Cost	$ 100
x Trend	1.227	x Trend	1.596*
RCN	245	RCN	160
x % Good	.49	x % Good	.20
Sound Value	$ 120	Sound Value	$ 32

* The trending factor is applied only to the last year of the economic life. Although the equipment is 15 years old, it is trended by the 10th year trend.

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

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) The department of revenue will utilize the machinery and equipment depreciation schedule which is set forth in the following table. The depreciation schedule will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306.

Life Expectancy Table remains the same as proposed.

(2) The department will utilize the depreciation schedules set forth above as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed.

1. Determine the economic life of the subject industry.

2. Acquire a set of reasonable trends for that economic life.

3. Acquire the original installed cost (direct and indirect) for the subject equipment.

4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).

5. Depreciate the RCN on the basis of age to arrive at sound value.

Example:

Industry - Sawmill
Economic life - 10 years
1986 Table - Table 6 (Subsection 1)

Case	I	II
Equipment - Motor		
Original Installed Cost	$ 200	$ 100
Year Installed	1980	1972

Case I

Cost	$ 200
x Trend	1.227
RCN	245
x % Good	.49
Sound Value	$ 120

Case II

Cost	$ 100
x Trend	1.596*
RCN	245
x % Good	.20
Sound Value	$ 32

* The trending factor is applied only to the last year of the economic life. Although the equipment is 15 years old, it is trended by the 10th year trend.

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

3. A public hearing was held on November 20, 1986, to consider the proposed adoption of these rules. Several persons appeared at the hearing to offer oral testimony and written comments were received from one taxpayer. Gregg Groepper and Randolph Wilke, Property Assessment Division, appeared on behalf of the Department.

Pfizer, Inc., through its attorney, submitted comment concerning the adoption of the rules. The first comment relates to a lack of foundation for the development of trend factors. The foundation for the rule is the Marshall Valuation Service. In addition, language has been added to the rule explaining how the Marshall Valuation Service data is used to develop the trending and depreciation schedules. The rule relating to industrial machinery and equipment trend factors is being adopted so that taxpayers will have direct knowledge of the trend factors which are being applied to their industrial machinery and equipment for ad valorem tax purposes. The rule will operate in conjunction with ARM 42.22.1307. That rule reflects that the trend factors are developed annually from the Marshall Valuation Service. Accordingly, there is a foundation for the development of the trend factors set forth in the new rule.

The second comment offered on behalf of Pfizer is that the Department of Revenue has denied taxpayers due process of law in adopting these rules since the taxpayers have no ability to know the foundation for the rules, the methods of their compilation, or the persons who compiled them. The Department of Revenue asserts that the foundation for the development of the rules has been set forth above. A rule is not legally defective because the methodology by which it was compiled is not set forth within the rule.

The third comment offered on behalf of Pfizer was to the effect that the rules are incomplete because they do not define the concept of depreciation. The Department has previously defined the concept of depreciation, insofar as it affects the valuation of industrial property, at ARM 42.22.1308.

Flying J Inc., through its attorney, submitted written comments pertaining to the adoption of the rules. Flying J. Inc. raised five points for the Department's consideration. First, it suggests that the use of trend factors is discriminatory because they fail to take into account the operating or nonoperating character of the property being valued. This comment is an argument for economic obsolescence. The Department of Revenue always considers economic obsolescence when it values industrial machinery and equipment. Consequently, the comment is not well taken.

Second, Flying J. Inc. suggested that the trending and depreciation tables do not adequately account for technical and functional obsolescence in industrial machinery and equipment. This comment is in error. The Department of Revenue's trending and depreciation schedules are premised upon an economic life expectancy. The economic life expectancy of industrial machinery and equipment will account for all forms of physical and functional obsolescence of the property being valued.

Third, Flying J. suggested that the proposed trending tables and depreciation schedules do not reflect a true life expectancy of industrial machinery and equipment. The comment is incorrect to the extent that the commentator apparently believed that the life expectancy starts again following a sale. This is not the case. The thrust of the rest of the comment is that whenever a taxpayer acquires industrial machinery and equipment, the Department of Revenue commences a new economic life expectancy period for that machinery and equipment. The commentator suggested that at the date of acquisition, the property is typically "worn out." The Department's experience in this area leads it to believe that taxpayers acquire capital assets because they have economic utility to the taxpayers. Industrial machinery and equipment is maintained in such a fashion so that it will continue to have economic utility and to produce the industrial product for which it was designed.

Fourth, Flying J. suggests that the trend factors and depreciation schedules do not reflect market value as required by Montana law. The Department of Revenue has relied on the

replacement cost method, including trending and depreciation based on an economic life expectancy, for a number of years. That methodology has been challenged several times by taxpayers in the State of Montana. The Department's methodology has been sustained by the State Tax Appeal Board in contested case proceedings. The Department believes its methodology does yield market value of property.

Fifth, Flying J. suggested that the adoption of the rules should be prospective in nature and not retroactive. The 1986 tax assessments for industrial machinery and equipment have been prepared. They were based upon the same cost replacement methodology, with trending and depreciation, as they had been for many years. Consequently, taxpayers in Montana had an opportunity to challenge those assessments if they desired to do so. The Department will continue to use its cost replacement methodology, with trending and depreciation, because it yields market value and because it promotes equalization within the same tax class.

4. The authority for the rules is 15-1-201, MCA, and the rules implement 15-6-138 and 15-8-111, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT and TRANSFER of 42.22.2101 through 42.22.2103 and 42.22.2111 through 42.22.2115 (42.25.501 through 42.25.503 and 42.25.511 through 42.25.515) respectively relating to gross proceeds tax on coal production.	NOTICE OF THE AMENDMENT and TRANSFER of Rules 42.22.2101 through 42.22.2103 and 42.22.2111 through 42.22.2115 (42.25.501 through 42.25.503 and 42.25.511 through 42.25.515) respectively relating to gross proceeds tax on coal production.

TO: All Interested Persons:

1. On October 30, 1986, the Department published notice of the proposed amendment and transfer of rules 42.22.2101 through 42.22.2103 (42.25.501 through 42.25.503) and 42.22.2111 through 42.22.2115 (42.25.511 through 42.25.515) relating to gross proceeds tax on coal production at pages 1757 through 1761 of the 1986 Montana Administrative Register, issue no. 20.

2. The Department has amended and transferred these rules as proposed.

3. No comments or testimony were received.

4. The authority for the rules is §§ 15-23-108 and 15-35-111, MCA, and the rules implement Title 15, ch. 23, part 7, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

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

In the matter of the repeal of Rule 46.5.621; the amendment of Rules 46.5.601 through 46.5.607, 46.5.609 through 46.5.612, 46.5.614, 46.5.615, 46.5.616, 46.5.620, 46.5.622, 46.5.630, 46.5.632, 46.5.635, 46.5.636, 46.5.657 and 46.5.669; and the adoption of rules pertaining to child and youth care facilities	)	NOTICE OF THE REPEAL OF RULE 46.5.621; THE AMENDMENT OF RULES 46.5.601 THROUGH 46.5.607, 46.5.609 THROUGH 46.5.612, 46.5.614, 46.5.615, 46.5.616, 46.5.620, 46.5.630, 46.5.632, 46.5.635 AND 46.5.636; AND THE ADOPTION OF RULES I (46.5.623), (II) 46.5.627, (III) 46.5.628, (IV) 46.5.640, (V) 46.5.641, (VI) 46.5.642, (VIII) 46.5.648, (IX) 46.5.647 AND (X) 46.5.646 PERTAINING TO CHILD AND YOUTH CARE FACILITIES

TO: All Interested Persons

1. On April 10, 1986, the Department of Social and Rehabilitation Services published notice of the proposed repeal, amendment and adoption of rules pertaining to child and youth care facilities at page 511 of the 1986 Montana Administrative Register, issue number 7.

2. A supplemental notice extending the comment period to December 11, 1986, was published on September 26, 1986, at page 1579 of the 1986 Montana Administrative Register, issue number 18. A second supplemental notice announcing the time and place of a final hearing on the proposed rules was published on October 30, 1986, at page 1814 of the 1986 Montana Administrative Register, issue number 20.

3. The Department has repealed Rule 46.5.621 as proposed.

4. The Department has amended Rules 46.5.603, 46.5.604, 46.5.605, 46.5.606, 46.5.607, 46.5.609, 46.5.615, 46.5.630, 46.5.632, 46.5.635 and 46.5.636 as proposed.

5. The Department has adopted Rule 46.5.646, CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, SECLUSION as proposed.

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

46.5.601 YOUTH CARE FACILITY, DEFINITIONS Subsections (1) through (2) remain as proposed.

(a) "Residential treatment center" means a unit or facility of a child care agency that treats children who are seriously disturbed either mentally, emotionally or behaviorally. In addition to the child care agency rules, such unit or facility must meet the licensing requirements contained in ~~Rules IV, V, VI, VII, VIII, IX and X.~~ ARM 46.5.640, 46.5.641, 46.5.642, 46.5.646, 46.5.647 AND 46.5.648.

(b) "Seclusion" means isolation of a child in a locked room ~~when that child is out of control and is in danger of harming himself/herself or others~~. Seclusion may be used to protect the child, other children, and staff and to give the child the opportunity to regain control of his or her behavior and emotions by providing definite external boundaries and decreased stimulation.

~~(c) "Psychotropic medication" means a drug or substance which acts upon the brain and includes all central nervous system agents identified in american hospital formulary service section 28:08 through 28:28. (The list of psychotropic medications is available from the American Society of Hospital Pharmacists, 4630 Montgomery Avenue, Bethesda, Maryland.)~~

Subsections (2)(d) and (2)(e) remain as proposed in text but will be recategorized as (2)(c) and (2)(d).

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1102, 53-2-201 and 53-4-113 MCA

46.5.602 YOUTH CARE FACILITY, PURPOSE (1) These rules establish licensing procedures and ~~minimum standards~~ MINIMUM STANDARDS requirements for youth care facilities.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1102, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.610 YOUTH CARE FACILITY, REPORTS Subsections (1) through (5) remain as proposed.

(6) Runaways shall be reported IMMEDIATELY TO THE POLICE AND within the next working day to the agency or person who placed the child.

Subsections (7) and (8) remain as proposed.

AUTH: Sec. 41-3-1142, 41-3-1103 and 53-4-111(1); AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.611 CHILD CARE AGENCY, CASE PLANS (1) Each child care agency, except receiving homes, must develop a case plan for each child in care. A case plan is a specific plan for providing care, treatment and services of any kind to a specific child. ~~The child care agency must seek assistance in developing and reviewing the case plan from the referring party, the child, all significant child care staff, and the parents, guardian, or legal custodian of the child.~~

Subsections (2) through (4) remain as proposed.

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.612 CHILD CARE AGENCY, ADMISSIONS, AND DISCHARGES, ~~AND FOLLOW-UP~~ Subsection (1) remains as proposed.

~~(2) Admissions shall be limited to those children for whom the child care agency's services are appropriate, considering the child's psychological and emotional needs, social development and past medical and educational history.~~

~~(3) No child under the age of six (6) shall be admitted to a child care agency.~~

(~~1~~2) Each child care agency, ~~excluding receiving homes,~~ must have a written ~~process of~~ admissions, policies which includes the following minimum requirements.

(a) ~~The~~ EACH ~~provider~~ child care agency, EXCEPT MATERNITY HOMES AND RECEIVING HOMES, shall ~~require the placing agency to submit~~ obtain or develop a social study, ~~completed~~ on the child and his family ~~and updated to the date of referral,~~ to the child care agency's ~~admissions person or committee. In the case of nonagency referrals, the child care agency has the responsibility to compile all necessary social information.~~ before admission.

Subsection (2)(b) remains as proposed.

~~(de) When any child is placed in Montana a child care agency from another state which is a member of the Interstate Compact on the Placement of Children, such placement must go through an agency or court in the sending state which will request the state's compact administrator to notify the compact administrator in Montana. No child subject to the compact may be placed within Montana until all necessary procedures pursuant to the compact have been completed. that agency must notify the Montana state compact administrator.~~

Subsection (2)(d) remains as proposed but will be recategorized as (2)(c).

~~(fe) The provider may accept emergency placements in some circumstances where all of the required information for placement is not readily available. These placements shall not exceed 10 percent of the total number of residents. The provider shall obtain the required information within 60 30 days of admission.~~

~~(f~~D) Referrals may only be accepted from ~~parties~~ parents or agencies authorized by law to place children. ~~and with the resources to pay for the placement.~~

~~(g~~E) The admission policy shall specify the age, sex and type of children served. ~~The child care agency shall specify in the policy whether it will accept children who may be a danger to themselves or others and shall specify what programs and procedures are available to assure the protection and safety of such children and the other residents.~~

Subsections (2) and (2)(a) remain as proposed but will be recategorized as (3) and (3)(a).

(b) When the placement has been made by the parent, the provider shall be responsible for ~~both follow-up services to the family and child and~~ referral for support services.

(c) The provider shall assist the child and, when appropriate, the child's family in preparing for the child's discharge from the program.

AUTH: Sec. 41-3-1142, 53-4-111, 53-4-113(4) and 41-3-1103 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1142, 53-2-201, 53-4-113 and 41-3-1103 MCA

46.5.614 CHILD CARE AGENCY, PERSONNEL Subsections (1) through (3)(a)(vii) remain as proposed.

~~(4) Health prerequisites to hiring. Personnel shall be in good physical and mental health. A SRS 33, "personal statement of health for licensure" form provided by the department must be completed by the provider for each staff member and submitted with the initial application for licensure and annually thereafter.~~

Subsection (5) remains as proposed in text but will be renumbered as (4).

~~(6) All child care staff must, within 90 days of beginning employment, be trained to administer first aid.~~

(5) THE FACILITY SHALL HAVE A POLICY GOVERNING EMERGENCY MEDICAL PROCEDURES, AND THAT POLICY SHALL BE FULLY EXPLAINED TO CHILD CARE STAFF PERSONS PRIOR TO THEIR BEGINNING TO CARE FOR CHILDREN.

~~(7~~6) The child care agency shall employ, train and supervise an adequate number of staff necessary to ensure proper care, treatment and safety of the residents.

~~(8~~7) No staff member, aide, volunteer or other person having direct contact with the children in the facility shall conduct themselves in a manner which poses any potential threat to the health, safety and well-being of the children in care.

~~(9) The child care staff of a child care agency shall be physically, mentally and emotionally competent to care for~~

~~children and free from communicable disease. No child care staff member shall:~~

~~(a) have been convicted of a crime involving harm to children or physical or sexual violence. Any provider, caregiver or other person charged with a crime involving children or physical or sexual violence and awaiting trial may not provide care or be present in the home pending the outcome of the trial;~~

~~(b) be currently diagnosed or receiving therapy or medication for a serious mental illness which might create a risk to children in care. Serious mental illness which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. The department may request a provider, caregiver or other person to obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe a serious mental illness exists;~~

~~(c) be chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. The department may request the provider, caregiver or other person to obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists;~~

~~(d) have been named as a perpetrator in a substantiated report of child abuse or neglect.~~

(~~10~~8) The ~~qualifications~~ PERSONAL REFERENCES of all staff shall be verified by the child care agency.

Subsections (11) through (13)(b)(ii) remain the same in text but will be renumbered as (9) through (11)(b)(ii).

(~~10~~11412) Education. If a child care agency conducts a formal education program for children in care, teachers must have the same MINIMUM qualifications as comparable teachers in the public and private schools of Montana.

~~(11)5) Health and nutrition.~~

~~(a) Every child care agency must employ or have easy access to have a written agreement with the following professionals:~~

~~(i) a licensed physician;~~

~~(ii) a licensed dentist;~~

~~(iii) a registered nurse; and~~

~~(iv) a qualified nutritionist. registered dietician.~~

~~(b) Every child care agency except maternity homes must provide for regular periodic review of the health records of all children in care by a registered nurse or other appropriately qualified health professional, to assure the continued health care of the children.~~

~~(16) Maintenance personnel. A child care facility must employ adequate maintenance personnel to operate the physical plant efficiently without reliance upon child care staff~~

~~members or children in care. Maintenance personnel must meet the general qualifications for child care agency personnel.~~

~~(12)(7) Work hours. A child care agency must maintain adequate child care staff to assure that no staff member, particularly house parents, is burdened with excessive working hours or responsibilities.~~

AUTH: Sec. 41-3-1103, 41-3-1142, 53-4-111 and 53-4-113 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.616 CHILD CARE AGENCY, FINANCES Subsections (1) through (1)(d) remain the same.

~~(2) The child care agency shall provide, for initial licensing and for annual relicensing thereafter, a copy of the current report of audit by the independent auditor.~~

~~(3) The child care agency shall provide the licensing agent, the department, and all referral parties a specific listing of items included in their rate charged. This rate and its specific coverage must be verified by an independent auditor.~~

~~(4) The child care agency must notify all appropriate referral sources and financially responsible parties of intended rate increases at least four months prior to the anticipated effective date.~~

Subsection (5) remains the same in text but will be renumbered as (2).

~~(6) The child care agency shall be continuously assured of enough money, in addition to goods in kind (e.g., donations of food or clothing) obtain enough funding to provide for the proper care and reasonable development of the children from whom it has assured responsibility or intends to assume responsibility. in care.~~

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.620 CHILD CARE AGENCY, RECORDS Subsections (1) through (2)(d) remain as proposed.

(e) quarterly progress reports on the child's reaction to the placement and services provided; and

(f) quarterly reports from any parties providing any services to the child outside the child care agency~~.~~; AND

Subsections (2)(g) through (4) remain as proposed.

(5) Every child care agency, EXCEPT RECEIVING HOMES, must provide for regular periodic review of the health records of all children in care by a registered nurse or other appropriately qualified health professional to assure the continued health care of the children.

AUTH: Sec. 41-3-1103, 41-2-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

7. The Department has adopted the following rules as proposed with the following changes:

46.5.623 CHILD CARE AGENCY, ~~ADMINISTRATION~~ SUPERVISION OF MEDICATION

Subsection (1) remains as proposed.

(a) These policies shall specify:

(i) ~~the conditions under which medications can be prescribed and administered;~~

~~(ii) who can prescribe and who can administer medication;~~

~~(iii)~~ procedures for documenting the ~~administration~~ supervision of medication and medication errors and drug reactions; and

~~(iv)~~ procedures for notification of the attending physician in cases of medication errors and/or drug reactions.

~~(2) The agency shall ensure that a child is personally examined by the prescribing physician prior to receiving any medication. In cases of medical emergency, telephone orders for the administration of medication may only be placed by a licensed physician;~~

~~(3)~~(2) Each child care agency shall maintain a cumulative record of all medication dispensed to children including:

(a) the name of the resident;

(b) the type and usage of medication;

(c) the reason for prescribing the medication;

(d) the time and date the medication ~~is dispensed;~~ was taken by the child;

(e) the name of the ~~dispensing~~ supervising person; and

(f) the name of the prescribing physician.

(~~4~~3) When a child first comes into care, the child care agency shall ascertain all medication the child is currently taking. ~~At this time the facility shall carefully review all medication the child is using~~ and make plans to either continue the medication or to reconsider the medication needs of the child considering the changed living circumstances.

~~(5) The child care agency shall have a written medication schedule for each child to whom medication is prescribed. A child's medication schedule shall contain the following information:~~

~~(a) name of child;~~

~~(b) name of prescribing physician;~~

~~(c) telephone number at which prescribing physician may be reached in case of medical emergency;~~

~~(d)--date-on-which-medication-was-prescribed;~~

~~(e)--generic--and--commercial--name--of--medication--prescribed;~~

~~(f)--dosage-level;~~

~~(g)--time(s)-of--day--when--medication--is-to-be-administered;~~

~~(h)--possible--adverse-side-effects-of-prescribed-medication;-and~~

~~(i)--date-on-which-prescription-will-be-reviewed.~~

(64) The child care agency shall provide a copy of a child's medication schedule to all staff members responsible for ~~administering~~ supervising the medication to the child. The schedule shall subsequently be placed in the child's case record.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 53-4-111 and 53-4-113 MCA

46.5.627 CHILD CARE AGENCY, TIME-OUT (1) Any child care agency which uses time-out procedures shall have a written policy governing the use of time-out.

(2) This policy shall include procedures for ~~recording each-incident~~ involving the use of time-out and shall outline other less restrictive responses to be used prior to use of time-out.

~~(3)--Any-use-of-time-out-exceeding-30-minutes-in-duration must-have-been-approved-by-a-qualified-treatment-practitioner.~~

AUTH: Sec. 41-3-1103 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 53-2-201, 53-4-111 and 53-4-113 MCA

46.5.628 CHILD CARE AGENCY, PASSIVE PHYSICAL RESTRAINT (1) The child care agency must provide training in passive physical restraint to all staff members who may be required to use passive physical restraint and shall provide at least yearly refresher courses.

(2) Passive physical restraint of a child may be used:

~~(a)~~ to end a disturbance by the child that immediately threatens physical injury to the child, other persons, or property.

~~(b)--to-end--a-disturbance--by-the--child-that--threatens physical-injury-to-others;~~

~~(3)--A-child--care-agency--shall--not--use--any--form--of restraint-other-than--passive-physical--restraint--without-the prior-approval-of-the-department.--Approval-may-be-granted-for other-types-of-restraint-only-if-the--child-care--agency-meets the-requirements-for-a-residential-treatment-center.~~

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 53-2-201, 53-4-111 and 53-4-113 MCA

46.5.640 CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, STAFFING (1) In addition to the child care agency staff referred to in ARM 46.5.614 (7) through (~~11~~12), a residential treatment center must have on staff or under contract a licensed psychiatrist or psychologist, an education program coordinator, teachers, a program administrator, ~~licensed psychologist(s),~~ a registered nurse, recreation staff and qualified treatment practitioners.

(2) Child care staff qualifications/ratio:

(a) Child care staff of a residential treatment center must have a bachelor's level degree or three years of experience in group child care, or any equivalent combination of education and experience.

(b) Child care staff are involved in the on-going daily care and custody of the residents.

(c) Child care staff/child ratio:

7 am to 11 pm	One (1) awake staff person per each six (6) children in the residence/unit with one (1) staff person on call.
11 pm to 7 am	One (1) awake staff person per each ~~ten (10)~~ twelve (12) children in the residence/unit with one (1) staff person on call.

(3) Psychiatrist; ~~qualifications.~~

~~(a) The psychiatrist must be licensed to practice in the state of Montana.~~

~~(b)~~ The psychiatrist ~~shall~~ may be available to the residents and the child care staff for consultation, training and therapy as needed, and may

~~(c) The psychiatrist shall also~~ assist the administrative staff, treatment practitioners and education staff to understand the medical concepts in working with children and their families.

Subsections (4) through (5) remain as proposed.

(a) The residential treatment center administrator must have a bachelor's degree and four years of experience in residential child care or a master's degree and two years of residential child care experience. Prior relevant administrative and supervisory experience may be substituted for residential child care experience.

Subsections (5)(b) through (6) remain as proposed.

~~(a)--The--psychologist(s)--must-be-on-staff-or-under-contract-and-must-be-licensed-to-practice-in-the-state-of-Montana by-the-state-board-of-psychologist-examiners;~~

(ba) The services of a psychologist shall be used to provide a diagnosis and to contribute to treatment plans for each child.

(cb) The psychologist(s) shall provide, consult or supervise:

Subsections (6)(b)(i) through (7)(b) remain as proposed.

~~(8)--Recreation-staff:~~

~~(a)--The-person-in-charge-of-the-recreation--program-must be-on-staff-or-under-contract-and-have-a-bachelor's-degree;~~

~~(b)-Recreation--aides-shall--receive-eight-(8)--hours--of training-during--the-first-90--days-of-employment-on-the-needs of-emotionally-disturbed-children--and-the--role-of-recreation in-the-child's--treatment-plan;--Aides-must-be--supervised--by the-bachelor-level-degree-recreation-staff-person;~~

(98) Treatment practitioner:

Subsections (9)(a) and (9)(b) remain as proposed but will be recategorized as (8)(a) and (8)(b).

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985
IMP: Sec. 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113 MCA

46.5.641 CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, EDUCATION The residential treatment center shall have an on-grounds ~~school~~ education program including special education services.

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 53-2-201 and 53-4-111 MCA

46.5.642 CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, RECREATION The residential treatment center shall have an on-grounds recreation program for residents, including: team sports, individual sports, non-competitive games, physical conditioning, arts, crafts, music, cultural and ethnic pursuits, records, books, and hobby equipment; as appropriate for each child's treatment plan.

AUTH: Sec. 41-3-1142 and 53-4-111 MCA
IMP: Sec. 53-4-111 and 53-4-113 MCA

46.5.647 CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, MECHANICAL RESTRAINT Subsections (1) through (2)(a) remain as proposed.

(3) Each child care agency which uses mechanical restraint shall have written policies governing the use of such restraint. The policy shall describe, at a minimum:

(a) the philosophy for use of mechanical restraint;

(b) the procedure for use of mechanical restraint;

(c) the emergency evacuation procedures for special circumstances occurring which a child is in restraint (i.e. fire, natural disaster);

(d) the method for children to express grievances regarding the use of mechanical restraint.

Subsections (3) through (4)(a) remain as proposed in text but will be renumbered (4) through (5)(a).

(6) Mechanical restraint shall not be used as punishment.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-4-1103, 41-3-1141, 41-3-1142, 53-4-111 and 53-4-113 MCA

46.5.648 CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, CHEMICAL RESTRAINT Subsections (1) and (2) remain as proposed.

(3) Each child care agency which uses chemical restraint shall have written policies governing the use of such restraint. The policies shall describe at a minimum:

(a) the philosophy for use of chemical restraint;

(b) the procedures for use of chemical restraint;

(c) the emergency evacuation procedures for special circumstances occurring while a child is in restraint (i.e. fire, natural disaster);

(d) the method for children to express grievances regarding use of chemical restraint.

Subsections (3) through (4) remain as proposed in text but will be renumbered as (4) through (5)(b).

~~(5)~~(6) ~~The chief administrator of the child care agency or a person designated by that administrator~~ A physician shall authorize each use of chemical restraint~~,~~ prior to the administering of such restraint.

Subsections (6) through (6)(b) remain as proposed in text but will be renumbered as (7) through (7)(b).

(8) Chemical restraint shall not be used as punishment.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA; AUTH Extension, Sec. 2, Ch. 177, Laws of 1985; Sec. 7, Ch. 531, Laws of 1985

IMP: Sec. 41-3-1103, 41-3-1141, 41-3-1142, 53-4-111 and 53-4-113 MCA

8. The Department has withdrawn proposed amendments to ARM 46.5.622, 46.5.657 and 46.5.669.

9. The Department has withdrawn the proposed adoption of Rule VII, CHILD CARE AGENCY, RESIDENTIAL TREATMENT CENTER, PSYCHOTROPIC MEDICATION.

10. The Department has thoroughly considered all commentary received:

COMMENT: One respondent at the hearing asked for a clarification under Rule I (3) [46.5.623] of the term "agency". She wondered if a physician was required to determine medication, etc.

RESPONSE: The child care agency can determine whether they feel a physician, nurse or other staff should conduct the review of the child's medication. The words "child care" have been inserted in front of "agency" to clarify that we mean "child care agency" and not "child placing agency".

COMMENT: One respondent at the hearing requested that the staff/child ratio in Rule IV (2)(C) [46.5.640] be changed to 1 to 12 and the option be left to the child care agency to determine whether the staff should be awake at night.

RESPONSE: The current licensing rules for child care agencies require a staff/child ratio of 1 to 10 during the night time hours. The staff/child ratio will be changed to 1 to 12. The Department has deliberated and discussed the request to allow the child care agency to decide whether it is most appropriate to have awake or asleep staff at night. The Department at this time believes the word "awake" should remain as a requirement for night staff. The word "awake", of course, remains for the 7:00 a.m. to 11:00 p.m. shifts.

COMMENT: At the hearing, a respondent mentioned the detail in the "seclusion" rule that is not also included in the "chemical restraints" or "mechanical restraints" rules. Since chemical and mechanical restraints are more restrictive than seclusion, sections of the seclusion rule should also apply to chemical and mechanical restraint or be deleted from the seclusion rule.

RESPONSE: The Department agrees and subsections (3) through (7) and (9) of the seclusion rule have been adapted to fit and added to Rule VIII [46.5.648], Chemical Restraint and Rule IX [46.5.647], Mechanical Restraint.

COMMENT: Amendment to ARM 46.5.622, 46.5.657 and 46.5.669 require further study before adoption. More input should be obtained from youth group home providers.

RESPONSE: The Department agrees. Proposed amendments to ARM 46.5.622, 46.5.657 and 46.5.669 have been withdrawn.

COMMENT: Rule VII on psychotropic medication is redundant. These requirements are covered in Rule I, "Administration of Medication" and by other state and federal laws governing medical practice.

RESPONSE: The Department agrees. Rule VII, "Psychotropic Medication", has been withdrawn.

COMMENT: ARM 46.5.614 should not include any requirements for personnel to answer questions from the Department that an employer is prohibited by Civil Rights laws from asking the employee during a hiring interview.

RESPONSE: The Department agrees and the proposed section has been dropped.

COMMENT: In proposed Rule I (3) [46.5.623], it is unclear whether a physician or agency personnel is required to determine, prescribe or administer medication, etc.

RESPONSE: The Department believes the agency can determine this within current Montana laws governing medical practice.

COMMENT: ARM 46.5.610(5)(b) should not require the incident report to have to be filed with both the placing agency and the licensing worker because this would require the agency to have to report twice.

RESPONSE: This report involves a "serious" incident only; therefore, the proposed rule has been adopted as proposed.

COMMENT: Does Rule IV (2)(C) [46.5.640] require one awake staff person per agency or per living unit?

RESPONSE: The proposal requires an awake staff person per agency.

COMMENT: Rule VI [46.5.642] should require only that a recreation program may include the items listed. It should not mandate that the listed items be required since some children may not be ready for recreational pursuits when they first enter the agency.

RESPONSE: The Department agrees and the rule has been changed accordingly.

COMMENT: The intent behind Rule I (1)(a)(i) [46.5.623] is unclear since the child care agency is not necessarily capable of determining without the aid of a physician when a medication error occurs.

RESPONSE: Staff with training can identify reactions to medication without the physician.

COMMENT: In Rule IV (8)(a) [46.5.640], Department representatives should meet with social worker licensing staff at the Department of Commerce to arrive at a usable description of what is meant by supervision of a licensed practitioner" by a licensed psychologist or psychiatrist" and how often this is to take place.

RESPONSE: Consultation with the Department of Commerce was done by phone and the word "supervised" was deleted in final draft.

COMMENT: The proposed change of ARM 46.5.622 to replace the work "standards" with "licensing requirements" should be dropped.

RESPONSE: The Department agrees and has dropped the proposed changes.

COMMENT: ARM 46.5.610(6) should be changed to require that police and case workers will be notified immediately of runaways, which both groups require any way, while parents may be notified within 72 hours.

RESPONSE: The rule has been changed to reflect immediate notification of police. Notifying parents is left to the discretion of the placing agency and child care agency.

Dave Lewis

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 15, 1986.

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

In the matter of the repeal of Rule 46.12.1434; the amendment of Rules 46.12.1401 through 46.12.1405, 46.12.1407 through 46.12.1413, 46.12.1425 through 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1439, 46.12.1440, 46.12.1451, 46.12.1452, 46.12.1454, 46.12.1455, 46.12.1457 and 46.12.1458; and the adoption of rules I-XII pertaining to the home and community services program	NOTICE OF THE REPEAL OF RULE 46.12.1434; THE AMENDMENT OF RULES 46.12.1401 THROUGH 46.12.1405, 46.12.1407 THROUGH 46.12.1413, 46.12.1425 THROUGH 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1439, 46.12.1440, 46.12.1451, 46.12.1452, 46.12.1454, 46.12.1455, 46.12.1457 AND 46.12.1458; AND ADOPTION OF RULES (I) 46.12.1462, (II) 46.12.1463, (III) 46.12.1464, (IV) 46.12.1468, (V) 46.12.1469, (VI) 46.12.1470, (VII) 46.12.1474, (VIII) 46.12.1475, (IX) 46.12.1476, (X) 46.12.1480, (XI) 46.12.1481 AND (XII) 46.12.1482 PERTAINING TO THE HOME AND COMMUNITY SERVICES PROGRAM

TO: All Interested Persons

1. On November 14, 1986, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rule 46.12.1434; the amendment of Rules 46.12.1401 through 46.12.1405, 46.12.1407 through 46.12.1413, 46.12.1425 through 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1439, 46.12.1440, 46.12.1451, 46.12.1452, 46.12.1454, 46.12.1455, 46.12.1457 and 46.12.1458; and adoption of Rules (I) 46.12.1462, (II) 46.12.1463, (III) 46.12.1464, (IV) 46.12.1468, (V) 46.12.1469, (VI) 46.12.1470, (VII) 46.12.1474, (VIII) 46.12.1475, (IX) 46.12.1476, (X) 46.12.1480, (XI) 46.12.1481 AND (XII) 46.12.1482 pertaining to the home and community services program at page 1870 of the 1986 Montana Administrative Register, issue number 21.

2. As proposed, the Department has repealed Rule 46.12.1434.

3. The Department has amended Rules 46.12.1401 through 46.12.1405, 46.12.1407 through 46.12.1413, 46.12.1425 through 46.12.1433, 46.12.1435, 46.12.1436, 46.12.1439, 46.12.1440, 46.12.1451, 46.12.1452, 46.12.1454, 46.12.1455, 46.12.1457 and 46.12.1458 as proposed.

4. The Department has adopted Rules 46.12.1462, PSYCHOLOGICAL SERVICES, DEFINITION; 46.12.1463, PSYCHOLOGICAL SERVICES, REQUIREMENT; 46.12.1464, PSYCHOLOGICAL SERVICES, REIMBURSEMENT; 46.12.1468, NURSING SERVICES, DEFINITION; 46.12.1469, NURSING SERVICES, REQUIREMENTS; 46.12.1470, NURSING SERVICES, REIMBURSEMENT; 46.12.1474, RESPIRATORY THERAPY SERVICES, DEFINITION; 46.12.1476, RESPIRATORY THERAPY SERVICES, REIMBURSEMENT and 46.12.1482, DIETITIAN SERVICES, REIMBURSEMENT as proposed.

5. The Department has adopted the following rules as proposed with the following changes:

46.12.1475 RESPIRATORY THERAPY SERVICES, REQUIREMENTS

Subsection (1) remains as proposed.

(2) A certified respiratory therapy technician, as defined by the national board for respiratory care, may assist under the direct supervision of a registered respiratory therapist or physician who is responsible for and participates in the recipient's treatment program.

(3) Respiratory therapy services are limited to recipients who would be institutionalized without respiratory care.

(4) Respiratory therapy services are limited to a maximum of 24 ~~visits~~ hours per fiscal year; however, the department may within its discretion authorize further specified hours of respiratory therapy services in excess of this limit. Any services exceeding this limit must be prior authorized by the department.

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

46.12.1480 ~~DIETICIAN~~ DIETITIAN SERVICES, DEFINITION

(1) ~~Dietician~~ Dietitian services mean services related to the nutritional needs of and management for the recipient.

(2) ~~Dietician~~ Dietitian services include ~~nutrition evaluation and consultation,~~ evaluation and monitoring of nutritional status, nutrition counseling, therapy, education and research.

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

46.12.1481 ~~DIETICIAN~~ DIETITIAN SERVICES, REQUIREMENTS

(1) ~~Dietician~~ Dietitian services must be provided by a registered ~~dietician~~ dietitian. Persons providing ~~dietician~~ dietitian services must meet the qualifications in section 37-21-302 MCA.

(2) ~~Dietician~~ Dietitian services are limited to recipients ~~who have a medically restricted diet or who do not eat appropriately to maintain health.~~ whose disease or medical condition is caused by or complicated by diet or nutritional status.

(3) ~~Dietician~~ Dietitian services are limited to a maximum of 12 hours per fiscal year.

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

6. The Department has thoroughly considered all commentary received:

COMMENT: A commenter was concerned about the reimbursement rate for respiratory therapy services. Clarification was also requested regarding whether the unit of service was by the hour or the visit.

RESPONSE: The reimbursement rate for respiratory therapy services is the lower of the provider's billed charges or $25 per hour. The reimbursement rate includes all services provided to the recipient. Respiratory therapists, like all other Medicaid providers, cannot be reimbursed separately for travel to and from a recipient's residence.

COMMENT: Clarification was requested on the role of the certified respiratory technician in providing respiratory therapy services. One commenter suggested that, since the majority of respiratory therapists in Montana are certified, the Department should remove the requirement for direct supervision of the certified therapist by a respiratory therapist or physician.

RESPONSE: There is a difference in education and training requirements for certified and registered respiratory therapists. Therefore, the Department will require a certified respiratory therapist to provide services under the direct supervision of the registered respiratory therapist. In the absence of a registered respiratory therapist, direct supervision of the certified therapist may be provided by the physician who ordered the care.

COMMENT: One commenter requested a change in the maximum number of respiratory therapy visits allowed per recipient per fiscal year to allow service to more medically involved cases.

RESPONSE: The limit on the number of services allowed is included for budget and utilization control purposes. The administrative rule allows the Department to prior authorize exceptions to this limit on a case-by-case basis. The

Department will re-evaluate the limit after one year of program experience to determine if changes need to be made.

COMMENT: One commenter recommended that all certified and registered respiratory therapists who participate in the Medicaid program be required to be directly employed by a hospital.

RESPONSE: The Department has no documented basis for excluding therapists who are not employed by a hospital. If a therapist is certified or registered by the National Board of Respiratory Care, he or she meets the criteria to provide the service. Also the Department does not want to limit the availability of qualified providers to provide respiratory therapy services. The Department will evaluate the program after one year to determine if changes to the qualification requirements need to be made.

COMMENT: Several commenters requested that the maximum number of dietitian services be removed and left to the discretion of the attending physician.

RESPONSE: The limit on the number of dietitian services allowed is included for budget and utilization control purposes. The administrative rule allows the Department to prior authorize exceptions to this limit on a case-by-case basis. The Department will re-evaluate the limit after one year of program experience to determine if changes need to be made.

COMMENT: One commenter requested changes to the spelling, definition and requirements for dietitian services.

RESPONSE: These changes were incorporated into the administrative rule language.

COMMENT: A request was made to allow psychological consultation services for elderly recipients, as well as disabled recipients.

RESPONSE: Psychological consultation services are offered only for habilitative purposes, and habilitative services under the waiver are available only to disabled persons. The Department believes that adequate psychological services are available to elderly recipients through the regular Medicaid program as set forth in ARM 46.12.580-582.

COMMENT: A commenter questioned the reimbursement rate for dietitian services. A comparison was made to the rate paid to respiratory therapists who have less years of education and training. The commenter recommended a $35-40

hourly rate which is the usual and customary charge for registered dietitian's services in the private sector.

RESPONSE: Reimbursement rates are not established according to educational requirements of the profession. Dietitian services and respiratory therapy services are new services to the Medicaid program. Without historical experience and data for dietitian's services and respiratory therapy services, the Department has relied upon the rates established for currently covered therapist services.

7. These rule changes will be effective January 1, 1987.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 15, 1986.

VOLUME NO. 41 OPINION NO. 94

PUBLIC OFFICE - Recall petitions;
PUBLIC OFFICERS - Recall petitions;
MONTANA CODE ANNOTATED - Sections 2-16-601 to 2-16-635, 2-16-617, 2-16-619(1), 2-16-620, 2-16-621, 2-16-622(2).

HELD: 1. Signatures may be withdrawn from a recall petition up to the time when the filing officer finally determines that the petition is sufficient and so notifies the official named in the petition.

2. Signatures may be added to a recall petition within three months after the form of the petition is approved under section 2-16-617, MCA.

4 December 1986

Claude I. Burlingame
Sanders County Attorney
Sanders County Courthouse
Thompson Falls MT 59873

Dear Mr. Burlingame:

You have requested my opinion on the following questions:

1. May signatures on recall petitions be withdrawn, and, if so, how far along in the recall procedure may such withdrawal occur?

2. May additional signatures be added to the original recall petitions, and, if so, how far along in the recall procedure may such additions be made?

The Montana Recall Act, §§ 2-16-601 to 635, MCA, was adopted by voter initiative in 1976. The recall statutes contemplate a schedule of events which is here briefly described. A sample petition is filed with the

appropriate filing officer; the filing officer reviews the petition for sufficiency as to form and, within one week of receipt, approves or rejects the form. § 2-16-617(3), MCA. The requisite number of signatures is then collected by the sponsors of the recall and submitted to the officer responsible for registration of electors within three months of the date on which the form of the petition was approved. § 2-16-619(1), MCA. The county clerk in each county in which the petition is signed must verify and compare the signatures of each person who has signed the petition, within thirty days following receipt of the petition or of a portion of the petition, and certify all valid signatures to the filing officer. § 2-16-620, MCA. The filing officer totals the number of certified signatures received from the county clerks and, if the requisite number of valid signatures is certified, notifies the official named in the petition; if the official named in the petition does not resign within five days of the filing, a special election is called unless the filing is within 90 days of a general election, in which case the question is placed on a separate ballot in the general election. §§ 2-16-621, 2-16-622(2), MCA.

The Montana statutes do not provide for withdrawal of signatures from a recall petition. However, the general rule is that where a petition of a certain number of electors is required to initiate proceedings for a public purpose, any person signing the petition has an absolute right to withdraw his name at any time before the person or body created by law to determine the matter submitted by the petition has finally acted. Ford v. Mitchell, 103 Mont. 99, 113-14, 61 P.2d 815, 821-22 (1936) (initiative petition); State ex rel. Freeze v. Taylor, 90 Mont. 439, 445, 4 P.2d 479, 481 (1931) (petition seeking consolidation of a county and municipalities).

Case law in other jurisdictions has also established that there is a general right to withdrawal of names from a recall petition if exercised prior to "final action" on such petition. See generally 27 A.L.R.2d 604 (1953); 53A Am. Jur. 2d Public Officers and Employees § 205 (1984); and Mocco v. Picone, 497 A.2d 512, 513 (N.J. Super. Ct. App. Div. 1985); State ex rel. Citizens for Quality Education v. Gallagher, 697 P.2d 935, 937-38 (N.M. 1985); In Re Petition of Struck, 244 N.E.2d 176,

178 (Ill. 1969); Hawthorne v. McKeithen, 216 So. 2d 899, 901 (La. Ct. App. 1968); Nunn v. New, 222 S.W.2d 261, 266 (Tex. Ct. App. 1949), rev'd on other grounds, 226 S.W.2d 116 (Tex. 1950). The above-cited opinions concerning recall petitions differ as to when "final action" on a recall petition occurs. Mocco defines final action as that point at which signatures have been verified. Struck and Nunn hold that it is when the petition is filed, and Gallagher and Hawthorne conclude that it occurs when an election is ordered.

A Montana case, although it does not concern a recall petition, is relevant. In State ex rel. O'Connell v. Mitchell, 111 Mont. 94, 106 P.2d 180 (1940), an initiative petition had been filed with the Secretary of State. Signatures had been checked by the county clerks and forwarded to the Secretary of State. If a sufficient number of valid signatures was contained in the petition, the Secretary of State was required to certify the measure to the Governor so that it could then be voted upon by the electorate. After the signatures were checked by the county clerks but before the petition was certified to the Governor, withdrawal petitions were filed reducing the number of signatures below that required for an election on the measure. The Montana Supreme Court found that, in the absence of a relevant statute, a right of withdrawal of signatures on a voter initiative petition existed until final action was taken on the petition, i.e., notification to the Governor that the petition had qualified for the ballot. See also State ex rel. Freeze v. Taylor, supra, wherein the withdrawal of signatures from a petition to consolidate a county and municipalities was considered too late where the county clerk had already certified the petition to the board of county commissioners. 4 P.2d at 481. Accord Holmes v. Valley Electrical Membership Corp., 398 So. 2d 153, 155 (La. Ct. App. 1981) (in absence of relevant statute, signatures on nominating petition could be validly withdrawn where timely withdrawal was requested); Judson PTO v. New Salem School Board, 262 N.W.2d 502, 505 (N.D. 1978) (names may be withdrawn from a petition to reopen a school up to time when petition is finally acted upon, i.e, time of initial filing); McAlmond v. City of Bremerton, 374 P.2d 181, 183 (Wash. 1962) (signatures on annexation petition may be withdrawn prior to assumption of jurisdiction over petition by appropriate authority);

Lynn v. Supple, 140 N.E.2d 555, 558 (Ohio 1957) (withdrawal of names from referendum petition is permitted before official action has been taken thereon).

In the instant case, applying the holding in the Montana cases, final action by a filing officer on a recall petition occurs when the filing officer finally determines that the recall petition is sufficient and so notifies the official named in the petition. Up until that time the withdrawal of signatures is permissible.

The addition of names to an original petition for recall, however, is a different matter. If recall petitioners were permitted to submit additional names until, at some point, the requisite number of valid signatures was certified by the county clerks, the recall process could prove interminable. "Logically, somewhere there has to be an end to the conflict and a count taken." Coleman v. Allen, 347 So. 2d 84, 87 (La. Ct. App. 1977).

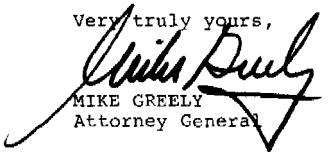
The deadlines contained in the Montana Recall Act are evidence of an intention to cut the procedure off at some reasonable point and to foster prompt action following the approval of the form of the sample petition. Section 2-16-619(1), MCA, permits signed circulation sheets or sections of a petition for recall to be submitted to the officer responsible for registration of electors within three months of approval of the petition's form under section 2-16-617, MCA. Thus, the point in the procedure after which the submission of additional signatures must be disallowed is at the end of the three-month period after approval of the petition's form. Permitting the submission of additional signatures after the three-month period has run would allow the recall process to continue in an endless fashion, contrary to the design of the Recall Act.

THEREFORE, IT IS MY OPINION:

1. Signatures may be withdrawn from a recall petition up to the time when the filing officer finally determines that the petition is sufficient and so notifies the official named in the petition.

2. Signatures may be added to a recall petition within three months after the form of the petition is approved under section 2-16-617, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 95

ARREST - City court warrants;
COURTS - City court arrest warrants;
COURTS, CITY - Arrest warrants;
CRIMINAL LAW AND PROCEDURE - City court arrest warrants;
MOTOR VEHICLES - City court arrest warrants for DUI;
MONTANA CODE ANNOTATED - Sections 3-10-303, 3-11-102, 3-11-103(1), 7-32-4301, 7-32-4302, 46-1-201(6), 46-6-201, 46-6-202(1), 46-6-202(3), 46-6-301 to 46-6-303, 46-18-212, 61-8-401, 61-8-714.

HELD: A city court may issue an arrest warrant in the name of the State of Montana when a violation of section 61-8-401, MCA, is charged.

11 December 1986

John Warner
City Attorney
P.O. Box 231
Havre MT 59501

Dear Mr. Warner:

You have requested my opinion on the following question:

> Whether the Havre City Court may issue an arrest warrant in the name of the State of Montana based on a violation of a state law, section 61-8-401, MCA.

The city court has concurrent jurisdiction with the justice court of all misdemeanors committed within the county and punishable by a fine not exceeding $500, imprisonment not exceeding six months, or both such fine and imprisonment. §§ 3-11-102(1), 3-10-303, MCA. "All misdemeanors" punishable in that manner would include most misdemeanors charged under state law. § 46-18-212, MCA. First and second offenses of driving under the influence in violation of section 61-8-401, MCA (DUIs), are punishable by a $500 fine, imprisonment for six months, or both. § 61-8-714, MCA. A city court

therefore has jurisdiction over first and second offense DUIs.[1/]

Applications for search warrants and felony complaints may also be filed in city court. § 3-11-102(2), MCA. When a complaint charging the commission of a felony is filed in city court, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. § 3-11-102(2), MCA. Additionally, the city court generally has exclusive jurisdiction of proceedings for violations of the civil or criminal ordinances of a city or town. § 3-11-103(1), MCA.

A city judge or city magistrate has the power to issue arrest warrants. § 46-1-201(6), MCA. When a written complaint charging a person with the commission of an offense is presented to a court, the judge will examine, under oath, the complainant and any other witnesses. § 46-6-201(1) and (2), MCA. If the judge is satisfied from the contents of the complaint and his examination of the complainant and other witnesses that there is probable cause to believe the person against whom the complaint was made has committed the offense, he will issue a summons or a warrant for the arrest of the person complained against. §§ 46-6-201(3), 46-6-301 to 303, MCA.

Pursuant to section 46-6-202(1), MCA, a warrant of arrest shall:

> (a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;
>
> (b) set forth the nature of the offense;
>
> (c) command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, if the judge is absent or unable to act, before

---

[1/] The city court would not have jurisdiction of third or subsequent DUI offenses, because the maximum fine for them is $1,000, and the maximum imprisonment is one year. § 61-8-714(3), MCA.

the nearest or most accessible court in the same county or the adjoining county;

(d) specify the name of the person to be arrested or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of his office. [Emphasis added.]

The only arrest warrants issued in the name of a municipality are warrants issued for the violation of a municipal ordinance. Warrants issued for violations of city ordinances cannot be executed outside the city limits, except as provided by sections 7-32-4301 and 7-32-4302, MCA. § 46-6-202(3), MCA. However, an arrest warrant issued by a city court for the violation of a state law, including a first or second violation of section 61-8-401, MCA, would be issued in the name of the State of Montana. § 46-6-202(1)(a), MCA. A warrant issued in the name of the State is directed to all peace officers in the state and may be executed in any county of the state. § 46-6-202(3), MCA.

The statutes, when read as a whole, are clear. A city court has jurisdiction over some violations of state law, including first and second offense DUIs. A city court may issue an arrest warrant in the name of the State of Montana when a violation of state law is charged. Such a warrant could be executed in any county of the state.

THEREFORE, IT IS MY OPINION:

A city court may issue an arrest warrant in the name of the State of Montana when a violation of section 61-8-401, MCA, is charged.

Very truly yours,

MIKE GREELY
Attorney General

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Application of)
THE MONTANA DEPARTMENT OF INSTITUTIONS) DECLARATORY RULING
for a Declaratory Ruling.)

The Department of Institutions of the State of Montana has petitioned the Human Rights Commission to declare an exception to the marital status discrimination provisions of the Governmental Code of Fair Practices.

The petition was filed on January 17, 1985, and it seeks a determination as to whether an exception should be granted for the purposes of advertising for and hiring only married couples for employment as houseparents in juvenile aftercare group homes. Following notice to interested parties and notice to the general public a hearing was conducted on April 29, 1985. The Department appeared through its attorney, Karl Nagel, Esq., and through department representatives. No interested party appeared to request intervention in the case by testimony or otherwise.

Having considered the hearing examiner's proposed order, the exceptions and briefs of the party, oral argument and the complete record including the transcript and exhibits, the Commission now makes the following:

RULING ON EXCEPTIONS

The Montana Human Rights Act and the Governmental Code of Fair Practices Act require that all hearings and subsequent proceedings under the Acts be held in accordance with the Montana Administrative Procedure Act. Section 2-4-621(3), MCA, sets forth the requirements to be followed by the Commission when a hearing examiner has been appointed:

The agency may adopt the proposal for decision as the Agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

Applying this standard of review, the Commission rejects the Hearing Examiner's findings of facts Nos. 9, 26, 35 and 36 as not supported by competent substantial evidence in the record. The Hearing Examiner's findings of fact numbers 12, 15, 20, 21, 22, 24, 25, 27, 28, 31, 32, 33, 34 and 37 are modified to accurately reflect the record.

Based upon the foregoing rulings on exceptions, the Commission now makes the following:

FINDINGS OF FACT

1. A petition for a declaratory ruling was filed on January 17, 1985.

2. Margery H. Brown, the Chair of Commission, issued a notice of hearing on March 18, 1985.

3. Although the petitioner alleged it knew "of no other party similarly affected," twenty-six potentially interested persons and organizations were identified, and they were given notice of the hearing by means of first class mail.

4. The general Montana public was given notice of the hearing by means of publication in the Montana Administrative Register, (5 MAR 239-241, March 14, 1985), a news release and stories regarding the date and subject of the hearing which were published in Montana newspapers, including the Independent Record of Helena (March 19, 1985), the Great Falls Tribune (March 20, 1985) and members of the Lee chain of newspapers of Montana.

5. A prehearing conference was conducted on April 9, 1985, at which time the petitioner consented to the conduct of informal hearing proceedings under §§2-4-603, 2-4-604, MCA.

6. An informal hearing pursuant to the notice of hearing was conducted on April 29, 1985 at which time four witnesses appeared and testified for the petitioner, viz:

a. Daniel Russell, Administrator of the Corrections Division, Montana Department of Institutions;

b. James Pomroy, Chief of the Community Corrections Bureau, Montana Department of Institutions;

c. Tom Roy, Professor of Social Work of the University of Montana and consultant to the Montana Department of Institutions; and

d. Dave Bennetts, Administrative Assistant in the Corrections Bureau, Montana Department of Institutions.

7. The petitioner also presented written exhibits in the form of copies of national juvenile justice standards and commentary and letters of support.

8. "It was stipulated that the hearing examiner could take official notice of any existing standards in the field" of juvenile justice standards as they may pertain to the issues contained in the petition. Petitioner's proposed finding 2.

9. The petitioner presented testimony from four expert witnesses.

a. Three of the four witnesses are employees of petitioner. The fourth, Tom Roy, is a professor in Social Work at the University of Montana and has contracted with the Department of Institutions.

b. One of the four witnesses had a role in adopting the surrogate parent model of an aftercare group home in 1969.

c. The four expert witnesses relied on their professional training and experience as the basis for their testimony rather than citations to or discussion of scientific literature regarding the use of various role models for children and youth.

d. Petitioner did not offer literature stating that parental role modeling is vital in the aftercare group home living situation.

10. There are four kinds of group homes in the State of Montana, and their general designations and functions are:

a. District Youth Guidance Homes. There are nine of these homes in Montana, and they are a part of the deinstitutionalization process to provide facilities for children which are an alternative to placement in institutions;

b. Achievement Homes. The three homes in Montana have been established to work with younger children using a treatment model;

c. Attention Homes. These are crisis intervention centers which are designed to assist children in working out their problems; and

d. Aftercare Group Homes. The four homes, which are operated by the Department of Institutions, are deinstitutionalization programs which receive children and youth from Montana's large residential facilities, the Mountain View School in Helena, and Pine Hills School in Miles City.

11. All four kinds of group homes are served by the Montana Residential Child Care Association, whose president is Dave Bennetts, of the petitioner's Community Corrections Bureau.

12. Only the employment practice of the aftercare group home was presented for determination.

13. The first aftercare group home was opened in Helena in 1969, and in 1975 three others were opened in Billings, Great Falls, and Missoula.

14. Each of the homes have an aftercare counselor, who serves as a kind of juvenile probation officer, and each has houseparents, who have a support role to the aftercare counselor.

15. The houseparents are generally responsible for the total functioning of the home, they make certain the facility is "like home" for its residents, they care for the children and youth in the home, they provide transportation and recreation and they have knowledge of the problems of the adolescent and parent and apply that knowledge to serve the home's residents.

A married couple hired as houseparents for an aftercare group home provide role models for youth from broken homes. It is the opinion of the Department's expert witnesses that youth sense a commitment between married individuals that is different than the commitment between two unmarried staff members. Hiring a married couple for houseparents in an aftercare group home provides a positive parenting role model for the youth in residence.

The parental role models provided by a healthy, stable marriage can help the youth in the group home deal effectively with situations involving peer group pressure and the revolt from parents that is part of adolescence.

16. When a child or youth is to be released from either Mountain View or Pine Hills School he or she is screened for a placement referral by Dave Bennetts, the Corrections Bureau administrative assistant, and he selects the individuals who are appropriate for placement in an aftercare home.

17. The individuals involved in the program are children who have been found delinquent or children in need of supervision under Montana law, and while younger children are most often placed in foster homes, children and youth whose ages range from 12 to 21 are placed in the aftercare homes.

18. At the time of the hearing there were five children in the Helena home, five at the one in Missoula, six in Great Falls and seven in Billings.

19. Group homes do not provide intensive treatment or use the treatment model as part of their program. The treatment model is a program of incentives and restrictions to affect behavior, and it includes methods such as entering into a behavior contract with a juvenile or using incentives or punishment based upon behavior goals as well as other behavior modification procedures;

20. Aftercare placement and living stresses living in a family kind of environment rather than treatment. Group homes evolved in the late 1960's as part of a national movement away from institutionalization of youth toward what is known as the normalization model. The notion was that most kids who have problems, are having difficulty in their home community and keeping them indefinitely in institutions does nothing to rehabilitate them. The effort was directed toward providing these kids a more normal type of experience in the community. The prevailing family unit in our society is the married couple. The surrogate parent model of group homes allows youth to emulate the parenting behavior of the married couple running the group home.

21. Each juvenile who is placed in an aftercare home is given an initial thirty-day assessment to gauge success or failure there. The average length of stay of a youth staying beyond 30 days is approximately a school year. The average stay of all youth is 4.5 months.

22. This declaratory ruling was prompted by the desire to provide the surrogate parent group home model as an alternative living situation for juveniles who have been released from a facility to live in a group home designed for seven juveniles.

23. There are many models or choices for aftercare and group home staffing, and the most prominent ones are:

a. The parental role model or surrogate parent model in which a married couple operates the home in an atmosphere of a stable family home;

b. The shift staff model in which individuals operate the group home on a rotation basis; and

c. The single-parent model or single group home parent model, where one or more unrelated persons staff the home on a full-time basis.

24. The Department selected the surrogate parental model as the most desirable staffing pattern for the aftercare group homes in 1969.

25. The prohibition against discrimination on the basis of marital status was added to the Montana law in 1975.

26. The petitioner conducted a survey of three attention homes and five district youth guidance homes regarding their hiring practices (which survey was made for evidence at the hearing), and none of the homes surveyed had a written policy on hiring married staff.

27. Due to potential legal problems, the written policies of the homes surveyed speak in terms of good relationships with juveniles in the home rather than requiring that only married persons be hired as houseparents. Even though the policies of the group homes do not explicitly state they hire only married couples, traditionally they hire married couples.

28. There are group homes which hire only married couples and advertise only for married couples.

29. Single group home parents have been utilized by homes in Shelby, Miles City and Bozeman. None of these homes are aftercare group homes.

30. The practice of hiring only married couples as group home parents is not universal in Montana.

31. The national juvenile standards presented by the petitioner reveal the following:

a. The U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention standards, Removing Children from Adult Jails: A Guide for Action does not discuss the surrogate parent model;

b. The tentative draft of the Standards Relating to Corrections Administration of the American Bar Association's Institute of Judicial Administration, Juvenile Justice Standards Project does not discuss the surrogate parent model;

c. The Juvenile Justice Standards Relating to Dispositions discusses "nonsecure residences" and the commentary on the standard positively mentions the "family living experience," as well as the use of a family home and a couple ("traditionally a married couple") whose services are purchased; the commentary also indicates that while a full-time husband and wife team is typical, other staff often "serve as adjuncts to, or substitutes for," the husband and wife team.

32. Some group homes in Montana have in fact been operated by single persons or persons unrelated by marriage, and operated successfully. The petitioner has selected the surrogate parent model group home as the best staffing pattern to achieve the objective of providing the resident youth with appropriate role models.

Based upon the foregoing findings of fact the following conclusions of law are made:

CONCLUSIONS OF LAW

1. The Montana Human Rights Commission has jurisdiction over the persons and the subject matter of this petition for a declaratory ruling pursuant to §49-3-105, MCA in that the petitioner is a state agency seeking an exemption from the requirements of the Governmental Code of Fair Practices;

2. Proper notice of the pendency of the petition and the hearing has been given by means of mailed notice to potentially interested persons, publication in the Montana Administrative Register and by means of a news release.

3. Section 49-3-103, MCA, states:

Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on marital status . . . when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age.

In the recent case of Stone v. Belgrade School District, 41 State Rep. 2436, _____ P.2d _____, (Mont., 1984), the Montana Supreme Court decided that sex was a bona fide occupational qualification (BFOQ) using the test developed to assess the BFOQ in gender cases. Dothard v. Rawlinson 433 US 321 (1977). The test adopted has three prongs:

a. Whether the essence of the business operation would be undermined by not following the hiring practice;

b. Whether the employer has reasonable cause to believe, meaning a factual basis, that substantially all excluded persons would be unable to perform the task the job invoked, both safely and efficiently; and

c. Whether the employer could not reasonably rearrange job responsibilities or engage in alternative practices to minimize a clash between privacy interests and the fundamental principal barring discrimination in employment.

The court held that an "employer can discriminate on the basis of gender when the reasonable demands of the position require sex discrimination."

The petitioner did not raise privacy interest as an affirmative defense for discriminating on the basis of marital status.

4. Applying the test adopted in Stone the Commission concludes that hiring only married couples as aftercare group home parents does constitute a distinction permitted by §49-3-103, MCA, in that:

a. Marriage is a bona fide occupational qualification because the essence of the business operation (i.e. operating an aftercare group home based on the surrogate parental model) would be undermined by not requiring marriage as an employment qualification for the position of houseparent. The only way to provide the surrogate parental model alternative is to hire only married couples as houseparents.

b. Marriage is reasonably necessary to the normal operations of the surrogate parental aftercare home.

5. The petitioner has carried its burden of showing that it has reasonable cause to believe that unmarried persons could not provide the surrogate parent role model behavior needed in the position of aftercare group home parent.

6. There are reasonable grounds for allowing an exemption on the basis of marital status to the prohibitions of discrimination set forth in §49-3-105, MCA.

ORDER

The petition of the Montana Department of Institutions for a declaratory ruling that it may advertise for and hire only married group home parents without violating the provisions of the Governmental Code of Fair Practices prohibiting marital status discrimination is hereby granted.

DATED this 22nd day of November, 1985.

HUMAN RIGHTS COMMISSION
Margery H. Brown, Chair

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

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, 1986. This table includes those rules adopted during the period September 30, 1986 through December 31, 1986 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, 1986, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1986 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I	Blind Vendors' Bidding Preference, p. 1730
I-IX	Emergency Telephone Service, p. 1523, 1889
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