MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption, amendment and repeal of the substantive rules of the board	)))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On June 4, 1986 at 9:00 a.m. a public hearing will be held in the board room of the Public Employees Retirement Division, 1712 Ninth Avenue, Helena, Montana, to consider the proposed adoption of rules; the repeal of Rules 2.43.401, 2.43.501, 2.43.601 and 2.43.602; and the amendment of Rules 2.43.301, 2.43.402, 2.43.403, 2.43.404, 2.43.411, 2.43.412 2.43.413, 2.43.414, 2.43.502, 2.43.603 and 2.43.604 pertaining to the administration of public retirement systems and the state social security program.

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

2.43.301 RETIREMENT SYSTEMS COVERED (1) Except where specifically noted all the rules stated herein are in effect for the following retirement systems:

~~(1)~~(a) public employees;
~~(2)~~(b) game wardens;
~~(3)~~(c) judges; and
~~(4)~~(d) highway patrol;
(e) sheriffs';
(f) municipal police; and
(g) firefighters' unified.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA)

2.43.402 ~~PERS-1 FORM~~ MEMBERSHIP CARDS REQUIRED (1) ~~All members at the time of employment must complete a PERS-1 card.~~ Each contributing employee must complete a membership card upon employment, name change or change of beneficiary, and this card must be forwarded by the employing agency to the retirement division.

(2) No benefit will be processed or refund of contributions made, unless the division has a completed membership card on file.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-401, 19-5-602, 19-6-602, 19-7-602, 19-8-702, 19-9-912 & 19-13-903, MCA.)

2.43.403 AFFECT OF VOLUNTARY ELECTIONS (1) ~~Elected~~

~~officials and direct appointees of the governor may elect~~PERS membership All employees who may elect membership in PERS under 19-3-403, MCA, must do so by completing a membership card, but once electing membership are subject to the same laws, rules and regulations as any member and may not discontinue membership without termination of employment.

(2) Exemption from (1) may be granted upon submission to the division of proof that the employee was not given the opportunity to freely elect membership. The filing of this request for exemption must be made within one year of the date that an individual enjoys the right to elect membership. Request for exemption after this date must be brought to the board.

(3) In case of discontinuation of membership as certified above in (2), employee contributions, plus interest will be refunded to the employee; employer contributions will not be refunded.

(4) Persons excluded from PERS membership under 19-3-403(10) MCA, must provide satisfactory proof of age to the division as enumerated in ARM 2.43.503.

(Auth. 19-3-304, MCA; Imp. 19-3-304 and 19-3-403, MCA.)

2.43.404 REQUIRED EMPLOYER REPORTS (1) All reporting officials must submit monthly contribution reports by the ~~20th~~ 15th of the month following the month reported. ~~All reporting officials must make a monthly report of all retired members' employment with their agency.~~ The monthly report must be in alphabetical order by last name and include for each employee: social security number, last and first name, salary, regular contributions, additional contributions, if any, and hours worked. Agencies may use the form provided by the retirement division or a report printed by the employer together with compatible magnetic media.

(2) All PERS reporting officials must report, on a monthly basis, all retired PERS members employed with their agency. This report must include the retiree's social security number, last and first name, salary and hours worked.

(3) Reporting errors may be corrected on subsequent monthly reports via a letter of explanation. Corrections reducing an employee's contributions cannot be accepted if the employee has received a refund.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-307, 19-3-1106, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-202 and 19-13-203, MCA.)

2.43.411 NATIONAL GUARD MEMBERSHIP -- APPLICATION (1) ~~All~~ Mmembers of the Montana army and air national guard, who are statutorily eligible, may elect membership in the public employees' retirement system on forms provided by the public

employees' retirement division.

(Auth. 19-3-304 MCA; Imp. 19-3-402 MCA.)

2.43.412 NATIONAL GUARD MEMBERSHIP -- CREDITABLE SERVICE (1) For those statutorily eligible to elect membership, creditable service for employment by the national guard shall be calculated as follows:

Subsections (1) through (3) become (a) through (c) and remain the same.

(Auth. 19-3-304 MCA; Imp 19-3-402 and Title 19, Ch. 3, part 5 MCA.)

2.43.413 NATIONAL GUARD MEMBERSHIP -- PRIOR CREDITABLE SERVICE (1) When statutorily eligible, ~~All~~ members of the national guard electing membership in the PERS may qualify any or all prior national guard service as creditable service, subject to the requirements of 19-3-505 and 19-3-506, MCA. Applications for prior service credit shall be made on a form prescribed by the public employees' retirement board, and the adjutant general shall provide the public employees' retirement division a report of all prior service for each applicant, certifying the amount of such prior service and the remuneration received for said service from all sources.

Subsections (2) through (4) remain the same.

(Auth. 19-3-304 MCA; Imp. 19-3-402 and Title 19, Ch. 3, part 5 MCA.)

2.43.414 NATIONAL GUARD MEMBERSHIP -- REPORTING (1) Current service for ~~all~~ participating national guardsmen shall be reported by the adjutant general to the public employees' retirement division annually based upon the 12-month calendar year. The annual report of service shall be filed with the public employees' retirement division no later than January 31 of the following year.

Subsections (2) and (3) remain the same.

(Auth. 19-3-304 MCA; Imp. 19-3-402 MCA.)

2.43.502 DISABILITY RETIREMENT ~~Disability retirement is divided into two groups, industrial and ordinary. Pertinent rules relative to each are as follows: (1)(a) Any member who is incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of his employment is eligible to apply for an industrial disability provided said disability is of a permanent duration or of extended and uncertain duration as determined by the board on the basis of competent medical opinion.~~

(1)(a) Members eligible for disability retirement must file claims within four (4) months after the member's

discontinuance from service, unless the member is continuously disabled from the last date of service to the date the application is filed.

~~(b) All disability claims are reviewed by a medical doctor prior to their consideration by the board.~~

~~(c)~~ (b) Application for disability retirement may be secured from the public employees' retirement division office, and a complete application will include:

(i) employee's claim;

(ii) employer statement; and

(iii) attending physician's statement. Any additional information pertinent to the claim may be submitted by the member and ~~will~~ may be reviewed by a medical doctor and the board.

~~(d)~~ (c) Any claimant may request an informal meeting with the board before or after initial action on his claim by submitting written request to the division ~~administrator~~ at least 1 full week before any scheduled meeting; provided, however, ~~said~~ claimant will be given an opportunity to discuss his claim with the board no later than the second regularly scheduled meeting after submitting his request. Inability to attend any given meeting will not jeopardize a member's right to appear at future meetings.

(d) Any such request for, or attendance at, an informal meeting as described above in (c) shall in no way constitute a waiver of an individual's right to request a formal hearing under the Administrative Procedures Act. Any member requesting a formal hearing after an adverse determination by the board must file a request for hearing, in writing, no later than 30 days after notification of the board's original determination.

(e) Any retiree who has been previously retired under the disability provision of this act upon return to covered employment is subject to immediate reinstatement to active membership and a discontinuance of his disability allowance.

(f) All approved disability claims will be retroactive to the date on which the claimant ceased to be employed by ~~receive compensation from~~ a covered employer.

(2) Any member ~~with 10 years of creditable service~~ of the judges', highway patrol, game wardens', or sheriffs' retirement system, regardless of length of service, who is incapacitated for the performance of duty by a ~~non job~~ duty-related disability may apply for ~~an ordinary~~ duty-related disability retirement, subject to the rules stated above ~~under industrial disability~~ enumerated in (1)(a) through (f).

(a) Any member who is eligible for a duty-related disability, regardless of length of service, may elect to apply for the more general disability retirement described in (1)(a) through (f), above, if such an election would result in a higher monthly disability allowance because of service credits earned.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201,19-9-201, and 19-13-202 MCA; Imp. 19-3-1002, 19-3-1003, 19-3-1005, 19-3-1006, 19-5-601, 19-6-601, 19-7-601 19-8-701, 19-9-901, 19-9-902, 19-13-801 and 19-13-802 MCA.)

2.43.603 REFUNDS ~~Retirement system entitlements are refunded under the following conditions~~ (1) Any contributing member whose service has been discontinued for any reason other than death or retirement, may elect to withdraw his accumulated contributions provided:

(a) he makes written request on an application provided by the PERD, and

~~(1)~~ (b) all refund applications must be completed by both the employee and the employer, notarized, and forwarded to the PERD ~~of the department~~ by the employer, and

(c) the report the member last appears on is credited to his account, and

(d) the member is not returning to covered employment for at least 30 days.

(2) Correctly completed and submitted refund applications, ~~except for employees with less than 3 months' service,~~ will be processed ~~within 10 working days of their receipt, under normal working conditions.~~ three weeks after the member's final contributions are credited to his account, including termination payments of sick and annual leave.

(3) ~~All refunds with interest payments may require 5 additional days' processing time.~~ The employer portion of the refund application need not be completed if the member's account has been inactive for more than three months.

(4) Additional contributions will be refunded ~~only~~ no more than once each 6 months or upon termination.

(5) Request for additional contribution refund must ~~be notarized,~~ include the notarized signature of the member, but the employer portion need not be completed.

(6) Refunds of total additional contributions must include accrued interest.

(7) No partial refunds of normal contributions or accumulated contributions will be made.

(8) Refund of employer contributions will not be made except where it can be documented, to the division's satisfaction, that an error has been made in the employer contribution paid.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; Imp. 19-3-703, 19-5-403, 19-6-403, 19-7-304, 19-8-503, 19-9-602 and 19-13-602, MCA.)

2.43.604 DEATH BENEFITS (1) Upon the death of a member or retiree, a certificate of death must be submitted to the ~~public employees'~~ retirement division along with a completed death benefit claim by the beneficiary on record at the public employees' retirement division office, or in the event

of no living designated beneficiary, the beneficiary as defined in ~~19-3-104,~~ MCA statute.

(2) Upon receipt of the above, the ~~public employees'~~ retirement division will advise the beneficiary of the benefits available to him. Claims forms for death benefit payments are available at the office of the ~~public employees'~~ retirement division.

(Auth. Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, ch. 3, Part 12, 19-6-602, 19-6-603, 19-6-604, 19-7-604, 19-8-703, 19-8-704, 19-9-911, 19-9-912, and ch. 13, part 9 MCA)

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

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

(1) "Administrator" means the administrator of the public employees' retirement division of the department of administration;

(2) "Board" or "retirement board" means the public employees retirement board as provided for in 2-15-1009, MCA;

(3) "Continuous employment" means that a member of a retirement system serves in covered employment, whether full-time, part-time, or seasonal, for a period of time without terminating such covered employment and without withdrawing his accumulated contributions during any intervening periods which may occur between covered employment.

(4) "Division" or "retirement division" means the public employees' retirement division of the department of administration;

(5) "Full-time employment" means any period of employment in which the member is compensated for at least 160 hours during a calendar month;

(6) "Full time public service employment" means a period of at least 160 hours of paid employment during a calendar month with the state of Montana, or a political subdivision thereof, which was not subject to coverage under a state-administered retirement system at the time the service was performed and is not otherwise qualifiable for service credits in a retirement system;

(7) "Member" means a public employee working in covered employment for which contributions are made into either the public employees', sheriffs', municipal police, highway patrolmen's, judges, firefighters' unified, or game wardens' retirement systems;

(8) "Part-time employment" means any period of employment in which the member is compensated for less than 160 hours during a calendar month;

(9) "PERS" means the public employees' retirement system;

(10) "Seasonal employment" means a period of full-time employment within a calendar or fiscal year which is less than 6 months duration and which recurs during those months in succeeding years on a permanent basis;

(11) "Service" or "membership service" means a period of employment for which the required contributions are deposited into the member's retirement system;

(12) "Service years" or "years of service" means periods of 12 consecutive calendar months of continuous employment which are used to determine eligibility for retirement or other benefits; this number can be larger than the actual number of years of "creditable service" for certain employees;

(13) "Service credits" or "creditable service" means the number of years and months applied to the statutorily-defined formulas for specific benefits; this number can be smaller than the number of "service years" for certain employees; and

(14) "Vested" means the member has satisfied any statutorily-imposed requirements and has a right to retirement or other enumerated membership benefits.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Chs. 3, 5, 6, 7, 8, 9, and 13, MCA)

RULE II REQUEST FOR RELEASE OF INFORMATION BY MEMBERS (1) Telephone requests from system members or retirees for general information will be handled in a manner most efficient to both the member or retiree and the division, subject to written verification.

(2) Specific information, particular to a member or retirees's account, will only be released upon receipt by the division of a written authorization signed by the member or retiree.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Chs. 3, 5, 6, 7, 8, 9, and 13, MCA)

RULE III ACTUARIAL TABLES, RATES AND ASSUMPTIONS (1) Actuarial tables and assumptions will be adopted by the board after the presentation of the recommendations of the actuary by including the tables, rates, etc. in the minutes of the board with the resolution adopting said tables, rates or assumptions.

(2) The retirement division shall maintain a file of copies of all resolutions adopting tables, rates or assumptions and the current version of all tables as amended by the board. The file shall be open and readily available to the public.

(3) This rule includes but is not limited to the following actuarial tables and assumptions:

(a) interest rate assumptions;
(b) salary increase assumptions;
(c) required contribution rates;
(d) mortality assumptions;
(e) separation and retirement assumptions; and
(f) joint and survivor tables.

(4) The tables, rates or assumptions shall be effective as provided in the adopting resolution.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-305, 19-8-801, 19-5-201(2); 19-6-202; 19-7-201(3); 19-8-202; 19-9-504; 19-13-504, MCA)

RULE IV MEMBERSHIP (1) An eligible employee becomes a member of a retirement system on his first day of covered employment under that system.

(2) A member of PERS or Sheriffs' Retirement System who elects to requalify previously refunded service in his current system shall have, as his first day of membership, the first day of his requalified service.

(3) A member of the Police or Firefighters' Unified retirement systems shall not have his first day of membership changed by any election to requalify previously refunded service.

(4) A member of a retirement system will not affect his first day of membership service because of any voluntary election to transfer service credits into this system from another system or to qualify any other full-time public service employment or military service.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Ch. 3, parts 4 and 5, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch 8, part 3, Ch. 9, parts 4 and 6, and Ch. 13, parts 3 and 4, MCA.)

RULE V BASIC UNIT OF SERVICE (1) The year is the basic unit for the awarding of service credits and service years for all retirement systems.

(2) Except as otherwise specified by rule or statute, 12 months of service credit will equal one year of service credit, regardless of the calendar period during which the service credits were earned.

(3) In the case of members with periods of both full-time and part-time covered employment with such full-time employment being used in the calculation of "final average salary," proportional service credits shall be granted in each calendar month where the fraction is the number of hours worked during a calendar month divided by 160 hours. In no case may the fraction be greater than 1.

(4) If a member has only part-time covered employment, or if he has both full-time and part-time covered employment

but such full-time employment is not used to calculate "final average salary," a full year of service credit shall be granted for each year of continuous employment regardless of months or hours worked during that year.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp.Title 19; Ch. 3, part 5; Ch. 5, part 3; Ch. 6, part 3; Ch. 7, part 3; Ch. 8, part 3; Ch. 9, part 4; Ch. 13, part 4, MCA.)

RULE VI NO DUPLICATION OF CREDITS (1) A member employed in more than one covered job during any given month may not earn more than one month service credit in a covered retirement system.

(2) A member may not qualify the same period of military or public service employment in more than one retirement system.

(3) A member may not requalify credit from another retirement system, or qualify any period of military or public service employment, for any calendar month for which full service credit has already been granted.

(Auth. 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-508, 19-6-302, 19-7-307, 19-8-305, 19-9-401, 19-13-401, MCA.)

RULE VII LUMP SUM PAYMENTS OF VACATION OR SICK LEAVE EXCLUDED (1) No creditable service shall be granted for lump sum payments of vacation or sick leave after a member's effective date of retirement.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Ch. 3, part 5, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 3, Ch. 13, part 4, MCA.)

RULE VIII IMPROPER CREDIT (1) If the board finds that any membership service has been improperly credited, it will cause such credit to be cancelled and the member's accumulated contributions attributable thereto refunded to the member.

(2) If the cancellation involves the qualification and transfer of service between two or more Montana retirement systems, the state/employer contributions, with interest as determined by the board, will be returned to the retirement system from which they were transferred.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-1403, 19-5-703, 19-6-704, 19-7-704, 19-8-804, 19-9-1003, and 19-13-1002, MCA)

RULE IX PROOF OF SERVICE (1) When hours of employment are required for granting service credits, the board will

utilize the employer certified records of employment to calculate and grant service credits to members.

(2) If, for any reason, employer records are missing or alleged to be inaccurate, it shall be the member's responsibility to provide acceptable documentation to the board which proves the amount of service time and salary paid to the member by the employer during the period in question.

(3) If the board grants a petition for correction of employer records, additional service time will be granted only after payment of required contributions, plus interest, into the retirement system by the member.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Ch. 3, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch 9, part 4, Ch. 13, part 4, MCA.)

RULE X SCHOOL TERM AS SERVICE YEAR (1) Members who are employed in a PERS covered position for a school district or state university shall receive a full year of service credit if they are employed the full school term, provided they do not take another paid position which is covered by a state-administered retirement system between school terms.

(Auth. 19-3-304, MCA; Imp. 19-3-401(3), MCA.)

RULE XI SEASONAL EMPLOYEES (1) Members who are employed on a seasonal basis in a PERS covered position shall accrue a full year of service credits for each 12 months of continuous covered employment, provided they do not take another paid position which is covered by a state administered retirement system during the "off season."

(Auth. 19-5-201, MCA; Imp. 19-5-402(2), MCA.)

RULE XII ELECTED OFFICIALS (1) Any member who holds his covered position by virtue of election to a public office shall accrue service years and receive service credits over the entire term for which he holds elected office and receives a salary for his services. Per diem or other such benefits will not be considered salary.

(2) A member who is appointed to an elective office to fill an unexpired term will accrue service years and receive service credits for the fractional portion of such term as he actually serves.

(Auth. 19-5-201 and 19-7-201 MCA; Imp. Title 19, Chs. 5 and 7, part 3, MCA)

RULE XIII JOB SHARING (1) Two employees sharing a full-time covered position shall accrue service years and receive service credits in the same manner as part-time members.

(Auth. 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Chs. 3, 6, 7, 8, part 3, and Chs. 9 and 13, part 4, MCA.)

RULE XIV REQUALIFICATION OF SERVICE (1) At any time prior to retirement, an active member, who is statutorily eligible to do so, may elect to qualify into his current retirement system all or any portion of his previously refunded credits in his current or another state retirement system.

(2) The foregoing shall not be construed to allow the transfer or purchase of credits between two retirement systems while the individual is a member of both systems, nor shall it allow the transfer or purchase of service into a system by an inactive member or former member of that system.

(3) In order to qualify the previously refunded service, an active member must initiate the action through the system to which he currently contributes, identifying the system and the period of employment which is to be requalified.

(4) The division will review refund information in its files, or submitted to it by the teachers' retirement system and will notify the member the exact amount of time which can be requalified and the amount of employee contributions, plus interest, which must be deposited by the member in order to "buy back" the previously refunded service time.

(5) The member must sign an agreement with the board for the buy back of previously refunded service credits, stating the amount of service credit to be requalified, the cost of the "buy back," and the amount of time over which the member will pay for such service.

(6) After full payment is made by the member, and if the service credit to be requalified was originally granted in a system other than the current system, the board will transfer from the previous system into the current system the actuarial equivalent of the employer's/state's share of granting such service credit in the current system.

(Auth. 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp, 19-3-509, 19-3-511, 19-3-605, 19-6-305, 19-7-309, 19-8-306, 19-9-405, 19-9-603, 19-13-404, MCA.)

RULE XV ABSENCE WHILE IN MILITARY SERVICE (1) If an actively employed member of the public employees', judges, highway patrol, sheriffs', game wardens', municipal police, or firefighters' unified retirement systems who enters the U. S. military during time of war involving the United States or during time of national emergency as specified by statute, that member may elect to qualify such time as service time within his retirement system, provided he:

(a) remains a member of the retirement system during the period of active military duty by leaving his accumulated contributions on deposit;

(b) during the period of absence from covered employment, he continues to contribute to the retirement system amounts equal to the contributions he would have made if not absent; or

(c) within two years from time of return to service, he has entered into a signed agreement with the board to qualify the active military service time, which will include member's contributions and interest.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-502, 19-5-304, 19-6-303, 19-7-303, 19-8-304, 19-9-402, 19-13-402, MCA)

RULE XVI MOST CURRENT SERVICE QUALIFIED FIRST (1) When qualifying only a portion of a member's eligible military or other full-time public service, the member must first qualify the most recent service.

(2) When requalifying or transferring a portion of a member's previously refunded service credits from another retirement system, the member must first requalify his most recent service time within that system.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Ch. 3, part 5, Ch. 5, 6, 7, 8, part 3; Ch. 9 and 13, part 4, MCA.)

RULE XVII QUALIFICATION OF OTHER TYPES OF SERVICE (1) When the statutes allow for military, U.S. government, full-time Montana public service employment, or other service which is not otherwise "creditable service" to be qualified into a retirement system, the active member will be responsible for providing military records or employer certification of such service and the compensation received to the board.

(2) If certification is not available from the employer, or if the member contests such certification, the member may petition the board to qualify such service based upon acceptable documentation.

(3) The board shall review the required employer certifications or acceptable documentation presented to qualify other full-time public service and determine whether such service qualifies.

(4) The division will calculate the cost of qualifying military or other full-time public service employment into the member's current system.

(5) The active member must sign an agreement with the board to qualify all, or a specific portion of this service, to be credited to his account. The agreement will state whether payment for this qualification of service will be made in a lump sum or in installment payments. Such installment payments will be subject to additional interest as determined by the board and computed over the payment period.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-503, 19-3-505, 19-3-510, 19-5-304, 19-6-304, 19-6-305(2), 19-7-309(2), 19-8-304(3) and (4), 19-8-306(2), 19-8-307, 19-9-403, 19-9-405(2), 19-13-403, and 19-13-404(2), MCA.)

RULE XVIII SERVICE CREDIT FOR PERIOD(S) OF DISABILITY (1) A member of the PERS whose absence from service is compensated by workers' compensation, and who elects to leave his accumulated contributions on deposit with the retirement system during that absence, may elect to qualify up to five years of the period of absence for service credits within 12 months of reinstatement to his position.

(2) In order to be eligible to qualify such a period of absence, a workers' compensation determination that the illness or injury was job-related must be made no later than one year after the member returns to his covered position.

(3) The member must file written application to qualify such service time with the board along with documentation of the period of time he was in receipt of workers' compensation benefits.

(4) The division will calculate the amount of contributions due based upon the amount the member would have normally received as salary had he not been absent from service using the member and employer contribution rates in effect during that period of time.

(5) Employee contributions, plus interest accruing from one year after the date the member returns to service, may be made in one lump sum or on an installment basis.

(6) The employer will be responsible for paying to the system the employer share of the contributions due, but may elect not to pay the accrued interest, if any, which is due, in which case the member must pay any interest due.

(7) No service credit will be granted to the member until the total contributions due are deposited into the system.

(Auth. 19-3-304, MCA; Imp. 19-3-504, MCA.)

RULE XIX INCOMPLETE PAYMENTS (1) No newly qualified or requalified service credits will accrue to a member's account until total payment has been made based upon the written agreement between the member and the board to purchase such service credits.

(2) If a member terminates covered employment for reasons other than death or disability, prior to completing payments as per written agreement with the board, his additional contributions, plus accrued interest, shall be refunded to him and no additional service credits or years of service will be added to the member's account.

(3) If a member making payments to a retirement system under an agreement to requalify previously refunded service or to qualify other types of service as provided by statute

terminates covered employment due to death or disability prior to completing those payments, the member, or anyone acting on his behalf, must complete payment prior to receipt of any benefits.

(4) If a member, or anyone acting on his behalf, fails to pay the balance of the agreed upon payments due within 60 days of termination of covered service, the additional contributions (plus interest) will be refunded to the member, his beneficiary, or his estate and the service being qualified will not accrue to his retirement account.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Ch. 3, part 5, Chs. 5, 6, 7, 8, part 3, Chs. 9 and 13, part 4, MCA.)

RULE XX PART-PAID FIREFIGHTERS' SERVICE (1) Service credits earned by part-paid firefighters prior to July 1, 1981, will be computed and granted on the basis of the ratio of salary earned by the part-paid firefighter to the salary paid to a newly confirmed full-paid firefighter during the same time period.

(2) Service credits earned on or after July 1, 1981, shall be granted under the assumption that all part-paid firefighters work 15% time. Employer and part-paid employee contributions to the firefighters unified retirement system will be based on an assumed salary for part-paid firefighters which is 15% of a newly confirmed full-paid firefighter's salary for the same time period.

(3) A part-paid firefighter will accrue a service credit of one month for each calendar month during which contributions are made; however, if and when such part-paid service is qualified into another system, or if such part-paid firefighter also has full-paid firefighter service credits, each calendar month of part-paid service shall be credited as only .15 month of service.

(Auth. 19-3-304, MCA; Imp. Title 19, Ch. 13, part 4, MCA.)

RULE XXI REINSTATEMENT -- CREDIT FOR LOST TIME (1) A member whose service is involuntarily terminated and is later reinstated as the result of a suit, court order, appeal or out-of-court settlement, to which the board is a party, may petition the board for service years and credits to be granted for the period of time lost provided the member is awarded retroactive compensation in settlement of his claim. Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.

(2) The board will review documentation provided by the member and will determine the amount of employee and employer contributions which must be paid to the retirement fund based upon the compensation awarded under (1) above and will credit

proportional service time to the member after all required contributions, including interest, have been paid.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, chs. 3, 5, 6, 7, 8, part 3, and chs. 9 and 13, part 4, MCA)

RULE XXII ACCEPTABLE DOCUMENTATION (1) For the purposes of documenting and qualifying service time where there is no employer certification available or when such certification is alleged to be in error, the board will consider such documents as:

(a) weekly/bi-weekly, or monthly pay stubs;

(b) copies of logs, time sheets or other documents required to be kept by the employee for the employer;

(c) union agreement(s) in effect for time period in question;

(d) any other binding agreement or contract in effect at that time;

(e) certified copy of a court order or out-of court settlement agreement; and/or

(f) other notarized or official documents which would support the member's claim.

(Auth. 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. Title 19, Chs. 3, 6, 7, 8, part 3; and Chs. 9 and 13, part 4, MCA.)

RULE XXIII APPLICATION PROCESS FOR SERVICE RETIREMENT (1) In order to receive the first retirement benefit in a timely manner, prospective retirees must request an estimate of retirement benefits no less than 30 days prior to a member's anticipated retirement date.

(2) The request must include the retiring member's:

(a) full name;

(b) social security number;

(c) mailing address;

(d) date of birth;

(e) name of beneficiary;

(f) beneficiary's social security number;

(g) beneficiary's date of birth; and

(h) anticipated date of retirement.

(3) The division will compute estimates of retirement benefits for the eligible retiring member (and his beneficiary under any options which are statutorily available to members of some systems) and will mail those estimates along with complete retirement information and an application for service retirement to the member.

(4) Based on the retirement estimates and information provided by the division, the member must elect a regular, early, or optional retirement (if eligible) and must return the signed retirement application to the board along with copies of his and his beneficiary's birth certificates or

other acceptable proof of age, before benefits will be paid.

(Auth. Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, Title 19, Ch 3, parts 9 and 11, Ch. 5, parts 5 and 7, Ch. 6, part 5, Ch. 7, parts 5 and 7, Ch. 8, parts 6 and 8; Ch. 9, part 8, and Ch. 13, part 7, MCA)

RULE XXIV ACCEPTABLE PROOF OF DATE OF BIRTH (1) A certified copy of a birth certificate or state birth registration shall be proof of the date of birth for the purpose of completing an application for retirement benefits.

(2) If a birth certificate or state birth registration is not available, the board will accept the following, in order of preference, as proof of date of birth:

(a) baptismal record;
(b) selective service record;
(c) armed forces discharge;
(d) passport;
(e) school record
(f) life insurance policy;
(g) naturalization record;
(h) alien registration record; and
(i) such other records as may be submitted by the member which are acceptable to the board.

(Auth. Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; Imp, Title 19, Ch. 3, parts 9 and 11; Ch. 5, parts 5 and 7; Ch. 6, part 5; Ch. 7, parts 5 and 7; Ch. 8, parts 6 and 8; Ch. 9, part 8; Ch. 13, part 7, MCA)

RULE XXV INVOLUNTARY RETIREMENT (1) An elected official, who is a member of either the judges' or sheriffs' retirement systems due to the elected office he holds, is eligible for an involuntary retirement allowance only when he runs for and loses an election which would have continued him in a covered office, provided the requisite number of years of total service have been performed.

(2) If an elected official chooses not to run, runs for another office which is not covered by that retirement system, or is otherwise removed from office for cause, he shall not be eligible for an involuntary retirement allowance.

(Auth. 19-5-201 and 19-7-201, MCA; Imp. 19-5-503 and 19-7-504, MCA)

RULE XXVI DESIGNATION OF BENEFICIARY (1) The participant shall make the selection of beneficiary, in writing and on the form provided by the division for this purpose, dated and signed by the participant and witnessed by a disinterested third party who shall attest to the voluntary

nature of the participant's action.

(2) The designation of beneficiary shall be effective immediately upon receipt by the division.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp, 19-3-1301, 19-5-602, 19-6-602, 19-7-602, 19-8-702, 19-9-912, and 19-13-903, MCA.)

RULE XXVII CONVERSION OF RETIREMENT ANNUITY UPON DEATH OR DIVORCE FROM BENEFICIARY (1) Upon the death of, or divorce from, a named beneficiary, a PERS retiree may convert from an optional to a regular retirement allowance or may designate a new beneficiary and retirement option. In the case of a divorce, the retiree may only change beneficiaries if the court did not award previously assigned optional retirement benefits to the ex-spouse as part of the divorce settlement.

(2) In the case of a conversion from an optional to the regular retirement allowance after the death of the former beneficiary, the resulting regular retirement allowance will be the same dollar amount as the retiree was receiving at the time of death of the beneficiary.

(3) In the case of a conversion from an optional to the regular retirement allowance after divorce from the former beneficiary, the resulting regular retirement allowance will be the same as the original regular retirement allowance plus an amount equal in dollars to any cost-of-living adjustment (COLA) granted.

(4) In the case of a subsequent designation of another beneficiary, the retiree may again elect an optional retirement allowance and the resulting benefits will be calculated by applying the actuarial reduction factors in use at the time of the original retirement (based upon the age of the new beneficiary) to the regular benefit as described in (2) or (3) above.

(5) A change of beneficiary will become effective on the date that it is received, properly completed, by the retirement division. Any subsequent change in optional retirement allowance will become effective on the first day of the month following receipt of the written election by the division.

(Auth. 19-3-304; Imp. 19-3-1101(5), MCA.)

RULE XXVIII PAYMENT TO AN ESTATE (1) Payment due to an estate will be made upon receipt of a certified copy of one of the following:

(a) letters testamentary which are issued to a person named personal representative of an estate;

(b) an order admitting a will to probate as evidence of title;

(c) an affidavit filed with the county court under the

Small Estates Provisions of the Uniform Probate Code, Title 72; or

(d) a judgment to declare heirship under the provisions of the Uniform Probate Code, Title 72.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; Imp. 19-3-1302; Title 19, Ch. 5, part 6; Title 19, Ch. 6, part 6; Title 19, Ch. 7, part 6; Title 19, Ch. 8, part 7; 19-9-912; 19-13-903, MCA.)

RULE XXIX REDUCTION IN WORK FORCE (1) Employees laid off due to a reduction in work force may be eligible to receive a refund of their accumulated contributions, provided the application for withdrawal of contributions is on file and the employer has certified the employee was laid off due to reduction in force.

(2) Such refund will not be processed before the employee's last day of employment.

(3) Any contributions received after the first refund will be processed under normal refund procedures.

(Auth. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. 19-3-703, 19-5-403, 19-6-403, 19-7-304, 19-8-503, 19-9-304 and 19-13-304, MCA.)

RULE XXX DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Adjustment reports" means forms filed to correct omissions, previous under- or over-reportings of employees' wages, and certain other errors in wage reports.

(2) "Contributions" means payments made under the reporting entity's agreement which the state agency deposits in a federal reserve bank. The amounts are based on the wages paid to employees whose services are covered under their agreement.

(3) "Contribution tax rate" means the combined employer and employee percentage rate established by Congress to finance the Federal social security program.

(4) "Coverage groups" means the groupings by which employees must be covered under a plan and agreement with the state agency.

(5) "Eligibility list" means the form completed by a political subdivision and mailed to the state agency containing the type-written names of the employees eligible to vote in the social security referendum.

(6) "Employer identification number" means the 13-digit number assigned to the employer by the social security administration.

(7) "Plan and agreement" means the voluntary contract between the governing body of the political subdivision and the public employees' retirement board enabling the employees to have social security coverage via coverage groups or "class of positions."

(8) "Reporting entity" means any unit which has been assigned an employer identification number and files separate reports with the state agency.

(9) "Resolution" means a document enacted by the governing body of the political subdivision authorizing its executive officers to obtain social security coverage for its employees.

(10) "Retirement system" means a pension, annuity, retirement fund or system established by the state, and/or political subdivision for social security coverage purposes.

(11) "Social security administration" means the federal agency which administers the federal Social Security Act of 1935.

(12) "State agency" means the Montana social security program, located within the public employees' retirement division of the department of administration.

(13) "Supplements" "supplemental reports" means additional wage reports and/or deposits which may be filed with the state up until the point they are considered delinquent.

(Auth. 19-1-201, Imp. Title 19, Ch. 1, MCA.)

RULE XXXI REQUIRED REPORTS (1) Each reporting official must timely complete and file, by the designated due dates, semi-monthly, monthly, quarterly and annual reports as required by the division in accordance with the instructions in the "Montana social security reporting manual," including updates.

(Auth. 19-1-201 MCA, IMP, Title 19, Ch. 1, part 7, MCA.)

RULE XXXII COVERAGE PROCEDURES FOR POLITICAL SUBDIVISIONS NOT UNDER A RETIREMENT SYSTEM (1) The governing body of the political subdivision must enact and forward to the state agency an ordinance, resolution or other customary enactment authorizing its executive officers to secure and submit a "plan and agreement" for social security to the state agency. This resolution, ordinance or document should:

(a) authorize participation in the social security program;

(b) provide for the execution of the "plan and agreement;"

(c) define coverage group;

(d) give proper assurances that the laws and regulations will be complied with; and

(e) provide for funds from which contributions are to be paid when due;

(2) The state agency will send 2 copies of the plan and agreement with an explanation sheet clarifying the various articles in the plan and agreement to the governing body of the political subdivision which will be responsible for

completing and executing both copies and returning them to the state agency for final approval.

(3) Upon final approval, one executed copy will be sent to the governing body and one will be retained by the state agency.

(4) The state agency will send instructions and forms to the reporting official as soon as such reports are required.

(Auth. 19-1-201, MCA; Imp. Title 19, Ch. 1, parts 3 and 5, MCA)

RULE XXXIII COVERAGE PROCEDURES FOR POLITICAL SUBDIVISIONS UNDER A RETIREMENT SYSTEM (1) The governing body of the political subdivision must adopt a resolution requesting the governor to authorize a referendum on the question of social security coverage, forwarding two copies of the resolution to the state agency.

(2) The state agency will acknowledge receipt of the resolution on behalf of the governor and will inform the political subdivision of the date of the referendum in which the eligible employees will vote on the question of social security participation.

(3) At least ninety (90) days prior to the actual referendum the necessary notices of the referendum and information on social security benefits will be sent to the election official of the political subdivision by the state agency for distribution to each eligible member of the retirement system.

(4) Two weeks prior to the actual referendum date, ballots, referendum eligibility lists, and instructions as to procedure will be mailed to all election officials by the state agency.

(5) Following the referendum the election official will certify the results of the balloting to the state agency for verification and record.

(6) The state agency will certify the results of the referendum and send 2 copies of the plan and agreement to the governing body of the political subdivision for execution, approval and return.

(7) One executed copy of the plan and agreement will be returned by the state agency to the political subdivision for their records and files.

(8) The state agency will send instructions and forms to the reporting offical as soon as such reports are required.

(Auth. 19-1-201, MCA; Imp. Title 19, Ch. 1, parts 3 and 5, MCA)

RULE XXXIV ERROR DISCOVERED BY SOCIAL SECURITY ADMINISTRATION (1) If the social security administration (SSA) discovers a reporting error in the processing of an individual's claim for benefits, a "federal determination of error in state's wage reports" will be sent to the reporting

official for verification.

(2) Within 30 days of receipt, the reporting official must verify the wage change and reporting information with individual wage records and forward this federal form to the state agency for completion and approval along with any payments due.

(Auth. 19-1-201, MCA; Imp. Title 19, Ch. 1, parts 7 and 8, MCA.)

RULE XXXV LATE FILING PENALTIES (1) If the "Montana social security wage and deposit report and payments are not received by the state agency by the due dates, the entity will receive written notification of state and/or federal interest penalties due and payable with the next report. The penalties will have been calculated according to the guidelines defined in the "Montana social security reporting manual."

(2) Such state penalty may be waived only when a written request is submitted by the entity showing unavoidable delay. Such penalty shall not be waived by the board repeatedly for any entity except upon a showing of highly unusual circumstances evidencing no entity responsiblity for the delay.

(3) If the entity disagrees with such a federal penalty, and wishes to file a request for review, acceptable evidence of timely reporting must be forwarded to the state agency with the next report.

(Auth. 19-1-201, MCA; Imp. Title 19, Ch. 1, parts 7 and 8 MCA.)

RULE XXXVI BASIC UNIT OF SERVICE TIME (1) As of July 1, 1965, the basic unit of service time for volunteer firefighters is one fiscal year. Volunteer firefighters not continuously on a roster of a qualifying volunteer fire company for the entire fiscal year shall not receive a retirement credit for that fiscal year.

(2) A volunteer fireman will receive one year of retirement credit for each two full fiscal years of service performed prior to July 1, 1965.

(Auth. 19-12-203, MCA; Imp. 19-12-401, MCA.)

RULE XXXVII REQUIRED REPORTS (1) All volunteer fire departments must submit an "annual certificate." This report is on a fiscal year basis and due by September 1st of each year. The report is a certification by the fire chief that the members were active for the full fiscal year and also had the required 30 hours of training. The annual certificate is signed by the fire chief and notarized. Annual certificate forms are provided by the retirement division.

(2) Annual certificates filed after the September 1st

due date will be accepted if the chief of the fire department filing the late report will attach a copy of their department's training records showing the required 30 hours of training per member.

(Auth. 19-12-203, MCA; Imp. 19-12-402, MCA.)

RULE XXXVIII APPLICATION FOR SUPPLEMENTAL INSURANCE BENEFIT (1) Each volunteer fire company is eligible for supplemental insurance benefits provided:

(a) eligible volunteer fire departments submit an application form (as provided by the division), certified copy of the department's active membership list and proof of insurance; and

(b) in case of injury or accident the group insurance policy that the fire department holds is the primary insurer.

(2) The retirement division will pay those expenses of an accident after the primary group insurance policy dollar is met, up to $25,000 per accident per fireman.

(Auth. 19-12-203, MCA; Imp. 19-12-103, MCA.)

4. The board is proposing to repeal Rule 2.43.401 pertaining to the board's authority to contract and can be found on page 2-3131 of the ARM; Rule 2.43.501 pertaining to the effective dates of service retirements and can be found on page 2-3153 of the ARM; Rule 2.43.601 pertaining to estimated retirement benefits and can be found on page 2-3165 of the ARM; and Rule 2.43.602 pertaining to the payment of retirement benefits and can be found on page 2-3165 of the ARM.

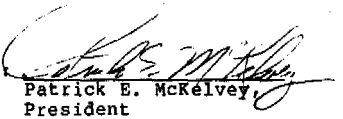
5. The board is proposing these rule changes to update the current rules because of changes in statute and policy since 1979. The proposed amendments are necessary to clarify the meaning of existing rules. The proposed adoptions are necessary interpretation of statute. The proposed repeals are the result of both statutory change and the redundant nature of some existing rules.

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Public Employees Retirement Board, 1712 Ninth Avenue, Helena, Montana 59620, no later than June 12, 1986.

7. Paul Smietanka, legal counsel for the Department of Administration, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed rules is based on sections 19-1-201, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-203 and

19-13-202 MCA, and the rules implement Title 19, Sections 1, 3, 5, 6, 7, 8, 9, 12, and 13, MCA.

By: 

Patrick E. McKelvey,
President
Public Employees' Retirement
Board

Certified to the Secretary of State on May 5, 1986

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 4.10.1501 concerning the definition of terms in the pesticide act	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 4.10.1501 CONCERNING THE DEFINITION OF TERMS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 16, 1986, the department proposes to amend rule 4.10.1501, regarding the definition of pesticide terms.

2. The rule as proposed to be amended reads as follows: (new matter underlined, deleted matter interlined).

4.10.1501 DEFINITION OF TERMS

(1) through (10) Remain the same.

(11) "Applicant" means a person who applies for a registration pursuant to Section 80-2-201 MCA; or a person who applies for a license pursuant to Section 80-8-203 MCA; 80-8-205 MCA; 80-8-207 MCA; 80-8-213 MCA; or a person who applies for a permit pursuant to Section 80-8-209 MCA; of the Act.

(12) "Application form" means the form approved by the department which must be completed in its entirety by persons requesting a registration, license, ~~certification-license~~ or permit.

(13) "Application of a pesticide" means the placement ~~for-effect~~ of a pesticide at or on the site where the pest control or other response is desired.

(14) through (23) Remain the same.

(24) "Commercial applicator ~~certified~~~~cation-license-or certified-license~~" means an authorization issued by the department to an individual to use and apply restricted use and general use pesticides for which he is qualified.

(25) through (30) Remain the same.

(31) "Degradation product" means a substance resulting from the transformation of a pesticide by physical, ~~physiocochemical~~, or biochemical means.

(32) through (33) Remain the same.

(34) "Direct supervision" means the act or process whereby the ~~application~~ use of a pesticide is made by a competent person acting under the verifiable instructions and ~~control~~ supervision of a licensed or certified applicator. Although not physically present, the applicator has provided detailed guidance to the competent person for proper use of the pesticide; and the applicator has made provisions for contact in the event he is needed. ~~who-is-responsible-for-the-actions-of-that-person-and-who-is~~

~~available-if-and-when-needed,-even-though-such-certified applicator-is-not-physically-present-at-the-time-and-place the-pesticide-is-applied.~~

(35) through (39) Remain the same.

~~-----"Emergency-pest-problem"-means-the-process-by-which-an uncertified-farm-applicator-may-obtain,-in-case-of-an emergency-pest-problem,-authorization-from-the-department-to use-a-restricted-use-pesticide-for-a-single-application.~~

(40) "Examination" means a method or examining process in writing, ~~except-as-provided-for-farm-applicators,~~ which is used for determining competency of an individual prior to the issuance of a license, permit, or certificate. The licensing examination may include specific types of examinations to determine competency on required subjects.

(41) Remains the same.

(42) "Farm applicator" means a person applying pesticides to his own crops or land. In the case of restricted use pesticides, a person certified as a farm applicator to use or supervise the use of a restricted use pesticide for purposes of producing any agricultural commodity on lands owned, rented, or leased by him or his employer ~~or-(if-applied-without-compensation-other-than trading-of-personnel-services-between-producers-of agricultural-commodities)-on-the-property-of-his-immediate and-adjacent-neighbor~~.

(43) Remains the same.

(44) "Fee" means the amount ~~of-money-specified-by-law or-regulation~~ payable by a person to the department for a training, registration, or licenseing or permitting.

(45) through (51)(a) Remain the same.

(b) A licensed pesticide operator, as an employee of a licensed commercial applicator, may use and apply general use pesticides for which the applicator is licensed and under his direct supervision within a ~~50~~100 miles radius of the licensed applicator's ~~business-location~~; beyond ~~50~~100 miles, special supervision shall be required.

(c) ~~U~~An unlicensed employee of a licensed commercial applicator may use and apply general use pesticides only under the special supervision of the licensed applicator or ~~within-50-miles-and-under-the-special-supervision-of-a~~ licensed operator employed by the licensed applicator.

(52) "Government applicator certifiedcation licenseor ~~certified-licensee~~" means an authorization issued by the department to an individual to use and apply restricted use and general use pesticides for which he is qualified.

(53) Remains the same.

(54) "Group or class of pesticides" means those pesticides grouped or classified as related pesticides as established by the department. ~~from-time-to-time-s~~Such grouping or classes will primarily be based upon the chemical makeup or uses of pesticides.

(55) through (59) Remain the same.

(60) "Move-~~i~~Lateral movement" (in soils) means to undergo transfer through soil. This is generally in a

horizontal plane from the original site of application or use by physical, chemical, or biological means.

(61) Remains the same.

(62) "License" means an authorization to apply or sell pesticides, issued by the department to a person who has qualified by meeting the conditions and standards of the Act and rules adopted thereunder.

(63) "Licensing Period" means a complete calendar year, January 1 through December 31, for which a person has been issued a license by the department (even though the person was not issued a certificate license for the complete calendar year).

(64) through (67) Remain the same.

(68) "Non-commercial certified applicator" means an individual who cannot be classified as a commercial, public utility, or government certified applicator or who cannot be classified as a private applicator but desires the use of restricted use pesticides, shall be considered to be a certified non-commercial applicator. A certified non-commercial applicator may only use restricted use pesticides on lands owned, rented, or leased by his employer or himself.

(69) through (71) Remain the same.

(72) "Order" means a lawfully directive or order of the department directing a person to perform or cease a specific action or operation.

(73) through (74) Remain the same.

(75) "Permits" means the a special use permit document, which may be referred to as a certificate, issued by the department to a farm applicator to purchase, use or apply restricted use pesticides.

(76) Remains the same.

(77) "Practical knowledge" means the possession of pertinent facts and comprehension together with the ability to use them in dealing with specific problems and situations.

(78) through (80) Remain the same.

(81) "Qualification Period" means the number of licensing, certificate, or permit periods period of time for which a person is qualified a for the issuance of an annual a license, certificate, or permit, unless otherwise modified by the department, a person must requalify at the end of a qualification period prior to the issuance of a license, certificate, or permit.

(82) "Records" means a procedure whereby a licensed or certified licensed applicator or dealer and a non-commercial certified applicator are person is required to record, maintain, reveal, or and submit certain data and information, required by the departmentAct.

(83) "Re-entry" means the action of entering an area or site at, in, or on which a pesticide has been usedapplied.

(84) "Registered" means a pesticide formulation required to be registered which has been submitted and is

product which is labeled as a pesticide or intended for use as a pesticide which has been approved by the department prior-to for sale, offereding for sale, exchanged, or distributgdion, for use or application in the state.

(85) through (91)(a) Remain the same.

(b) A licensed applicator or operator, as an employee of a certified-licensed applicator, may use and apply restricted use pesticides for which the certified-licensed applicator is licensed, only within a-50 100 miles radius of the certified-licensed applicator's-business-location-and while under his direct supervision; or-under-the-special supervision-of-the-certified-licensed-applicator;-an unlicensed-employee;

(c) A licensed applicator, or operator working beyond the 50100 mile limit radius may use or apply restricted use pesticides only under the special supervision of a certified-licensed applicator.

(92) "Revocation or Revoking" means the process or procedure of the department in to temporarily and/or permanently revoking rescind a person's license, permit, or certificate.

(93) through (99) Remain the same.

~~"Tag"-means-the-identification-to-be-attached-to-a-farm applicator-permit-or-certificate-annually-within-a qualification-period;~~

(100) through (105) Remain the same.

(106) "Violation" means an act or action in-violation of not in conformity with the Act or rules adopted thereunder and-in-the-case-of-minor-violations;-those violations-committed-by-a-person-or-a-licensed;-permitted; or-certified-individual-or-persons;-normally-unintentional which-do-not-directly-affect-public-health-and/or-the environment;-or-in-the-case-of-major-violations;-those violations-committed-by-a-person-or-a-licensed;-permitted; or-certified-individual-or-person-whether-intentional-or not;-which-directly-affects-or-may-affect-public-health and/or-environment.

(107) Remains the same.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

3. It is necessary to amend this rule to clarify some definitions or to bring them into conformity with recently proposed amended portions of the pesticide rules. These amendments are also necessary to bring the definitions into conformity with Montana statutes and EPA regulations.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to Gary L. Gingery, Montana Department of Agriculture, Environmental Management Division, Capitol Station, Helena, MT 59620-0205, no later than June 12, 1986.

5. If persons directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Gary L. Gingery, Montana Department of Agriculture, Environmental Management Division, Capitol Station, Helena, MT 59620-0205, no later than June 12, 1986.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 240 based on the total number of persons holding pesticide dealer and applicator licenses.

Keith Kelly, Director

Certified to the Secretary of State, May 5, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the proposed amendments of 8.12.601 concerning applications and 8.12.606 concerning renewals	))))))	NOTICE OF PROPOSED AMENDMENT OF 8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS AND 8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1986, the Board of Chiropractors proposes to amend the above-stated rules.

2. The proposed amendment of 8.12.601 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-357, Administrative Rules of Montana)

"8.12.601 APPLICATIONS, EDUCATION REQUIREMENTS (1) through (3) will remain the same.

(4) A $50 re-examination fee shall be paid for a subsequent examination for each section (written/practical) ~~and application.~~"

Auth: 37-1-134, 37-12-201, MCA Imp: 37-1-134, 37-12-302, 307, MCA

3. The proposed amendment of 8.12.606 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-358 and 8-359, Administrative Rules of Montana)

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENT

(1) Annual renewal fee of ~~$50~~ $100 is due on or before September 1st of each year. ..."

Auth: 37-1-134, 37-12-201, MCA Imp: 37-1-134, 37-12-302, 307, MCA

4. The number of applicants increased requiring additional examination dates, board member days, rental of meeting rooms, supplies and salaries. Also the number of valid complaints has increased, requiring investigation, additional board meetings for review, hearings and disciplinary actions.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1986.

6. If a person who is directly affected by the proposed amendments, wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Chiropractors, 1424 9th

Avenue, Helena, Montana, 59620-0407, no later than June 13, 1986.

7. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 based on the 257 licensees in Montana.

BOARD OF CHIROPRACTORS
PAT PARDIS, D.C., PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 5, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTURITRY

In the matter of the proposed adoption of new rules concerning licensing and appropriate procedures, unprofessional conduct, inspections, disciplinary issues and complaint procedures for denturitry	)	NOTICE OF PROPOSED ADOPTION OF NEW RULES FOR LICENSING, PROCEDURE, UNPROFESSIONAL CONDUCT, INSPECTIONS, DISCIPLINARY ISSUES AND COMPLAINT PROCEDURES FOR DENTURITRY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1986, the Board of Denturitry proposes to adopt the above-stated new rules.

2. The new rules will read as follows:

"I. BOARD ORGANIZATION (1) The board of denturitry hereby adopts and incorporates the organizational rules of the department of commerce as listed in Chapter 1 of this title."

Auth: 37-29-201, MCA Imp: 2-4-201, MCA

"II. PROCEDURAL RULES (1) The board of denturitry hereby adopts and incorporates the procedural rules of the department of commerce as listed in Chapter 2 of this title."

Auth: 37-29-201, MCA Imp: 2-4-201, MCA

"III. PUBLIC PARTICIPATION RULES (1) The board of denturitry hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in Chapter 2 of this title."

Auth: 37-29-201, MCA Imp: 2-4-201, MCA

"IV. BOARD MEETINGS (1) The chairman shall set the date for board meetings and the department shall notify the board members in writing of all board meetings.

(2) Election of officers shall be held at the annual July meeting of the board.

(3) Roberts Rules of Order shall govern the deliberations of the board insofar as they do not conflict with other rules that the board may adopt or with the laws of the state of Montana."

Auth: 37-29-201, MCA Imp: 37-29-202, MCA

"V. RECORDS OF MINUTES AND HEARINGS (1) The minutes of the board, including the regular and special meetings, shall be typewritten and a copy supplied to each member of the board by the department.

(2) The original copy of the minutes shall be maintained in a minutes book by the department. Minutes may be microfilmed for preservation."

Auth: 37-29-201, MCA Imp: 37-29-201, 202, MCA

"VI. APPLICATIONS (1) Written application for denturitry licenses shall be made on forms prescribed by the board and provided by the department.

(2) The application fee and required documentation must be submitted to the Board of Denturitry, 1424 - 9th Avenue, Helena, Montana 59620-0407 at least 15 days prior to the examination date.

(a) Official transcripts from all colleges or educational institutions must be provided directly to the board office by the college or institution."

Auth: 37-29-201, MCA Imp: 37-29-303, MCA

"VII. EXAMINATION (1) No applicant will be permitted to bring any papers, books, or other documents to the examination, unless requested by the board. Examinees must furnish their own supplies for the practical examination.

(2) The board may accept successful completion of a regional examination in lieu of its own examination.

(3) Grading will be done by examiners conducting the examination.

(4) The department shall retain the applicant's examination papers and scores as a part of the permanent record of the applicant.

(5) Examination papers may not be copied or duplicated in order to guarantee security of the test papers and protect the privacy of the applicant."

Auth: 37-29-201, MCA Imp: 37-29-305, MCA

"VIII. FEE SCHEDULE

(1)	Application for license	$200
(2)	Original license	$200
(3)	Examination	$200
(4)	Full re-examination	$200
(5)	Written re-examination	$100
(6)	License renewal by December 1st of each year, which may be paid in 2 installments of $250 each on October 1st and December 1st of each year	$500
(7)	Duplicate, replacement or Second Address License	$ 50
(8)	A 10% penalty fee shall be assessed for each month or portion thereof that the payment of the renewal fee is delayed after the expiration date	
(9)	All fees are non-refundable"	

Auth: 37-1-134, 37-29-201, 304, MCA Imp: 37-1-134, 37-29-304, MCA

"IX. LICENSE FORM (1) Original license shall be on a certificate issued by the department and must include:

(a) name of license
(b) permanent license number
(c) board name
(d) licensed as a "DENTURIST"
(e) original date of issuance.

(2) Renewal license shall be issued annually on a wallet card and/or wall receipt stating name, business address of licensee and certificate number of licensee."

Auth: 37-29-201, MCA Imp: 37-29-301, 306, MCA

"X. RENEWAL - CONTINUING EDUCATION (1) License must be renewed by December 1st of each year upon payment of the annual renewal fee, proof of 12 hours continuing education and possession of a cardio pulmonary resuscitation card.

(2) A license not renewed within 90 days after December 1st will be suspended for non-renewal. A person applying for renewal whose license was suspended for failure to renew, may be required to submit to an examination as a condition of renewal for a 3 year period after suspension.

(3) Prior approval of a course, seminar or workshop by the board must be obtained except for those programs sponsored by the Montana Denturists Association, American Academy of Denturitry or other state regulatory agency.

(4) Correspondence courses or television programs are not acceptable for continuing education credit.

(5) A signed written report of attendance must be sent to the office of the board upon completion of the continuing education course reflecting the title of the course or seminar, dates of attendance, number of clock hours, licensees name and address, and signature of instructor or monitor of the continuing education program.

(6) For those denturists licensed during the renewal year, the fulfillment of the continuing education requirement will not be required for the first year of licensure.

(7) The board may, in individual cases involving disability, illness or family emergency, grant waivers of the continuing education requirements or grant extensions of time within which to fulfill the same or make the required reports. Request for waiver must be in written format to the board. Waivers of minimum educational requirements may be granted by the board for a period not to exceed the next renewal year.

(8) The board has authority to make written exception for reasons of individual hardship including health, military service, retirement, inaccessibility of programs or such other emergency the board may consider.

(9) It is the responsibility of each licensee to finance costs of continuing education."

Auth: 37-29-201, MCA Imp: 37-29-306, MCA

"XI. REINSTATEMENT OF LICENSE (1) An application for reinstatement must be made on the form used for original license applications. In addition, the applicant must state in the form of written communication, reasons why reinstatement should be granted.

(2) The board, at their discretion, may require a personal interview."

Auth: 37-29-201, MCA Imp: 37-29-313, MCA

"XII. UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of section 37-29-311, MCA, the board defines "unprofessional conduct" as follows:

(a) misrepresentation, fraud or deception in applying for a license, taking an examination to secure a license, or holding or renewing a license in the practice of denturitry;

(b) discriminating in services because of race, creed, color, age or national origin;

(c) using advertising matter which contains misstatements, falsehoods, misrepresentation or wording that may in any way reflect against a fellow licensee or other licensed health care provider;

(d) failure to comply with the statutes regulating the practice of denturitry or the rules of the board;

(e) employing, procuring, inducing, aiding or abetting a person not licensed to engage in the practice of denturitry;

(f) operating under unsanitary conditions after a warning from the board or consistently maintaining an unsanitary office;

(g) resorting to fraud, misrepresentation or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, organization or government entity;

(h) failing to exercise appropriate supervision over interns who are authorized to practice only under the supervision of a licensed denturist or board certified prosthadontist;

(i) being unfit to safely practice denturitry because of physical or mental impairment;

(j) incompetence or gross negligence in the practice of denturitry;

(k) the use of any narcotic, dangerous drug or intoxicating liquor to an extent that such use impairs the ability to safely conduct the practice of denturitry; and

(l) failing to adequately maintain complete records of each patient."

Auth: 37-1-136, 37-29-201, 311, MCA Imp: 37-1-136, 37-29-311, 402, 403, MCA

"XIII. INSPECTIONS - SANITARY STANDARDS (1) A facility may be inspected by either a designated inspector or one or more members of the board.

(2) A copy of the inspection form must be signed by the person conducting the inspection and the denturist or his office staff and dated, with a copy to the denturist with original to be placed in the board file.

(3) New facilities shall be inspected prior to opening for business.

(4) All violations noted during an inspection must be corrected within 30 days of the inspection date.

(5) Operating under unsanitary conditions after a warning from the board or consistently maintaining an unsanitary office may result in revocation or suspension of license."

Auth: 37-29-201, MCA Imp: 37-29-311, 401, MCA

"XIV. GROUNDS FOR DENIAL OF A LICENSE (1) Failure to meet any requirements or standards established by law or rules of the board; or

(2) Misrepresentation of facts and information on application for licensure; or

(3) Having another person appear in the applicant's place for examination; or

(4) Failure to pass the examination for licensure; or

(5) A course of conduct which would be grounds for discipline under section 37-29-311, MCA."

Auth: 37-1-137, 37-29-201, MCA Imp: 37-29-201, 311, MCA

"XV. REPRIMAND, CENSURE OR PROBATION (1) The board may elect to reprimand or censure a licensee for lesser infractions of Rule XII or for the commission of an act which fails to conform to the acceptable standards of practice.

(2) A licensee may be placed on probation for:

(a) physical or mental impairment serious enough to warrant monitoring; and/or

(b) unprofessional conduct."

Auth: 37-1-136, MCA Imp: 37-1-136, 37-29-201, 311, MCA

"XVI. NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION (1) An applicant or licensee whose application for licensure is denied, or against whom disciplinary action is proposed shall be given written notice containing a statement:

(a) of the reason(s) for the proposed denial or disciplinary action; and

(b) informing the applicant or licensee of the right to a hearing under the provisions of the Montana Administrative Procedure Act.

(2) All board actions regarding denial of a license or disciplinary action against an applicant or licensee shall be

recorded in the minutes of the board and a copy of the written notice shall be made a permanent part of the applicant's or licensee's file."

Auth: 37-1-136, 137, 37-29-201, MCA Imp: 37-1-136, 137, 37-29-201, 311, MCA

"XVII. COMPLAINT PROCEDURE - INVESTIGATION (1) All complaints must be in writing and upon a form prescribed by the board. The complaint must include the following:

(a) name and address of licensee suspected of the alleged violation;

(b) nature of the complaint, listing dates of service and other pertinent details;

(c) name and address of person receiving denture services if complaint filed by a third party;

(d) signature of person filing the complaint and address of person filing complaint.

(2) Unless confidentiality is waived by the licensee, all steps in the complaint process will be confidential until final disposition by the board.

(3) All correspondence, communications, or investigations on complaints shall be made to the office of the Board of Denturitry, 1424 - 9th Avenue, Helena, Montana 59620-0407."

Auth: 37-29-201, MCA Imp: 37-20-201, MCA

"XVIII. RECEIPT OF COMPLAINT - BOARD ACTION (1) The complaint received by the board will be documented. Receipt of the formal complaint will be acknowledged to the complainant.

(2) If no formal complaint is received within 30 days of the original complaint, the complaint may be dismisssed by the board.

(3) A copy of the complaint will be provided to the licensee with request to respond to the complaint within 30 days of notification.

(4) Matters presented by the complaint, if their nature warrants it, may be taken up by correspondence with the parties affected in an endeavor to bring about a satisfactory disposition without formal hearing.

(5) The board will review all complaints received and may initiate an investigation or request the department of commerce to investigate.

(6) All investigation reports, documents, papers, x-rays, or other items of the investigative process shall be made a part of the records of the board and retained by the board and not the parties conducting the investigation, except that x-rays may be duplicated for the board's retention and the original returned to the person who provided the original.

(7) The board may, in its discretion, dismiss any complaint which it determines to be frivolous, vexatious, or without basis.

(8) As a result of its investigation, the board may determine that no violation of the law and rules has occurred. If so, the case will be closed and the complainant will be so notified.

(9) The board may determine that a violation of the law and rules appears to have occurred and take appropriate disciplinary action against the licensee. Any such action shall proceed in accordance with the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

(10) Dismissal of the charges leads to case closure. Sustaining of charges will result in the imposition of the penalties and sanctions as expressed in Title 37, Chapter 29, MCA, or rules of the board upon the person in violation. The complainant and licensee will be notified of a dismissal."

Auth: 37-1-136, 37-29-201, MCA Imp: 37-1-136, 37-29-201, 311, MCA

3. The rules are being proposed to implement Chapter 29 of Title 37, MCA relating to the Board of Denturitry. The Board was granted rule-making authority in the 1985 legislative session pursuant to 37-29-201, MCA.

Rules I, II, and III relate to adoption of organizational, procedural and public participation. Rules IV and V relate to board meetings. Rules VI through XI relate to licensing procedures. Rule XII relates to unprofessional conduct. Rule XIII relates to inspections and sanitary standards. Rules XIV through XVIII relate to disciplinary issues and complaint procedures.

4. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Denturitry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1986.

5. If a person who is directly affected by the proposed adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Denturitry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1986.

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

directly affected has been determined to be 1 based on the 12 licensees in Montana.

BOARD OF DENTURITRY
BRENT KANDARIAN, PRESIDENT

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

Certified to the Secretary of State, May 5, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the proposed adoption of new rule regarding disciplinary actions	)))	NOTICE OF PROPOSED NEW RULE REGARDING DISCIPLINARY ACTIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 16, 1986, the Board of Morticians proposes to adopt the above-stated rule.

2. The proposed new rule will read as follows:

"I. DISCIPLINARY ACTIONS (1) The board reserves the discretion to take appropriate disciplinary action provided for in sections 37-1-136, 37-19-311, 312, MCA, against a licensee who has violated any law or rule of the board, and to decide on a case-by-case basis the type and extent of disciplinary action it deems appropriate applying the following considerations:

(a) the seriousness of the infraction;

(b) the detriment to the health, safety and welfare of the people of Montana; and

(c) past or pending disciplinary actions relating to the licensee.

(2) The board may impose one or more of the following sanctions in appropriate cases:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee;

(f) limitation or restriction of the scope of the license and the licensee's practice;

(g) deferral of disciplinary proceedings or imposition of disciplinary sanctions; or

(h) ordering the licensee to successfully complete appropriate professional training.

(3) When a license is revoked or suspended, the licensee must surrender the license to the board."

Auth: 37-1-136, 37-19-202, MCA Imp: 37-1-136, 37-19-311, 312, MCA

3. This rule would grant the board the authority to discipline a licensee or funeral establishment for violations. The rule was proposed at the board meeting on April 1, 1986.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1986.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Morticians, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than June 13, 1986.

6. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 32 based on the 320 licensees in Montana.

BOARD OF MORTICIANS
DENNIS DOLAN, CHAIRMAN

BY: Keith P. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 5, 1986.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE TO INCREASE THE PRIVILEGE AND LICENSE TAX ON THE PRODUCTION OF OIL AND NATURAL GAS WITHIN THE STATE OF MONTANA.	NOTICE OF PROPOSED AMENDMENT OF 36.22.1242 INCREASING THE OIL AND GAS PRIVILEGE AND LICENSE TAX. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 30, 1986 the Board of Oil and Gas Conservation of the State of Montana proposes to amend a rule setting the rate of the privilege and license tax on production of oil and natural gas at the maximum allowed by Sec. 82-11-131, MCA.

2. The proposed rule does not replace any section currently found in the Administrative Rules of Montana. The proposed rule provides as follows:

36.22.1242 REPORTS BY PRODUCERS (1) and (2) remain the same.

(3) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved and marketed or stored within the state or exported therefrom shall be 2/10ths of 1% of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after July 1, 1986.

AUTH: 82-11-111, MCA IMP: 82-11-131, MCA

3. The Board is proposing this increase in the privilege and license tax on petroleum and natural gas because, as a result of the recent decline in the price of those commodities, the present rate of tax is insufficient to finance the operations of the Board and its staff, even though the Board has curtailed its expenditures and will continue to do so.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment to Dee Rickman, 1520 East Sixth Avenue, Helena, Montana 59620 no later than June 12, 1986.

5. If a person who is directly affected by proposed amendment wishes to enter his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dee Rickman, 1520 East Sixth Avenue, Helena, Montana 59620 no later than June 12, 1986.

6. If the Board receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 persons based on the Board's determination that there are more than 250 persons who are either oil or gas producers subject to pay the privilege and license tax.

BOARD OF OIL AND GAS CONSERVATION
RICHARD A. CAMPBELL, CHAIRMAN

BY: Dee Rickman
DEE RICKMAN
ASSISTANT ADMINISTRATOR
OIL AND GAS CONSERVATION DIVISION

Certified to the Secretary of State May 5, 1986.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to fees for Clerks and Recorders for filing certified copies of agricultural liens and continuations.	)))))	NOTICE OF PROPOSED ADOPTION OF A RULE - Fees for Clerks and Recorders for filing certified copies of agricultural liens and continuations and prescribing a method of payment.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 14, 1986 the secretary of state proposes to adopt a rule pertaining to fees for clerks and recorders for filing certified copies of agricultural liens and continuations after July 1, 1986.

2. The proposed rule provides as follows:

RULE I FEES FOR FILING NEW UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL PROPERTY TO BE PAID TO CLERKS AND RECORDERS (1) After June 30, 1986, the secretary of state shall mail a certified copy of a financing or continuation statement securing agricultural property as defined in 30-9-403(9), MCA to the clerk and recorder of the debtor's county, after it has been filed in the office of the secretary of state. A fee of $2 for each financing statement or continuation statement securing agricultural property will be mailed with the documents. These documents will be mailed within one working day of receipt in the secretary of state's office.

AUTH & IMP: 30-9-403(9), MCA

3. This rule is being proposed to establish fees for filing documents as required by Title 30, Chapter 9.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Bobby June Day, Room 225, Capitol Building, Helena, Montana 59620, no later than June 12, 1986.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Bobby June Day, Room 225, Capitol Building, Helena, Montana 59620, no later than June 12, 1986.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 6 based on the 56 county clerks and recorders in the state.

JIM WALTERMIRE
Secretary of State

Dated this 5th day of May, 1986.

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

In the matter of the adoption of rules and the amendment of Rules 46.25.101 and 46.25.732 pertaining to the structured job search and training program and workfare	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES AND THE AMENDMENT OF RULES 46.25.101 AND 46.25.732 PERTAINING TO THE STRUCTURED JOB SEARCH AND TRAINING PROGRAM AND WORKFARE

TO: All Interested Persons

1. On June 4, 1986, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of rules and the amendment of Rules 46.25.101 and 46.25.732 pertaining to the structured job search and training program and workfare.

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

RULE I STRUCTURED JOB SEARCH AND TRAINING PROGRAM

(1) Recipients of general relief assistance, unless exempted elsewhere in this rule, are required to participate in the structured job search and training program. The program shall consist of 3 components:

(a) assessment and testing;

(b) job readiness; and

(c) extended job search.

(2) All recipients, unless qualified under the exemptions listed for the workfare program found in ARM 46.25.732(2), must enroll and cooperate as directed by the department in the assessment and testing component and in the preparation of the employability plan.

(3) All recipients who have completed the requirements of subsection (2) of this rule must participate in the job readiness component for at least 80 hours in any five-week period designated by the department and spend at least eight (8) hours per week in a supervised effort to find employment.

(a) If a recipient's employability plan identifies exceptional need that would prevent successful job placement during the job readiness component and that can be reasonably addressed by participating in one or more of the activities described in subsection (4) of this rule, the recipient may be permitted to temporarily postpone participation in the readiness component.

(4) All recipients who have completed the job readiness component shall participate for six (6) consecutive months in the extended job search component. They must:

(a) continue to spend at least eight (8) hours per week in a supervised effort to find employment; and

(b) participate for 32 hours per week, as called for in their employability plan, in:

(i) remedial education;

(ii) counseling;

(iii) job skills training;

(iv) workfare; or

(v) job seeking or other related activities.

(5) A recipient who has participated in the components found in subsections (2), (3) and (4) of this rule, but whose participation ends prior to completion of all of the components, shall be required to reenter the program, starting at the beginning of the first unfinished component, and complete all remaining components.

(6) The following supportive services, if necessary to overcome barriers to employment specified in a recipient's employability plan, may be provided:

(a) Child care:

(i) payment shall not exceed the limits established in ARM 46.10.404(g), (h) and (j);

(ii) payments shall be made to a registered provider after submission to the department of a bill signed by the provider listing dates of service and stating names of children cared for.

(b) Transportation:

(i) payment will be made for only the least expensive means;

(ii) use of private transportation will be reimbursed at the rate of 21 cents per mile up to a maximum of $25.00 per month.

(c) Work clothing:

(i) if unavailable from another source, up to $50.00 per recipient worth of work clothing may be purchased by the department;

(ii) will be provided only one time to each recipient.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 7, Ch. 370, L. 1985; Sec. 7, Ch. 670, L. 1985; Sec. 3, Ch. 10, L. 1986 Sp. Sess.
IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

RULE II PENALTY (1) Recipients of general relief assistance who are subject to the provisions found in Rule I and ARM 46.25.732 and who without good cause refuse to participate in any component of the structured job search and training program, participate in workfare, register for employment, or accept available employment shall lose one-fourth (¼) of their next monthly benefit for each refusal.

(a) A refusal is defined as:

(i) failure without good cause to participate in any of the components of the structured job search and training program;

(ii) failure without good cause to participate in the workfare program;

(iii) failure to register with job service every other month; or

(iv) failure to accept available employment.

(b) No more than one refusal may be attributed to a recipient per day.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 7, Ch. 370, L. 1985; Sec. 7, Ch. 670, L. 1985; Sec. 3, Ch. 10, L. 1986 Sp. Sess.
IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

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

46.25.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Able-bodied" means the condition of a person who is not infirm.

(2) "Assessment" means the determination of whether the structured job search and training program can offer services or activities which will enable a participant to obtain employment.

(3) "Barriers to employment" means limitations such as parental status, criminal records, lack of child care and physical or mental status which preclude or hinder an individual from seeking, obtaining and retaining employment.

Subsections (2) through (6) remain the same in text but will be renumbered (4) through (8).

(9) "Employability plan" means a written plan which outlines the steps necessary to obtain employment. The employability plan must, at a minimum, include assessment of job readiness and skills, barriers to employment, specific employment and training needs, services identified to meet needs and transition steps to employment.

(10) "Extended job search" means a program component that combines the use of individual job search, counseling, workfare and remedial and job skills training to assist in obtaining employment.

Subsections (7) through (9) remain the same in text but will be renumbered (11) through (13).

(14) "Good cause" means inability to participate because of circumstances beyond the person's control and includes, but is not limited to:

(a) illness of the participant;

(b) illness of another household member sufficiently serious to require the presence of the participant; or

(c) an unanticipated emergency.

Subsections (10) through (17) remain the same in text but will be renumbered (15) through (22).

(23) "Job readiness" means a program component that uses motivational counseling, job development and referral, practicing and coaching of telephone and interview techniques, refinement of job hunting skills, classroom training, peer support and group job search to assist a recipient in obtaining employment.

(24) "Job skills training" means training that is necessary to raise the functional skill level of participants to the point at which they can successfully enter employment.

Subsections (18) and (19) remain the same in text but will be renumbered (25) and (26).

(27) "Remedial education" means training that is necessary to raise the functional educational level of a participant to the point at which they can successfully enter employment.

Subsections (20) through (22) remain the same in text but will be renumbered (28) through (30).

(31) "Structured job search and training" means a program consisting of three components: assessment and testing, job readiness and extended job search.

Subsection (23) remains the same in text but will be renumbered (32).

(33) "Testing" means the use of an instrument such as the general aptitude testing battery and/or the specific aptitude test battery to develop a set of steps to accomplish the goal of employment.

(34) "Workfare" means the performance of work as directed by the department in lieu of welfare at a public agency or a private nonprofit agency.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985; Sec. 1, Ch. 370, L. 1985; Sec. 3, Ch. 10, L. 1986 Sp. Sess.

IMP: Sec. 53-2-201, 53-2-301, 53-2-802, 53-3-109, 53-3-304 and 53-3-305 MCA

46.25.732 WORKFARE ~~PROGRAM~~

(1) All recipients of general relief assistance, unless ~~excluded~~ exempted elsewhere in this rule, are required to participate in a workfare ~~program to be reimbursed at the prevailing rate of pay for similar work in the county~~. for as long as they receive assistance. The work, as assigned by the department, shall be with a public agency or private nonprofit agency. The household shall be required to work the number of hours equal to the quotient found by divlding their general relief assistance grant amount by the prevailing rate paid in

that county by that agency for similar work, but not lower than the federal minimum wage.

(2) The following persons ~~may~~ shall be exempt from ~~the work requirement~~ participation in workfare:

(a) a primary caretaker ~~relatives~~ of children under 6 years ~~old~~ of age;

(b) children under the age of 16 years;

(c) persons over 16 years of age who are full time high school students actively pursuing a degree or equivalency; ~~or diploma~~;

(d) persons determined infirm as provided in ARM 46.25.724;

(e) ~~persons geographically isolated~~; persons residing at a location so remote from the local office of human services or service unit that effective participation in the program is precluded. The individual shall be considered remote if a round trip of more than two (2) hours by reasonably available public or private transportation would be required for a normal work or training day; ~~and~~

(f) ~~persons sixty-five years of age or older~~; recipients participating in the assessment and testing and job readiness components as described in rule I;

(g) recipients participating in the extended job search component described in rule I, unless otherwise specified in the employability plan.

(3) ~~Work program participants are required to register for employment with the local job service and explore job possibilities at least weekly with the local job service.~~ All recipients, unless exempted in subsection (2) of this rule, must, for as long as they receive general relief assistance, register every other month for employment at the local job service office and must actively pursue and accept available employment within their capability.

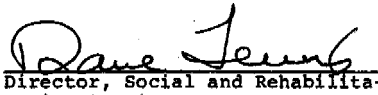
~~(4) Any recipient who refuses to participate in the work program will have the monthly general relief benefit amount decreased by one fourth for each refusal.~~

AUTH: Sec. 53-2-803, 53-2-201 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985; Sec. 1, Ch. 370, L. 1985; Sec. 3, Ch. 10, L. 1986 Sp. Sess.
IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

4. The March, 1986 special legislative session mandated through passage of HB 12 that a structured job search and training program be established by this department. These rules implement that mandate and are proposed to become effective July 1, 1986. Rule I will be adopted as ARM 46.25.731; Rule II will be adopted as ARM 46.25.733.

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 the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 12, 1986.

6. 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 May 5, 1986.

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

In the matter of the amendment of Rules 46.8.701 and 46.8.704 pertaining to certification of developmental disabilities professional persons and repeal of Rule 46.8.108 pertaining to service program funding	) NOTICE OF PROPOSED AMENDMENT OF RULES 46.8.701 AND 46.8.704 PERTAINING TO CERTIFICATION OF DEVELOPMENTAL DISABILITIES PROFESSIONAL PERSONS AND REPEAL OF RULE 46.8.108 PERTAINING TO SERVICE PROGRAM FUNDING. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 27, 1986, the Department of Social and Rehabilitation Services proposes to amend Rules 46.8.701 and 46.8.704 pertaining to certification of developmental disabilities professional persons and repeal Rule 46.8.108 pertaining to service program funding.

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

46.8.701 GENERAL (1) The department of social and rehabilitation services and the department of institutions shall jointly certify developmental disabilities professional persons. ~~and mental health professional persons.~~

(2) Definitions used for certification of professional persons ~~in the areas of mental health and~~ for developmental disabilities are:

(a) "SRS" means the department of social and rehabilitation services.

(b) "Institutions" means the department of institutions.

~~(c) "Mental health professional person" is a person trained in the field of mental health and certified by SRS and institutions.~~

(dc) "Developmental disabilities professional person" is a person trained in the field of developmental disabilities and certified by SRS and institutions.

(ed) "Certification committee" means the committee with delegated authority to certify ~~mental health professional persons and~~ developmental disabilities professional persons.

Subsections (2)(f) through (2)(h) remain the same in text but will be recategorized (e) through (g).

(3) Professional persons shall be certified for the following purposes:

(a) to recommend to the district court the most appropriate habilitation plan or treatment plan for an individual who is or may be found to be developmentally disabled ~~or mentally ill~~ based upon his evaluation of the individual when

a commitment to a residential facility is being sought for that individual; and

Subsections (3)(b) and (4) remain the same.

AUTH: Sec. 53-20-106 MCA
IMP: Sec. 53-20-102 and 53-20-106 MCA

46.8.704 CERTIFICATION OF PROFESSIONAL PERSONS, QUALIFICATIONS ~~(1)--Mental-health-professionals:~~

~~(a)--Applicants-possessing--a--license--from-the--Montana department--of-professional--and-occupational-licensing,-board of--psychologists,--as-a--licensed-psychologist,-shall-be-eligible-for-certification-as-a-professional-person.--Evidence-of appropriate--experience-may--be--required-at-the-discretion-of the-committee.--For-psychologists--without-such-a-license,-the applicants-shall-possess-a-master's--degree-in-psychology-from an-accredited-program.--Academic-training-shall-be-in-a-clinical-field-of-psychology--that-directly-relates-to-psychopathology.---Applicants--in-the--field-of--psychology-shall-have-at least--one-year-of-experience-in-delivering-professional-services-to-clients-in-a-mental-health-setting.~~

~~(b)--In-the-field-of--guidance-and-counseling,-applicants shall--possess--a-master's--degree-in-guidance-and--counseling from-an-accredited-program-and-shall-have-at-least-one-year-of experience--in--delivering--services--to-clients--in-a--mental health-setting.~~

~~(c)--In-the--field--of-nursing,--an-applicant--shall-be-a registered-nurse,-licensed-under-Montana-law,-preferably--with a-bachelor's--degree-in--nursing-and-must-have-at--least-three years-of-nursing-experience--in-providing--services-to-clients in-a-mental-health-setting.~~

~~(d)--In-the--field-of-social--work,-applicants-shall-possess-a--master's-degree--from-an--accredited-program-that-provides-training-in-the-treatment-of--mental-disorders-and-shall have--at-least--one-year--of-experience--in-delivering-professional--services-to-clients-in-a-mental--health-setting.--Membership-in-academy--of-certified--social--workers--may-be-substituted-for-above-education-and-experience.~~

Subsections (2) through (4) remain the same in text but will be renumbered as (1) through (3).

AUTH: Sec. 53-20-106 MCA
IMP: Sec. 53-20-102 and 53-20-106 MCA

3. The Department proposes to repeal Rule 46.8.108 pertaining to service program funding. The rule as proposed to be repealed may be found on page 46-591 of the Administrative Rules of Montana.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

4. Earlier this year, the Montana Department of Institutions (D of I) promulgated a rule for certification for mental health professional persons. The new rule creates a difficulty because there are now two different rules governing the certification of mental health professional persons, one under D of I and another under this Department's rules. These proposed amendments to the SRS rules delete the references to certification which will, in turn, eliminate the current conflict.

ARM 46.8.108 is proposed to be repealed based upon the prior inclusion of the substance of this rule in statewide contracting procedures. Repeal of the rule would delete unnecessary duplication of procedures in the ARM.

5. Interested parties may submit their data, views, or arguments concerning the proposed changes in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 12, 1986.

6. If a person who is directly affected by the proposed amendment and repeal wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request along with any written comments he has to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 12, 1986.

7. If the Department receives requests for a public hearing under 2-4-315, MCA, on the proposed amendment and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 15 persons based on the fact that approximately 150 persons are certified as developmental disabilities professional persons.

Dave Lewis

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1986.

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

In the matter of the amendment of Rules 46.12.801, 46.12.802, 46.12.805 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.801, 46.12.802, 46.12.805 and 46.12.806 PERTAINING TO PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES

TO: All Interested Persons

1. On June 5, 1986, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.801, 46.12.802, 46.12.805 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies.

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

46.12.801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITIONS (1) "Prosthetic devices" means replacement, corrective, or supportive devices or appliances which artifically replace a missing portion of the body to:

(a) prevent or correct physical deformity or malfunction; or

(b) support a weak or deformed portion of the body.

(2) "Durable medical equipment" means ~~medical~~ the most economical and medically necessary equipment appropriate for use in a patient's home, or residence, including, but not limited to, wheelchairs, walkers, canes, crutches, hospital beds, oxygen equipment and sickroom equipment.

(3) "Medical supplies" means disposable or non-reusable medical supplies, including, but not limited to, splints, bandages, and oxygen. ~~and oxygen equipment.~~

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing home residents are contained in ARM 46.12.1205.

(1) Reimbursement for Pprosthetic devices, durable medical equipment and medical supplies shall be limited to

items delivered in the most appropriate and cost effective manner. The items must be medically necessary and prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) A copy of the prescription must be attached to the claim and indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment and medical supplies. Prescriptions for medical supplies used on a continuous basis shall be renewed by a physician at least every six months.

(i) Prescriptions for oxygen shall include the liter flow per minute and the hours of use per day.

(b) Claims for oxygen must reflect the actual amount used by the patient.

(2) ~~The following are limitations of the medical assistance program as it relates to prosthesis, appliances, and medical supplies:~~ The following items are not reimbursable by the program:

(a) Orthopedic shoes, corrections, and shoe repairs ~~are excluded~~ unless they shoes are attached to a brace or other device.

~~(b) Shoe repair and shoe corrections are excluded.~~

~~(c) Wheelchairs, walkers, etc, utilized by nursing home patients may not be provided unless the item is of special design for the particular patient and is used exclusively by him or unless it is a necessary part of a discharged home plan.~~

(~~d~~b) Convenience and comfort items. ~~are not a benefit of the program.~~

(c) Nutrient solutions except when they are for parenteral and enteral nutrition therapy, are the only source of nutrition for patients, and are determined medically appropriate and prior authorized by the department.

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

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT/~~GENERAL~~ REQUIREMENTS

(1) Requirements for the purchase of prosthetic devices, durable medical equipment and medical supplies are as follows:

(~~1~~a) The department will pay the lowest of the following for prosthetic devices, durable medical equipment, and medical supplies not also covered by medicare: the provider's actual (submitted) charge for the item or the medicaid fee schedule.

(b) The department will pay the lower of the following for prosthetic devices, durable medical equipment and medical supplies which are also covered by medicare: the provider's actual (submitted) charge for the item; the medicaid fee schedule; or the amount allowable for the same item under medicare.

(c) All prosthetic devices, durable medical equipment and medical supplies listed as by report (BR), or those not listed in the fee schedule, will be reimbursed at the lower of 90 percent of the provider's actual (submitted) charge, or the amount allowable for the same item under medicare.

(i) Those items not listed in the fee schedule must be submitted to the department for approval.

(d) Purchase or rental of prosthetic devices, durable medical equipment and medical supplies of $150.00 or more per claim require written prior authorization on the claim before the authorization service is rendered to the recipient. By report items with a cost of less than $150.00 will be paid at 90 percent of billed charges without authorization.

(e) Authorization of claims which require prior authorization or are by report (BR) items does not guarantee that the recipient is eligible for medicaid.

(f) Reimbursement for prosthetic devices, durable medical equipment and medical supplies utilized by nursing home patients are subject to the limits in ARM 46.12.1205 if billed by a nursing home.

(2) ~~Rental of prosthetic devices and durable medical equipment shall not exceed the purchase price plus one month's rental, or where a patient's age or physical condition requires frequent changes in prosthetic devices and/or durable medical equipment. The limitation of rental shall apply to each change in prosthetic device and/or durable medical equipment.~~ If the purchase of a rental item is cost effective, the department may negotiate with the provider to purchase the item.

(a) Oxygen concentrators and liquid oxygen systems shall be approved initially on a rental basis only. Purchase of oxygen concentrators and liquid oxygen systems shall be considered on a case-by-case basis and must be prior authorized.

(3) The department may contract with providers of prosthetic devices, durable medical equipment and medical supplies to be sole providers of a specific item in a geographic area.

~~(3) All prosthesis, durable medical equipment and medical supplies listed as By Report (BR) in the reimbursement fee schedule require prior authorization by the designated peer review organization.~~

~~(4) All prosthesis, durable medical equipment and medical supplies listed as by report (BR) in the reimbursement fee schedule will be reimbursed at the lower of 90% of billed charges or no more than the manufacturer's 1980 suggested retail price or the requirements listed in item (1) of this rule.~~

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

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, ~~REIMBURSEMENT~~/FEE SCHEDULE

(1) MEDICAID FEE SCHEDULE FOR RENTAL/PURCHASE OF PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES. ~~AND EQUIPMENT~~

~~Crutches, stand, wood/per month---$6.60~~

~~Crutches, for arm/per month---$14.52~~

~~Crutches, special/per month---$15.73~~

~~Hospital bed, standard with mattress/per month---$42.90~~

~~Hospital bed, electric with mattress/per month---$89.10~~

~~Hospital bed, electric or standard, side rails/per month---$14.30~~

~~Trapeze bar with stand/per month---$29.70~~

~~Trapeze bars/per month---$14.30~~

~~Walker, regular/per month---$17.60~~

~~Walker, wheeled/per month---$20.90~~

~~Wheelchair, standard, folding/per month---$54.45~~

~~Wheelchair, standard hospital/per month---$42.35~~

~~Wheelchair, standard with accessory/per month---$54.45~~

~~Wheelchair, standard, motor/per month---$60.50~~

~~Wheelchair, child, with accessory/per month---$31.46~~

~~Wheelchair, custom, special/per month---$40.40~~

~~Wheelchair accessory/per month---$54.45~~

~~Raised toilet seat/per month---$8.47~~

~~Miscellaneous supplies and equipment/per month---BR~~

~~Standard commode/per month---$14.30~~

~~Wheeled commode/per month---$17.60~~

~~Hoyerlift/per month---$60.50~~

~~Seat-lift/per-month---$60.50~~

~~Ultrasonic-nebulizer/per-month---$54.45~~

~~Asthmastix/per-month---BR~~

~~IPPB/per-month---$66.00~~

~~Portabird/per-month---$60.50~~

~~Handevent/per-month---$60.50~~

~~Respirator/per-month---$54.45~~

~~Linde-reservoir/per-month---$48.40~~

~~Linde-walker-unit/per-month---$42.35~~

~~PCU-container/per-month---$48.40~~

~~LV-160/per-month---$42.35~~

~~Liberator-stroller/per-month---$108.90~~

~~Mada-Duo-pak-13-B/per-month---$30.25~~

~~Lifesaving-unit-5000/per-month---$29.04~~

~~Lifesaving-unit-5010/per-month---$29.04~~

~~Oxygen-regulator/per-month---$20.35~~

~~Cylinder/per-month---$7.26~~

~~Regular-humid-unit/per-month---$18.15~~

~~Oxygen-tent/per-month---$36.30~~

~~Port-carry-unit-with-E-tank/Reg/per-month---$24.20~~

~~Liberator/per-month----$66.55~~

~~Brion-oxyeconcentrator/per-month---$290.40~~

~~Water-mattress/per-month---$42.35~~

~~Raised-toilet-seat/per-month---$8.47~~

~~Dialysis-equipment/per-month---BR~~

~~Dialysis-Unibed-tank/per-month---$24.20~~

~~Dialysis-Duo-bed-tank/per-month---$48.40~~

~~Dialysis-Tri-bed-tank/per-month---$72.60~~

~~Jobst-pressure-pump/per-month---$48.40~~

~~(2)---MEDICAID-FEE-SCHEDULE-FOR-PURCHASE-OF-MEDICAL SUPPLIES-AND-EQUIPMENT~~

ITEM	MONTHLY RENTAL	PURCHASE
Surgical Supplies		
Syringes -		
Insulin (glass)/each		$ .24
Tuberculin (glass)/each		$ .24
General (glass)/each		BR
Special (glass)/each		$13.31
Insulin (disposable)/each		$ .24
Tuberculin (disposable)/each		$ .24
General (disposable)/each		$ .32
Special (disposable)/each		$ .32
Asepto syringes/each		$ .28
Needles		
Regular (permanent)/each		$ .21
Regular (disposable)/each		$ .28
Special (permanent)/each		$ .24
Special (disposable)/each		$ .36

ITEM	MONTHLY RENTAL	PURCHASE
Analysis Reagents and Equipment		
~~Urine-test---BR~~		
Tes-tape/~~roll~~--		$4.40
Clinitest tablets/each --~~$.0523~~		$ .05
Clinitest tablets (foil~~rap~~ roll)/each - ~~$-.06~~		$ .07
Clintest set		BR
~~Clinitest-strips/each---$-.07~~		
Monolet lancets		BR
~~Albustix-strips/each---BR~~		
~~Keto-Diastix/each---$-.12~~		
Combistix strips/~~each~~--		$ .04
Uristix strips/~~roll~~--		BR
Acetest tablets		$ .10
Acetest tablets roll/per tablet		$ .10
Clinitest strips each		$ .07
~~Acetest-tablets/each---$-.10~~		
Albustix		BR
Ketostix strips/~~each~~--		$ .18
Diastix/~~each~~--		$ .07
Glucometer		BR
Keto-diastix		$ .12
Urinetest		BR

ITEM	MONTHLY RENTAL	PURCHASE
Dextristix		$ .53
Autoclix		BR
Labstix		BR
Blood pressure kit		BR
Chemstrip		$ .51
Glucoscan meter kit		BR
Visidex		BR
Dextrostix		BR
Glucostix		BR
Durable Sick Room Apparatus		
Cane, regular		$13.20
Cane, quad		$36.14
Crutches, stand, wood	$6.60	$24.15
Crutches, stand, metal		$30.25
Crutches, for arm	$14.52	$58.08
Crutches, special	$15.73	$31.46
Dialysis equipment	BR	BR
Hospital bed, standard with mattress	$42.90	$906.60
Hospital bed, electric with mattress	$89.10	$1,264.18
Hospital bed, standard, side rails/ per rail		$60.50
Hospital bed, electric, side rails/ per rail		$60.50

ITEM	MONTHLY RENTAL	PURCHASE
Postural drainage board		$54.45
Alternating pressure pad		$36.30
Alternating pressure pad with pump		$369.53
Jobst pressure pump	$48.40	---
Bathtub lift	BR	BR
Hoyer lift	$60.50	$635.25
Seat lift	$60.50	$1,155.55
Standard commode	$14.30	$78.65
Wheeled commode	$17.30	$121.00
General Equipment		
Bed pan, regular		$12.25
Bed pan, fracture		$8.46
Thermometer, fever/each		$1.76
Emesis basin		$7.70
Urinal, female, metal		$32.25
Urinal, male, metal		$37.40
Heating pad		$19.29
Traction, hip		BR
Traction, neck		$29.04
~~Vaporizer, steam-type---$14.47~~		
~~Humidifier---$32.19~~		
~~Vaporizer, cool-type---$24.02~~		
~~Handheld nebulizer---$7.21~~		
Whirlpool bath (portable)		$352.00

ITEM	MONTHLY RENTAL	PURCHASE
Sitz bath		$60.50
Cervical collar		$23.60
Foot Cradle		BR
Trapeze bar with stand	$29.70	---
Trapeze bars	$14.30	~~$22.00~~ ---
Walker, regular	$17.60	$66.50
Walker, wheeled	$20.90	$169.40
Wheelchair, standard folding	$54.45	$687.50
Wheelchair, standard hospital	$42.35	$399.30
Wheelchair, standard with accessory	$54.45	$830.50
Wheelchair, standard motor	$60.50	$1,712.26
Wheelchair, child, folding	$25.20	$605.00
Wheelchair, child, with accessory	$31.46	$487.30
Wheelchair, custom special	$48.40	$1,070.85
Wheelchair accessory		BR
Wheelchair repair		BR
Waterpik		$43.51
Bathtub stool		$55.66
~~Wheelchair accessory---BR~~		
Flotation cushion wheelchair/each		$33.00
Bathtub seat		$78.03
Bathtub rails/each - BR, not to exceed		$40.65
Raised toilet seat	$8.47	$55.33
~~Wheelchair repair---BR~~		

ITEM	MONTHLY RENTAL	PURCHASE
Ostomy and Urostomy		
Ostomy pouch, self administered		$12.10
Disposable colostomy bags		~~$13.26~~ BR
Disposable colostomy appliance accessory		$17.51
Disposable colostomy appliance		BR
Colostomy shield appliance		$8.47
Colostomy irrigating appliance		$7.26
Colostomy irrigate accessory		$.81
Colostomy appliance (non-disposable)		BR
Colostomy appliance accessory		$6.00
Disposable ileostomy appliance		$48.91
Disposable ileostomy accessory		$38.67
Disposable urostomy bags/each		$1.71
Stomahesine powder or paste		BR
Disposable diapers		BR
Male urinal, complete/each		$10.73
Urinal bag (each)		$3.49
Suspensory (for use with urinal)		$22.95
Disposable urinal collect bag/each		$3.49
Urinal accessories (drainage tube)		$8.78
Bedside collect unit, complete		$10.96
Bedside drainage bags		$7.02
Incontinance clamp		$34.71

ITEM	MONTHLY RENTAL	PURCHASE
Urethral catheter with tray (rubber silicone)/each		$ 5.47
Urethral catheter, each		$.85
Indwelling catheter (Foley, balloon retention)/each		$ 8.31
~~Feeding tube/per foot---BR~~		
Colon tube/per foot		BR
Gastric tubes/per foot		$.50
Syringe tubing		BR
~~Wrist splint---$18.94~~		
~~Arm splint---$9.68~~		
~~Finger splint---$-.91~~		
~~Leg splint---$32.63~~		
Installment DME or machine set-up		BR
OXYGEN AND OXYGEN EQUIPMENT		
Ultrasonic nebulizer	$54.45	$514.25
Oxygen concentrator	$150.00	$1,500.00
Linde reservoir	$48.40	---
Linde walker unit	$42.35	---
Liberator	$66.55	---
Liberator/stroller	$108.90	---
P.C.U. container	$48.40	---
L.V. 160	$42.35	---
Cylinder	$7.26	---

ITEM	MONTHLY RENTAL	PURCHASE
Oxygen tent	$36.30	---
Porta-carry unit with E tank/reg.	$24.20	---
Asthamastix	BR	BR
IPPB, air/oxygen	$66.00	$508.20
~~IPPB, oxygen---$508.20~~		
Pulmonaide	BR	
Portabird	$47.66	$572.00
Handevent	$10.48	$125.84
Respirator	$54.45	$477.95
Mada Duo-pak (with adjustable flow regulator)	$30.25	$230.69
Lifesaving unit 5000	$29.04	$154.50
Lifesaving unit 5010	$29.04	$203.28
Regular humidifier unit		$20.30
D or E cylinder		BR
Vaporizer, steam type		$14.47
Humidifier		$32.19
Vaporizer, cool type		$24.02
Handheld nebulizer		$7.21
~~E-cylinder---$83.25~~		
~~R-cylinder---BR~~		
~~Cylinder-No.-5---BR~~		
02 liquid per pound		$1.25
02 gas per cubic foot		$ .06

ITEM	MONTHLY RENTAL	PURCHASE
02-contents-binde-Reservoir---$45.38		
02-contents-liberator---$49.61		
02-contents-L-V-160---$344.85		
02-contents-PEU-Reservoir---$43.56		
02-contents-G-P-45---$290.40		
02-contents-D-cylinder---$12.71		
02-contents-E-cylinder		$12.71
02-contents-GPL-K-cylinder---$21.48		
02-contents-H-cylinder---$21.48		
02-contents-J-cylinder---$25.53		
02-contents-M-cylinder---$10.41		
02-contents-O-cylinder---BR		
02-contents-Q-cylinder---$14.52		
02-contents-R-cylinder---$10.89		
02-contents-S-cylinder---$13.62		
IPPB Kit		BR
Cannula		$2.75
Connective tubing/per foot		$ .48
Portable aspirator		$10.96
Connectors		$ .97
Face mask		$3.03
Mouth piece		$ .73
Nasal catheter		$1.64
Disposable IPPB tubing		$4.24

ITEM	MONTHLY RENTAL	PURCHASE
Disposable humidifiers		$1.73
Extension hoses		$1.82
Mada plastic nebulizer W mask & tube		$7.26
Nasal 02 kit		$18.15
02 tubing		$2.12
~~Delivery charge---BR~~		
Oxygen regulator	$6.00	~~$10.15~~ $90.00
~~Liquid-02-330---BR~~		
~~Liquid-02-80---BR~~		
Aquapak		$4.54
Anatomical Supports		
Arm sling		$3.96
Wrist splint		$18.94
Arm splint		$9.68
Finger splint		$ .91
Leg splint		$32.63
Appliances, surgical		BR
Post hernia truss		$12.69
Scrotal truss		$47.55
Umbilical truss		BR
Shoulder brace		$16.94
Sacroiliac support		$14.58
Lumbosacral support (corsets)		$102.85

ITEM	MONTHLY RENTAL	PURCHASE
~~Post-hernia-truss---$12.69~~		
Hinged joint steel knee cap		BR
Acrylic neck brace		$29.04
Ankle brace		BR
Knee brace		$16.89
Wrist brace		BR
Corsets		$72.60
Abdominal support		$13.92
Dorso lumbar support		$113.52
Mastectomy support		$30.25
Orthopedic brace		BR
~~Acrylic-Neck-brace---$29.04~~		
Foam cervical collar		$11.44
Dennis Brown splint		$24.20
~~Ankle-brace---BR~~		
Orthopedic shoes, brace		$221.74
Orthotic appliances		BR
Orthotic appliance repair		BR
Girdle attachment brace		BR
Rib belt		BR
Repair of prosthesis		BR
Repair orthopedic appliance		BR
Elastic supports		BR

ITEM	MONTHLY RENTAL	PURCHASE
Elastic stockings (sheer type~~, --Jobst-or-similar~~)		$ 27.06
Jobst stockings		BR
Elastic stockings (surgical type)		$27.06
~~Miscellaneous~~ Other Supplies and Equipment		
~~Miscellaneous-supplies-and-equipment---BR~~		
Apnea Monitor	$150.00	
Gel cushion		$46.53
Enema supplies		$12.10
Allergenic extract		BR
Injection supplies		BR
Isotopes		$52.37
Eye prosthesis		$363.00
Overbed table		$13.92
Foam cushion		$10.84
Water mattress	$42.35	$105.60
Foam mattress		$76.45
Tracheotomy tubes		$12.10
Stump sox/pair		$16.50
Protective helmet		$29.15
Transfer board		$13.75
Helping Hand		$24.20
Disposable gloves/each		$ .09

ITEM	MONTHLY RENTAL	PURCHASE
Gauze, bandages, tape		BR
Rest-On foam pads		$4.38
Disposable under pads/each		$ .32
Sheepskin		BR
Oversponges/each		$ .07
Arm sling		$3.96
Dermacin		$2.42
Parenteral and enteral feeding equipment and supplies		BR
Shipping and delivery charges		BR
Miscellaneous supplies and equipment	BR	BR
Contraceptives		
Diaphragm		$7.26
Condoms/one dozen		$3.30
~~IUD's---Cu7---$22.00~~		
IUD's - Progestasert		$9.90 40.00
~~IUD's---others---$6.60~~		
Pills/one cycle		$3.30
Foam, jelly, creme		$3.63

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

3. The proposed rule change for prosthetic devices, durable medical equipment and medical supplies would strengthen the program's control over reimbursement for these items. The rule change would clearly identify the information required to determine if an item is medically necessary and would specifically exclude certain items that are not

considered to be medically necessary. It would specifically list certain items which are currently being paid under "miscellaneous", establish fees for some by-report items and change the basis of reimbursement for such items as oxygen.

The rule changes would be budget neutral or would have an estimated financial impact of savings to the program although the amount of savings cannot be estimated.

Copies of this notice can be obtained through human services offices in 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 June 12, 1986.

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

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1986.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the adoption of Rules 2.52.343 and 2.52.344 of the Workers' Compensation Court	)))	NOTICE OF AMENDMENT OF RULES 2.52.343 AND 2.52.344 OF THE WORKERS' COMPENSATION COURT

TO: All Interested Persons

1. On March 13, 1986, the Workers' Compensation Court published a Notice of Proposed Amendment of Rules ARM 2.52.343 and 2.52.344 at page 302, Montana Administrative Register, Issue No. 5 of 1986.

2. The Office of the Workers' Compensation Judge has adopted the rules as proposed.

3. John McMaster, Attorney for the Legislative Council, notified the Court that the implementation cites for ARM 2.52.343 and ARM 2.52.344 should include MCA §§ 39-71-612 and -614.

The amendments to these rules are necessary in order to comply with the 1985 legislative changes to MCA §§ 39-71-612 and -614.

4. Authority and implementation MCA § 2-4-201; MCA §§ 39-71-2901 through -2909; MCA §§ 39-71-612 and -614.

TIMOTHY W. REARDON, JUDGE

May 5, 1986
CERTIFIED TO THE SECRETARY OF STATE

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of Rules I (4.10.1201) through VIII (4.10.1208) concerning 1080 protection collars	))))	ADOPTION OF NEW RULES REGARDING USE OF 1080 LIVESTOCK PROTECTION COLLARS SECTIONS

TO: All Interested Persons

1. On April 22, 1986, at 10:00 p.m. in room 225 of the Agriculture/Livestock Building, Sixth and Roberts, Helena, the Department of Agriculture conducted a hearing regarding the above stated rules published on page 396, 1986 MAR issue number 6.

2. The department has adopted the rules with the following changes: (text of the rule with matter stricken, interlined and new matter added, then underlined):

Rule I through Rule IV (3) no changes.

Rule IV (4) ~~Requalification.~~ Applicators maintaining their license for four consecutive licensing periods shall be required to requalify for licensing prior to every fifth licensing period. Applicator requalification shall be accomplished by passing an examination or by attending an acceptable applicator training course approved by the department. An applicator requalifying for licensing by attending a pesticide training course shall be required to have the government agency sponsor of the training course submit to the department a written verification of the applicator's attendance and an agenda of topics and speakers. The standards for requalification shall be the same as those required for initial certification. The department retains the right to approve or disapprove or disapprove such training courses relative to meeting the qualification for relicensing. The department may also require applicators to pass an examination and/or attend training during any licensing period on new major pesticide technology which applies to the applicator's classification.

(5) All individuals who have attended a training course and having passed the written examination on the use of the collars, will be certified under one of the following classifications:

(a) Certified-Licensed Government Applicator-Regulatory Pest Control-Predator - Livestock Protection Collar.

(b) Certified-Licensed Commercial Applicator--Agricultural Pest Control--Vertebrate--Livestock Protection Collar.

(c) Permitted or Certified Farm Applicator-Livestock Protection Collar.

(6) Applicants desiring certification for use of collars and individuals certified to use the collars shall

have to meet and comply with other applicable licensing requirements as established by departmental rules.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

Rule V USE RESTRICTIONS OF COMPOUND 1080 LIVESTOCK PROTECTION COLLARS (1) Use of collars shall conform to all applicable federal regulations and state rules.

(2) The certified applicator is directly responsible for assuring that all use restrictions, directions and precautions are met. The certified applicator will decide, in accordance with label directions, when and under what circumstances collars will be used. The certified applicator will either apply collars or be physically present where collars are applied by a noncertified person. However, the noncertified person who has received appropriate instructions from and is under the direct supervision of the certified applicator may store collars, check collars in the field, remove collars, repair or dispose of damaged collars in accordance with use restrictions, retrieve collars lying in the field, and properly dispose of contaminated material and animal carcasses.

(3) through (18) no changes.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

Rule VI SUPERVISION, INSPECTION OF 1080 LIVESTOCK PROTECTION COLLARS (1) The department, or its authorized agent(s) shall ~~check the records, warning signs, and collars~~ of inspect each applicator at least once a year to verify that all applicable laws, regulations, rules and restrictions are being strictly followed.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

Rule VII no changes.

Rule VIII VIOLATIONS (1)(a) through (i) no changes.

(j) To violate any rule or standard established by these rules, any collar labeling, ~~or collars~~ or by the Act.

AUTH: 80-8-105, MCA IMP: 80-8-105, MCA

3. The department received the following comments:

Comment: Most of the commentors expressed concern that the amount of record keeping would be very cumbersome and would actually result in an increase in the per-unit cost to livestock producers who choose to use the collar.

Response: The use of 1080 as a predacide has been banned since 1972. The use and misuse of this toxicant in bait stations prior to 1972 contributed, in large part, to this ban. The Environmental Protection Agency (EPA) in

allowing the controlled use of 1080 in a selective device, i.e. the livestock protection collar, felt it was necessary to establish maximum safeguards in its use because of the historical stigma attached to the term 1080. EPA has determined that strict use restrictions and stringent record keeping requirements provide a mechanism for closely monitoring the use of 1080 while providing maximum safeguards to humans and the environment. Whether some of the requirements are overly-restrictive can only be determined after Montana producers have had an opportunity to use the collar and the use patterns have been evaluated.

Comment: Several commentors expressed concern that the Office of Endangered Species (OES), U.S. Fish and Wildlife Service, be responsive to requests for use of the collar in designated endangered species counties.

Response: An employee of the OES was at the hearing and assured those present that OES would be responsive to requests for collar use and would try to respond on a case-by-case basis.

Comment: One commentor, John MacMaster of the Legislative Council, expressed a concern about disposed 1080 collars contaminating ground water.

Response: The disposal restrictions established by EPA are very explicit, i.e. "bury punctured or unserviceable collars and other contaminated wastes (carcasses, wool, hair, vegetation, soil, leather clothing and water) under three feet of soil at a safe location, preferably on property owned and managed by the applicator and at least one half mile from human habitations and water supplies." Another restriction limits the burial of collars in any one hole to 10. Since most collars that will be disposed of will likely have been punctured, it is unlikely they would contain any more than 1 mg. (active ingredient) of compound 1080 (filled collars contain approximately 3 mg. of 1080 (active ingredient) the amount of actual 1080 in any disposal site would be extremely small. If leaching of the 1080 from the collars did occur, the small amount present would be so rapidly diluted that its toxic properties would be rendered harmless. While the department will not go so far as to say the possibility does not exist, if disposal instructions are followed explicitly, the probability is extremely remote.

Gail Miller-Richardson, made ten comments which the department will address individually:

Comment: 1) "The Montana Department of Agriculture, should, rather that allow this toxic poison back into our environment, try experimenting with other means of predator control, such as guarding dogs and aversive conditioning. Too often, with tragic results, have toxic substances been relied on by the livestock industry for predation control. I do not understand the reluctance of the industry to try alternatives which have proven successful in other countries, and indeed in the U.S."

Response: The MDA does not have the authority to experiment with alternative predator control techniques. However, in the training program which has been developed for livestock protection collar applicators, alternatives are emphasized. Specific non-lethal alternatives that will be discussed are: fences, guarding animals, repellants and frightening devices and reproduction inhibitors.

Livestock producers recognize that 1080 will not solve the predator problem, it is merely a tool that can be effective under some conditions. Since the ban on 1080 in 1972 Montana producers have used various alternative control methods, with varying degrees of success and expense.

One obvious limitation to collar use in Montana is the fact that it can be used only on animals weighing less than 50 pounds, which means its use will be restricted to the spring of the year. Since predators do not typically limit their killing to one season of the year, it is obvious that alternative control methods will have to be employed during the remainder of the year.

Comment: 2) "The livestock industry has brought on many predator problems itself by not disposing properly of carcasses, by not sheltering ewes during lambing, for example, and by not making more use of herders and guard dogs."

Response: This is a gross generalization. Montana producers have and do employ other techniques to reduce predation. Some have proven to be successful, while others have proven to be quite costly and relatively ineffective. As Gee and Magelby point out, in a study of the sheep industry in 1977, sheepherders have become as hard to find in some areas of the U.S. as some of our endangered species.

Comment: "RULE IV - it seems that the state is making it too easy for people to become certified to use 1080 collars. Any Tom-Dick or Harry could meet this testing criterion."

Response: Persons who wish to become certified to use collars must meet all the general and specific standards as set forth in the department's administrative rules for pesticide applicators. For commercial and government applicators see ARM 4.10.204 and 4.10.205. For farm (private) applicators see the standards in ARM 4.10.401. In addition, prospective livestock protection collar applicators must meet fourteen additional requirements, upon which they must be examined, to prove their competency. The department's objective is to insure that only competent individuals, trained and examined, be certified to purchase and use the 1080 toxic collars.

Comment: "RULE V - (2) no non-certified person should have anything to do with the collars - let's have some control here."

Response: The intent here was to have at least one other person familiar with collar use, inspection and maintenance in the event the certified applicator through some emergency was unable to perform such duties. Logic

dictates that if an employee were to notice that a sheep was laying dead in a pasture with a collar around it's neck that he should not have to drive 20 miles back to the ranch house to inform the applicator before the sheep could be properly disposed. EPA determined that these things could happen in the real world and the purpose of this rule is to cover just such a contingency. The applicator and non-certified employee must also comply with the "direct supervision" standard. This standard requires that the certified applicator provide verifiable instructions to the non-certified person including: 1) detailed guidance for applying the pesticide properly, and 2) provisions for contacting the certified applicator in the event he is needed.

Comment: (3) "There is no way in the world to know if an endangered species has been poisoned if it is covered up and not reported. How many ranchers have killed grizzly bears and not reported it? There is no way this provision is enforceable. Ranchers will not report poisonings of endangered species or non-target animals because it might mean loosing their precious collars."

Response: The department believes in the integrity of all individuals. Farmers and ranchers across this state have been stewards of the land and wildlife for many years. These rural people respect and enjoy wildlife. Should any one individual adversely affect an endangered animal they will be subject to severe penalties from the department and the Department of Interior for failing to report such occurrences. We have no indication that sheep ranchers will not report problems with endangered species.

Comment: "RULE V (6) - a rancher should not be able to use collars 'where coyote predation can reasonably be expected to occur.'"

Response: This has been taken out of context. Collars will be used only where predation is occurring or where previous livestock losses due to predation can be documented.

Comment: "RULE VI - this rule is ludicrous. "At least once a year" is totally insane. If you folks cannot keep track of these collars better than this, you have no business dispensing them at all."

Response: New applicators coming into the system are typically inspected several times during the first year of operation. The intent of this rule is to insure that in future years the department obligates it's inspectional staff to at least one inspection annually.

Comment: "RULES VI, VII & VIII show how unenforceable the regulations concerning collar use are. If records and collars are only checked once a year, there is absolutely no way of knowing if 1080 is being used as bait in carcasses, which is the rancher's method of choice, as the past shows. Then Montana will have endangered species and non-target animals being killed and no one will know about it because it will be covered up."

Response: Monthly reporting of records is required. If these records are not received each month the department would follow up with an inspection. If applicators misuse 1080 in any way, such as injection into carcasses, a major violation of FIFRA and the Montana Pesticide Act will have occurred. Violators will be subject to civil and/or criminal penalties, injunction and/or loss of certification. Specific penalties may be found in Section 80-8-211 and 80-8-306 of the Montana Pesticide Act and Section 12 of FIFRA.

Comment: "And what about public lands, BLM - Forest Service, that are leased by ranchers. That land belongs to all of us, and no 1080 should be allowed there - period. And what are the penalties for these violations - I don't see that mentioned."

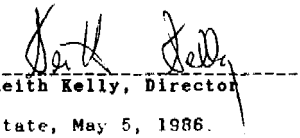
Response: Livestock Protection Collars may be used on federal lands with the approval of the federal land management agency. Because of the fencing requirements it is unlikely that very much federal land in Montana would qualify. Also, sheep grazing of federal land generally occurs during the summer and most lambs will have exceeded the 50 pounds limitation by this time, so collars couldn't be used anyway.

Comment: The EPA suggested several editorial changes in Rule IV, V, VI and VIII.

Response: The department agreed with these changes and has modified the rules to reflect the changes.

4. The majority of comments the department received were in support of the rules and registration of the use of livestock protection collars in Montana.

The authority of the department to adopt the proposed rules is based upon section 80-8-105, MCA and implements section 80-8-105, MCA.

BY: 
Keith Kelly, Director

Certified to the Secretary of State, May 5, 1986.

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

In the matter of the emergency amendment of emergency rules pertaining to the Montana Insurance Assistance Plan	))))	NOTICE OF ADOPTION OF EMERGENCY AMENDMENT OF RULES

TO: ALL INTERESTED PERSONS

1. On April 14, 1986, the State Auditor and Commissioner of Insurance published notice of adoption of rules pertaining to the Montana Insurance Assistance Plan at page 655 of the 1986 Montana Administrative Register, Issue No. 8. Legislative Counsel has requested that the rules be amended.

2. The text of the emergency amendment is as follows:

RULE I DEFINITIONS (1)-(11) Same as proposed rules. ~~(12) "Surplus line insurer" means an unauthorized insurer permitted to transact insurance in this state in accordance with The Surplus Line Insurance Law (33-2-301 through 317, MCA).~~ (12) "Surplus line agent" means an individual, firm, or corporation who meets the requirements of 33-2-305, MCA, and who has the rights provided in 33-2-306, MCA.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986
IMP: Sec. 16, Ch. 11, Sp. L. March,1986

RULE II AGENT COMMISSION Same as proposed rules.

AUTH: Sec. 8, Ch. 11, Sp. L. March, 1986; Sec. 16, Ch. 11, Sp. L. March, 1986
IMP: Sec. 8, Ch. 11, Sp L. March, 1986

RULE III APPLICATIONS AND APPLICATION FEES (1)-(4) Same as proposed rules.

(5) Deleted in its entirety.

RULE IV FISCAL ARRANGEMENT (1) The advisory committee shall designate a committee member as fiscal agent for the plan. The fiscal agent is authorized to receive and hold funds submitted to the plan and to disburse them upon authorization of one other committee member. The funds may be used for the necessary expenses of the committees, including printing, postage, mailing, telephone, and such other expenses incurred by the plan as the advisory committee deems appropriate for payment.

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

(4) Deleted in its entirety.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986
IMP: Sec. 10, Ch. 11, Sp. L. March, 1986

RULE V UNAVAILABILITY An applicant is unable to procure insurance through ordinary methods, ~~and insurance is unavailable when the applicant has been declined insurance coverage by a minimum of three insurers, including one surplus line agent.~~ if his application for insurance has been rejected by a minimum of two insurers and one surplus line agent. The applicant shall submit, to the commissioner, written documentation by an insurance agent licensed in this state of the applicant's inability to procure insurance.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986 IMP: Sec. 5 and 8(1)(c), Ch. 11, Sp. L. March, 1986

RULE VI ELIGIBLE APPLICANTS Same as proposed rules.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986 IMP: Sec 10(1), Ch. 11, Sp. L. March, 1986

RULE VII LINES OF INSURANCE ~~Insurance coverage that an insurer is qualified to write in this state is that line~~ The underwriting committee shall submit applications to insurers participating in the plan for only those lines of insurance which the insurer is authorized to transact in this state.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986 IMP: Sec. 12(3), Ch. 11, Sp. L. March, 1986

RULE VIII EFFECTIVE DATE OF POLICY Same as proposed rules.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986 IMP: Sec. 13, Ch. 11, Sp. L. March, 1986

RULE IX SEVERABILITY Same as proposed rules.

AUTH: Sec. 16, Ch. 11, Sp. L. March, 1986 IMP: Sec. 1 through 16, Ch. 11, Sp. L. March, 1986

3. The authority of the agency to adopt the proposed rules is provided in sections 8 and 16, chapter 11, Special Laws, March 1986, and the rules implement sections 1 through 16, chapter 11, Special Laws, March, 1986.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State May 1, 1986.

BEFORE THE STATE AUDITOR

AND COMMISSIONER OF INSURANCE

OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to the Montana Title Insurance Act	))))	NOTICE OF ADOPTION OF ARM 6.6.2201 THROUGH 6.6.2203

TO: ALL INTERESTED PERSONS

1. On January 1, 1986, the State Auditor and Commissioner of Insurance (commissioner) published notice of public hearing on the proposed adoption of Rules I through III (subchapter 22, ARM 6.6.2201 through 6.6.2203), pertaining to the Montana Title Insurance Act, at page 12 of the 1986 Montana Administrative Register, issue number 1.

2. The commissioner adopts these rules to meet requests by the Montana Land Title Association for clarification of the Montana Title Insurance Act; to define the phrase, "owner's title insurance policy or commitment to insure", as used in 33-25-214(3); to set forth the situations under which an insurer may issue a policy without taking exception to a specific recorded, inchoate, or death tax item; to describe what is meant by "escrow, closing, or settlement services" in 33-25-201; to explain the duties of an escrow agent in performing escrow, closing, or settlement services; to outline restrictions concerning the use of escrow funds; to explain the way in which an escrow agent must keep records concerning escrow funds; to outline the audit requirements with which an escrow agent must comply; to define "rebate" as that term as used in 33-25-202 and 33-25-401; to define "inducement" as that term as used in 33-25-202; and to provide that a title insurance agent, who is also a licensed attorney rendering real services in the transaction insured, must render a separate legal billing therefor.

3. The commissioner has adopted the rules with the following changes:

~~Rule I~~ 6.6.2201 LIENS, ENCUMBRANCES, AND STANDARDS OF INSURABILITY ~~(1) Defects of title are not regulated by subsection (2) or (3) of this rule.~~ (1)(a) The provisions of subsections (2) and (3) of ARM 6.6.2201 do not apply to defects in title. Defects in title arise when a document or proceeding upon which title depends fails to accomplish its stated purpose. Defects of title include, but are not limited to, a break in the chain of title, a defective probate proceeding, an improperly acknowledged deed, or an error in a legal description.

(b) The provisions of subsections (2) and (3) of ARM 6.6.2201 apply to other interests against the property. "Other interests against the property" means those interests created by documents the purpose of which is to encumber title. "Other

interests against the property" include recorded liens or encumbrances.

(2) Deleted in its entirety and replaced with the following: (2) "[I]ssuing an owner's title insurance policy or commitment to insure" includes issuing a title insurance policy or commitment to insure to the person who is or will be the owner or tenant in possession of the property to which title is insured, but does not include issuing a title insurance policy or commitment to insure to a lender or other party whose insured interest concerns the validity, enforceability, or priority of a lien securing a financial obligation.

(3) The requirements that a title insurer show all outstanding enforceable recorded liens or other interests against the property title to be insured under an owner's title insurance policy and make a determination of insurability as to possible liens and encumbrances shall not be construed as prohibiting a title insurer from issuing a policy without taking exception to a specific recorded, inchoate, or death tax item when sound underwriting standards and practices allow insurance against the item. Specifically, an insurer may issue a policy without taking exception to a specific recorded, inchoate, or death tax item in the following situations:

(3)(a)-(3)(e) Same as proposed rules.

(3)(f) Deleted in its entirety.

(3)(g) Renumbered as (3)(f).

(4) For purposes ~~of Rule I(3)(d)~~ ARM 6.6.2201(3)(d), "sufficient indemnity" means a direct obligation to pay such liens in an amount judged adequate by the insurer and executed by a financial institution regulated by the state or federal government or executed by a responsible person except where the provisions of 71-3-516, MCA are applicable.

(5) ~~Rule I(3)(d)~~ ARM 6.6.2201(3)(d) shall apply to recorded liens being contested if the indemnity is 150% of the claim, is executed by a financial institution regulated by the state or federal government, or is in an amount judged to be adequate by the insurer.

(6) Deleted in its entirety.

~~(7)~~(6) For purposes of ~~Rule I(4)~~ ARM 6.6.2201(4), "responsible person" is any person, or persons if they are jointly and severally liable, whose currently verified balance sheet upon examination is determined by the insurer to be sufficient for the purpose of the indemnity given. Verified copies of all statements shall be retained by the insurer or its agent.

AUTH: 33-1-313, MCA IMP: 33-25-214, MCA

Rule II ARM 6.6.2202 ESCROW, CLOSING, OR SETTLEMENT SERVICES

(1)-(5) Same as proposed rules.

(6) Upon completion of an escrow transaction, the escrow agent shall deliver to each principal a verified written, signed closing statement of the principal's account. The statement shall show all receipts and disbursements of escrow funds for that account as well as charges and credits to that

account. Service charges made by the escrow agent and all disbursements by the agent in connection with the transaction shall be clearly designated. Payments outside of escrow, if shown in the statement, shall be set forth separately from payments under the escrow. A copy of the closing statement shall be retained by the escrow agent in the appropriate escrow file. The statement shall be dated and signed, a copy delivered to each interested real estate broker, and an additional copy furnished to an appropriate principal upon his request.

(7)-(14) Same as proposed rules.

(15) ~~Each escrow agent shall have available not less often than the end of every third year, an audit by an independent public accountant of the escrow accounts of the agent, and such audit shall be available to the commissioner upon request.~~ The commissioner may request, once within a three-year period, an audit by an independent public accountant of an escrow agent's escrow accounts. If the commissioner requests an audit of an escrow agent's escrow accounts, and the independent public accountant conducting the audit discovers discrepancies in the audited account, the commissioner may require annual audits of the escrow account until the commissioner believes the problems have been resolved. The scope of the audit shall be limited to a sample check of closed escrow transactions, a verification of open escrows, and a determination as to whether the escrow agent's records are maintained in a manner to permit such audit. The audit report shall contain a balance sheet of the close of the audit period; a statement of receipts and disbursements of escrow funds showing reconciliation between the beginning and ending balances; a list of all bank accounts of the escrow agent containing escrow funds showing the name, address, and account number; a list of any closing escrow accounts which have been open for more than one year at the end of the audit period showing the name, number, and amount of such escrow liability; an explanation of the method used to verify the escrow account liabilities together with the number of escrows; the number of confirmations requested; the number of discrepancies and approximate percentage of escrow accounts checked; and a statement that the escrow agent has complied with the regulations of the commissioner as to escrow accounts listing any exceptions as disclosed by such sampling and said statements and lists.

AUTH: 33-1-313, MCA IMP: 33-25-201, MCA

~~Rule III~~ ARM 6.6.2203 REBATES AND INDUCEMENTS Same as proposed rules.

AUTH: 33-1-313, MCA IMP: 33-25-202, MCA
33-25-401(1)(a), MCA

4. The commissioner received written comments and testimony in support of and in opposition to the proposed rules. The comments and the commissioner's responses to them are summarized as follows:

(a) Don Al Asay, representing Safeco Title Insurance Company of Idaho, and Loren Solberg, representing County Guaranty Title Insurance Company, stated that the applicability of subsections (1) and (3) of Rule I is unclear because the phrase "defects of title", as used in Rule I(1), is not defined. They suggested amending the rule to provide that defects in title arise when a document or proceeding upon which title depends fails to accomplish its stated purpose, and that defects in title include a break in the chain of title, a defective probate proceeding, an improperly acknowledged deed, or an error in a legal description. In addition, they suggested that the applicability of subsections (2) and (3) of Rule I be limited to "other interests against the property", and that "other interests against the property" be limited to recorded liens or encumbrances.

The commissioner agreed with these comments and amended the rule to reflect them.

(b) Loren Solberg, representing County Guaranty Title Company, stated that Rule I(2) draws a stricter definition of "knowingly" than contemplated by 1-1-204, MCA (1985). He noted that the definition of "knowingly" contained in 1-1-204, MCA (1985) is adequate for purposes of 33-25-214(3), MCA (1985). He argued that the rules should distinguish between an owner's title insurance policy under which the insured has an indeterminate amount of tangible and intangible equity in the property in excess of the liability of his title insurance, and mortgage title insurance under which the insured has a determinate amount of equity in the insured property. To make this distinction, and to eliminate the overly strict definition given "knowingly", he proposed that Rules I(3)(f) and I(6) be deleted and that Rule 1(2) be amended to read as follows:

> (2) "issuing an owner's title insurance policy or commitment to insure" is issuing a title insurance policy or commitment to insure in which the insured or proposed insured is, or is to become, the owner or tenant in possession of the property to which title is insured, as distinguished from the insured or proposed insured being a lender or other party whose insured interests concerns the validity, enforceability, or priority of a lien securing a financial obligation.

The commissioner agreed with these comments and amended Rule I(2) and deleted Rules I(3)(f) and I(6) as requested.

(c) Don Al Asay, representing Safeco Title Insurance Company of Idaho, stated that Rule I should apply only to the issuance of an owner's title insurance policy. He recommended that Rule I(3) be amended to read:

> The requirements that a title insurer show all outstanding enforceable recorded liens or other interests against the property title to be insured under an owner's title policy and make ... .

and that Rules I(3)(f) and I(6) be deleted.

The commissioner agreed with these comments and amended Rule I(3) and deleted Rules I(3)(f) and I(6) as requested.

(d) Maurice Maffei, stated that "responsible person", as used in Rule I(3)(g), should be defined.

The commissioner rejected this comment because the term, "responsible person", as used in Rule I(3)(a) is sufficiently clear.

(e) Daniel B. Levine, representing Independent Title Services, asked that proposed Rule II(5) be amended to clarify whether writing title insurance and collecting title insurance premium is a business interest to be disclosed.

The commissioner believes that neither writing title insurance nor collecting title insurance premium is a business interest to be disclosed. An escrow agent must, however, disclose any financial relationship with the buyer, seller, or lenders involved in the transaction.

(f) Don Al Asay, representing Safeco Title Insurance Company of Idaho, proposed that the term, "verified", as used in Rule II(6) is unclear. He noted that if the rule requires a sworn statement as to the validity of the settlement statement, it departs from customary escrow practice.

The commissioner agreed with this comment, deleted the word, "verified", and amended the Rule to require a written, signed closing statement.

(g) William F. Gowen, representing Helena Abstract and Title Company, proposed that, to lessen hardship on small- and medium-sized offices, Rule II(15) be amended to require an audit by an independent public accountant, at the commissioner's discretion, once within a three-year period. He also suggested that a provision be added, permitting an annual audit, at the commissioner's discretion, if discrepancies are discovered during an audit.

The commissioner agreed with these comments and amended Rule II(15) to reflect them.

(h) In commenting to Rule III(2)(b), Daniel B. Levine, representing Independent Title Services, noted that under current practice some title insurers promise, at the time they issue the "Property Profile", to let realtors know, at no charge, if the title contains something they should know about.

The commissioner acknowledges this comment and notes that the rule simply prohibits the practice.

(i) Daniel B. Levine, representing Independent Title Services, suggested that the form referred to in Rule III(2)(b) should include the following statement, "This form is furnished without cost or obligation."

The commissioner agreed with this comment and added the statement to the form.

(j) Daniel B. Levine, representing Independent Title Services, and Jack Johns, stated that title insurers will perform closings below cost and subsidize them through title insurance premiums unless a minimum closing fee, based upon the average time spent in closing and the average apportioned costs, is set in Rule III(2)(d). Loren Solberg responded that as liability increases, closing fees should increase; and (2)

if a minimum closing fee were set, title insurers would charge the minimum closing fee without considering their increased liability.

The commissioner accepted Mr. Solberg's argument and did not amend Rule III(2)(d).

5. The authority of the agency to adopt the proposed rules is based on Section 33-1-313, MCA, and the rules implement Section 33-25-104, et seq., MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 5th day of May, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ARCHITECTS

In the matter of the amendments of 8.6.406 concerning qualifications, 8.6.407 concerning examinations, 8.6.409 concerning seals, and adoption of new rule 8.6.414 concerning disciplinary actions and new rule 8.6.415 concerning partnerships	NOTICE OF AMENDMENTS OF 8.6.406 QUALIFICATIONS REQUIRED OF ARCHITECTS LICENSED OUTSIDE MONTANA, 8.6.407 EXAMINATION, 8.6.409 INDIVIDUAL SEAL, AND ADOPTION OF NEW RULES I (8.6.414) DISCIPLINARY ACTIONS, AND II (8.6.415) ARCHITECT PARTNERSHIPS TO FILE STATEMENT WITH BOARD OFFICE

TO: All Interested Persons:

1. On March 27, 1986, the Board of Architects published a notice of amendments and adoption of the above-stated rules at page 404, 1986 Montana Administrative Register, issue number 6.

2. The board has amended and adopted the rules as proposed with the following changes.

3. Rule 8.6.406 was amended and adopted as proposed except that the Administrative Code Committee would like section 37-65-305 removed from the authority citation.

4. Rule 8.6.407 was amended and adopted with the following change to (2)(a)(ii):

"8.6.407 EXAMINATION (ii) Meet the alternate education criteria ~~adopted, up-dated regularly, and~~ outlined in the National Council of Architectural Registration Boards (NCARB) Circular of Information Number 3, 1985."

Auth: 37-65-204, MCA Imp: 37-65-303, MCA

5. The Administrative Code Committee commented that, by not including the year of the pamphlet, the amendment violated the licensee's right to know. (2-4-307(3)) The Code Committee also wanted section 37-65-303, MCA removed from the authority citation and wanted 37-65-101, MCA added to the implementing section.

6. Rule 8.6.409 was amended and adopted as proposed.

7. New Rule I (8.6.414) was adopted as proposed with the following change to subsection (3):

"I. (8.6.414) DISCIPLINARY ACTIONS (3) When a license is revoked or suspended, the licensee must surrender to the board his wall certificate, seal, and current renewal license."

Auth: 37-1-136, 37-65-204, MCA Imp: 37-1-136, 37-65-321, MCA

8. The Administrative Code Committee requested the word "seal" be added to subsection (3) and also that section 37-65-204, MCA be added to the authority citation and section 37-65-321, MCA be added to the implementing citation.

9. New Rule II (8.6.415) was adopted as proposed with section 37-65-204, MCA being added to the authority citation and section 37-4-208, MCA being added to the implementing citation by request of the Administrative Code Committee.

10. No other comments or testimony were received.

BOARD OF ARCHITECTS
GEORGE C. PAGE, PRESIDENT

BY: _____
ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, May 5, 1986.

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

In the matter of the amendment of 8.22.502 concerning pari-mutuel wagering	)	NOTICE OF AMENDMENT OF 8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS

TO: All Interested Persons:

1. On October 18, 1985, the Board of Horse Racing published a notice of amendment of the above-stated rule at page 1455, issue 19 of the 1985 Montana Administrative Register. That amendment had to be renoticed for hearing because the required number of persons designated therein requested a public hearing. That hearing was noticed in issue number 2 of the 1986 Montana Administrative Register published on January 31, 1986.

The hearing was held on March 7, 1986 at 4:30 p.m., in the Bonanza West of the Ponderosa Inn, Great Falls, Montana.

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

3. No comments or testimony were received.

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

BY: _____
ROBERT J. WOOD, COUNSEL

Certified to the Secretary of State, May 5, 1986.

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

In the matter of the amendment of 8.42.402 concerning examinations	)))	NOTICE OF AMENDMENT OF 8.42.402 EXAMINATIONS

TO: All Interested Persons:

1. On March 27, 1986, the Board of Physical Therapy Examiners published a notice of amendment of the above-stated rule at page 418, 1986 Montana Administrative Register, issue number 6.

2. The board has amended the rule as proposed with the following change.

3. "8.42.402 EXAMINATIONS (2) The examination ~~and meeting dates~~ will be offered in February, July and November of each year. Exact examination dates will be established by PES as the national uniform testing date. Applicants must have their applications in the board office at least 45 days prior to the examination date."

Auth: 37-11-201, MCA Imp: 37-11-303 & 304, MCA

4. The Administrative Code Committee stated that the amendment, as shown in original notice, would conflict with 37-11-304(3). The examination is to be offered at least every six months. The Board decided to offer the examination in February, July and November to conform to the statute. A comment was also received from Jerome B. Connolly in support of the rule amendment.

5. No other comments or testimony were received.

BOARD OF PHYSICAL THERAPY EXAMINERS
RICHARD BARTOW, CHAIRMAN

BY: _____
ROBERT J. WOOD, GEN. COUNSEL

Certified to the Secretary of State, May 5, 1986.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
FINANCIAL DIVISION

In the matter of the amendment of 8.80.301 relating to advertising by consumer loan licensees	))))	NOTICE OF THE AMENDMENT OF 8.80.301 ADVERTISING

TO: All Interested Persons:

1. On March 13, 1986, the Financial Division published a notice of amendment of the above-stated rule at page 321, 1986 Montana Administrative Register, issue number 5.

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

3. No comments or testimony were received.

FINANCIAL DIVISION
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, May 5, 1986.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule 32.3.212 regarding import of cattle from states classified as Brucellosis A, B, C or Free	)))))	NOTICE OF AMENDMENT OF RULE 32.3.212, ADDITIONAL REQUIREMENTS FOR CATTLE

TO: All Interested Persons.

1. On March 27, 1986 at page 432, issue No. 6 of the Montana Administrative Register, the Board of Livestock published notice of a proposed amendment to Rule 32.3.212 regarding changes in the import requirements for cattle from states designated Brucellosis A, B, C or Free.

2. The Board has amended the Rules as proposed with these changes:

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE

(1) Remains the same.

(2) (a) Same as proposed.

(i) through (iv) remains the same.

(v) Montana cattle returning from an "A" area in ~~adjacent~~ adjoining states where they have pastured as part of normal ranching operating. The cattle must originate from an established Montana herd. No additions to the herd may occur while out of state. The pasture premises must be leased or owned by the owner of the cattle. The owner must file an acceptable grazing permit herd plan prior to the cattle leaving Montana. The owner must assume any liability the department may incur for granting this exception if brucella infection is traced to the pasture location from which the cattle returned. A visual inspection by the department of the pasture area, at the owner's expense, may be required before acceptance of the herd plan. If at any time the department determines the cattle may have been exposed to brucellosis, it may prohibit reentry and require such testing as it determines is necessary.

(b) Remains the same.

(3) Same as proposed.

(4) (a) Same as proposed.

(b) Vaccinated...THE GRAZING PERIOD MAY NOT EXCEED SIX MONTHS.

(c) Same as proposed

(5) Remains the same.

3. The original notice did not state that Rule implements 81-2-703 - 706, MCA.

4. No other comments or testimony were received.

5. Adjoining in place of adjacent ensures that only states directly bordering Montana may participate in this exception. The 6 month limitation will preclude the chance of a possible infected heifer from calving while on the grazing range.

Nancy Espy
Chairman, Board of Livestock

BY: Les Graham, Executive Secretary to the Board of Livestock

Certified to the Secretary of State May 5,1986

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule 32.3.213 regarding the addition of cats to import requirements, applying to rabies vaccinations	NOTICE OF AMENDMENT OF RULE 32.3.213, SPECIAL REQUIREMENTS FOR CATS AND DOGS

TO: All Interested Persons.

1. On March 27, 1986 at page 437, issue No. 6 of the Montana Administrative Register, the Board of Livestock published notice of a proposed amendment to Rule 32.3.213 which would add cats to the import requirements found in that Rule for dogs. The Rule concerns rabies vaccinations.
2. The Board has amended the Rule as proposed, with the addition in 32.3.213(1)(b) that the health certificate must note the serial number of both the rabies vaccine and the tag. The original proposal required only the serial number of the rabies tag. The change is as follows:

32.3.213 SPECIAL REQUIREMENTS FOR DOGS AND CATS

(1) Same as proposed.

(b) have been officially vaccinated by a licensed veterinarian against rabies, in accordance with procedures recommended in the latest version of the U. S. Public Health Compendium for rabies vaccines and are identified on the health certificate by the date of rabies vaccination and the serial number of the rabies vaccine and tag. Rabies vaccination requirements do not apply to puppies and kittens under three (3) months of age.

(2) Same as proposed.

3. No other comments or testimony were received.
4. The reason for the change is that vaccines contain lot serial numbers and their origins may be traced by that number.

Nancy Espy
Chairman, Board of Livestock

BY:
Les Graham, Executive Secretary
to the Board of Livestock

Certified to the Secretary of State May 5, 1986.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rule 32.3.407A, regarding Brucellosis test on change of ownership, waiving all test requirements.	)))))	NOTICE OF AMENDMENT OF RULE 32.3.407A, CHANGE OF OWNERSHIP TEST

TO: All Interested Persons.

1. On March 27, 1986 at page 435, issue No. 6 of the Montana Administrative Register, the Board of Livestock published notice of the proposed amendment of Rule 32.3.407A regarding the waiver of all change of ownership Brucellosis test requirements.
2. The Board has adopted the amendment as proposed.
3. No comments or testimony were received.

Nancy Espy
Chairman, Board of Livestock

BY: Les Graham, Executive Secretary
to the Board of Livestock

Certified to the Secretary of State, May 5, 1986.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the adoption of new rules concerning disciplinary actions	NOTICE OF CORRECTED ADOPTION OF RULES 36.21.502 VIOLATION AND COMPLAINT PROCEDURES AND 36.21.504 DISCIPLINARY ACTIONS

TO: ALL INTERESTED PERSONS:

1. On Thursday, April 24, 1986, a notice of adoption was published at page 671, 1986 Montana Administrative Register, issue number 8. That notice contained a summary of a public hearing held on definition rules and disciplinary action rules of which 36.21.502 and 36.21.504 were a part. These two rules as printed in the adoption notice contained material that was not contained in the notice of proposed adoption published on February 27, 1986 at page 235, 1986 Montana Administrative Register, issue number 4. Because the information was not correct, this notice of corrected adoption is being published.

The two rules as adopted should read as follows: (new matter underlined, deleted matter interlined).

Rule III now "36.21.502 VIOLATION AND COMPLAINT PROCEDURES (1) Whenever the Board shall have reason to believe that any person to whom a license has been issued ~~has become unfit to practice as a water well contractor or driller or~~ has violated the provisions of Title 37, Chapter 43, MCA and/or Title 36, Chapter 21, Administrative Rules of Montana, or whenever written complaint, charging the holder of a license with the violation of any provision of Title 37, Chapter 43, MCA, and/or Title 36, Chapter 21, ARM, is filed with the board, the board shall start an investigation. When the board receives a complaint, the board shall initiate an investigation within 30 days of receipt of the complaint. If from such investigation it shall appear to the board that the licensee may not be in compliance with statute or rules, the board may initiate disciplinary action."

Rule V now "36.21.504 DISCIPLINARY ACTIONS (1) For purposes of implementing section 37-43-203, MCA, the Board of Water Well Contractors may initiate disciplinary action for reasons including, but not limited to, the following:

~~(a) habitual use of alcohol or drugs to the point where it interferes with the individual's job performance;~~

~~(b) being unfit to practice because of physical or psychological impairment;~~

(ea) misrepresentation or fraud committed as a holder of a license;

(db) false or misleading advertising;

(ec) fraud or misrepresentation in obtaining a license or renewal;

~~(f) knowingly making false statements regarding qualifications and abilities of other licensed water well contractors or drillers;~~

~~(g) failure to report, through proper channels, facts known to the individual regarding the incompetent, unethical, or illegal practice of any licensed contractor or driller;~~

~~(h) violation of the construction standards established by board rule;~~

(id) violation of federal, state, municipal or county ordinances or regulations affecting the construction of water wells;

(je) violation of Title 37, Chapter 43, Montana Codes Annotated and/or Title 36, Chapter 21, Administrative Rules of Montana;

(kf) ~~lack of~~ demonstration of technical incompetence to carry out water well construction;

(lg) failure to file well logs with the proper authorities within the required time period as per section 85-2-516, MCA;

(mh) failure to provide the customer with an accurate copy of the well log upon completion of the well as per ARM 36.21.632;

(ni) allowing his license number to be used on a well log when the licensee was not actually involved in the construction of the well;

(oj) knowingly making false statements on a well log;

(pk) during the period of revocation or suspension, ~~hiring of~~ employing an individual, as a driller or contractor, whose water well contractor's or driller's license has been suspended or revoked~~, during the period of revocation or suspension~~;

(ql) failure to exercise proper supervision as required by ARM 36.21.409;

(rm) drilling of water wells by a contractor who does not have a current bond or in lieu thereof, a cashier's check, certificate of deposit, or bank draft in the correct amount, on file in the board office, as required by section 37-43-306, MCA;

(sn) performing as a contractor without a contractor's license and bond;

(to) falsifying apprenticeship records~~;~~.

(2) . . ."

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BY: Wesley Lindsay
WESLEY LINDSAY, CHAIRMAN
BOARD OF WATER WELL CONTRACTORS

Certified to the Secretary of State, May 5, 1986.

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

IN THE MATTER of Proposed Adoption of New Rules Regarding the Montana Telecommunications Act and New Rules for Minimum Rate Case Filing Requirements for Telephone Utilities	)))))	NOTICE OF ADOPTION OF RULES ARM 38.5.2701 THROUGH 38.5.2717 AND RULES 38.5.2801 THROUGH 38.5.2821

TO: All Interested Persons

1. On February 13, 1986 the Department of Public Service Regulation published notice of proposed adoption of rules regarding the Montana Telecommunications Act and minimum rate case filing requirements for telecommunications utilities at pages 166-179 of the 1986 Montana Administrative Register Issue Number 3.

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

Rule I. 38.5.2701 PURPOSE (1) ~~It remains~~ The purpose of these rules is to implement the policy of the state of Montana to maintain universal basic telecommunications service at affordable rates~~.--To~~ and, to the extent that it is consistent with maintaining universal service~~, it is further the State's policy~~ to encourage competition in the telecommunications industry, thereby allowing access by the public to advances in telecommunications technology. ~~It is the purpose of the Montana Telecommunications Act and these rules to provide a regulatory framework that will allow an orderly transition, where appropriate, from a regulated telecommunications industry to a competitive market environment.--Nothing in these rules preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetive activity.~~

(2) Regulatory jurisdiction exists over ~~basic telecommunications service that is~~ two-way switched, voice grade access and transport of communications originating and terminating in this state and nonvoice grade access and transport if intended to be converted to or from voice-grade access and transport. The Commission retains the power to protect ratepayer interests by totally regulating the rates for telecommunication services that are provided on a monopoly basis.

(3) No Change

AUTH: 69-3-822, MCA; IMP, 69-3-801 and 69-3-802, MCA

Rule II. 38.5.2702 DEFINITIONS ~~(1)--"Act" means the Montana Telecommunications Act.~~

~~(2)--"Commission" means the Montana Public Service Commission.~~

~~(3)--"Private Telecommunications Service" means the construction, maintenance or operation of a system by a person or entity for the provision of telecommunications service for that person's or entity's sole and exclusive use and not for resale, directly or indirectly.--The term "person or entity"~~

~~includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates and subsidiaries have a common ownership or control of 80 percent of the outstanding voting shares.~~

~~(4) "Regulated telecommunications service" means two-way switched, voice grade access and transport of communications originating and terminating in this state and nonvoice grade access and transport if intended to be converted to or from voice-grade access and transport.~~

(1) "Regulated telecommunications service" means two-way switched, voice grade access and transport of communications originating and terminating in this state and nonvoice grade access and transport if intended to be converted to or from voice-grade access and transport including any service, terms, charges or condition associated with or imposed to acquire or maintain regulated telecommunications service.

(2) Regulated telecommunications service does not include the provision of:

(a) No Change

(b) private telecommunications service as defined at 69-3-804, MCA;

(c), (d), (e), (f) No change

~~(5) "Resale of telecommunications service" means the resale of regulated telecommunications service. Telecommunication services may be resold with or without adding value, provided any added regulated service will result in regulation of the reseller.~~

~~(6) "Two-way switched, voice grade access and transport of communications originating and terminating in this state and nonvoice grade access and transport if intended to be converted to or from voice-grade access and transport" means basic telecommunications service, including any service, terms, charges or condition associated with or imposed to acquire or maintain basic telecommunications service.~~

AUTH: 69-3-822, MCA; IMP, 69-3-803 and 69-3-804, MCA

Rule IV. 38.5.2704 SERVICE PRESUMED TO BE BASIC TELECOMMUNICATIONS SERVICE (1) All telecommunications service is presumed to be ~~basic~~ regulated telecommunications service except ~~those~~ the services listed in 69-3-803 (3), MCA. The rules applicable to the regulation of public utilities continue to apply to ~~the regulation of basic~~ regulated telecommunications service. Telecommunications services regulated at the date of adoption of these rules continue to be regulated unless deregulated by statute and the tariff withdrawal approved by this Commission.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule V. 38.5.2705 INFORMATION REQUIRED TO DETERMINE STATUS OF SERVICE AS REGULATED OR ~~NON~~ NOT REGULATED (1) A telecommunications service provider may assert that a service it offers is not ~~basic telecommunication service and should be non~~regulated by informing the Commission of its intent to offer the service as ~~non~~ not regulated no later than 90 days

prior to offering the service as ~~non~~ not regulated. The following information shall be provided to the Commission:

(a) No change

(b) a complete description of the service asserted to be ~~non~~ not regulated, including an engineering description;

(c) No change

(d) the type, and an estimate of the number, of existing ~~or~~ and potential customers offered the service; and,

~~(e) an affidavit that all customers of the service, if any, have been appropriately informed of the provider's intent to offer the service as nonregulated;~~

~~(f)~~ (e) an affidavit that all persons and organizations on the telecommunications mailing list have been notified as required in ARM 38.5.2706.

(f) within 10 days of filing the information requested in (a) through (e), an affidavit that all customers of the service, if any, have been appropriately informed of the provider's intent to offer the service as not regulated;

(g) No change

(2) Any interested party may assert that a telecommunications service should be offered as ~~non~~ not regulated telecommunications. The burden of proof is on the party attempting to establish that the service is not ~~basic telecommunication service~~ regulated. Such a request will be considered a complaint subject to the requirements of ARM 38.2.2101 through 38.2.2107.

(3) The Commission may initiate an inquiry regarding whether a regulated telecommunications service should be offered as ~~non~~ not regulated.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule VI. 38.5.2706 NOTICE OF FILING TO INTERESTED PERSONS AND PROVIDERS (1) When, ~~under Rule V,~~ a telecommunications service provider files its intent to offer a ~~not regulated~~ service as not regulated as required by ARM 38.5.2705, it must notify all persons and entities on the telecommunications mailing list that it asserts that the service is not ~~basic telecommunications service~~ regulated. The notification shall contain the name and address of the provider, a description of the service asserted to be ~~non~~ not regulated and the mailing date.

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule VII. 38.5.2707 COMMISSION PRIMARY JURISDICTION

(1) The Commission shall have primary jurisdiction to determine if a telecommunications service is ~~basic telecommunications service subject to regulation~~ regulated. ~~To make its determination the~~ The Commission may make its determination using ~~use~~ contested case procedure or, ~~make its determination after a public hearing or, if there is no substantive factual question,~~ if no hearing is requested, may act without a hearing.

~~(a)~~ (2) Any ~~telecommunications provider or customer~~ interested party may comment in writing on the assertion that a

telecommunications service is not basic telecommunications service by filing comments with the Commission within 20 days of the mailing date of the notification required in ARM 38.5.2706 or, if a hearing is scheduled, within 10 days of the hearing. The Commission may consider these comments in making its determination.

~~(2)~~(3) If the Commission ~~acts~~ makes its determination without a hearing~~:~~

~~----(b)---The Commission~~ it shall inform the provider that it has accepted or rejected ~~its~~ the assertion that the service is ~~non~~ not regulated within 60 days of the filing of the information required in ARM 38.5.2705. If the Commission takes no action within 60 days, the provider may consider the service ~~non~~ not regulated.

~~(3)~~(4) If ~~the Commission requires~~ a hearing is required:

(a) ~~It~~ The Commission must promptly schedule the hearing and must give written notice as required in ARM 38.2.1801.

~~(b)--Any telecommunications provider or customer may comment in writing on the assertion that a telecommunications service is not basic telecommunications service by filing comments with the Commission within 20 days of the notice of hearing required by 38.2.1801.---The Commission may consider these comments in making its determination.~~

~~(c)~~(b) The Commission must inform the telecommunication provider that it has accepted or rejected its assertion that the service is ~~non~~ not regulated within 60 days of the hearing.

~~(4)~~(5) Not less than ~~10~~ 20 days prior to offering the service as ~~non~~ not regulated the telecommunications provider shall inform current customers, if any, that the service will no longer be regulated.

AUTH: 69-3-822, 69-1-110(3), MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule VIII. 38.5.2708 ADDITIONAL INFORMATION THAT MAY BE REQUIRED FROM REGULATED PROVIDERS (1) If the Commission determines that a service is ~~non~~ not regulated and the telecommunications provider also provides regulated telecommunications service the Commission may require information regarding:

(a) the revenues of and the cost of providing the ~~non~~ not regulated service;

(b), (c) No change

AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

~~Rule IX.---PROCEDURE TO BE REGULATED A TELECOMMUNICATION SERVICE---(1)---The Commission may initiate an examination of whether a nonregulated telecommunications service is basic telecommunications subject to its jurisdiction.~~

~~----(2)--Any interested party may request an examination of whether an unregulated telecommunications service is basic telecommunications----service----subject----to----Commission jurisdiction.---The burden of proof is on the party attempting to establish that the service should be regulated.---Such a request will be considered a complaint subject to the require-~~

~~ments of ARM 38.2.2101 through 38.2.2107.~~
AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA

Rule X. 38.5.2709 PROHIBITION AGAINST CROSS-SUBSIDIZATION (1) No provider of regulated telecommunications service may use current revenues earned or expenses incurred in conjunction with a regulated service to subsidize a ~~non~~ not regulated service. The accounting records of the provider shall be kept in a manner that provides adequate information to detect cross-subsidization. The Commission has the authority to determine the proper assignment or allocation of revenues, expenses and common investment between regulated and ~~non~~ not regulated service.

(2) Commission review to determine the proper allocation between regulated and ~~non~~ not regulated service may be in a rate case or the Commission may initiate an investigation.

(3) ~~An~~ A fully allocated cost accounting or tracking system shall be implemented by each telecommunications provider to separate all revenues and costs that are ~~not~~ regulated by this Commission.

(a) If the Commission finds it necessary it may require a telecommunications provider to maintain entirely separate records and accounts of ~~non~~regulated ~~or detariffed~~ telecommunications service.

(4) On finding that a ~~non~~ regulated service is subsidizing a not regulated service the Commission may eliminate the subsidy by any method it deems appropriate.

(5) Nothing in Title 69, Chapter 5 3, Part 8 precludes the Commission from exercising its authority under 69-3-202, MCA.
AUTH: 69-3-822, MCA; IMP, 69-3-806 and 69-3-202, MCA

Rule XI. 38.5.2710 MANNER OF REGULATION OF TELECOMMUNICATION SERVICE (1) No change

(2) The statement shall contain the ~~following~~ information required in 69-3-805(1)(a)-(c), MCA, and:

~~(a) the name and address of the provider;~~

~~(b)~~ (a) a description ~~of the telecommunications services offered including type~~ of the facilities used;

~~(c) the geographic area served;~~

~~(d) a description of the market served;~~

~~(e)~~ (b) tariffs for the regulated telecommunications service, if not on file, or a request that tariffs not be required by the Commission.; ~~and~~

~~(f) such other information as the Commission may require to accomplish the purpose of the Act;~~

~~(3) The provision of any regulated telecommunications service does not subject the provider to regulation of any other telecommunications service otherwise exempt under the Act.~~
AUTH: 69-3-822, MCA; IMP, 69-3-805, MCA

Rule XII. 38.5.2711 REGULATION OF RATES AND CHARGES
(1) No Change

~~(2) The Commission may establish specific rates, tariffs, or fares for the provision of regulated telecommunications service to the public. Alternatively, the Commission may authorize the provision of regulated telecommunications service under such terms and conditions as may best serve the State's telecommunications policy.~~

~~(3)~~(2) The Commission may initiate a determination of whether alternatives to rate setting are appropriate or the telecommunications provider or an interested party may request a determination. If the Commission initiates the determination it must notify all parties on the telecommunications mailing list that it intends to consider alternatives to rate setting and may give any additional notice it deems appropriate. If a telecommunications provider or an interested party petitions the Commission for an alternative to rate setting it shall notify all parties on the telecommunications mailing list.

(3) To make its determination the Commission may use contested case procedure, ~~require a public hearing, or, if there is no material factual question,~~ or if no hearing is requested, act without a hearing.

(4)(a), (b), (c), (d), (e), (f), (g) No Change

AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA

Rule XIII. 38.5.2712 ALTERNATIVE TO RATE SETTING

(1) To determine if any of the alternatives to rate setting listed in part (2) of this rule are appropriate, the Commission shall consider the ~~following~~ factor listed in 69-3-807(3)(a)-(e).:

~~(a) the number, size and distribution of alternative providers of service;~~

~~(b) the extent to which service is available from alternative providers in the relevant market;~~

~~(c) existing economic barriers to market entry;~~

~~(d) the ability of alternative providers to make functionally equivalent or substitute services readily available;~~

~~(e) the overall impact of the proposed terms and conditions on the continued availability of existing service at just and reasonable rates; and~~

~~(f) any other factors the Commission considers relevant to promote the purpose of this Act.~~

(2) If the Commission determines that an alternative to rate setting is appropriate for the telecommunications service the Commission may act as allowed in 69-3-807(2)(a)-(e).:

~~(a) totally detariff the service;~~

~~(b) detariff rates for the service but retain tariffs for the service standards and requirements;~~

~~(c) detariff rates but require notice of price changes to the Commission and customers;~~

~~(d) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum is cost compensatory; or~~

~~(e) establish any other rate or service regulation that promotes the purpose of this Act or Rules.~~

(3) No Change
AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA

Rule XV. 38.5.2714 PROCEDURES TO REQUIRE RE-TARIFFING (1) The Commission retains the right to ~~require~~ retariff~~ing~~. A determination that a service should be retariffed is dependent on the factors listed in ~~Rule XVIII (1)(a) through (e)~~ 69-3-807(3)(a)-(e).

(2) Any interested party may petition the Commission for a redetermination of whether an alternative to rate setting is appropriate. The burden of proof is on the party attempting to establish that the service should be retariffed. Such a request will be considered a complaint subject to the requirements of ARM 38.2.2101 through 38.2.2107.

(3) If the Commission intends to ~~redetermine~~ reconsider whether alternatives to rate setting are appropriate, it shall notify the telecommunication provider and all those on the telecommunications mailing list. ~~If there is no material factual question the Commission may make its determination without a hearing.~~ Any interested party may ~~comment by filing~~ file written comments within 20 days of notification that the Commission intends to ~~redetermine~~ reconsider whether alternatives to rate setting are appropriate. If there is no material factual question the Commission may make its determination without a hearing.
AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA

Rule XVIII. 38.5.2717 BILLING (1) ~~Regulated~~ A Telecommunications service regulated by the Montana Public Service Commission cannot be denied or terminated because of nonpayment of ~~nonregulated~~ services deregulated by this act. A telecommunications provider's bill to customers shall clearly indicate regulated service and distinguish between tariffed and detariffed service. Regulated and ~~non~~ not regulated service may appear on the same bill but must be presented as separate line items.

(2) Undesignated Ppartial payments of a bill shall be applied first to regulated service. Regulated service may not be effected by billing disputes over ~~non~~ not regulated service.
AUTH: 69-3-822, MCA; IMP, 69-3-102 and 69-3-201, MCA

Rule XIX. 38.5.2801 LETTER OF TRANSMITTAL (1) The letter accompanying ~~of~~ a telecommunications utility ~~transmitting~~ a rate case filing to the Commission ~~for filing~~ shall contain a minimum of the following:

(a) A ~~a~~list of documents submitted with the filing;

(b) A ~~a~~list of names and addresses of those to whom copies of the rate case have been mailed;

(c), (d), (e), (f), (g) No Change
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XX. 38.5.2802 APPLICATIONS FOR RATE INCREASES (1) Applications for rate increases exceeding $500,000

annually shall include, minimally, the information required in ARM 38.5.2808 through 38.5.2820. Applications for rate increases not exceeding $500,000 annually shall contain such information the utility feels will allow the Commission to adequately evaluate the request for an increase in rates. Additional information may be required by the Commission or its staff subsequent to the time of filing.

(2) The original and ten copies of the letter of transmittal, the application, all testimony, and all statements required in ARM 38.5.2808 through 38.5.2820 inclusive shall be submitted to the Commission at the date of filing. Montana Consumer Counsel shall receive two copies of the same materials.

(3) One copy of all of the material required in these rules shall be submitted on computer diskettes compatible with either IBM personal computers or an IBM System 36 where possible.

(4) No Change

AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXIV. 38.5.2806 UNIFORM SYSTEM OF ACCOUNTS TO BE GENERALLY FOLLOWED (1) All statements and schedules shall be prepared in accordance with the Federal Communications Commission Uniform System of Accounts, provided that such action does not conflict with Montana law and the Commission's rules and orders. If the applicant believes that the FCC classifications are inconsistent with this Commission's orders, the applicant's treatment and the inconsistency shall be stated on all related materials disclosing full particulars properly cross-referenced to the filing. Computations and other information related to the inconsistency shall be available for examination by the staff and intervenors. The treatment of any ~~cost~~ expense, rate base or revenue item that is not in conformance with, or is inconsistent with, prior Commission orders is to be clearly identified and explained.

AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXX. 38.5.2812 STATEMENT E -- ALLOCATION OF OVERALL ACCOUNTS (1) Statement E shall set forth the allocation of all overall accounts to ~~obtain~~ separate the amounts applicable to regulated service and not regulated services and shall provide a complete explanation of the method, procedures, and significant data used in making the allocations. All allocation factors shall be provided. Any method or procedure for allocating revenues or costs that has changed since the prior rate case must be specifically set forth and explained.

AUTH: 69-3-103, MCA; IMP, 69-3-821 and 69-3-822, MCA

Rule XXXII. 38.5.2814 STATEMENT G -- INCOME TAXES (1) Statement G shall include a reconciliation between booked taxes and actual taxes paid. All adjustments shall be completely described and the amounts thereof shown separately. Amounts of deferred taxes debited and credited shall be shown separately. There also should be shown the

amounts and basis of assignments of taxes attributed to ~~non~~ not regulated operations. Any abnormalities such as nonrecurring gains, losses and deductions affecting the income tax for the test period shall be explained and the tax effect set forth.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXIII. 38.5.2815 STATEMENT H -- RATE OF RETURN (1) Statement H shall show the percentage rate of return claimed. The statement shall show the cost of debt capital, preferred stock capital, and common stock capital and the overall rate of return claimed based on the utilities capitalization. In addition, items required in ARM 38.5.2816 through 38.5.2819, inclusive, shall be submitted as part of Statement H. In such cases where 50 percent or more of the common stock of the public utility is not held by the public but is owned by another corporation, the information required in Statement H shall also be submitted to the extent applicable with respect to the parent company.
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXVI. 38.5.2818 COMMON STOCK CAPITAL (1) Statement H shall include the following for each sale of common stock during the ~~five~~ two year period preceding the most recently available balance sheet:
(a), (b), (c), (d), (e), (f), (g), (h), (i), (2)(a), (b), (c), (d), (e), (f) No Change
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXXVII. 38.5.2819 STATEMENT H-1 -- REACQUISITION OF BONDS OR PREFERRED STOCK (1) If any bonds or preferred stock have been reacquired by the utility during the 18 months prior to the date of filing, show full details in Schedule H-1, including:
(a), (b), (c), (d) No Change
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

3. The Commission has adopted the rules as proposed:
Rule III. 38.5.2703 NOTICE
AUTH: 69-3-822, MCA; IMP, 69-3-803(3), 69-3-807, MCA
Rule XIV. 38.5.2713 FILING REQUIREMENT OF DETARIFFED SERVICES
AUTH: 69-3-822, MCA; IMP, 69-3-807, MCA
Rule XVI. 38.5.2715 FORBEARANCE
AUTH: 69-3-822, MCA; IMP, 69-3-808, MCA
Rule XVII. 38.5.2716 FILING OF NEGOTIATED CONTRACT
AUTH: 69-3-822, MCA; IMP, 69-3-808, MCA
Rule XXI. 38.5.2803 ANALYSIS OF TOTAL SYSTEM COSTS FOR A TWELVE MONTH HISTORICAL TEST YEAR
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA
Rule XXII. 38.5.2804 OTHER DATA RELIED ON
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA
Rule XXIII. 38.5.2805 WORKING PAPERS TO BE FILED
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

Rule XXV. 38.5.2807 COST OF SERVICE DATA
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA
Rule XXVI. 38.5.2808 STATEMENT A -- BALANCE SHEET
AUTH: 69-3-103, MCA; IMP, 69-2-101, 69-3-821 and 69-3-822, MCA
Rule XXVII. 38.5.2809 STATEMENT B -- INCOME STATEMENTS
AUTH: 69-3-103, MCA; IMP, 69-2-101, 69-3-821 and 69-3-822, MCA
Rule XXVIII. 38.5.2810 STATEMENT C -- RATE BASE
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA
Rule XXIX. 38.5.2811 STATEMENT D -- PLANT NOT USED AND USEFUL
AUTH: 69-3-103, MCA; IMP, 69-2-101, and 69-3-109, MCA
Rule XXXI. 38.5.2813 STATEMENT F -- AFFILIATED INTEREST TRANSACTIONS
AUTH: 69-3-103, MCA; IMP, 69-2-101 and 69-3-821, MCA
Rule XXXIV. 38.5.2816 DEBT CAPITAL
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA
Rule XXXV. 38.5.2817 PREFERRED STOCK CAPITAL
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA
Rule XXXVIII. 38.5.2820 STATEMENT I -- COMPARISON OF SALES AND REVENUES
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA
Rule XXXIX. 38.5.2821 DEFICIENT FILINGS
AUTH: 69-3-103, MCA; IMP, 69-2-101, MCA

4. Comments: Rule I: Rule I (1) - No specific comments were received on this part. The proposed rules have been revised throughout to avoid repetition of the statute. This caused no substantive change in the rules.

Rule I (2) - Comments were received on the phrase "basic telecommunication services" and on the phrase "retains the power to protect ratepayer interests by totally regulating the rates for telecommunication services that are provided on a monopoly basis."

a) "Basic Telecommunication Services." Summarized, the comments on this phrase were that it is ambiguous and adds little to the definition of regulated service and that the phrase restricts the Commission's jurisdiction because the specific and detailed list of deregulated services in §69-3-803, MCA, make it clear that all other services are regulated, regardless of whether the service is "basic." It was suggested that the phrase be removed from Rules I(2), II(4), II(6), IV(1), V(1)(2), VII(1), (2)(a) and 3(b).

Response: The phrase "basic telecommunication services" does not clarify the definition of regulated services. The revised rules delete the phrase "basic telecommunication services" and change Rule VII to state that the PSC has primary jurisdiction to determine what telecommunication services are regulated.

b) "Retains the power ..."

One party opposed inclusion of the phrase "retains the power to protect ratepayer interests by totally regulating the rates for telecommunication services that are provided on a monopoly basis" stating that this provision is "unclear" and in excess of the PSC's jurisdiction. Another party commented that the existence of alternative providers or technology does

not enter into the definition of regulated services, therefore, the legislature intended to limit the PSC's jurisdiction to two way switched voice grade access regardless of whether the service is provided on a monopoly basis.

Response: This phrase is a paraphrase of the Statement of Intent, House Bill 577, House Judiciary Committee.

Rule II: Rule II (1), (2) and (3) - No comments were received on these parts which were deleted as repetitive of statute.

Rule II (4) - A party commented that private lines should be included in the list of deregulated services. A party commented that Rule II(4) and Rule I(6) combined provide an additional and inappropriate limitation on the PSC's jurisdiction that conflicts with 69-3-803(3), MCA, because all services but those listed in 69-3-803(3), MCA, are regulated. The Commission's focus should be on detariffing not deregulating. A private microwave operator, referred to as a Private Operational - Fixed Microwave Radio Service (OFS), commented that because the FCC has preempted state regulation of OFS, portions of the Act itself and the rules are preempted; the second sentence of 69-3-804, MCA, could improperly impose state regulation on these carriers.

Response: Private lines is not listed as a deregulated service because the list is based on statute. The second sentence of Rule IV should make it clear private lines are deregulated. Section 69-3-803(3), MCA, does not list all services that are deregulated because this would mean the statutory definition of regulated services was superfluous. No change was made in response to the comment concerning OFS'. The proposed rules were drafted to implement the Telecommunication Act as adopted by the legislature. These rules make no attempt to create regulatory jurisdiction that has been preempted by the FCC.

Rule III: One party opposed Rule III because valuable information on services could become available to competitors. Throughout the rules many comments were received concerning adequate protection for proprietary information.

Response: Rule III should remain unchanged. The purpose of the notice provision is to inform interested parties about the potential deregulation or detariffing of a telecommunication service. Deregulation will occur statewide so it is important that carriers be informed of potential deregulation. A problem may exist concerning unlimited access to information, but that problem is not created or resolved by including or deleting this rule.

Rule IV: Several parties objected to the assumption that all telephone service, except that deregulated by statute, is basic service subject to PSC regulation, commenting that the PSC cannot presume all services are regulated. Only "two way switched service can be presumed regulated. Many services are clearly not regulated." The providers of a service should make the initial determination of whether a new service is regulated. The complaint process can be utilized to check excess. One party commented that "the Montana Telecommunication

Act defines in a broad manner which services are regulated, thus limiting the PSC's power in the process."

Several parties also commented that new services should be presumed to not be regulated. Customers today enjoy "basic" service and all future services will be enhanced service which should not be regulated.

Several parties also commented that the time periods were too long and would interfere with competition.

Response: An agency has primary jurisdiction to determine what it regulates. Adopting the comment that service should not be presumed regulated would confer on the utilities the discretion to determine what is regulated. The PSC's jurisdiction is limited to "two way switched voice grade access" but it has the authority to determine what services are within that definition.

Rule V: One party commented that the PSC should delineate between current and new services. No procedure is necessary to determine if new services are regulated. The provider should make that determination. Several parties commented that the time periods are too long and will delay the introduction of new services and that protection of proprietary information is needed.

One party commented that (1)(e) should be amended to permit notice to customers of proposed deregulation within 10 days of filing.

One party commented that (1)(d) should read "existing and potential" not "existing or potential".

Response: The word "or" is changed to "and" in Rule 1(d) and the time period for informing customers in 1 (e) is changed. These changes clarify the rules and shorten the time period slightly.

The comment that the PSC should distinguish between all current and future services and presume all future service is not regulated is not supported by statute. The frequent comment that the time periods are unreasonable was seriously considered. The time period in the rules are maximums. It is hoped petitions for detariffing and deregulation can be handled in a shorter time period but this time limit will allow sufficient time to respond.

Rule VI: Several parties commented that the PSC must protect proprietary information.

Response: This rule requires only that interested parties be informed of a request for deregulation; it provides no additional information to competitors. Because all carriers are subject to the same standard of regulation it is important that they be aware of filings before the MPSC.

Serious consideration has been given to the comment by all the carriers that protection for proprietary information is needed but no changes were made in the proposed rules. The MPSC does not have the statutory authority to provide blanket protection to every petition for deregulation or detariffing. See Art. II, §§ 8, 9, and 10 Mont. Const., and Title Two, Chapter 3, Part 5 and Title 2, Chapter 6, Parts 1,2 and 3 MCA. The MPSC can issue protective orders if a docket is created.

These rules do not anticipate a docket in every instance but one can be created if necessary. §69-3-106, MCA, can also be used to provide proprietary protection if needed.

Rule VII: Several parties commented that the time frames are too long. One party commented that all new services should be considered deregulated. One party commented that Rule VII(1) should be redrafted to provide an opportunity for hearing. A party commented that Rules VII(2)(a) and (3)(b) should be redrafted with the term "interested party" substituted for "telecommunication provider or customer" and the Rule VII(3)(B) time frame should be changed so comments are filed after hearing not notice.

Response: The time frames remain as drafted. If needed, these can be lengthened or shortened after the Commission has some experience with this process. The comment that a hearing must be held if requested is accepted because of 2-4-601 and 69-3-303, MCA. The rules have been slightly redrafted to substitute the term "interested parties," to allow comments up to 10 days after a hearing, and to make the time frame consistent with Rule XIII(4).

Rule VIII: Two comments were made by several parties. 1) The Commission has no authority to require information about not regulated services. 2) There is a need for protection of proprietary information. One party commented that this information should be required in all instances; for application for deregulation as well as detariffing.

Response: To the extent that regulated services are impacted, the PSC has the authority to inquire into the services regulated carriers offer that are not regulated. 69-3-822, MCA, prohibits cross-subsidization of not regulated services by regulated services. The Commission must have some knowledge of the deregulated services to do this.

The information required in this rule is not relevant to determining if the service is regulated. The Act does not make revenues or costs of the service a factor in determining if the service is regulated.

Rule IX: Several parties commented that the PSC does not have the jurisdiction to redetermine if a service that has been deregulated should be regulated under the statute. This question must be presented to the District Court, not the PSC.

Response: This rule has been deleted. Once the Commission has determined a service is deregulated by statute it has no jurisdiction to review its own decision.

Rule X: One party objected to the word "allocable," stating that revenue is assignable, not allocable. It was suggested that the word "not" be deleted from Rule X(3), "regulated" be substituted for "nonregulated and detariffed" in Rule X(3)(a) and the term "costs" be more precisely defined. Rule X(3)(a) should be redrafted to make it clear that recording in separate accounts occur prior to the separations process. Rule X(4) and X(5) have typographical areas.

One party opposed Rule (3)(a) if it can be interpreted to require detariffed services to be recorded in separate accounts and commented that Rule X(4)(a) is too broad if a fully

separate subsidiary could be required to eliminate cross-subsidization.

One party commented Rule X(3) should include investments in capital assets as well as revenues and costs and the phrase "nonregulated" should be changed to "not regulated or are not tariffed."

One party commented that protection against cross subsidization requires the MPSC to "fairly look at costs and if the regulated customers are paying their fair share of reasonably allocated costs, no more and no less, that should be the end of (the MPSC's) inquiry."

Response: The language "assignment or" has been added before allocation. "Fully allocated cost" has been added before accounting or tracking system in subsection (3).

While a separation between regulated and nonregulated services would generally occur prior to the separations process, companies should not be precluded from performing some allocations at an intrastate level.

Section (3)(a) is intended as a safeguard if companies do not track costs in a manner adequate to separate regulated from not regulated costs.

The term "costs" is not synonymous with the term "expenses." Costs includes both expenses and investment in capital assets.

Subsection (4) does not contain a laundry list of alternatives for the Commission to eliminate subsidies and no change is recommended since a list may be interpreted as limiting Commission alternatives. A particular method of eliminating a subsidy may not be practical or appropriate in every case.

Rule XI: Several parties commented that they oppose the application of Rule XI to existing carriers. One party commented that the information should be required prior to offering a service.

Response: This rule is an attempt to provide the MPSC with current information on telecommunication services offered in Montana. The statute states "Before any person or entity" not before new carriers. The required information is not burdensome.

Rule XII: One party commented that this rule places the established carriers at a disadvantage because it will be "very easy for a competitor to ... fulfill the provision of the rules relating to alternative providers ... [W]hereas [AT&T and MBT] could not immediately demonstrate ... that the competitor was an 'alternative provider'." Another party objected to notifying competitors of detariffing and commented that (4)(d) should be broadened to include competition in the form of alternative technologies. Informing competitors of the proposed detariffing was objected to. Rule XII(4)(d) should be amended to alternative technologies as well as alternative service providers.

A party commented that in Rule XII(1) the word "must" should be substituted for "may" and Rule XII(3) must provide an opportunity for hearing.

Response: The concern about the established carriers'

disadvantage is addressed in 69-3-807(5), MCA. There is no need to duplicate the statute in the rules. All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation.

The comment that alternative services might take the form of technologies as well as specific alternative providers is correct. No change is needed because the rules as drafted can encompass that situation. Alternative service is not defined and could be interpreted to mean availability of alternative technologies.

Rule XIII: A party commented that the practical effect of this rule would be to establish improper dual regulatory treatment and that in Rule XIII(2) the term "cost compensatory" should be defined as incremental costs. A party commented that an analysis of existing economic barriers would be difficult and time consuming and that the information to customers required in Rule XIII(4) should be changed from 20 days to 10 days to be consistent with Rule VII(4).

A party questioned whether the PSC may detariff without competition.

Response: The rule does not impose dual regulatory requirements. The statute requires that alternative providers exist. "Nothing in this section shall authorize the application of subsection (2) to any service for which there are no alternative providers of such service." It may be correct that it may be easier for a competitor to establish that the established carriers' service exists as an alternative, but there is not "dual regulatory requirements." The established carriers may also show an alternative exists. All regulated carriers are subject to the same standard; this is statutory and need not be repeated in the rules. The phrase "cost compensatory" does refer to incremental cost. This is defined in Rule XIV. Rule VIII(1)(c) is deleted because it is included in the other factors.

The comment that detariffing requires competition was incorporated in the proposed rules.

Rule XIV: A party commented that detariffed services should be given the same treatment as deregulated services for purposes of determining the revenue effect of deregulation or detariffing. The market should be allowed to regulate the price.

Another party commented that the PSC should require documentation showing revenues exceed costs on an embedded basis also and that the rule as written should state "long run" incremental costs. The Commission should be able to review short run and long run incremental costs as well as embedded costs.

Response - No change is recommended in this rule. The purpose of the rule is to prevent subsidization, not to set the price of detariffed services.

Rule XV: A party commented that the PSC must provide an opportunity for hearing.

Response: The rule has been redrafted to provide an opportunity for hearing.

Rule XVI: A party commented that the language of (1)(e) should be broadened to include the situation in which the alternative is the purchase or lease by a customer of its own equipment.

Response: It is correct that forbearance may occur in situations where the alternative is purchase or lease. No change is needed for the final rules because the rules as drafted can encompass that situation. Alternative service is not defined and could be interpreted to mean purchase or lease of equipment.

Rule XVII: As with other rules, several carriers commented that proprietary protection is needed.

Response: As stated above, the problem of proprietary information is recognized. This rule conforms with 69-5-807, MCA, and no change is recommended.

Rule XVIII: (This rule is reviewed by subsection.) Rule XVIII (1) - AT&T and MBT both commented that they do not have the technical capability to selectively disconnect deregulated services therefore this will increase bad debt expense. Under this rule deregulated as well as regulated service will have to continue if deregulated services are not paid for. AT&T also commented extensively on local and long distance services. It will not have the technical ability to bill its own services and deny service independent of LEC's until 1988. AT&T would like to postpone this rule until that date. AT&T also commented that it is unclear from Rule XVIII whether detariffed services are regulated.

Mountain Bell accepts that regulated service cannot be denied or terminated for nonpayment of not regulated services but opposes providing detail on the bill. Mountain Bell commented that it does not have the technical capability to do this.

Montana Consumer Counsel supports this rule.

Rule XVIII (2) - AT&T commented that the LEC's existing billing systems have limited capacity for maintaining historical records. Also, the rule should only address undesignated partial payment. Mountain Bell accepts the concept of this rule but opposes the detail on bills. Montana Consumer Counsel supported this rule. Northwest Telephone System opposed maintenance of separate subscriber accounts for regulated and not regulated services because the accounting charge will be costly and should not be required unless it is established a problem exists.

Response: This rule has been redrafted to clarify its intent. This rule is not intended to address the problems of cut off of local service for nonpayment of long distance charges. The MPSC's current policy is to allow disconnection. This policy is not changed with this rule. More information than what was offered in this rule making process would be required to resolve the local - long distance question because the service involve different carriers.

This rule has three purposes: 1) A telecommunication provider cannot discontinue its regulated services because of nonpayment of its deregulated services. 2) Regulated and not

regulated services may appear on the same bill but customers must be able to distinguish between tariffed, detariffed and deregulated services. 3) Partial payments must be applied to regulated service first.

Rule XX: A party commented that subparagraph (3) contemplates submission of all material required by the filing rules in the form of computer diskettes and requested that the requirement be modified to read "where appropriate".

Response: The intent of this rule is to receive as much of a rate case in computer form as is possible. This will allow the PSC to cut photocopy costs and allow easier access to rate case information by allowing computer searches and organization procedures. Because some material may not be available in computer form the words "where possible" are inserted into the rule.

Rule XXI: Two parties commented that a historical test year may not be appropriate in many cases and that the requirement that adjustment become effective within 12 months is unreasonable.

Response: These rules are minimum filing requirements. If a company wishes to file a future test year these rules do not preclude them from doing so. However, companies must also submit historical information. The PSC has consistently used historical test years. Currently this same rule exists for all other utilities in the state. This requirement is consistent with requirements for other utilities. These rules do not preclude a company from proposing anything they wish in a rate case. It simply requires information in a traditional format to be filed.

Rule XXIV: MCI Telecommunication commented that it is not required by the Federal Communications Commission to use the Uniform System of Accounts and the language in this rule should be modified to state that companies must use the Uniform System of Accounts or Generally Accepted Accounting Principles as required by the FCC.

Response: No change is made in this rule. Currently, all carriers operating in the state can comply with this rule. The PSC may waive its own rules if a problem arises in the future.

Rule XXVIII: A party commented that total company information concerning the financial statements should not be required because it includes portions assigned to the interstate jurisdiction and could be received through data requests if desired.

Response: The separation of revenues, expenses, and rate base between regulated and not regulated services will be made at the total state level before jurisdictional separations are applied. The regulated - not regulated separation will no doubt become a major focus of almost all future filings. It is true that this information could be received through the use of data requests. However, since it would probably be requested in every case, inclusion in the minimum filing requirements will not impose additional burden on the telephone utilities and will save the staff and intervenors valuable

time in analyzing a rate request.

Rule XXXVII: A party commented that the rate of return information is duplicate material already filed in support of the rate of return testimony and exhibits.

Response: It was not intended that material be filed twice. A applicant can satisfy the rate of return requirements by noting the statement numbers in rate of return testimony and exhibits or by referencing material contained in other parts of the filing in preparing Statement H.

Rule XXXIV: A party requested clarification of subpart (g) of this rule regarding whether or not "cost of money" refers to embedded cost.

Response: This material is required for each class and series of long-term debt outstanding (see first paragraph under (1).) Since this refers to all outstanding debt it is embedded.

Rule XXXVI: A party commented that this requires submission of a large volume of information with respect to common stock for a five year period and that this should be amended to be a shorter time period.

Response: This rule has been amended to require this information for a two year period instead of a five year period.

Rule XXXVII: A party requested clarification about the 18 month requirement.

Response: This rule has been clarified to read "the date of filing." Eighteen months was chosen because it would usually cover the entire test year (12 months) and up to the time of filing.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE MAY 5, 1986.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I (42.25.1021) through VI (42.25.1026) relating to net proceeds reporting requirements for new production of oil and gas.	NOTICE OF THE ADOPTION of New Rules I (42.25.1021) through VI (42.25.1026) relating to net proceeds reporting requirements for new production of oil and gas.

TO: All Interested Persons:

1. On December 26, 1985, the Department of Revenue published notice of the proposed adoption of new rules I (42.25.1021) through VI (42.25.1026) relating to reporting requirements for new production of oil and gas at pages 1974 through 1976 of the 1985 Montana Administrative Register, issue no. 24.

2. The Department has adopted rules I (42.25.1021) through VI (42.25.1026) with the following changes:

42.25.1021 NEW PRODUCTION REPORTING REQUIREMENT (1) Effective July 1, 1985, an operator must report production from an oil or gas lease on a quarterly basis if that lease has not had production during the five year period immediately preceding the first month of production. ~~in the quarter for which the production is reported~~ The quarterly report must be submitted to the department on or before the last day of October, January, April, and July. If production from a lease is required to be reported on a quarterly basis, such reporting requirement shall remain in effect throughout the duration of the lease. If a well is drilled on a currently producing lease, production from that well is not considered new production. However, once a lease qualifies as new production, all additional production from that lease will also qualify as new production. For purposes of this rule, the definitions of lease and unit shall be those set forth in ARM 42.22.1201.
AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-602 MCA, and Sec. 2, Ch. 695, L. 1985.

42.25.1022 NET PROCEEDS COMPUTATION - QUARTERLY FILINGS (1) Net Proceeds for purposes of new production from an oil or gas lease are the equivalent of gross sales proceeds without a deduction for excise taxes on the product yielded from such lease for the period covered by the statement. There shall be deducted from the gross proceeds, the value of petroleum and other mineral or crude oil or cubic feet of natural gas produced and used in the operation of the lease from which the petroleum or other mineral or crude oil or natural gas was produced. The gross value shall not include the value of natural gas exempt from taxation under 15-23-612, MCA, nor the value of governmental royalties from oil and gas production which are

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

42.25.1023 COMMENCEMENT OF NEW PRODUCTION (1) In determining whether production from a lease is deemed new production, the five year period of inactivity shall be calculated from the last day of the calendar month immediately preceding the month in which either:

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

(b) ~~a pumping unit begins production from a crude oil well, or~~ when production for sale from a crude oil well is pumped or flows.

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

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

42.25.1024 UNITIZED LEASES - NEW PRODUCTION DETERMINATION (1) A unitized or communitized or pooled lease will be deemed to have existing production and will not qualify under the provisions of 15-23-601(2), MCA, if the lease involved has had production attributed to it from the unit or communitized or pooled area. A unitized or communitized or pooled lease need not have a well located on its surface to be considered to have existing production. If a lease is included within a unit, community, or pool but has not had production attributed to it from the unit, community, or pool for the previous five years, any production from that lease will be deemed to be new production.

(2) If a unitized, communitized, or pooled area is formed which contains leases which produce old and new oil or gas, the operator will compile the quarterly reports for new oil or gas gross proceeds tax and the annual net proceeds tax return on the basis of the allocation percentages for each lease determined in the document setting up the unitization, communitization, or pooling agreements and provisions. In calculating the expenses which will be attributed to the annual net proceeds tax return, the operator will multiply the total amount of deductible expenses by the sum of the allocation percentages for each of the leases in the unitized, communitized, or pooled area which produce old oil or gas.

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

42.25.1025 PRODUCTION FROM NEW FORMATION OF CURRENTLY PRODUCING LEASE (1) ~~Any production occurring on or attributable to a lease within the last 5 years will disqualify that lease from having the new production classification.~~ Production from a new formation which has not produced oil or gas, but is on a

lease that has had production during the preceding five years will not qualify as new production. If a new lease is created to produce from a new formation, such production will constitute new production.
AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-601 MCA, and Sec. 1, Ch. 695, L. 1985.

42.25.1026 CHANGES IN LEASES (1) The lease cannot be changed by subdividing or recombining so as to make land or formations, formerly part of a producing lease, become part of a nonproducing lease and thereby qualify it for the new production classification. ~~Once a particular parcel of land is part of a producing lease, a lease containing such land cannot qualify for the new production classification unless production on the original lease has ceased for 5 years.~~ Nor can a lease be changed by subdividing or recombining so as to make land or formations formerly part of a nonproducing lease, become part of a producing lease and thereby qualify it for old production classification. However, related to recombining and subdividing, the following conditions may exist:

(a) If a new lease is created by recombining two or more leases prior to July 1, 1985, the new lease will qualify for new production if there was no production attributed to the recombined leases in the five years immediately preceding the first month of production.

(b) If a lease is subdivided into two or more leases prior to July 1, 1985, the newly created leases will qualify for new production if the area within each newly created lease did not have production attributed to it in the five years immediately preceding the first month of production.
AUTH: 15-23-108 MCA, and Sec. 22, Ch. 695, L. 1985; IMP: 15-23-601 MCA, and Sec. 1, Ch. 695, L. 1985.

3. A public hearing was held on January 15, 1986, to consider the proposed adoptions. The following comments were received by the Department on the proposed adoption of the rules:

Rule I (42.25.1021) - Senator Delwyn Gage recommended that on line 5, after "month of production", the remaining portion of the sentence be eliminated. He stated this change would eliminate any contradiction with Rule III and more closely follow the statute. The Department is in agreement with this recommendation and has made that change.

Both Senator Gage and Marc Buyske, attorney, suggested that line 10 be modified to address the situation where a lease, currently qualifying as new production, commences additional new production. They asked if that production would also qualify as new production. Under the current wording of the rule, such production would not qualify as new production. Both Senator Gage and Mr. Buyske stated that that was not the intent of Senate Bill 390. The Department is in agreement with these comments and has made the necessary changes.

Rule II (42.25.1022) - Senator Gage recommended adding the word "sales" to line 3 after the word "gross". The Department is in agreement and has made this change.

Rule III (42.25.1023) - Senate Gage and Janelle Fallon of the Montana Petroleum Association both commented that Rule III could be modified to use language more closely tied to industry usage. The Department is in agreement and has replaced subsection (b) with "when production for sale from a crude oil well is pumped or flows" and deleted subsection (c).

Rule IV (42.25.1024) - Senator Gage stated that in the case of unitized, communitized, or pooled areas, he would like the rule to say that the lease shall be defined as the area described in and subject to the terms and conditions of the unitization, communitization, or pooling agreement. Through subsequent discussions, both Senator Gage and the Department agree that to insert such language into the rule would require a change in the law.

Janelle Fallon stated that Senate Bill No. 390 never addressed unitization or pooling. In response to this statement, the Department must state that since the bill never mentioned unitization or pooling, but only referred to "lease" when defining new production, the rule must do the same. Therefore, the only way Senate Bill No. 390 can be read is to say that if a lease had production within the previous five years, it would not be eligible for new production status.

Mr. Buyske commented that Rule IV is not consistent with the intent of Senate Bill No. 390. He also stated that a plain and unambiguous reading of Senate Bill No. 390 would say that a lease may be subject to the new production classification if the lands subject to the lease have not produced the specified products within the prescribed time period. He states that Senate Bill No. 390 does provide that production may be attributable to a lease and that the lease may be eligible for new production. Mr. Buyske also stated the rule may have a serious practical problem in that an operator for a unit may be required to file on both old and new production. Finally, Mr. Buyske mentioned that there may be a constitutional problem due to the fact that royalty owners may be subject to different tax liabilities based upon the same production.

In response to Mr. Buyske's comments, the Department believes that Rule IV properly categorizes "new production" within the definition provided in Senate Bill No. 390. Second, the Department cannot agree with Mr. Buyske's liberal interpretation of Senate Bill No. 390 to say that even though a lease may have had production attributed to it over the previous five years, it may still be eligible for "new production". The bill simply does not say that nor does it give any indication that that was what was intended. The Department agrees that there may be a practical problem in requiring an operator of a unit to report both "new" and "old" production. Senator Gage has also recognized this problem and the Department has added subsection

(2) to accommodate this problem. The Department does not feel there are any constitutional problems with the rule or the statute. It is true that all royalty owners will not be taxed the same. However, all royalty owners of "new production" will be taxed similarly, and all royalty owners of "old production" will also be taxed the same.

Rule V (42.25.1025) - Mr. Buyske stated that this rule is contrary to what is the normal source of transactions in oil and gas law and would only create unnecessary confusion. Senator Gage commented that the first sentence is repetitious with other sections of the rule and should be deleted. The Department has determined that based upon the wording of Senate Bill No. 390, no other position can be taken other than what is present in Rule V. The Department does agree to eliminate the first sentence of the rule. Senator Gage did raise the question about whether Rule V would allow production from a new formation to be classified "new production" if a new lease was created for such production. The answer to that question is "yes" and the Department has added a new sentence after "new production" to clarify this question.

Rule VI (42.25.1026) - Senator Gage objected to this rule for two reasons. First, he stated that this issue was discussed during the session and it was decided that the issue would not be addressed. Therefore, he felt it was inappropriate for the Department to address an issue the Legislature felt did not need to be addressed. Second, he felt it was not appropriate for the rule to abuse the person who may pick up a lease on land that had been previously part of a producing lease but had not had production on that land. Senator Gage did raise the question as to whether inactive leases could be subdivided or combined and whether any subsequent production would constitute "new production". In response to the question regarding inactive leases, the Department agrees that the rule would allow the leases to be combined or subdivided and any subsequent production eligible for "new production" classification. To further address the entire issue of combining and subdividing leases, the Department and Senator Gage have agreed to amend this rule as indicated in this notice.

Mr. Buyske raised the issue of the "Pugh" clause. This clause holds that acreage covered by a lease which lies outside of a production spacing unit will not be held by production attributable to such lease as a consequence of the implementation of the production spacing or pooling order. Thus, such excluded acreage could be released to other leases and operated as a separate and distinct lease from the original leased area. The Department believes that unless the statute is amended, the Department must look solely at the lease. If there was production on that lease during the previous five years, it will not qualify as new production and if a producing lease is either subdivided or combined with other producing leases, the newly created leases will not qualify as new production.

4. The authority for the rules is § 15-23-108, MCA, and § 22, Ch. 695, L. 1985, and the rules implement §§ 15-23-601, 15-23-602, 15-23-603, and §§ 1 through 3, Ch. 695, L. 1985.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 05/05/86

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.27.116) and the AMENDMENT of Rule 42.27.102 relating to gasoline tax and distributor's bond.	NOTICE OF THE ADOPTION of Rule I (42.27.116) and the AMENDMENT of Rule 42.27.102 relating to gasoline tax and distributor's bond.

TO: All Interested Persons:

1. On February 27, 1986, the Department published notice of the proposed adoption of rule I (42.27.116) and the amendment of rule 42.27.102 relating to gasoline tax and distributor's bond at pages 240 and 241 of the 1986 Montana Administrative Register, issue no. 4.

2. The Department has adopted rule I (42.27.116) and amended rule 42.27.102 as proposed.

3. No comments or testimony were received.

4. The authority for the rules is § 15-70-104, MCA, and the rules implement §§ 15-70-202 and 15-70-204, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 05/05/86

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

In the matter of the amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1205 and 46.12.1206 pertaining to reimbursement for skilled nursing and intermediate care services	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1205 AND 46.12.1206 PERTAINING TO REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES

TO: All Interested Persons

1. On March 27, 1986, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1205 and 46.12.1206 pertaining to reimbursement for skilled nursing and intermediate care services, at page 439 of the 1986 Montana Administrative Register, issue number 6.

2. The Department has amended Rules 46.12.1202 and 46.12.1205 as proposed.

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

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE JULY 1, 1983 Subsections (1) and (2) remain as proposed.

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

R=RO+RP

For facilities whose providers are owners on June 30, 1982, until ownership changes, and for facilities whose providers are not owners on June 30, 1982, until the June 30, 1982 provider changes:

RO=T, if A-T is less than 0

RO=A, if A-T is equal to or greater than 0

RP=S, if M_1-S is less than 0

RP=S(1) for facilities constructing new beds after July 1, 1984 where M_1-S is less than or equal to 0

RP=S(2) for facilities extensively remodeled after July 1, 1984 where M_1-S is less than or equal to 0

RP=M, if M-S is equal to or greater than 0

For all other facilities and for all facilities newly constructed after June 30, 1982, regardless of provider:

RO=A

RP=M

where:

R is the payment rate for the current year,

S is the interim property rate in effect on June 30, 1982. In the case where costs to a facility decrease such as through refinancing of debt or the renegotiation of a lease, S will be based on actual costs, if they are less. DECREASED

COSTS DUE TO THE NORMAL CHANGE IN INTEREST AND PRINCIPAL PAYMENTS OVER THE TERMS OF AN EXISTING MORTGAGE OR LEASE WILL NOT LEAD TO AN ADJUSTMENT BY THE DEPARTMENT.

S(1) = [(V x S) + (Y x 7.79 effective ~~April 1, 1986~~ JULY 1, 1985 and 7.98 effective July 1, 1986)] divided by (V + Y)

where:

V is the total square footage of the original structure before construction of new beds.

Y is the square footage added to the facility as a result of the construction.

S(2) = S + ((F x 12) divided by 365) x 1.025 effective July 1, 1985 and 1.0506 effective July 1, 1986)

where:

F is ((B divided by D) x .80) amortized over 360 months at 12% per annum.

D is the number of licensed beds in the facility.

B is the total allowable remodeling costs.

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

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

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

M_1 = the M calculated under 1204(3) in effect 6/30/85 times 1.0506 effective July 1, 1986.

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

46.12.1204 PAYMENT RATE Subsections (1) and (2) remain as proposed.

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

B=1 + (((F-G) divided by G) times ~~.711~~ THE RATIO OF TOTAL LABOR COSTS TO TOTAL OPERATING COSTS, BASED ON THE MOST CURRENT INFORMATION AVAILABLE) if F is equal to or greater than one standard deviation from the average wage, or

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

where:

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

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

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

Subsection (2)(b) remains as proposed.

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

(a) M = N x Z except for facilities extensively remodeled or constructing new beds after July 1, 1984.

M = N(1) x Z for facilities constructing new beds after July 1, 1984,

M = N(2) x Z for facilities extensively remodeled after July 1, 1984.

where:

M is the property rate per day of service,

N is the facility's property rate as of 6/30/85. For entire facilities built after 6/30/85

N is $7.60 for a facility of non-wood-frame construction, and $7.60 for a facility of wood-frame construction,

For facilities new to the program constructed prior to 6/30/82 a 6/30/85 rate will be computed according to property rules effective 6/30/85. That rate will be carried forward using M = N x Z

N(1) is (((A x D) + B x 7.60)) divided by (A + B))) x 1.025 effective ~~April 1, 1986~~ JULY 1, 1985 and 1.0506 effective July 1, 1986.

N(2) is D x 1.025 effective April 1, 1986 and 1.0506 effective July 1, 1986 + ((F x 12) divided by 365) where remodeling is completed during the 7/1/85 to 6/30/86 period.

N(2) = D x 1.025 effective January 1, 1986 and 1.0506 effective July 1, 1986 + ((F x 12) divided by 365) x 1.025 when remodeling is completed during the 7/1/84 to 6/30/85 period.

where:

A is the total square footage of the original structure.

B is the square footage added with the construction of new beds.

D is the property rate as of 6/30/85 for the original structure.

F is ((G divided by H x .80) amortized over 360 months at 12% per annum.

H is the number of licensed beds in the facility.

G is total allowable remodeling costs.

Z is 1.025 effective July 1, 1985 and 1.0506 effective July 1, 1986.

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

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

46.12.1206 PATIENT ASSESSMENTS, STAFFING REPORTS AND DEFICIENCIES Subsections (1) through (4) remain as proposed.

Subsections (4)(a) and (4)(b) remain as proposed in text but will be renumbered as (4)(b)(i) and (4)(c).

(A) WITHIN A REASONABLE LENGTH OF TIME AFTER THE COMPLETION OF THE REVIEW BY THE DEPARTMENT'S REVIEW TEAM, THE DEPARTMENT WILL NOTIFY THE FACILITY OF THE RESULTS OF THAT REVIEW. SUCH NOTICE SHALL INCLUDE THE PATIENT ASSESSMENT SCORE AS DETERMINED BY THE REVIEW, THE FACILITY'S PATIENT ASSESSMENT SCORE FOR THE SAME MONTH, AND A STATEMENT OF WHETHER OR NOT THERE IS A "SIGNIFICANT DIFFERENCE" WHICH WILL ADVERSELY AFFECT A FACILITY'S REIMBURSEMENT RATE. IF A SIGNIFICANT DIFFERENCE EXISTS, THE FACILITY WILL BE NOTIFIED THAT IT MAY APPEAL THE PATIENT ASSESSMENT SCORE GENERATED BY THE REVIEW TEAM IN ACCORDANCE WITH ARM 46.12.1210;

(B) FOR FACILITIES THAT OBJECT TO THE SAMPLING TECHNIQUE USED BY THE REVIEW TEAM TO COMPUTE THE AVERAGE NURSING CARE TIME, FOR RATE YEARS BEGINNING JULY 1, 1986, THE FOLLOWING PROCEDURE WILL BE THE ONLY APPEAL AVAILABLE:

Subsections (5) through (9)(d) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: Several commenters requested a clarification of the language regarding the provision allowing the Department to adjust the grandfathered rate of a grandfathered facility if such facility takes affirmative action to reduce its costs below those upon which the grandfathered rate was based -- such as refinancing of debt or renegotiation of a lease.

RESPONSE: The Department agrees and has revised the final rules to reflect the following:

"In the case where costs to a facility decrease such as through refinancing of debt or in the renegotiation of a lease, S will be based on actual costs if they are less. Decreased costs due to the normal change in interest and principal payments over the terms of an existing mortgage or lease will not lead to an adjustment.

COMMENT: Several commenters objected to the formula used to calculate a property rate adjustment for a provider involved in an extensive remodeling project. Specifically, objections were made to the fact that the formula is based on 100% occupancy.

RESPONSE: The Department believes that the formula, as it exists in this area, is adequate to reimburse providers for remodeling costs.

COMMENT: Several commenters objected to the imposition of a threshold which requires facilities to spend $2,400 per licensed bed before becoming eligible for a remodeling adjustment. Suggested thresholds ranged from $1,000 to $1,400.

RESPONSE: The Department believes that the $2,400 threshold is consistent with prior administrative rules and policies. The existing property rate structure is adequate to reimburse providers who spend less than $2,400 per licensed bed for remodeling projects.

COMMENT: Several commenters suggested that the appeals process be specifically described for any provider who is adversely affected by patient assessment abstract reviews.

RESPONSE: The Department agrees and has revised the final rules to reflect the following:

> "Within a reasonable length of time after the completion of the review by the Department's review team, the Department will notify the facility of the results of the review. Such notice shall include the patient assessment score as determined by the review, the facility's patient assessment score for the same month and a statement of whether or not there is a 'significant difference' which will adversely affect a facility's reimbursement rate. If a significant difference exists, the facility will be notified that it may appeal the patient assessment score generated by the review team in accordance with ARM 46.12.1210;
> (b) For facilities that object to the sampling technique used by the review team to compute the average nursing care time, for rate years beginning July 1, 1986, the following procedure will be the only appeal available:"

The remainder of the section will remain the same as 46.12.1206(4)(a) as proposed.

COMMENT: One commenter suggested that providers that have had indications of problems with either current staffing and/or patient assessment be reviewed more than once annually.

RESPONSE: The present rule revision does not preclude the Department from conducting more than one annual review. It is the Department's intention to monitor those problem providers more closely.

COMMENT: One commenter objected to the $2,400 threshold suggesting that it might force providers to needlessly spend money on a remodeling project in order to meet the threshold.

This commenter suggested that a more reasonable threshold is $1,200.

RESPONSE: The Department hopes that long term care providers will not make unnecessary expenditures for any purpose. A lower threshold, however, would not solve the problem. If a $1,200 threshold were established, providers could make unnecessary expenditures to meet it.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 5, 1986.

VOLUME NO. 41 OPINION NO. 58

COUNTY OFFICIALS AND EMPLOYEES - Minimum wage and maximum hours, compensatory time;
EMPLOYEES, PUBLIC - Minimum wage and maximum hours, compensatory time;
HOURS OF WORK - Application of federal and state maximum hours acts;
MINIMUM WAGE - Application of federal and state minimum wage acts;
PEACE OFFICERS - Minimum wage and maximum hours, compensatory time;
POLICE - Minimum wage and maximum hours, compensatory time;
CODE OF FEDERAL REGULATIONS - 29 C.F.R. §§ 553.3, 553.4;
MONTANA CODE ANNOTATED - Sections 7-4-2509, 7-32-2111, 7-32-4118, 39-3-204, 39-3-401 to 39-3-408;
PUBLIC LAWS - Pub. L. No. 99-150, § 2(a) (1985);
UNITED STATES CODE - 29 U.S.C. §§ 201 to 219.

HELD: 1. State and local government employees who are covered by the Fair Labor Standards Act (FLSA) are not subject to the provisions of the Montana Minimum Wages and Maximum Hours Act (MWMHA).

2. State and local government employees who are covered by the FLSA may reach agreement with their employers to receive compensatory time in lieu of cash overtime.

3. Provisions of state law, other than the MWMHA, which set shorter workweeks for specified groups of employees are to be given effect.

17 April 1986

Robert C. Kuchenbrod
Administrator
Central Services Division
Department of Justice
215 North Sanders
Helena MT 59620

Mike McGrath
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena MT 59623

Gentlemen:

You have requested my opinion on the following questions which have arisen due to recent changes in federal law:

1. Are state and local government employees covered by both the federal and the Montana minimum wage and overtime acts?

2. If the answer to question 1 is affirmative, does the federal provision allowing compensatory time apply?

3. How are law enforcement and fire protection employees to be treated for purposes of overtime?

The Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 to 219, as enacted in 1938, did not include state and local government employees within the scope of its minimum wage and overtime provisions. In 1974, the FLSA was amended to extend to employees of the states and their political subdivisions, with certain enumerated exceptions. 29 U.S.C. § 203(2). These amendments were subsequently challenged and were restricted by the United States Supreme Court in National League of Cities v. Usery, 426 U.S. 833 (1976), which held that Congress lacked the power to enforce the FLSA against the states in areas of traditional government functions. Thus, for nearly a decade, most state and local government employees have been exempt from the federal act. The Court retreated from this position in its decision in Garcia v. San Antonio Metropolitan Transit Authority, 105 S. Ct. 1005 (1985), overruling National League of Cities, supra, in effect reinstating coverage by FLSA of most state and local government employees.

Amendments to the FLSA, which are effective as of April 15, 1986, eased the transition for the states by providing that the states are not liable for violations of FLSA prior to April 15, 1986, unless the employee was covered by the FLSA on January 1, 1985. The amendments also allow, within limits, compensatory time-and-

one-half in lieu of cash payment for overtime. Fair Labor Standards Amendments of 1985, Pub. L. No. 99-150, § 2(a), 99 Stat. 787 (1985).

During the decade in which the National League of Cities rule controlled, most public employees in Montana were subject to the Montana Minimum Wages and Maximum Hours Act (MWMHA), §§ 39-3-401 to 408, MCA, rather than the FLSA. The state and federal acts currently differ in a few important respects, inter alia:

1. The Montana law has no provision of compensatory time in lieu of cash for overtime;

2. The Montana law exempts certain law enforcement and fire protection employees while the federal law does not; and

3. The FLSA allows for a longer maximum work period for law enforcement and fire protection employees than does the MWMHA.

In other respects, the state and federal acts, as well as the enforcing agencies' interpretations thereof, are virtually identical. For example, both acts have exemptions for professional, administrative, and executive employees.

Your first question is whether state and local government employees are subject to the wage and overtime provisions of both the FLSA and the MWMHA. It has been determined by the Montana Supreme Court that the FLSA did not preempt the entire field of wages and hours to the exclusion of any state regulation. Plouffe v. Farm & Ranch Equip. Co., 176 Mont. 31, 570 P.2d 1106 (1977). The Plouffe case involved an employee who was expressly exempted from the FLSA, but not from the MWMHA. Had the Montana court decided that the FLSA preempted the field, the Montana wage law could not have eliminated the exemption granted by federal law. However, the Court held to the contrary. Thus, the MWMHA remains effective for those employees who are not covered by or who are exempt from the FLSA.

The Plouffe opinion does not address the question posed herein, i.e., whether the MWMHA is to be given any effect where an employee is covered by the FLSA. This

question is answered by section 39-3-408, MCA, which provides:

> The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act.

Discussing this provision in State v. Holman Aviation Co., 176 Mont. 31, 575 P.2d 923, 925 (1978), the Court stated:

> Section [39-3-408], by its plain meaning provides merely that "the provisions of this act", the Montana Minimum Wages and Maximum Hours Act, shall be applicable to set minimum wages and maximum hours for certain Montana employees in occupations not covered by the F.L.S.A., and that the F.L.S.A. shall apply to those employees which the federal act specifies. [Emphasis added.]

Therefore, by the provisions of the MWMHA itself, the act is not to be given any effect if the employee is covered by the FLSA. The Montana Legislature has clearly spoken on this question. In 1973, the Legislature refused to adopt an amendment to the predecessor to section 39-3-408, MCA, which would have provided that the FLSA would apply only if it required a higher standard than the MWMHA. H.B. 279, 43d Leg. (1973).

Some confusion exists about the meaning of the following language in the FLSA which appears to require deference to state law:

> No provision of this chapter or of any other thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher

> standard than the standard established under this chapter.

29 U.S.C. § 218(a), in part. In the absence of section 39-3-408, MCA, the MWMHA would control if it set a higher minimum wage or a shorter work period than the FLSA. However, section 39-3-408, MCA, clearly states that the MWMHA provisions are not applicable to employees covered by the FLSA. The Legislature has expressed its clear intent to defer to the federal act. Therefore, in my opinion, an employee covered by the FLSA is bound solely by the FLSA, and the MWMHA does not apply.

This conclusion also answers your second question concerning compensatory time. If an employee is not exempt from the FLSA, then the recent amendments permitting government employees and employers to agree to payment of compensatory time-and-one-half in lieu of cash overtime will apply as of April 15, 1986. Fair Labor Standards Amendments of 1985, Pub. L. No. 99-150, § 2(a), 99 Stat. 787 (1985). Private sector employees do not have the option of compensatory time, nor do employees who are exempt from the FLSA and covered by the MWMHA.

It has been argued that section 39-3-204, MCA, compels the conclusion that compensatory time cannot be allowed even for employees covered by the FLSA. I do not so interpret that section. Even if that section could be interpreted to prohibit compensatory time, it would be inconsistent with the FLSA. Where a state law is inconsistent with a federal law on the same subject, the federal law controls by virtue of the Supremacy Clause of the United States Constitution. Butte Miners' Union No. 1 v. Anaconda Copper Mining Co., 112 Mont. 418, 118 P.2d 148 (1941). Nothing in the FLSA compels an opposite conclusion, since § 218, above quoted, applies only to minimum hourly wage or maximum work period and not to the form of compensation.

Your final question concerns the treatment of law enforcement and fire protection employees of state and local governments. Pursuant to the FLSA, these employees are covered unless the department or agency employs less than five persons in these activities. 29 U.S.C. § 213(a)(20). Whether a particular employee is engaged in fire protection or law enforcement activities

for the purposes of FLSA coverage may be determined from the definitions of 29 C.F.R. §§ 553.3 and 553.4. Any employees who are exempt from the FLSA are governed by the MWMHA, including the exclusions therefrom. The MWMHA does not apply in any respect to employees covered by the FLSA. However, provisions found elsewhere in the Montana Code Annotated which establish shorter work periods than does the FLSA are to control, according to 29 U.S.C. § 218. See, e.g., §§ 7-4-2509, 7-32-2111, 7-32-4118, MCA. Employees in these special circumstances remain eligible for compensatory time if they exceed the maximum hours of work.

THEREFORE, IT IS MY OPINION:

1. State and local government employees who are covered by the Fair Labor Standards Act (FLSA) are not subject to the provisions of the Montana Minimum Wages and Maximum Hours Act (MWMHA).

2. State and local government employees who are covered by the FLSA may reach agreement with their employers to receive compensatory time in lieu of cash overtime.

3. Provisions of state law, other than the MWMHA, which set shorter workweeks for specified groups of employees are to be given effect.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 59

COURTS - Use of bail schedule to collect $10 charge mandated in section 46-18-236, MCA;
MONTANA CODE ANNOTATED - Sections 46-9-301, 46-9-302, 46-18-236.

HELD: In order to collect the additional $10 charge required by section 46-18-236, MCA, a court may exercise its power under section 46-9-302, MCA, and increase the bail schedule for minor offenses in a like amount.

17 April 1986

James A. McCann
Roosevelt County Attorney
Roosevelt County Courthouse
Wolf Point MT 59201

Dear Mr. McCann:

You have requested my opinion on the following question:

> How can a court collect the $10 charge mandated in section 46-18-236, MCA, after bail bond has been forfeited for a misdemeanor?

In 1985, the Legislature enacted section 46-18-236, MCA, which states in pertinent part:

> (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:
>
> (a) $10 in each misdemeanor case; and
>
> (b) the greater of $20 or 10% of the fine levied in each felony case.

Section 46-9-302, MCA, provides in pertinent part:

> (1) A justice of the peace or city judge may, in his discretion, establish and post a schedule of cash bail for offenses ....

The Legislature adopted this provision to make it possible for people who are charged with minor offenses to post bail immediately, avoiding the time and inconvenience of a separate court hearing. See Commission Comments, annot. to § 46-9-302, MCA. When an offender who does not want to contest the charge fails to appear, his forfeited bail becomes the fine.

The justice of the peace or city judge is given ample authority to set a cash bail schedule in section 46-9-302, MCA. Section 46-9-301, MCA, enumerates various factors which the court may consider in establishing bail. In addition, where the bail schedule is used for minor offenses, it is reasonable that the court should have the flexibility to include all charges which may accrue to the case, such as the $10 charge mandated by section 46-18-236, MCA. The alternative of implementing the charge at the conclusion of a case can result in collection problems where there has been a forfeiture of bail.

Your inquiry concerns the issue of how the charge mandated by section 46-18-236, MCA, is to be collected when bail is forfeited.

While bail is not forfeited until an offender fails to appear for hearing, there is no reason that the bail schedule cannot take into account the possibility of the case culminating in that fashion. This procedure avoids the dilemma for the court in trying to collect the additional charge after the case has ended. It is also consistent with the intent of the Legislature that all people who are fined should pay the $10 fee, even if they forfeit bail.

THEREFORE, IT IS MY OPINION:

> In order to collect the additional $10 charge required by section 46-18-236, MCA, a court may exercise its power under section 46-9-302, MCA, and increase the bail schedule for minor offenses in a like amount.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 60

LOCAL GOVERNMENT - Distribution of accrued interest on protest fund;
PUBLIC FUNDS - Distribution of accrued interest on protest fund;
TAXATION AND REVENUE - Distribution of accrued interest on protest fund;
MONTANA CODE ANNOTATED - Sections 7-6-201, 7-6-202, 7-6-204(1), 7-6-205, 7-6-206, 15-1-402, 17-6-204, 32-1-102(4), 32-2-101(3), 32-3-102;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 25 (1985).

HELD: Interest accrued on amounts held in a protest fund established under section 15-1-402, MCA, must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units.

18 April 1986

John P. Connor, Jr.
Jefferson County Attorney
Jefferson County Courthouse
Boulder MT 59632

Dear Mr. Connor:

You have requested my opinion concerning the following question:

> Should interest accrued on money held in a protest fund established under section 15-1-402, MCA, be distributed to the general fund or to the various taxing jurisdictions within the county on a pro rata basis after resolution of the protest, either by settlement or by decision favorable to the county?

I conclude that the accrued interest should be distributed to the affected taxing units in the same proportion as the corpus of the protest fund.

Section 15-1-402, MCA, deals generally with the payment of county or municipal taxes under protest. Subsection (6) requires that:

> [a]ll portions of taxes and license fees paid under protest ... shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any action or suit to recover the same.

If a timely action to recover the protested taxes is not filed or, if properly initiated, the action is resolved favorably to the county or municipality, "the amount of the protested portions of the tax or license fee shall be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs." § 15-1-402(8)(a), MCA (emphasis added). Significantly, section 15-1-402(8)(b), MCA, which governs should the taxpayer be successful, includes as recoverable amounts not only the protested portions of the tax but also the "costs of suit and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county or 5% a year, whichever is greater, from the date of payment under protest." The lack of any reference in subsection 8(a) to the crediting of accrued interest to the taxing governmental entities, when read together with subsection 8(b)'s express provision for interest payments, indicates that the words "protested portions" in subsection 8(a) were not intended to include accrued interest. No other statutory provision directs that interest on monies deposited into the protest fund be paid to the affected taxing entities upon distribution of the tax payments to those entities.

Nonetheless, the general rule is that, in the absence of statutory provision to the contrary, accrued interest on taxes follows the taxes themselves; i.e., the interest is distributed in the same proportion as the taxes to the involved taxing jurisdictions. 85 C.J.S. Taxation § 1064 (1950); Yreka Union High School District v. Siskiyou Union High School District, 227 Cal. App. 2d 666, 39 Cal. Rptr. 112, 116 (1964); see State ex rel.

Fort Zumwalt School District v. Dickherber, 576 S.W.2d 532, 537 (Mo. 1979) ("the resolution we make comports with the general principle that the interest on public funds designated for a specific purpose follows those funds in the absence of an unequivocal legislative expression otherwise"); State ex rel. Board of County Commissioners v. Montoya, 91 N.M. 521, 575 P.2d 605, 607 (1978) ("[a]bsent a special statutory provision, the general rule is that the interest is an accretion or increment to the principal fund earning it, and becomes part of that fund"); Miles v. Gordon, 234 Ark. 525, 353 S.W.2d 157, 159 (1962) ("since it is interest on the tax monies, the interest itself falls within the category of tax money"); see generally Annot., 143 A.L.R. 1341, 1342-46 (1943); cf. School District No. 12 v. Pondera County, 89 Mont. 342, 347, 297 P. 498, 500 (1931) (interest and penalties on delinquent taxes follow the taxes); 41 Op. Att'y Gen. No. 25 (1985) (same). That payments under section 15-1-402, MCA, are deposited into a protest fund and are not available for immediate use does not change their status as tax monies since all amounts placed therein are to discharge alleged tax or license fee liability. See generally Mills v. County of Trinity, 108 Cal. App. 3d 656, 660, 166 Cal. Rptr. 674, 676 (1980) ("[i]n its broadest sense, a tax includes all charges upon persons or property for the support of government or for public purposes"); Arizona Department of Revenue v. Transamerica Title Insurance Company, 124 Ariz. 417, 604 P.2d 1128, 1131 (1979) ("[a] tax is the enforced contribution of persons and property levied by the authority of the state"). The fund merely ensures that the protested portions will not be distributed for use by the involved taxing jurisdictions prior to resolution of the challenge. Unless some statutory provision requires a different disposition, the accrued interest at issue here must, therefore, be allocated proportionally to the affected taxing entities.

The only statutory provision which may direct a disposition of the accrued interest from the protest fund in a manner contrary to the common-law rule is section 7-6-204(1), MCA. That section requires all interest on "public money" deposited by the county or the city treasurer pursuant to section 7-6-201(1), MCA, to "be credited to the general fund of the county, city, or town to whose credit such funds are deposited." The issue thus becomes whether the term "public money" in section 7-6-201(1), MCA, includes protest funds

established under section 15-1-402(6), MCA. Review of these statutory provisions and their legislative histories indicates that protest fund amounts are not so included.

First, section 15-1-402(6), MCA, permits deposits into "local banks or savings and loan associations," while section 7-6-201(1), MCA, provides for deposits into not only banks and savings and loan associations but also credit unions. Banks, savings and loan associations, and credit unions are, however, separately defined and regulated under Montana law. See §§ 32-1-102(4), 32-2-101(3)(a), 32-3-102, MCA. Section 15-1-402(7), MCA, allows investment of protest fund amounts in interest-bearing accounts and the state unified investment program. In contrast, "public money" may be placed not only into demand, time, or savings deposits but also into direct obligations of the United States government, securities issued by its agencies, and repurchase agreements. §§ 7-6-202, 7-6-205, 7-6-206, MCA. Although "public money" may further be placed into the state pooled investment fund pursuant to section 17-6-204, MCA, investment of protested tax amounts under the state program is not limited to that fund. Second, section 15-1-402, MCA, requires that a special fund be established for protested taxes; section 7-6-201, MCA, effectively authorizes commingling of all "public money." Third, section 15-1-402, MCA, specifically directs the method and manner of the protest fund's distribution. Section 7-6-201, MCA, is substantially less detailed, requiring in subsection (4) only that the deposits "shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time." Finally, aside from the differing conditions for the deposit, investment, and withdrawal of monies subject to sections 7-6-201 and 15-1-402, MCA, the obligation to deposit "public money" into interest-bearing accounts was established in 1913 (1913 Mont. Laws, ch. 88), but the comparable provision in section 15-1-402, MCA, was not added until 1977 (1977 Mont. Laws, ch. 394). Quite obviously, there would have been no need for the modification to section 15-1-402, MCA, if section 7-6-201, MCA, had already accomplished the desired result. See Crist v. Segna, 38 St. Rptr. 150, 152, 622 P.2d 1028, 1029 (1981); State ex rel. City of Townsend v. D. A. Davidson, Inc., 166 Mont. 104, 109, 531 P.2d 370, 372 (1975). In sum, sections 7-6-201 and 15-1-402, MCA, operate independently, and section

7-6-204(1), MCA, is thus inapplicable to interest accrued on protest fund amounts.

THEREFORE, IT IS MY OPINION:

> Interest accrued on amounts held in a protest fund established under section 15-1-402, MCA, must be distributed to the affected taxing units in the same proportion as the tax amounts in the fund are paid to those units.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 41 OPINION NO. 61

COUNTY COMMISSIONERS - Authority to create rural improvement district to improve petitioned county roads;
HIGHWAYS - Petitioned county roads included in definition in section 7-12-2101(11), MCA;
RURAL SPECIAL IMPROVEMENT DISTRICTS - Authority to improve petitioned county roads and duty to maintain them;
MONTANA CODE ANNOTATED - Sections 7-12-2101(11), 7-12-2102, 7-12-2161, 7-12-4102, 7-14-2102, 7-14-2103(2).

HELD: 1. A rural special improvement district may be created to improve a county road which has been established by petition.

2. If a district is created for that purpose, the district is responsible for the costs of maintenance and repair of the road.

2 May 1986

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following questions:

1. May a board of county commissioners create a rural special improvement district to improve a county road which has been established by the county road petition process?

2. If a rural special improvement district may be created to improve a county road established by petition, what entity is responsible for the maintenance of the improved road?

Regarding your first question, section 7-12-2102, MCA, authorizes the creation of rural special improvement districts. It states in pertinent part:

> (1) Whenever the public interest or convenience may require, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

The improvements authorized in section 7-12-4102, MCA, include paving or repaving "streets, avenues, alleys, or places or public ways." § 7-12-4102(2)(c)(iii), MCA. In your memorandum you questioned the interpretation of these terms to include "roads." It is my opinion that "streets" and "public ways" both include "roads." Section 7-12-2101(11), MCA, defines "street" to mean "avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years." In your memorandum you interpreted the definition to include only streets, alleys, etc., that are dedicated or in common and undisputed use. I do not interpret the definition that way. The definition refers to avenues, highways, etc., and places which have been dedicated. If the Legislature had meant to modify all the terms in the definition with "which have been dedicated" it would have so indicated by placing a comma after "places." See Sutherland, Statutory Construction § 12.15, p. 135 (4th ed.). Statutes can be expressed only in words, which in turn must be logically interpreted according to grammatical and statutory rules. State ex rel. Stafford v. Fox-Great Falls Theatre Corporation, 114 Mont. 52, 132 P.2d 689, 696 (1943).

In any event, the term "public ways" in section 7-12-4102(2)(c), MCA, would undoubtedly include roads.

Therefore, the board of county commissioners has authority to order the creation of a rural special

improvement district to improve a county road that was established by petition.

Regarding your next question, in your memorandum you indicated that the proposed rural special improvement district will be assessed only for paving the county road in question and not for maintaining it.

Section 7-12-2161, MCA, requires the board of county commissioners to estimate the cost of maintaining, preserving, or repairing the improvements in each district, and to levy and assess all the property within the district for the entire cost. The statute must be read, and the legislative intent determined, according to the clear meaning of the language used. Rierson v. State, 188 Mont. 522, 614 P.2d 1020, 1023 (1980).

The Legislature evidently intended rural special improvement districts to be responsible for the costs of maintenance and repair as well as the initial improvement.

In your memorandum you mentioned a possible conflict with section 7-14-2103(2), MCA, which requires the board of county commissioners to maintain county roads which were petitioned for by freeholders. This statute does not create a conflict. Section 7-14-2102, MCA, authorizes the board of county commissioners to do whatever is necessary for the best interests of the county roads. The rural special improvement district statutes empower the board of county commissioners to establish a district to assess and levy the taxes for improvements and maintenance in the district, and to generally administer the district. Therefore, even though the rural special improvement district pays for the maintenance of the road, the board of county commissioners is still administering the maintenance of the road.

Moreover, the requirement that the board of county commissioners maintain a petitioned county road does not mean that the board is required to pave and improve it. The board is only required to do whatever is necessary for the best interest of the road. § 7-14-2102, MCA. Obviously, the location of the road and the amount of traffic are primary considerations in the kind of maintenance provided.

Finally, the rules of statutory construction necessitate interpreting the various statutes pertaining to maintenance of county roads to make each statute operative. See Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 919 (1958).

On this basis, I conclude that if a rural special improvement district is established to improve a county petitioned road, the district must be assessed and levied for the road's maintenance and repair.

THEREFORE, IT IS MY OPINION:

1. A rural special improvement district may be created to improve a county road which has been established by petition.

2. If a district is created for that purpose, the district is responsible for the costs of maintenance and repair of the road.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1985. This table includes those rules adopted during the period January 1, 1986 through March 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 December 31, 1985, this table and the table of contents of this issue of the MAR.

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