MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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

In the matter of the adoption of new rules relating to salary and service credits for retirement systems, qualifying out-of-state service in PERS, and purchasing military service in the Sheriffs' Retirement System; and amending ARM 2.43.320 and 2.43.406 for the purposes of granting full service credit for temporary service reductions.	NOTICE OF PROPOSED ADOPTION AND AMENDMENT OF RULES TO IMPLEMENT RECENTLY ENACTED LEGISLATION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 27, 1987, the Public Employees' Retirement Board proposes to adopt rules to implement new statutes granting full salary credit for retirement system members whose hours have been temporarily reduced due to a budget deficit, allowing PERS members to qualify previously refunded service from other public retirement systems into PERS, and allowing certain members of the sheriffs' retirement system to purchase previous military service for purposes of calculating retirement benefits. On this date, the Board also proposes to amend ARM 2.43.320 and 2.43.406 in order to grant full service credits to members working at least 140 hours in a month.

2. The proposed rules provide as follows:

RULE I FULL SALARY CREDIT FOR TEMPORARY WORK REDUCTIONS (1) A retiring member whose final average salary calculation is adversely affected because of a temporary work reduction as defined in statute may file a written application for full salary credit with the board. Such application shall include:

(a) certification from the member's employing agency that the reduction in hours was a temporary measure in response to a budget deficit, and

(b) the employer's accounting of the number of hours, pay periods and hourly salary involved in the work reduction.

(2) The division will calculate the employee and employer contributions due, plus regular interest accruing one month from the end of any pay period of foregone salary, based upon the amount of salary forgone and the employer and employee contribution rates in effect at that time.

(3) The employee will be billed for the employee portion and may make payment in one lump sum or on an installment basis.

(4) Upon payment by the employee, the division will

bill the employing agency for the employer share, plus interest. The employer may elect not to pay any interest due, in which case the employee will be billed for this amount.

(5) Upon payment of the total amount due, the division shall add the foregone salary to the monthly payroll reports in the member's file and shall use these new salary totals in the calculation of final average salary for purposes of calculating monthly retirement benefits.

(6) No benefits will be paid until all required payments are made into the employee's account; however, the annuity starting date will be the first day of the month after the employee's last day of membership service.

(Auth. 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA; Imp. SB 136, 1987 Legislature.)

RULE II PREVIOUSLY REFUNDED OUT-OF-STATE OR FEDERAL PUBLIC SERVICE (1) For the purposes of qualifying up to 5 years of previously refunded public service into PERS, a statutorily eligible member must apply, in writing, to the retirement division, supplying the following information:

(a) certification by the member's former public retirement system of his dates of employment, full- or part-time employment status, weekly or monthly hours of employment (if part-time), date and amount of refund, and current membership status, or

(b) name and mailing address of his former public retirement system, approximate dates of employment, name of employing agency, approximate date of refund, and full name (if different) under which he was then employed.

(2) The division will calculate the actuarial cost of qualifying such service. The actuarial cost rate will be the current normal cost rate of the system plus 1.5% to compensate for adverse selection, plus simple interest beginning one month from the date of initial eligibility for qualifying such service. In setting the actuarial cost for a given period, the board may round down to a simple whole or half percent for purposes of ease in administering this provision.

(3) The member may purchase such service in one lump-sum or equal monthly installments by payroll deduction, with monthly payments subject to additional interest. It will be the member's responsibility to initiate and terminate additional PERS contributions with his payroll officer. Any overpayments will be refunded to the member along with interest, upon the request of the member.

(4) No service will be credited to the member's account until full payment has been made.

(Auth. 19-3-304, MCA; Imp. HB 132, 1987 Legislature)

RULE III SHERIFF'S MILITARY BUY-BACK (1) A member of the Sheriffs' Retirement System who elects to purchase military service under the provisions of Title 19, Chapter 7 will be required to contribute 11.1% of salary as of his 16th year and as many succeeding years as are required to qualify this service.

(Auth. 19-7-201, Imp. HB 158, 1987 Legislature)

3. Rule I is proposed to be adopted in order to implement the intent of SB 136 passed in regular session of the 50th Legislature, 1987, which requires that the Public Employees' Retirement Board adopt rules providing that a retirement system member whose hours have been temporarily reduced as a result of a budget deficit receives the same retirement benefits as if the reduction had not occurred. Rule II is proposed to be adopted in order to specify the procedures required by the Board in order for PERS members to qualify certain public service employement as provided in HB 132, 1987 Legislature. Rule III is proposed to be adopted in order to specify the actuarial contribution rates required for qualification of previous military service into the Sheriffs' Retirement System as provided in HB 158, as enacted during the 1987 Legislature.

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

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

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

(2) "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.

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

(4) "full-time employment" means any period of employment in which the member is compensated for at least ~~100~~ 140 hours during a calendar month;

(5) "full time public service employment" means a period of at least ~~100~~ 140 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;

(6) "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;

(7) "part-time employment" means any period of employment in which the member is compensated for less than ~~100~~ 140 hours during a calendar month;

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

(9) "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;

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

(11) "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;

(12) "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

(13) "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)

2.43.406 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 ~~100~~ 140 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 calculated "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, Chs. 3, 5, 6, 7, 8, 9 and 13, MCA)

5. These rules are proposed to be amended in order to meet the Legislative intent of SB 136, as described in paragraph 3 on page 3.

6. Interested parties may submit their data, views or arguments concerning the proposed adoptions or amendments in writing to Linda King, Assistant Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620, no later than June 25, 1987.

7. 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 Linda King, Assistant Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620, no later than June 25, 1987.

8. 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 Committe 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 2,844 persons based upon the number of active members in the state retirement systems covered by these rules per the 1986 actuarial valuations of those systems.

9. The authority of the department to make the proposed rules is is based on sections 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA, and the rules implement SB 136, HB 132 and HB 158 passed during the 1987 Legislature.

John Preoll, President
Public Employees'
Retirement Board

Certified to the Secretary of State May 18, 1987.

MAR Notice No. 2-2-162 10-5/28/87

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of adoption of revisions to rules relating to produce wholesalers and itinerant merchants, and establishing bond equivalents	)))))	NOTICE OF PROPOSED ADOPTION, AMENDMENT AND REPEAL OF RULES PERTAINING TO PRODUCE WHOLESALERS AND ITINERANT MERCHANTS AND ESTABLISHING BOND EQUIVALENTS. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 6, 1987 the Montana Department of Agriculture proposes to adopt new rules implementing House Bill 822 of the 1987 legislative session. These rules establish the requirements for bond equivalents to surety bonds. The department also proposes to make minor modifications to the existing rules relating to produce wholesalers and itinerant merchants.

2. The proposed rules read as follows:

RULE I BOND CONDITIONS - CANCELLATION (1) A surety bond, or bond equivalent shall be in bond increments found in ARM 4.12.2613 or 4.12.2618 based on monthly business conducted.

(2) The surety bond shall be on a form prescribed by the department.

(3) Such surety bond shall name the state of Montana as obligee for the benefit of all parties.

(4) A surety bond required by section 80-3-603 MCA, or 80-3-705 MCA, shall be effective on the date of commencement, shall not be affected by the expiration of the license period, and shall continue in full force and effect until cancelled. The continuous nature of a surety bond, however, shall in no event be construed to allow the liability of the surety under a surety bond to accumulate for each successive license period during which the surety bond is in force, but shall be limited in the aggregate to the amount stated on the bond or as changed, from time to time, by appropriate endorsement or rider.

(5) The principal or the surety on a bond may cancel a bond by written notice of intent to cancel, by registered or certified mail, with return receipt, to the other party and to the department. Such written notice shall be received at least sixty (60) days prior to the cancellation date specified on the notice.

(6) The licensee shall file a new bond or bond equivalent within 45 days after a notice of cancellation of an existing bond described in subsection (5) of this rule. The new bond or bond equivalent must become effective and be in full force and effect on and continue after the cancellation date of the existing bond.

AUTH: 80-3-603, 80-3-610, 80-3-705 and 80-3-709, MCA
IMP: 80-3-603 and 80-3-705, MCA

RULE II CERTIFICATES OF DEPOSIT OR OTHER BOND EQUIVALENTS (1) Rules promulgated hereunder that apply to surety bonds shall also apply to certificates of deposit (CD) and other bond equivalents.

(2) A CD may be liquidated for disbursement for the same reasons and in the same manner that surety bond proceeds may be requested for disbursement.

(3) A CD or other bond equivalent shall be on a form approved by the department.

(4) A CD issued by a bank or savings and loan association that is a member in good standing with the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively may be submitted to the department in lieu of a surety bond for a produce wholesaler or itinerant merchant as required by sections 80-3-603 MCA, and 80-3-705 MCA. The CD must be in an amount equal to the otherwise required surety bond.

(5) A CD may be automatically renewable, or for a single maturity. If it is for a single maturity, the CD must be for a term of one (1) year or less.

(6) A CD submitted in lieu of a surety bond shall be held by the department.

(7) All CDs shall be made payable or properly assigned to the department as follows: "Pay to the order of the Director of the Montana Department of Agriculture". If a CD is assigned to the department, written consent of the assignment must be received from the financial institution issuing the certificate.

(8) All interest earned on the CD is to be credited or paid directly to the purchaser of the CD. If interest is paid to the department, it shall be endorsed to the purchaser of the CD. These conditions are valid only if no claim has been made against the CD. In event of a claim the interest earned may become a part of the dispersible proceeds of the CD.

(9) If a licensee desires to terminate a license and requests the return of a CD, the licensee filing the CD must return the license and make written request by registered or certified mail with return receipt for the return of the CD. Upon receipt of the written request and the submission of the license, the director shall hold the CD for a period of ninety (90) days before it is returned. If at the end of the ninety (90) days no claim against the CD has been made, the CD shall be returned, unless the director is of the opinion that claims against the CD may exist. Under these conditions, the director may hold the CD until it is determined that no claims against the CD exist.

(10) If a license issued is revoked, the CD shall be held by the director for a period of one hundred and twenty (120) days or until the director is satisfied that no claims against the CD exist.

(11) If a licensee desires to remain licensed and requests the return of a CD on file with the director, the licensee shall file with the director a replacement CD,

bond, or bond equivalent in an amount required by the director in accordance with ARM 4.12.2613 or 4.12.2618. The replacement CD, bond, or bond equivalent must be received, become effective and be in full force and effect on or before the date that the licensee's existing CD is to be returned. The director shall not return the CD until a replacement CD, bond or bond equivalent has been received.

(12) If a reduction in the amount of a CD is permitted by the department, such reduction shall be made by submitting a new CD in the smaller amount approved by the department. The date the CD is to be effective, shall be set by the department and any new liability accrued under the prior CD will transfer to the new CD or its equivalent. The department will release the original CD upon receipt of the reduced CD or its equivalent providing all actions are approved by the department.

(13) In addition to CDs the director may accept irrevocable letters of credit which he deems to be acceptable. All of the provisions that apply to CDs shall apply to these bond equivalents.

AUTH: 80-3-603, 80-3-610, 80-3-705 and 80-3-709, MCA
IMP: 80-3-603 and 80-3-705, MCA

4.12.2604 CLARIFICATION AND ENFORCEMENT OF ACT-HEARINGS (1) ~~In all instances where a party is allowed a hearing, and in all cases where an appeal comes under the provisions of this act, the party to whom such hearing is granted and the appellant in cases of appeal to the District Court, shall before such hearing is held, and at the time of filing or notice of appeal file with the Director in the case of a hearing and with the clerk of the District Court in the case of an appeal, a surety bond in the sum of three hundred dollars ($300) signed by the party as principal with a surety company qualified and authorized to do business in the State of Montana, conditioned upon the payment of all costs and expenses, including the costs of taking and transcribing of all testimony, provided such hearing or appeal is terminated adversely to such party.~~ Except as specified in 80-3-605 and 80-3-608, MCA all hearings conducted pursuant to Title 80 Chapter 3 part 6 shall follow procedures outlined in the Montana Administrative Procedures Act.

AUTH: 80-3-610, MCA
IMP: 80-3-605, 80-3-608 and 80-3-609, MCA

4.12.2605 NOTICE OF FORMAL HEARING IS HEREBY REPEALED (Text can be found on 4-481 of the Administrative Rules)
AUTH: 80-3-610, MCA IMP: 80-3-608, MCA

4.12.2612 LICENSE AND BOND FOR WHOLESALE DEALERS IS HEREBY REPEALED (Text can be found on 4-482 of the Administrative Rules.)
AUTH: 80-3-610, MCA IMP: 80-3-603, MCA

4.12.2613 ~~SURETY~~ BOND SCHEDULE FOR WHOLESALE DEALERS IN AGRICULTURAL PRODUCTS (1) Surety bond or its equivalent for wholesale dealer in agricultural products shall be established at a minimum of $1,000 and increased according to the dollar volume of business conducted monthly based on the following schedule:

~~Monthly Business Conducted in Dollars ----- Surety Bond Amount~~
~~0 - 17,000 ----- $ 17,000~~
~~17,000 - 57,000 ----- 37,000~~
~~57,000 - 107,000 ----- 57,000~~
~~107,000 - 207,000 ----- 107,000~~
~~207,000 - 1007,000 ----- 157,000~~
~~1007,000 + over ----- 207,000~~

Monthly Business Conducted In Dollars			Bond Amount
0	-	$ 500	$ 1,000
501	-	5,000	3,000
5,001	-	10,000	5,000
10,001	-	20,000	10,000
20,001	-	50,000	20,000
50,001	-	100,000	30,000
$ 100,001	+	over	40,000

AUTH: 80-3-603 and 80-3-610, MCA IMP: 80-3-603, MCA

4.12.2618 ~~SURETY~~ BOND SCHEDULE FOR ITINERANT MERCHANTS (1) Surety bond or its equivalent for itinerant merchants shall be established at a minimum of $1,000 and increased according to dollar volume of business conducted monthly based on the following schedule:

~~Monthly Business Conducted ----- Surety Bond Amount~~
~~$ 0 - 250 ----- $ 1,000~~
~~250 - 500 ----- 3,000~~
~~500 - 1,000 ----- 5,000~~
~~1,000 - 1,250 ----- 7,000~~
~~1,250 - 1,500 ----- 8,000~~
~~1,500 - 1,750 ----- 9,000~~
~~1,750 + over ----- 10,000~~

Monthly Business Conducted			Surety Bond Amount
$ 0	-	250	$ 1,000
251	-	1,000	5,000
1,001	-	3,000	8,000
3,001	-	5,000	10,000
5,001	-	over	15,000

AUTH: 80-3-705 and 80-3-709, MCA IMP: 80-3-705, MCA

3. These rules are necessary to implement House Bill 822 of the 1987 legislative session. House Bill 822 contained an immediate effective date for the establishment of bond equivalents for surety bonds required in sections 80-3-603 and 80-3-705 MCA covering the duties of produce wholesalers or itinerant merchants. The department finds it necessary to establish rules to specify the conditions and terms of legal documents that create financial obligations equivalent to surety bonds. The department also finds it necessary to update the rules relating to produce wholesalers and itinerant merchants to better reflect the proper procedures used by the department in administering hearings pursuant to chapter 80 parts 6 and 7 MCA. The department also finds it necessary to revise bond schedules to better protect persons covered by the bonds.

4. Interested persons may submit their data, views, or comments concerning the proposed rules to O. Roy Bjornson, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620, no later than June 30, 1987.

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 O. Roy Bjornson, Montana Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620, no later than June 30, 1987.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected, a hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons based on approximately 100 licensed produce wholesalers and itinerant merchants in Montana.

7. The authority of the department to make the proposed rule is based on sections 80-3-603, 80-3-610, 80-3-705, 80-3-709 MCA and the rules implement sections 80-3-603, 80-3-608, 80-3-705, 80-3-708 MCA.

Keith Kelly, Director
Department of Agriculture

Certified to the Secretary of State May 18, 1987

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF BARBERS

In the matter of the proposed amendment of 8.10.1006 concerning procedures	)	NOTICE OF PROPOSED AMENDMENT OF 8.10.1006 PROCEDURE UPON COMPLETION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 29, 1987, the Board of Barbers proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-308, Administrative Rules of Montana)

"8.10.1006 PROCEDURE UPON COMPLETION (1) and (2) will remain the same.

~~(3) Any student who fails to pass the examination conducted by the board shall be required to complete a further course of study and training of not less than 250 clock hours, to be completed within 3 months before being eligible to take the examination again.~~

(4) will remain the same."

Auth: 37-30-203, MCA Imp: 37-30-303, 406, MCA

3. The reason for the proposed amendment is that 8.10.1006(3) has been found to be in excess of legislative authority.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Barbers, 1424 9th Avenue, Helena, Montana 59620-0407, no later than June 25, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Barbers, 1424 9th Avenue, Helena, Montana 59620-0407, not later than June 25, 1987.

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

date. Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF BARBERS
LARRY SANDRETTO, PRESIDENT

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

Certified to the Secretary of State, May 18, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS

In the matter of the proposed amendments of 8.50.423 concerning definitions, 8.50.424 concerning temporary employment, 8.50.425 concerning resident manager and qualifying agents, 8.50.430 concerning identification cards, 8.50.431 concerning insurance requirements, 8.50.436 concerning termination of business, 8.50.437 concerning fees, and the repeal of 8.50.439 concerning assessments	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF 8.50.423 DEFINITIONS, 8.50.424 TEMPORARY EMPLOYMENT WITHOUT IDENTIFICATION CARD, 8.50.425 RESIDENT MANAGER AND QUALIFYING AGENTS, 8.50.430 IDENTIFICATION POCKET CARD, 8.50.431 INSURANCE REQUIREMENTS, 8.50. 436 TERMINATION OF BUSINESS, 8.50.437 FEE SCHEDULE, AND THE REPEAL OF 8.50.439 ASSESSMENT

TO: All Interested Persons.

1. On Friday, June 19, 1987, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana, to consider the amendments and repeal of the above-stated rules.

2. The proposed amendment of 8.50.423 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1376 and 8-1377, Administrative Rules of Montana)

"8.50.423 DEFINITIONS (1) "Casual employment" means employment which comes about fortuitously and is for no fixed duration of time. An engagement or employment is not "casual" where a person is employed to do a particular service or class of service recurring somewhat regularly, or with a fair expectation of continuance for a more or less extended sequence or period of time, such as every Saturday night, a week, or a month.

A peace officer so engaged in casual employment desiring to be exempt from the provisions of 37-60-406, MCA, must file with the board when requested, a copy of the casual employment authorized by his sheriff or chief of police.

This definition does not apply to peace officers or reserve officers performing security guard functions for another governmental agency, or to security of in-custody inmates held elsewhere than at a custodial institution or jail or when private security companies are unwilling or unavailable to provide the service.

All other exceptions under this "casual employment" rule shall be determined by the board based upon the facts presented.

(2) through (8) will remain the same.

(9) "A retail merchant" means any person who operates a store for the purpose of making sales of goods to other

persons who purchase the goods for their own use and not for resale."

Auth: 37-60-202, MCA Imp: 37-60-101, MCA

3. The proposed amendment of 8.50.424 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1377, Administrative Rules of Montana)

"8.50.424 TEMPORARY EMPLOYMENT WITHOUT ~~REGISTRATION--OR~~ IDENTIFICATION CARD The board may authorize a licensee to employ temporarily without first obtaining ~~a registration card~~ or an identification card under the following conditions:

(1) and (2) will remain the same.

(3) No one person may be temporarily employed on a fragmented work schedule for more than ~~90~~ 30 days total in any one calendar year.

(4) will remain the same.

(5) Temporary employment will not be for more than ~~90~~ 30 consecutive calendar days.

(6) At the end of this period of time the licensee must either terminate the person or have the person make application for ~~either~~ an ~~registration or~~ identification card.

(7) The licensee will notify the board within 5 days of the termination of those persons employed for the ~~90~~ 30 consecutive calendar day period.

(8) will remain the same."

Auth: 37-60-202, MCA Imp: 37-60-302, 307, 308, 309, 310, 312, 321, 322, MCA

4. The proposed amendment of 8.50.425 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1378, Administrative Rules of Montana)

"8.50.425 RESIDENT MANAGER AND QUALIFYING AGENTS (1) will remain the same.

(2) When any person applying to be licensed as a qualifying agent and a resident manager who meets the definition of both, the board shall issue one license and indicate the person is licensed to do both and require the fee of only one license."

Auth: 37-60-202, MCA Imp: 37-60-302, MCA

5. The proposed amendment of 8.50.430 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1380, Administrative Rules of Montana)

"8.50.430 IDENTIFICATION/~~REGISTRATION~~-POCKET CARD

(1) Only one identification/~~registration~~ card shall be issued for each licensee. The holder of an identification/~~registration~~ card shall be responsible for the maintenance, custody and control of the identification/~~registration~~ card, and shall neither let, loan, sell nor otherwise permit unauthorized persons or employees

use it. If an identification/~~registration~~ card shall be altered in any way, it shall become invalid.

(2) Identification cards are renewed in the same way as license renewal in ARM 8.50.433.

~~(2)~~ (3) will remain the same."

Auth: 37-60-202, MCA Imp: 37-60-309, MCA

6. The proposed amendment of 8.50.431 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1381, Adminstrative Rules of Montana)

"8.50.431 INSURANCE REQUIREMENTS (1) will remain the same.

(2) Persons licensed as private investigators must carry coverage for omissions and errors; destruction, damage or loss of property entrusted to their custody, care and control; as well as coverage for defamation, malicious prosecution and invasion of privacy.

~~(2)~~ (3) . . .

~~(3)~~ (4) . . .

(5) In lieu of an insurance policy, proof of financial responsibility acceptable to the board requires a showing by the licensee of a property bond, a bond, trust fund, escrow account or a combination of these, in the amount of at least $25,000, and established for this purpose."

Auth: 37-60-202, MCA Imp: 37-60-202 (8), MCA

7. The proposed amendment of 8.50.436 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1382, Adminstrative Rules of Montana)

"8.50.436 TERMINATION OF BUSINESS (1) A licensee who terminates his business shall within 5 days mail or deliver his license and identification/~~registration~~ card to the department. If the licensee opens another business or goes to work for someone before the license or renewal expires, the department may return the license and identification/~~registration~~ card if the request is in compliance with the law and rules."

Auth: 37-60-202, MCA Imp: 37-60-309, MCA

8. The proposed amendment of 8.50.437 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1383, Administrative Rules of Montana)

8.50.437 FEE SCHEDULE

(1)	License application fees	
(a)	Contract security company	~~$100.00~~ 200.00
(b)	Proprietary security organization	~~100.00~~ 200.00
(c)	Private investigator employer	~~100.00~~ 200.00
(d)	Qualifying agents and resident managers	~~100.00~~ 200.00
(e)	Security alarm installer	~~100.00~~ 200.00

(f)	License renewals	~~150.00~~	100.00
	One-half price on renewals only for each additional license for dual or multiple licenses		
(g)	Duplicate licenses	15.00	
(2)	Employee registration application fees		
(a)	Armed contract security employee	~~100.00~~	75.00
(b)	Armed proprietary security employee	~~100.00~~	75.00
(c)	Armed private investigator employee	~~100.00~~	75.00
(d)	Renewals	~~150.00~~	50.00
(3)	Employee Identification Application Fees		
(a)	Unarmed contract security employee	~~30.00~~	25.00
(b)	Unarmed proprietary security employee	~~30.00~~	25.00
(c)	Unarmed private investigator employee	~~60.00~~	25.00
(d)	Unarmed installer employee	~~30.00~~	25.00
(e)	Renewals for unarmed contract and proprietary security employee	~~30.00~~	20.00
(f)	Renewals for unarmed private investigator employee	~~30.00~~	20.00
(g)	Renewals for unarmed alarm installer employee	~~30.00~~	20.00
(4)	Miscellaneous fees		
(a)	Re-exams	20.00	
(b)	Late renewals	25.00	
(c)	Branch office application	30.00	
(5)	Exam fee	25.00	

~~Fee schedule will remain in effect until December 1, 1987, after which date will revert back to the same fee schedule that is in effect on August 11, 1986, with the addition of permanent fees of $25.00 for unarmed alarm installer employees and their renewal of $10.00, and taking qualifying examinations---$25.00.~~

(6) Temporary ID card 10.00"

Auth: 37-1-134, MCA Imp: 37-1-134, 37-60-304, 305, 306, 312, MCA

9. The board is proposing to repeal 8.50.439 Assessment which can be found on page 8-1384, Administrative Rules of Montana. The board is proposing to repeal this rule because it was a one-time assessment to be paid prior to December 1, 1986. The assessment was charged so the board could make payment on a loan.

10. The reasons for the amendments to ARM 8.50.423 Definitions, 8.50.424 Temporary Employment Without Identification Card, 8.50.430 Identification Pocket Card, 8.50.431 Insurance Requirements, and 8.50.436 Termination of Business are being proposed so that the rules comply with the statutes being implemented that were amended by the 1987 Legislature.

11. The amendment of 8.50.425 Resident Manager and Qualfying Agents is being proposed to allow the resident manager and qualifying agents to be issued a license upon payment of only one fee if they meet the definition of both.

12. The amendment of 8.50.437 Fee Schedule is being proposed to make the fees commensurate with program costs.

13. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Montana Board of Private Security Patrolmen and Investigators, 1424 9th Avenue, Helena, Montana, no later than June 25, 1987.

BOARD OF PRIVATE SECURITY
PATROLMEN AND INVESTIGATORS

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

Certified to the Secretary of State, May 18, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

In the matter of the proposed amendment of 8.58.415A concerning continuing education	)))	NOTICE OF PROPOSED AMENDMENT OF 8.58.415A CONTINUING EDUCATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 29, 1987, the Board of Realty Regulation proposes to amend to above-stated rule.

2. The proposed amendment of 8.58.415A will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1609, Administrative Rules of Montana)

"8.58.415A CONTINUING EDUCATION (1) Each and every real estate licensee is hereby required to receive and successfully complete a minimum of 15 classroom or equivalent hours of continuing education in any two (2) year period, beginning January 1, 1988.

(2) through (4) will remain the same."

Auth: 37-51-202, 203, 204 (3), MCA Imp: 37-51-202, 203, 204 (3), MCA

3. The Board is proposing this amendment to provide an effective beginning date for continuing education.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, no later than June 25, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, no later than June 25, 1987.

6. If the Board receives requests for a public hearing on the proposed adoption from either 10% of 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committed 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 510 based on the 5100 licensees in Montana.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

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

Certified to the Secretary of State, May 18, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed amendments of 8.97.402 concerning eligibility, 8.97.411 concerning bonds and notes of board, 8.97.414 concerning loan loss reserve account, 8.97.509 concerning application and financing fees, 8.97.512 concerning taxable revenue bond program, 8.97.709 concerning terms, interest rates, fees and charges, 8.97.803 concerning application procedures - certified, 8.97.804 concerning application procedures - qualified	) NOTICE OF PROPOSED AMENDMENTS) OF 8.97.402 CRITERIA FOR) DETERMINING ELIGIBILITY, 8.) 97.411 BONDS AND NOTES OF) BOARD, 8.97.414 LOAN LOSS) RESERVE ACCOUNT FOR THE IN-) STATE INVESTMENT FUND, 8.97.) 509 APPLICATION AND FINANCING) FEES, COSTS AND OTHER) CHARGES, 8.97.512 TAXABLE) REVENUE BOND PROGRAM, 8.97.) 709 TERMS, INTEREST RATES,) FEES AND CHARGES, 8.97.803) APPLICATION PROCEDURE TO) BECOME A "CERTIFIED" MONTANA) CAPITAL COMPANY, 8.97.804) APPLICATION PROCEDURE TO) BECOME A "QUALIFIED" MONTANA) CAPITAL COMPANY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 29, 1987, the Montana Economic Development Board proposes to amend the above-stated rules.

2. The proposed amendment of 8.97.402 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3488 and 8-3489, Administrative Rules of Montana)

"8.97.402 CRITERIA FOR DETERMINING ELIGIBILITY The board shall determine that an application for financing is eligible under this subchapter only if it finds that:

(1) through (10) will remain the same.

(11) No loan, other than the federally guaranteed portion of a loan, shall be offered to the board for financing if the borrower on whose behalf the loan would be submitted as a signator to a loan, including the loan being contemplated for financing, appears in the most recent examination report of the financial institution as a classified asset or loan. Except in the case of purchase of the federally guaranteed portion of a loan, Aat the time an application for financing is submitted the financial institution submitting the application shall certify that the loan for which financing is sought has not been classified and that it does not have a loan currently outstanding for the same borrower that is a classified loan."

Auth: 17-6-324, MCA Imp: 17-6-303, 304, 305, 308, 314, MCA

3. Several lenders have questioned why the Board's rules do not allow the Board to purchase the federally guaranteed portions of loans classified by supervisory authorities since

there is "no risk" to the Board in doing so. They feel that otherwise eligible borrowers are being unreasonably denied access to the In-State Investment Fund.

The Board does perceive the purchase of the federally guaranteed portions of loans as risk free investments, and it has always been the Board's intent to allow the purchase of the federally guaranteed portions of loans which may be classified. This rule amendment is being proposed to clarify the Board's intent.

4. The proposed amendment of 8.97.411 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3493, Administrative Rules of Montana)

"8.97.411 BONDS AND NOTES OF BOARD The board may invest its funds in bonds, notes or other obligations of the board issued pursuant to Title 17, Chapter 5, Part 15, MCA, and to Title 17, Chapter 5, Part 16, MCA."

Auth: 17-6-324, MCA Imp: 17-6-308, MCA

5. This rule amendment will give the Board needed flexibility in designing a new taxable bond program and programs under the Municipal Finance Consolidation Act; such changes in programs are necessitated by changes in federal tax law.

6. The proposed amendment of 8.97.414 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3495, Administrative Rules of Montana)

"8.97.414 LOAN LOSS RESERVE ACCOUNT FOR THE IN-STATE INVESTMENT FUND (1) and (2) will remain the same.

(3) An amount equal to ~~0.25%~~ 2.00% of all interest on coal tax loans collected under ARM ~~8.97.308~~ shall be deposited to the loan loss reserve fund.

(4) through (6) will remain the same.

(7) Providing for an effective date of 10/1/87."

Auth: 17-6-324, MCA Imp: 17-6-315, MCA

7. The report issued October 27, 1986, by the bank examiners of the Department of Commerce recommended that the Board maintain a Loan Loss Reserve Fund of 1.5 - 2.0 percent of loans at risk. The Board currently deposits application fees and .25 percent of the interest earned on Coal Tax Loans to the Loan Loss Reserve. The amount of interest deposit is too small at .25 percent to increase the reserve sufficiently to keep pace with loan volume. This amendment will change the interest deposit to 2 percent in line with the law to be effective October 1, 1987. (SB 140 amending section 17-6-315, MCA.)

8. The proposed amendment of 8.97.509 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3503 and 8-3504, Administrative Rules of Montana)

"8.97.509 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES (1) and (2) will remain the same.

(3) Borrowers under either the pooled or stand alone IDB program shall pay the costs of issuance of the bonds. The immediate costs of the bond issue may include, but are not limited to fees of the underwriter, financial advisor, and bond counsel, the cost of printing, advertising, executing, and delivering the bonds, state-wide audit fee and all other costs that may, under federal arbitrage regulations, be recovered in addition to permissible yield differential. Such costs are incurred on behalf of one or more projects and a pro rata participation in those costs would be unfair to other project borrower(s) on whose behalf such costs were incurred to pay the actual costs.

(4) through (6) will remain the same."

Auth: 17-6-324, MCA Imp: 17-5-1504, 1521, SB 230 (17-5-1301, et seq.)

9. The 1987 Legislature passed SB 230 which assesses a portion of the state-wide audit costs to bond issuers. The rule change will list the state-wide audit fee as one of the immediate costs of the bond issue to be passed on to the users of the program.

10. The proposed amendment of 8.97.512 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3505, Administrative Rules of Montana)

"8.97.512 TAXABLE REVENUE BOND PROGRAM (1) The board may participate in the financing of projects which do not qualify for a tax exemption under section 103 of the Internal Revenue Code by issuing taxable bonds. The application procedures for the issuance of taxable composite or single project revenue bonds are the same procedures prescribed for the issuance of tax exempt composite or single purpose revenue bonds contained in these rules, except the requirements for a public hearing and other limitations on tax exempt financings shall not apply."

Auth: 17-6-324, MCA AUTH Extension, Sec. 3, Ch. 190, L. 1987 Imp: 17-5-1506, 17-5-1527 (6), MCA

11. SB 263 removed the public hearing requirement for projects financed with taxable bonds. The rules need to be modified to reflect SB 263's amendments.

12. The proposed amendment of 8.97.709 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3512, Administrative Rules of Montana)

"8.97.709 TERMS, INTEREST RATES, FEES AND CHARGES (1) and (2) will remain the same.

(3) The costs of the issuance of any bonds or notes by the board, including, but not limited to, underwriters discount, fees and charges of bond counsel and financial advisors, and the cost of advertising, printing, executing and

delivering the bonds or notes, trustee and paying agent fees, and state-wide audit fee may be financed with the proceeds of the bonds or notes, may be recovered by the board through the interest rate borne by obligations in accordance with ARM 8.97.709(2), or may be allocated among local government units participating in the program and charged to them directly."

Auth: 17-6-324, MCA Imp: 17-5-1611, 1643, SB 230 (17-5-1301, et seq.)

13. The 1987 Legislature passed SB 230 which assesses a portion of the state-wide audit costs to bond issuers. The rule change will list the state-wide audit fee as one of the immediate costs of the bond issue to be passed on to the users of the program.

14. The proposed amendment of 8.97.803 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3517 through 8-3520, Administrative Rules of Montana)

"8.97.803 APPLICATION PROCEDURE TO BECOME A 'CERTIFIED' MONTANA CAPITAL COMPANY (1) through (8) will remain the same.

(9) Certification automatically expires if the company fails to become qualified pursuant to ARM 8.97.804, within one year of the date it was certified or within one year of the effective date of this subsection, whichever is longer."

Auth: 17-6-324, MCA Imp: 90-8-202, 204, MCA

15. The purpose of this amendment is to provide a method to remove inactive capital companies from the list of companies "certified" under the Capital Companies Act.

16. The proposed amendment of 8.97.804 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3520 and 8-3521, Administrative Rules of Montana)

"8.97.804 APPLICATION PROCEDURE TO BECOME A 'QUALIFIED' MONTANA CAPITAL COMPANY (1) through (8) will remain the same.

(9) The reservation of tax credits expires if the credits are not used within one year of the date reserved or within one year of the effective date of this subsection, whichever is longer. Those credits will thereafter be available to any qualified company pursuant to ARM 8.97.807.

~~(9)~~ (10) The board shall notify the applicants of its action and the notice shall specify the level of capitalization that the applicant expects to qualify for tax credits provided in section 90-8-302, MCA. The specification of the expected level of capitalization does not reserve any equivalent level of tax credit, because tax credits shall be distributed as provided in ARM 8.97.807.

~~(10)~~ (11) The board shall suspend qualification of companies when all available tax credits have been distributed."

Auth: 17-6-324, MCA Imp: 908-202, 204, MCA

17. The purpose of this amendment is to provide a method whereby tax credits unused by one company can be reallocated to active capital companies which will use them.

18. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Montana Economic Development Board, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620-0401, no later than June 25, 1987.

19. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments either 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 Montana Economic Development Board, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620-0401, no later than June 25, 1987.

20. 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.

MONTANA ECONOMIC DEVELOPMENT BOARD
D. PATRICK McKITTRICK,
CHAIRMAN

BY: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 18, 1987.

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

In the matter of the amendment of rules 16.32.101, 16.32.102, 16.32.103, 16.32.106, 16.32.107, 16.32.109, 16.32.110, 16.32.111, 16.32.112, 16.32.114, 16.32.118, 16.32.136, and 16.32.137, concerning criteria and procedures for review of certificates of need for health care facilities.	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS (Certificate of Need)

To: All Interested Persons

1. On June 22, 1987, at 1:30 p.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the amendment of the above-listed rules.

2. The proposed amendments would conform the rules to changes made to the certificate of need statutes by Chapter 477, Laws of 1987, and make other procedural changes that experience with administration of the law recommends.

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

16.32.101 DEFINITIONS For the purposes of these rules:

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

(4) "Health service" means a major ~~subdivisions~~ subdivision, as determined by the department, within diagnostic, therapeutic, or rehabilitative areas of care, including alcohol, drug abuse, and mental health services, that may be provided by a health care facility. Specific treatments, tests, procedures or techniques in the provisions of care do not, by themselves, constitute a health service.

(a) "Health service" includes radiological diagnostic health services offered in, at, through, by or on behalf of a health care facility, including services offered in space leased or made available to any person by a health care facility except when the capital expenditure for the addition to or replacement of the same service is less than ~~$500,000~~$750,000.

~~(b) "Deletion of a health service" means the elimination or reduction in scope of a health service offered in or through a health care facility.~~

(5) Same as existing rule.

AUTHORITY: 50-5-103, MCA; Ch. 477, Sec. 11, Laws of 1987
IMPLEMENTING: Title ~~16~~50, Chapter 5, Part 3, MCA

16.32.102 LONG-TERM CARE -- DEFINITION; WHERE PROVIDED

(1) "Long-term care" means skilled nursing care, intermediate nursing care, or intermediate developmental disability care, ~~or personal care~~, as defined in 50-5-101(27)(b) through

~~(e)~~(d), MCA, which is provided to patients with chronic infirmities or disabilities necessitating the provision solely of such care. The term does not include such regular inpatient hospital treatment of specific psychiatric, rehabilitative, or acute medical problems under the direct and regular supervision of a physician as is ordinarily furnished by a hospital.

(2) Same as existing rule.

AUTHORITY: 50-5-103, MCA; Ch. 477, Sec. 11, Laws of 1987
IMPLEMENTING: 50-5-201, 50-5-301, MCA

16.32.103 SUBMISSION OF LETTER OF INTENT ~~(1)--At least 10 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the department and the agency qualified as a health systems agency pursuant to 42 USC 300l of the intent to acquire the facility and of the services to be offered in the facility and its bed capacity. The notice must be in writing and must contain the following:~~

~~(a) The services currently provided by the health care facility and the present bed capacity of the facility;~~

~~(b) Any additions, deletions or changes in such services which will result from the acquisition;~~

~~(c) Any changes in bed capacity, redistribution of beds among service categories or relocation of beds from one site to another which will result from the acquisition.~~

~~(2)~~(1) ~~Except as provided in subsection (1) of this rule, any~~ Any person proposing an activity other than those to which (3) and (4) below apply and that is subject to review under section 50-5-301, MCA, and not exempt under 50-5-309, MCA, shall submit to the department a letter of intent ~~except a health maintenance organization to excluded from submitting a letter of intent or application for a certificate of need for feasibility surveys or planning funded under 42 U.S.C. Sec. 246~~ that contains the following:

~~(3) The letter of intent must contain the following information~~

(a) name of applicant;

(b) proposal title;

(c) a statement whether the proposal involves:

(i) a substantial change in existing services;

(ii) acquisition of equipment (major medical equipment and/or other);

(iii) replacement of existing equipment;

(iv) renovation of existing structure;

(v) addition to existing structure;

(vi) other (explain);

(d) a narrative summary of the proposal, including statements on whether the proposal will affect bed capacity of the facility, or changes in services;

(e) an itemized estimate of proposed capital expenditures, including a ~~proposed equipment~~ list of proposed major medical equipment with a description of each ~~item which will be purchased to implement the proposal~~ and the cost of any building necessary to house it;

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

(g) effects of the proposal on the cost of patient care in the service area affected;

(h) projected dates for commencement and completion of the proposal; and

(i) the proposed geographic area to be served.;

(j) an itemized estimate of increases in annual operating and/or amortization expenses resulting from new health services if any are proposed;

(k) the location of the proposed project.;

~~(i) A brief description of other facilities in the services area which provide similar services.~~

(l) the name of the person to contact for further information; and

~~(4)~~(m) the ~~letter of intent must be dated and signed by~~ signature of an authorized representative of the applicant.

(2) For letters of intent submitted under section (1) of this rule, in determining whether or not a capital expenditure for equipment is over $750,000, the department will review the list submitted by the applicant pursuant to subsection (1)(e) of this rule and will aggregate the total cost for each item of equipment obligated for or purchased within a health care facility's fiscal year for a program, service, department, or plan.

(3) Any person or persons desiring to acquire or enter into a contract to acquire 50% or more of an existing health care facility must submit to the department a written letter noting intent to acquire the facility and containing the following:

(a) the services currently provided by the health care facility and the present and proposed bed capacity of the facility;

(b) any additions, deletions, or changes in such services which will result from the acquisition; and

(c) the projected cost of care at the facility compared to the cost under the current ownership, as well as any other factors which may cause an increase in the cost of care.

(4) Any person proposing to increase or relocate from one facility or site to another no more than 10 beds or 10% of the licensed beds must, in order to be exempt from certificate of need review for the change, submit to the department a letter of intent containing:

(a) the licensed capacity of the facility, the number of beds to be added or relocated, and in the latter case, the facilities or sites in question; and

(b) the cost of the addition or relocation and its likely effect on the cost of patient care.

(5) The department shall notify the applicant in writing whether or not the activity proposed in its letter of intent is subject to review under section 50-5-301, MCA.

~~(a) For letters of intent submitted under subsection (1) of this rule, this decision will be based on a determination whether acquisition of the facility will result in changes in~~

~~the services or bed capacity of the facility, as described in subsections (1)(a), (b), and (e) of this rule. Acquisition of a health care facility from a health maintenance organization will be considered a change in service.~~

~~(b) For letters of intent submitted under subsection (2) of this rule, in determining whether or not a capital expenditure for equipment is over $500,000, the department will review the total submitted by the applicant pursuant to subsection (3)(e) of this rule and will aggregate the total cost for each item of equipment obligated for or purchased within a health care facility's fiscal year for a program, service, department or plan.~~

(6) An applicant whose proposal is determined to be subject to certificate of need review under subsection (5)(a) submitting a letter of intent pursuant to sections (3) or (4) of this rule and whose proposal is found to require certificate of need review must submit a full letter of intent as described in subsection (2)(1) of this rule ~~within 30 days of that determination or the order to be entitled to review with the current batch, if batching is required.~~ In the case of a proposal for new beds, the batch in which the letter of intent for the proposal will be placed is determined by the date the full letter of intent is received by the department, in accordance with ARM 16.32.106.

(7) Persons who acquire health care facilities but who do not file the notice of intent required by subsection (1)(3) of this rule will be presumed to be subject to certificate of need review for the purposes of this subchapter.

~~(8) If an existing health care facility proposes to establish a home health agency, kidney treatment center, or long term care facility, such proposal will be reviewed pursuant to 50-5-301(4)(d), MCA.~~

(9)(8) Any affected person may request an informal hearing before the department to challenge the department's determination regarding applicability of certificate of need review. Such a request must be received by the department within 10 days following the determination. At least 7 days prior notice of the hearing ~~shall~~ will be sent to the persons ~~identified in ARM 46.32.112(1)(d)~~ applicant, the person requesting the hearing, and any other affected person who requests it. At the hearing, the affected parties or their counsel will be given the opportunity to present written or oral evidence or arguments challenging or supporting the department's determination. Within 7 days following the hearing, the department will issue its decision, in writing, and the reasons therefor, which shall be sent to the persons who received notice of the hearing. If the department determines that the applicant is subject to review, the letter of intent ~~may~~ will be assigned to the next appropriate batching period.

AUTHORITY: 50-5-103, 50-5-302, MCA; Ch. 26, Sec. 3, Laws of 1985; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-301, 50-5-302, MCA

16.32.106 BATCHING PERIODS; SUBMISSION OF APPLICATIONS

(1) The following batching periods are established for ~~all categories of service and for all regions~~ applications for new beds or major medical equipment from any region of the state:

(a) January 1 through January 20;

(b) March 1 through March 20;

(c) May 1 through May 20;

(d) July 1 through July 20;

(e) September 1 through September 20; and

(f) November 1 through November 20.

Except as provided in ~~subsections (2) and (5)~~ section (4) below and in ARM 16.32.103(6), letters of intent for new beds or major medical equipment will be accepted only during these periods. Letters of intent received at other times will be assigned to the next batching period.

(2) Same as existing rule.

~~(3) Only proposals involving new services, new or increased bed capacity, or construction or replacement of health care facilities will be batched.~~

~~(4)~~(3) Except as provided in ~~subsection (3)~~(14) below, upon determination by the department that an activity described in a letter of intent is subject to certificate of need review and involves either new beds or major medical equipment, the letter of intent will be placed in the appropriate batch, according to its category and region of the state. At the conclusion of the batch period, the department will notify each applicant in the batch that its application may be submitted, and that a deadline for submission will be determined at the conclusion of the challenge period immediately following the batch just concluded. If, at the end of the challenge period, no challenging letter of intent has been submitted, the applicant's deadline for submission of an application will be set no earlier than 30 calendar days after the date notice of the deadline is sent and no later than 90 calendar days after the conclusion of the challenge period. If a challenging letter of intent has been submitted, the deadline for both original and challenging applications will be 30 calendar days after the ~~end of the challenge period~~ date notice of the deadline is sent, unless a longer time is agreed upon by all affected applicants. On the first day of the month following the conclusion of each batching period, the department will publish notices in a newspaper of general circulation in the affected areas listing the letters of intent which have been received in the batch just concluded.

~~(5)~~(4) Same as existing rule.

~~(6)~~(5) Same as existing rule.

~~(7)(a)~~(6) An application will be accepted only after submission of a letter of intent, and, in the case of an application for new beds or major medical equipment, will be accepted no earlier than the conclusion of the batch period in which the letter of intent was accepted.

~~(b) If a challenging letter of intent has been submitted during the challenge period and is accepted for comparative~~

~~review, the challenger will have an additional thirty days following the conclusion of the challenge period in which to submit an application.~~

~~(c)~~(7) The application must contain, at a minimum, the information as specified by the department pursuant to ARM 16.32.136 and 16.32.137.

~~(d)~~(8) The original and four nine copies of the application must be submitted to the department. ~~An additional copy must be submitted to the agency qualified as a health systems agency pursuant to 42 U.S.C. See. 300l.~~

(9) If the application is received without the full fee required by [Chapter 477, Section 8, Laws of 1987], it will not be considered submitted to the department until the date the full fee due is received by the department. The fee must be paid by cashier's check made out to the department of health and environmental sciences.

~~(e)~~(10) Within ~~15 calendar~~ 20 working days from the date that the department receives the application, the department shall determine whether or not the application is complete.

~~(a)~~(11) If the application is determined to be incomplete, the department shall, ~~within 5 working days after that determination,~~ notify the applicant in writing by mail of the incompleteness and of the specific information that is necessary to complete the application. The department shall also indicate a time, which may be no less than 15 calendar days, within which the department must receive the additional information requested. Within 15 working days after receipt of the additional information, the department shall determine whether the application is complete, and, ~~if~~ if the information submitted is still not sufficient, ~~the department may require~~ send a written request for additional information.

~~(b)~~(12) If an applicant whose application is to be comparatively reviewed with another application does not submit adequate information ~~is not received within the time specified, the department may determine that the applicant has forfeited its right to comparative review for~~ the application will be dropped from the current batching period ~~batch in such a case; the department may either process the application without comparative review according to ARM 16.32.197 or assign the application~~ and assigned to the next appropriate batching period.

~~(e)~~(13) Same as existing rule.

~~(f)~~(14) Only those applications for new beds or major medical equipment which are received and declared complete within the time periods specified in this rule are entitled to participate in comparative review procedures with other applications within the current batch. However, the department may, in its discretion, conduct a comparative review of competing applications from different batches if such applications are being reviewed concurrently and if such comparative review can be conducted consistently with all other time constraints imposed by Title 50, Chapter 5, Part 3, MCA, and this subchapter.

~~(10) Applications which qualify for abbreviated review under ARM 16.32.114, except for those described in ARM 16.32.114(2)(f), need not be placed in a batch and may be proc-~~

~~issued immediately in accordance with ARM 16.32.114 without batching or comparative review.~~

AUTHORITY: 50-5-103, 50-5-302, 2-4-201, MCA; Ch. 26, Sec. 3, Laws of 1985; Ch. 477, Sec. 11, Laws of 1987
IMPLEMENTING: 50-5-302, MCA; Ch. 477, Sec. 8, Laws of 1987

16.32.107 NOTICE OF ACCEPTANCE OF APPLICATION; REVIEW PROCEDURES (1) When an application is determined to be complete, the department shall issue a notice of acceptance ~~in accordance with subsection (3) below~~ which includes the following:

(a) the review period time schedule;

(b) the date by which a written request for an informational hearing must be received by the department;

(c) the manner in which notification will be provided of the time and place of any informational hearing which is held; and

(d) the manner in which the informational hearing will be conducted.

~~(2) Within thirty days after a notice of acceptance of a complete application has been issued, the department shall, after consultation with the agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l, issue a preliminary decision on the application, accompanied by a staff report and findings in support of the decision. Notice of the preliminary decision shall be published as provided in section (3).~~

~~(3)~~(2) A notice of acceptance of a complete application must be mailed to the applicant, ~~an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l Health Service Act including the chairman of the Health Systems Agency governing board and the chairman of the affected Sub-area Council,~~ and all licensed health care facilities of the type affected by the application and health maintenance organizations located in the service area, ~~and rate review agencies in the state. Contiguous health systems agencies qualified pursuant to 42 U.S.C. Sec. 300l will be notified if the service area borders one of the surrounding states.~~ A The notice of preliminary decision acceptance must also be circulated as provided for notices of acceptance, and published in a newspaper of general circulation in the service area affected.

~~(4) A notice of preliminary decision must include:~~

~~(a) the review period schedule;~~

~~(b) the date by which a written request for a public hearing must be received by the department;~~

~~(c) the manner in which notification will be provided of the time and place of a public hearing so requested; and~~

~~(d) the manner in which the public hearing will be conducted.~~

AUTHORITY: 50-5-103, 50-5-302, MCA; Ch. 26, Sec. 3, Laws of 1985; Ch. 477, Sec. 11, Laws of 1987
IMPLEMENTING: 50-5-302, MCA

16.32.109 INFORMATIONAL HEARING PROCEDURES ~~(1) If the preliminary decision issued pursuant to ARM 16.32.107(2) is for~~

~~dentat-of-the-apptication, or in the case of comparative review of competing applications, a public hearing must be held no later than 60 days following the issuance of the preliminary decision. Public notice of the hearing must be published with the preliminary decision as provided in ARM 16-32-107(3) and (4).~~

~~(2)(a) If the preliminary decision is for approval of the application and no comparative review is required, the notice of preliminary decision shall include a statement that any affected person may request a public hearing on the application. Such a request must be received by the department in writing within 15 days after publication of the notice.~~

~~(b) The department shall hold a hearing if requested by the agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l or there is substantial public interest or significant opposition to the application by affected persons, as reflected in requests for a hearing.~~

~~(c) If the department determines that a hearing is warranted, it must be held within forty five days after receipt of the request.~~

~~(3) All parties, including the department and the qualified health systems agency, who wish to participate formally in the hearing shall submit a pre hearing memorandum to the department no later than fifteen days prior to the hearing, which shall set out with as much specificity as possible the party's statement of issues contested facts, points of law, anticipated witnesses and the nature of their testimony, and copies of anticipated exhibits.~~

~~(4) The hearing will be before the department and will be conducted pursuant to the informal rules of procedure, 2-4-605, MCA. Informal public testimony may be permitted at the discretion of the hearings officer.~~

~~(5) The record of decision will close at the conclusion of the hearing. Parties will be entitled to submit proposed findings of fact, conclusions of law and a proposed order.~~

~~(6) The qualified health systems agency must be given the opportunity to provide the department with recommendations on the application within fifteen days after the conclusion of the hearing, unless another period of time has been agreed to, in writing, by the health systems agency and the department.~~

~~(7) The department is not a party to the hearing for the purposes of 2-4-612, MCA.~~

(1) During the course of the review period, any affected person may request an informational hearing by writing to the department. The department may also hold a hearing on its own initiative.

(2) A hearing request must be received by the department within 15 calendar days after the date of the notice of acceptance of the completed application appears in the newspaper.

(3) Notice of the informational hearing will be given at least 14 calendar days before the hearing date by the following means:

(a) Written notice must be sent by certified mail to the person requesting the hearing, the applicant, and all other ap-

plicants assigned for comparative review with the applicant, if any. Other persons who have requested notice will be notified by ordinary mail.

(b) Notice to all other affected persons will be by legal advertisement in a newspaper with general circulation in the service area affected by the application.

(c) The notice must indicate:

(i) the date of the hearing;

(ii) the time of the hearing;

(iii) the location of the hearing; and

(iv) the person to whom written comments may be sent prior to the hearing.

(4) Whenever a hearing is held for an application which is being comparatively reviewed with another application, the hearing will be conducted as a joint hearing on all such applications.

(5) Any person may comment during the hearing and all comments made at the hearing will be tape-recorded and retained by the department until the project is completed or the certificate of need expires. The hearing will be informal and neither the Montana Administrative Procedure Act nor the Rules of Civil Procedure will apply. Any affected person may conduct reasonable questioning of any person who makes relevant factual allegations.

AUTHORITY: 50-5-103, 50-5-302, MCA; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-302, MCA

16.32.110 CRITERIA AND FINDINGS (1) A certificate of need will not be issued unless the department determines there is a need for the proposed ~~new-health-service~~ project, and that the proposal is consistent with the state health plan unless compelling evidence is presented that need for the project exists in spite of projections to the contrary in the plan. In addition, ~~c~~consistency with the state health plan may be waived in emergency circumstances that pose an imminent threat to public health. Criteria listed in section 50-5-304, MCA, ~~42-CFR 123-412,~~ and the following will be considered by the department in making its decision:

(a) in the case of an application proposing a construction project, the probable impact that the costs of the proposed construction, including the costs and methods of energy conservation, will have on the costs of providing health services;

~~(b) in the case of an application proposing the deletion of a health service, the need that the population presently serviced has for the service, the extent to which that need will be met adequately by alternative arrangements proposed, and the effect of the deletion on the ability of the population served to obtain needed service;~~

~~(c) in the case of an application proposing a new health service:~~

~~(i)~~(b) the equal access the medically underserved population, as well as all other population people within the geo-

graphical area documented as served by the applicant, will have to the subject matter of the proposal.~~proposed new health service; and~~

~~(ii) the effect the proposed new health service will have on energy conservation;~~

(2) In the case of any proposed new inpatient health care facility or inpatient health care service, the department will make each of the following determinations in writing:

(a) the efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed, instead of using the proposed facilities or services;

(b) ~~That~~whether a superior alternative to such inpatient service in terms of cost efficiency and appropriateness ~~do not exist~~exists, or ~~that~~whether the development of such alternatives is ~~not~~ practicable;

(c) ~~That~~whether, in the case of new construction, alternatives to new construction such as modernization or sharing arrangements have been considered and ~~have been~~ or implemented to the maximum extent practicable, and whether such alternatives would be preferable to new construction;

(d) ~~That~~whether patients will experience problems including, but not limited to, cost, availability, or accessibility in obtaining inpatient care of the type proposed in the absence of the proposed new service;

~~(e) That, in the case of the proposal for the addition of long-term care beds, consideration has been given to the relationship of this addition to the plans of other agencies, including home health services, responsible for either providing or financing long-term care; and~~

~~(f)~~(e) ~~That the department has considered~~ the efficiency and appropriateness of the proposal and the potential impact the capital and operating costs of the proposal may have on patient charges; and

~~(g)~~(f) the findings required by subsection (1) of this rule.

~~(3) In the case of an application proposing the formation of a health maintenance organization for which assistance may be provided under 42 U.S.C. Sec. 300e the following criteria shall apply:~~

~~(a) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization of proposed health maintenance organization for the new institutional health services proposed to be provided by the organization;~~

~~(b) The availability in a cost effective and reasonable manner consistent with the basic method of a health maintenance organization of proposed health maintenance organization of the proposed new health service from other health care facilities. In assessing the availability of these health services from these health care facilities, the department shall consider only whether the services from these providers:~~

~~(i) Would be available under a contract of at least 5 years duration;~~

(iii)----Would--be--available--and--conveniently-accessible through-physicians-and--other--health--professionals-associated with--the--health--maintenance--organization-or-proposed-health maintenance-organization;

(iii)-Would-cost-no--more-than--if-the--services-were-provided-by--the-health--maintenance-organization--or-the-proposed health-maintenance-organization;-and

(iv)--Would-be-available-in-a-manner--which-is-administratively-feasible--to-the-health-maintenance-organization-or-proposed-health-maintenance-organization;

(4)--In-the-case-of-an-application--from-a--health-maintenance-organization;--a-certificate--of-need-shall-not-be-denied with-respect-to-such-proposal-when:

(a)--The-department--has--granted--a--certificate--of-need which-authorized-the-development-of-a-service-or-expenditure-in preparation-for-such-offering-or-development--or-otherwise-made a-finding-that-such-development-or-expenditure-is-needed;

(b)--When-the-proposal-of-the-health-maintenance-organization-is-consistent-with--the-basic--objectives;-time-schedules; and-plans-of-the-previously-approved-application;-and

(c)--When-denial-would-be-based-solely-upon-the-fact-there is-a-health-maintenance--organization-in--the-same--area-or-the services-being--reviewed-are--not-discussed-in-health-plans-developed-for-the-health-service-area;

(5)--The-department-shall-not--deny-a--certificate-of-need with-respect-to-the-services-proposed-to-be-offered-by-a-health maintenance-organization-for-which--assistance-may--be-provided under-42-U.S.C.-Sec.-300e-unless-the-department-determines-that the-service-is:

(a)--Not-needed-by-the-enrolled-or--reasonably-anticipated new-members--of-the-health-maintenance-organization-or-proposed health-maintenance-organization;-and

(b)--Available--from--non-health--maintenance-organization providers-or--other-health--maintenance-organizations-in-a-reasonable-and-cost-effective-manner-which-is--consistent-with-the basic-methods--of-operation-of-the-health-maintenance-organization-under-42-U.S.C.-Sec.--300e;

(6)--In-the--case-of--a-new--health-service--which-is-proposed-to-be-provided-by-or-through-a-health-maintenance-organization-for-which-assistance-may--be--provided--under--42-U.S.C. Sec.--300e--and-which-includes-in-the-proposal-the-construction; development-or-establishment-of--a--new--inpatient--health-care facility;-the-department-shall-determine-whether-utilization-of the-facility-by-members--of-the--applicant-will--account-for-at least-75--percent-of--the-projected--annual-in-patient-days;-as determined-in-accordance-with-the-recommended--occupancy-levels under-the-applicable-health-systems-plan;-and-furthermore:

(a)---if-the-department-determines-that-these-members-will account-for-less-than-75--percent--of--these--patient--days;-it shall-review--the-proposal-in-accordance-with-the-provisions-of section-50-5-304;-MCA;-and--sections-(1);--(2)-and--(3)-of-this rule;-or

(b)---if-the-department-determines-that-these-members-will account-for-75-percent-or-more--of-the--patient-days;--it-shall

review the proposal in accordance with sections (3), (4) and (5) of this rule.

(7)(3) Same as existing rule.

AUTHORITY: 50-5-103, 50-5-304, MCA; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-304, MCA

16.32.111 DEPARTMENT DECISION (1)(a) If no request for a hearing is received within 15-day comment period, provided in ARM 16.32.109(2), the department must issue its final decision within 45 days after the end of the comment period.

(b) If a hearing is held pursuant to ARM 16.32.109, the final decision of the department must be issued within 30 days after the conclusion of the hearing.

(c) These deadlines may be extended with the concurrence of the affected applicants.

(2)(1) Same as existing rule.

(3)(2) Same as existing rule.

(4)(3)(a) The basis for the decision of the department must be based on the record and contained expressed in written findings of fact and conclusions of law, andwhich must be mailed to the applicant and all other applicants assigned for comparative review with the applicant, along with a notice of the right to a reconsideration hearing and the deadline for requesting such a hearing. and any agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 and must The findings, conclusions, and notice will be made available, upon request, to others for cost. Whenever the department's decision involves new health services proposed by a health maintenance organization, or the department's decision to deny a certificate of need is based on its findings with respect to provision of health services to minorities and medically underserved populations, the department shall send copies of the department's written findings and decision to Region VIII office of the Department of Health and Human Services at the time the applicant is notified of the department's decision.

(b) Notice, in summary form, of the department's decision, the right to request a reconsideration hearing, and the deadline for such a request will also be sent to each health care facility of the type affected by the application or applications in question within the geographic area affected by the application(s), and will be published in a newspaper of general circulation in the service area affected.

(5) If the department's decision is not consistent with the Montana Health Systems Plan, the Montana Annual Implementation Plan, or the Montana State Health Plan, or does not concur with the recommendations of an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 the department shall submit a written detailed statement of the reasons for the inconsistency to the agency qualifying as a health systems agency pursuant to 42 U.S.C. Sec. 3001.

AUTHORITY: 50-5-103, MCA; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-302, 50-5-304, MCA

16.32.112 APPEAL PROCEDURES ~~(1) Any party to the public hearing held pursuant to ARM 16.32.109 may request a reconsideration hearing before the department for "good cause".~~

~~(a) For the purpose of this rule "good cause" exists if the requester:~~

~~(i) presents significant relevant information not previously considered by the department;~~

~~(ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision; or~~

~~(iii) demonstrates the department has failed to follow procedural requirements in reaching its decision.~~

~~(b) The request must be received in writing within 20 calendar days after the department's initial decision has been issued and state facts constituting the alleged "good cause".~~

~~(c) The department has 7 calendar days from receipt of the request in which to determine if "good cause" has been demonstrated, and shall notify the requestor, in writing, of its decision. If the department determines "good cause" exists, an informal hearing shall be held within 20 calendar days after receipt of the request.~~

(4)(1) Notice of the date and time of a reconsideration hearing shall be sent to the person requesting the hearing, the applicant, ~~any agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l~~ and any other affected person upon request who requests it.

(2) Any affected person who wishes to participate in the hearing must submit a pre-hearing memorandum *and* the fee required by [Chapter 477, Section 8(3), Laws of 1987] to the department, no later than 15 days prior to the hearing, in which is set out with as much specificity as possible a statement of the issues that person will address at the hearing, the facts he plans to contest, the relevant points of law, the witnesses that person anticipates calling, the nature of the testimony of each witness, and copies of anticipated exhibits. No affected person may participate in the hearing unless the department has received such pre-hearing memorandum from that person by the prescribed deadline and the required fee is paid.

(3) The fee required by [Chapter 477, Section 8(3), Laws of 1987] must be paid by cashier's check made out to the department of health and environmental sciences.

(4) Counsel for the department and the health planning staff may participate in the hearing to provide testimony and exhibits, and to cross-examine witnesses, but need not submit a pre-hearing memorandum and are not considered parties for the purposes of section 2-4-613, MCA.

(5) A copy of any pre-hearing motion filed by an affected person after the date the pre-hearing memorandum is due must be served by mail upon each person who files such a memorandum. If a motion is filed on or prior to the date the pre-hearing memorandum is due, a copy must be served upon each person who has requested such notice from the department's hearing officer.

(6) The department's hearing officer may require the direct testimony of each party's witnesses to be in writing and filed prior to hearing with the department, with copies served upon each party who submitted a pre-hearing memorandum.

(7) Informal public testimony may be permitted at the discretion of the hearing officer.

~~(e)~~(8) At the reconsideration hearing, the affected parties or their counsel will be given the opportunity to present written or oral evidence or statements concerning ~~in opposition to~~ the department's action and the grounds upon which it was based. ~~, written or oral statements challenging the grounds upon which the department's action was based, and other written or oral evidence relating to the factors on which "good cause" for the hearing was based.~~

~~(f)~~(9) The department shall make written findings of fact and conclusions of law which state the basis for its decision within 30 calendar days after the conclusion of the reconsideration hearing. These findings of fact and conclusions of law shall be sent to ~~the person requesting the hearing, the applicant, and the agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 300l~~ all parties participating in the hearing. Any other affected person upon request may receive a copy of these findings for cost.

~~(g)~~(10) The decision of the department following the reconsideration hearing shall be considered the department's final decision for the purpose of appealing the decision to district court.

~~(2) A party may appeal the department's initial decision directly to district court without first requesting a reconsideration hearing, if the issues on appeal do not satisfy the criteria set forth in subsection (1)(a).~~

AUTHORITY: 50-5-103, 50-5-306, MCA; Ch. 26, Sec. 3, Laws of 1985; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-306, MCA; Ch. 477, Sec. 8(3), Laws of 1987

16.32.114 ABBREVIATED REVIEW ~~(1) If the application does not significantly impact cost or utilization of health care, the department may conduct an abbreviated review of the project.~~

~~(2)~~(1) The following are examples of activities that may qualify for an abbreviated review:

~~(a) Decrease in bed capacity of a health care facility which will not have an adverse impact on the delivery of health care in the service area.~~

~~(b) Decrease in services provided by a health care facility which will not have an adverse impact on the delivery of health care in the service area.~~

~~(c) Equipment replacement which would not expand the health care service offered by the health care facility.~~

~~(d)~~(a) Same as existing rule.

~~(e)~~(b) Same as existing rule.

~~(f)~~(c) expansion of a geographic service area of a home health agency providing it does not expand into an existing home health service area, ~~or into an area into which another~~

~~applicant in the same batch has proposed to expand;~~

~~(g)~~(d) six-month extension of a certificate of need, pursuant to Section 50-5-305, MCA; ~~and~~

~~(h)~~(e) change of ownership of 50% or more of a health care facility for which a letter of intent was not filed by the deadline set in 50-5-302(2) and which does not involve a ~~change in services offered or of~~ significant increase in the rates charged for services or an increase in bed capacity; ~~and~~

(f) an addition of a health service described in 50-5-301(1)(c), MCA.

~~(3)~~(2) The applicant desiring abbreviated review must file a letter of intent with the department requesting an abbreviated review of the proposal with justification for the request.

~~(4)~~(3) Same as existing rule.

~~(5) If it is determined that abbreviated review is not appropriate, the letter of intent will be placed in the appropriate batch, corresponding to the date of receipt of the letter of intent, and processed in accordance with ARM 16.32.106.~~

~~(6)~~(4) Upon acceptance of an application for abbreviated review, the department shall issue a notice of acceptance in accordance with ARM 16.32.107~~(3) and (4)~~(2). If a request for an informational hearing is received within the time specified in the notice, the abbreviated review schedule will be terminated and the review of the application will continue in accordance with the normal review procedures.

~~(7)~~(5) If the department determines there is a need for the project, ~~and after taking into consideration recommendations from the agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l,~~ and if no requests for a hearing have been received, the department shall issue its decision within 25 calendar days from the date of publication of the notice of acceptance issued under ~~paragraph (6)~~ section (4), above.

~~(8)~~(6) Projects or portions of projects which qualify for abbreviated review under subsection ~~(2)(d)~~ (1)(a) of this rule must be approved if the department determines that the health care facility for which the expenditures are proposed is needed, and that the expenditures are consistent with the state health plan.

~~(9)~~(7) Notice of ~~The~~the department's decision, the right to a reconsideration hearing, and the deadline for requesting such a hearing must be sent by certified mail to the applicant ~~and the agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 300l.~~ Notice to ~~All~~all other affected persons must will be ~~notified~~ by newspaper advertisement.

AUTHORITY: 50-5-103, 50-5-302, MCA; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-302, MCA

16.32.118 DURATION OF CERTIFICATE; TERMINATION; EXTENSION

(1) Same as existing rule.

(2)(a) A holder of a certificate of need may submit to the department a written request for a 6-month extension of his

certificate of need, for good cause. ~~The request must be submitted at least 30 calendar days before expiration of the certificate of need.~~ The request must set forth the reasons constituting good cause for the extension~~, and must be accompanied by an affidavit verifying that all information submitted is true and correct~~.

(b) Within 20 days after receipt of the request, the department must issue its written decision granting or denying the extension. The decision must be sent to the applicant by certified mail, and distributed at cost to others who request it ~~as provided in ARM 16.32.1104~~.

(c) Reconsideration of the department's decision may be requested by the holder and ~~conducted as provided in ARM 16.32.1126~~ will be granted if the requester:

(i) presents significant relevant information not previously considered by the department; or

(ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision.

(d) "Good cause" for the purpose of ~~this~~ subsection (2)(a) includes but is not limited to, emergency situations which prevent the recipient of the certificate of need from obtaining necessary financing, commencing construction, or implementing a new service.

AUTHORITY: 50-5-103, 50-5-305, MCA; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-305, MCA

16.32.136 CERTIFICATE OF NEED APPLICATION: INTRODUCTION AND COVER LETTER (1) It is suggested that the applicant contact the Bureau of Health Planning ~~and Resource Development~~ before completing and submitting the necessary information. It is possible that some information listed in 16.32.137 may not be required for a simple review, or that additional information will be required for a complex review. If an early contact is made between an applicant and the appropriate review agency, the applicant will be made aware of what will be required in specific cases before a formal application is completed and submitted.

(2) The applicant must ~~provide~~ send a cover letter, containing the information set out in (3) below which is applicable to the project, ~~and send the original and one copy~~ to the Bureau of Health Planning and Resource Development, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620. The cover letter must accompany the original and each of the nine copies of the information required by ARM 16.32.137.

(3) The following information must appear in a~~the~~ cover ~~letter accompanying the application proper~~:

(a)-(c) Same as existing rule.

(d) whether the project involves any of the following:

(i) Same as existing rule.

(ii) the acquisition of equipment and the construction of any building necessary to house the equipment requiring a capi-

tal expenditure of more than ~~$500,000~~ $750,000;

(iii) the construction, remodeling, renovation, or replacement of a health care facility requiring a capital expenditure of more than ~~$750,000~~ $1,500,000;

(iv) a change in bed capacity through an increase in the number of beds or a relocation of beds from one facility or site to another ~~by more than 10 beds or 10% of the total licensed bed capacity, whichever is less~~;

(v) addition of health services to be offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the previous 12-month period and which will result in additional annual operating and amortization expenses of ~~$100,000~~ $150,000 or more;

(vi) acquisition by any person of major medical equipment unless it is to replace equipment performing substantially the same service and in the same manner;

(vii) the expansion of a geographic service area of a home health agency;

(e)-(k) Same as existing rule.

AUTHORITY: 50-5-302, 2-4-201, MCA; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-302, MCA

16.32.137 CERTIFICATE OF NEED APPLICATION -- REQUIRED INFORMATION The following information must be included in a certificate of need application, on forms provided by the department:

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

(3) A discussion of planning and environmental considerations, including the following information:

(a) an explanation of how the proposed service or facility is compatible with the current State Health Plan ~~and Health Systems Plan~~. If it is not compatible, an explanation of why it should be approved;

(b)-(e) Same as existing rule.

(4)(a)-(c)(iii) Same as existing rule.

(iv) the name and title of the chief administrator of the applicant's facility, and whether employed by the applicant or another organization as identified in paragraph (d) below;

(d)-(f) Same as existing rule.

(5)-(6)(d) Same as existing rule.

~~(e) for outpatient centers, the current and proposed capacity for outpatient procedures;~~

~~(f)~~(e) Same as existing rule.

~~(g)~~(f) Same as existing rule.

~~(h)~~(g) Same as existing rule.

(7)-(11) Same as existing rule.

AUTHORITY: 50-5-302, 2-4-201, MCA; Ch. 477, Sec. 11, Laws of 1987

IMPLEMENTING: 50-5-302, MCA

4. The above amendments are necessary primarily to reflect and respond to changes in the certificate of need (CON) legislation made by the 1987 Legislature. Generally, the amendments were made for the following primary reasons:

a. All references to the Health Systems Agency, federal health planning law and rules, and the Health Systems Plan were deleted, since they no longer exist.

b. Since the creation of health maintenance organizations no longer is subject to CON review, all references to HMO's were altered accordingly.

c. Hearing requirements were changed to reflect the fact that any hearing prior to the final decision is now informational rather than adversarial, and the reconsideration hearing is expanded to allow complete, rather than limited, review of the Department's decision.

d. Since the types of proposals which can be batched are limited to two categories only (addition of beds or major medical equipment) batching language was amended accordingly.

The rationale for amendments, in addition to those made for the above reasons or to conform the rules to other new statutory language, edit, or clarify, are as follows:

16.32.101 Definitions The amendment of (4)(b) deleted a category which never was subject to CON review.

16.32.103 Submission of Letter of Intent Particular provisions are added for Letters of Intent (LOI's) for facility acquisitions and the addition or relocation of small numbers of beds. The list of items an LOI must contain is altered to delete the description of other facilities (which the Department does not need in an LOI), and to add the name of a specific contact person. The primary change is that if the Department decides a proposal involving a small number of beds must undergo CON review, the batch in which it will be placed will be determined by the date a full LOI is submitted, because, otherwise, interested members of the public could not always be notified in time to submit a challenging LOI.

16.32.106 Batching Periods; Submission of Applications Nine, rather than four, copies of an application are now required due to the number of individuals dealing with each submission. The reference in (9) to fees is intended to ensure the Department's fee is properly submitted along with an application. Finally, (10) was deleted because it was inaccurate and is adequately covered in ARM 16.32.114.

16.32.107 Notice of Acceptance of Applications Direct notice to rate review agencies was deleted because of lack of response from such agencies in the past.

16.32.109 Informational Hearing Procedures The amendments reflect the statutory change in nature of the pre-decision hearing and the change in time frames for review.

16.32.110 Criteria and Findings The amendment in section (1) reflects longstanding CON review practice as well as court decisions concerning the role of state health plans.

16.32.111 Department Decision The items added to the notice of decision and the manner in which notice is to be given are intended to ensure that all affected persons are informed

of their rights.

16.32.112 Appeal Procedures This rule now incorporates some of the procedural requirements previously specified in ARM 16.32.109 and/or found useful in practice (e.g., pre-hearing memoranda and pre-filed testimony). The Department is no longer required to submit a pre-hearing memorandum in order to participate in the hearing, since Department staff should logically be involved in any case, and staff time is extremely limited. Finally, the rule specifies the manner in which the statutory fee must be paid, as it does the effect of non-payment.

16.32.114 Abbreviated Review The contents of the notice to the public of the decision are expanded to give adequate notice of available remedies and to match that normally given in practice.

16.32.118 Duration of Certificate; Termination; Extension An extension request no longer must be submitted 30 days prior to expiration of the CON because the statute does not require it and because the Department does not want to be bound by it. Since an affidavit has not proved inherently valuable, it was eliminated. Grounds for reconsidering the Department's decision to grant or deny a CON extension were incorporated verbatim instead of by reference, with the exception that Department procedural error is no longer included, being largely irrelevant in this context.

16.32.136 Certificate of Need Application; Introduction and Cover Letter and

16.32.137 Certificate of Need Application -- Required Information ARM 16.32.136 was clarified so that there was no question that a cover letter should accompany the original and each of the nine copies submitted of the information required by ARM 16.32.137.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 25, 1987.

6 Robert L. Solomon at the above address has been designated to preside over and conduct the hearing.

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

Certified to the Secretary of State May 18, 1987.

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

In the matter of the Adoption of a Rule regarding the impairment rating panel	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF TEMPORARY RULE

TO ALL INTERESTED PERSONS:

1. On June 10, 1987, at 11:00 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of a temporary rule regarding the impairment rating panel by the Division of Workers' Compensation.

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

RULE I IMPAIRMENT RATING DISPUTE PROCEDURE (1) An evaluator must be a qualified physician licensed to practice in the state of Montana under Title 37, chapter 3, MCA, and board certified in his area of specialty appropriate to the injury of the claimant. The claimant's treating physician may not be an evaluator. The division will develop a list of evaluators which may include those physicians nominated by the Board of Medical Examiners.

(2) The division will arrange evaluations as close to the claimant's residence as reasonably possible.

(3) The division will give written notice to the parties of the time and place of the examination. If the claimant fails to give 48 hours notice of his inability to attend the examination, he is liable for payment of the evaluator's charges incurred except for good cause shown.

(4) The division may request a party to submit all pertinent medical documents including any previous impairment evaluations to the selected evaluator.

(5) Any party wanting to provide information to an evaluator or inquire about the status of an evaluation shall do so only through the division.

(6) The impairment evaluators shall operate according to the following procedures:

(a) The evaluator shall submit a report of his findings to the division, claimant and insurer within fifteen (15) days of the date of the examination.

(b) If another evaluation is requested within 15 days after the first evaluator mailed the first report, the division will select a second evaluator who will render an impairment evaluation of the claimant.

(c) The second evaluator shall submit a report of his findings to the division, claimant and insurer, within fifteen (15) days of the date of the examination.

(d) The division shall submit both reports to the third evaluator, who shall then submit a final report to the division, claimant and insurer within thirty (30) days of the date of the examination. The third evaluator must obtain division approval prior to seeking other consultation. The final report must certify that the other two evaluators have been consulted.

(e) If neither party disputes the rating in the final report, the insurer shall begin paying the impairment award, if any, within 45 days of the third evaluator's mailing of the report.

(f) Either party may dispute the final impairment rating by filing a petition with the Workers' Compensation Court within fifteen (15) days of the third evaluator's mailing of the report.

(7) If a claimant obtains an impairment rating from any physician other than his attending physician without prior approval of the insurer, the insurer is not liable for payment of either the physician's bill or the impairment rating.

3. The rationale for adopting this rule is to establish procedures for the operation of the impairment rating panel under the provisions of the Workers' Compensation Act. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464 of the Laws of 1987 and by Section 24 of Chapter 464 of Laws of 1987. This rule implements Section 24 of Chapter 464 of Laws of 1987.

4. James Keil, Hearing Examiner of the division, has been designated to preside over and conduct the hearing.

5. Interested parties may submit their data, views and arguments, either orally or in writing, at the hearing. Written argument, views or data may also be submitted to James Keil, Hearing Examiner, Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than June 10, 1987.

6. The rule is proposed as a temporary rule pursuant to Chapter 8 of Laws of 1987. This rule will become effective from the date of adoption until no later than October 1, 1987. The division will be giving notice of hearing with the intent to adopt a permanent rule in the interim period.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: May 18, 1987

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

In the matter of the Adoption of a Rule regarding distribution of benefits from the uninsured employers fund	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF TEMPORARY RULE

TO ALL INTERESTED PERSONS:

1. On June 10, 1987, at 9:00 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of a temporary rule concerning distribution of benefits from the uninsured employers fund by the division of workers' compensation.

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

RULE I UNINSURED EMPLOYERS FUND DISTRIBUTION (1) Any claimant incurring an industrial injury or occupational disease in the course of employment with an uninsured employer on or after July 1, 1987, is eligible to apply for benefits by completing forms provided by the division. Upon receipt by the uninsured employers' fund of properly executed forms from a claimant, the division will initiate an investigation to determine whether the claimant meets eligibility requirements for the uninsured employers' fund. If claimant is found to be eligible, the division will send a written notice to the employer advising of the employers' responsibilities under the law.

(2) Compensation may be paid from the date the fund accepts liability for a claim, if sufficient funds are available.

(3) Estimated costs of administration for the fiscal year will be prepaid at the beginning of the fiscal year. Actual costs will be reviewed quarterly and adjustments will be made as required. The fund shall maintain a minimum balance sufficient to cover bad debts, administrative costs and other charges deemed appropriate by the division. The difference between the fund balance and the minimum balance shall be known as the "available balance" which is the amount to be utilized for making payments.

(4) Once a month the division shall specify a percentage at which all known wage loss benefits due for the prior month under Sections 39-71-701, 39-71-702, and 39-71-703, MCA, will be paid which shall be known as the "Uninsured Rate Factor" (URF). This factor will be

calculated by dividing the available balance for the month by the total wage loss benefits due for the month. Only those benefits included in the calculation of the URF at the time it is calculated will be paid during the month for which the URF is set. The URF shall not exceed 100%. The fund will not make payments for any month in which the URF falls below 17%. The division shall maintain records of the URF established for each month.

(5) If funds are available after payment of all wage loss liabilities, medical and other benefits may be paid at an appropriate percentage.

(6) The Division will coordinate collection of moneys for benefits. Amounts collected from employers will be set aside and directed to the individual claimants or returned to the uninsured employers fund if benefits were paid on behalf of the claimant. Employers will be charged a collection fee to be established by the division which will be credited to the uninsured employers' fund.

3. The rationale for adopting this rule is to establish a reasonable procedure for distributing benefits from the uninsured employers fund as funds are available. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5, and extended by Section 69 of Chapter 464 of the Laws of 1987. This rule implements 39-71-503, MCA, as amended by Section 14 of Chapter 464 of Laws of 1987.

4. James Keil, Hearing Examiner of the division has been designated to preside over and conduct the hearing.

5. Interested parties may submit their data, views and arguments, either orally or in writing, at the hearing. Written argument, views or data may also be submitted to James Keil, Hearing Examiner, Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than June 10, 1987.

6. The rule is proposed as a temporary rule pursuant to Chapter 8 of Laws of 1987. This rule will become effective from the date of adoption until no later than October 1, 1987. The division will be giving notice of hearing with the intent to adopt a permanent rule in the interim period.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: May 18, 1987

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

In The Matter of Adoption of Rules regarding rehabilitation	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF TEMPORARY RULES

TO: ALL INTERESTED PERSONS

1. On June 10, 1987, at 10:00 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of temporary rules regarding rehabilitation by the Division of Workers' Compensation.

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

RULE I REHABILITATION PANELS (1) Prior to referral to a rehabilitation panel, the following requirements must be met:

(a) The worker has not returned to work,

(b) the insurer has made a written request to the division, on a form approved by the division, to refer the worker to a rehabilitation panel, and

(c) the insurer has submitted to the division all of the worker's medical records, rehabilitation reports, and other pertinent information in its possession.

(2) (a) Rehabilitation panels may convene in the following cities in Montana as often as necessary in order that the rehabilitation panel evaluations are expeditiously handled:

(i) Butte
(ii) Billings
(iii) Missoula
(iv) Kalispell
(v) Helena
(vi) Bozeman
(vii) Great Falls

(b) If a worker is receiving total rehabilitation benefits, the panel shall issue a report within the time period for which the worker is eligible for the benefits, unless the period is extended by the insurer or the division as provided in Section 44(3) of Chapter 464 of Laws of 1987.

(c) the worker and insurer shall be given written notice of the date and place the panel will convene.

(d) If additional information is required in order to provide a complete report, the panel shall request this information from any person or persons who have access to this information and then reconvene at a later date to complete the report.

(3)(a) The members of the rehabilitation panel, after reviewing all pertinent information submitted, shall issue a written report.

(b) The report shall be signed by each member of the panel and contain the following information:

(i) a finding of the first appropriate option in Section 36 of Chapter 464, that the worker is suited for and what information supports this option, and

(ii) a finding of why any prior option in Section 36(2) of Chapter 464 does not apply to this worker.

(c) If the panel's findings support the options of Sections 36(2)(a), (b), or (c), of Chapter 464 (return to the same position; return to a modified position; or return to a related occupation suited to the claimant's education and marketable skills), as suitable for returning a worker to work, the report should also contain the following information:

(i) a finding of the type of job or jobs in the worker's local and statewide job pool,

(ii) a finding that the jobs are part of the worker's job pool as defined in Section 34(7) of Chapter 464, and

(iii) a finding of the worker's anticipated earnings based on his level of experience stated either as a range or an average of anticipated earnings for both the local and the statewide job pool.

(d) If the panel's findings support the options of Section 36(2)(d) of Chapter 464 (on-the-job training), as suitable for returning a worker to work, the report should also contain the following information:

(i) a finding of the type or types of on-the-job training programs in the worker's local or statewide job pool,

(ii) a finding that the jobs are part of the worker's job pool as defined in Section 34(7) of Chapter 464, and

(iii) a finding of the worker's anticipated earnings based on his level of experience stated either as a range or as an average of anticipated earnings for both the local and the statewide job pool.

(e) If the panel's findings support the option of Section 36(e) or (f) of Chapter 464 (short-term retraining program or long-term retraining program), as necessary for returning a worker to work, the report shall also contain the following information:

(i) a finding of the type and length of retraining program that has been identified as suitable for the worker and the information supporting his finding,

(ii) a finding of the positions that will be available to the worker in the local or statewide job pool following retraining, and

(iii) a finding of the worker's anticipated earnings following retraining either as a range or an

average of the anticipated earnings in both the worker's local and statewide job pool.

(f) If the panel's findings support the option of Section 36(g) of Chapter 464 (self-employment), as suitable for returning a worker to work, the report shall also contain the following information:

(i) a finding of the area or areas of self-employment that are commensurate with the worker's abilities, education, work experience and medically determined restrictions and what information supports this finding,

(ii) a finding of the limitations the worker may have in self-employment including physical limitations and any limitations in the worker's ability to manage the business,

(iii) a finding of what assistance will be necessary in the day-to-day running of the business or in the area of business management, and

(iv) a finding of the worker's anticipated earnings from the self-employment venture.

RULE II AUXILIARY REHABILITATION BENEFITS (1) A claimant may request auxiliary rehabilitation benefits and obtain the insurer's authorization prior to incurring such expenses.

(2) Travel and relocation expenses may be paid to a worker on the same schedule as reimbursed to state employees in the course of state business.

(3) Mileage and per diem expenses may be paid for up to five round trips in searching for new employment.

(4) Relocation expenses include actual expenses of moving by a commercial mover, or actual charges for rental of a truck or trailer by a commercial rental company and receipted fuel expenses.

(5) Auxiliary rehabilitation benefits do not include the expenses of long term commuting.

(6) The division may order the insurer to pay such other reasonable and necessary auxiliary rehabilitation benefits as it deems appropriate.

3. The rationale for adopting this rule is to establish procedures for the operation of rehabilitation panels and to detail substantive provisions of the rehabilitation statutes within the Workers' Compensation Act. This Rule is authorized by Section 39-71-203, MCA, as amended by Section 5 and extended by Section 69 of Chapter 464 of the Laws of 1987. This rule implements Sections 34 through 50 of Chapter 464 of Laws of 1987.

4. James Keil, Hearing Examiner of the division has been designated to preside over and conduct the hearing.

5. Interested parties may submit their data, views and arguments, either orally or in writing, at the hearing. Written argument, views or data may also be submitted to James Keil, Hearing Examiner, Division of Workers'

Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than June 10, 1987.

6. The rule is proposed as a temporary rule pursuant to Chapter 8 of Laws of 1987. This rule will become effective from the date of adoption until no later than October 1, 1987. The division will be giving notice of hearing with the intent to adopt a permanent rule in the interim period.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: May 18, 1987

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

In the matter of the Adoption of a Rule regarding time limits for administrative review and contested case hearings	))))	NOTICE OF PROPOSED RULE (No Public Hearing Contemplated)

TO ALL INTERESTED PERSONS:

1. On July 1, 1987, the Workers' Compensation Division proposes to adopt a rule setting time limits for requests for administrative review or contested case hearings on agency actions.

2. The proposed rule provides as follows:

RULE I TIME LIMITS (1) A party seeking administrative review under ARM 24.29.206 must make a written request for administrative review to the division within ninety days of notice of adverse action.

(2) A party seeking a contested case hearing under ARM 24.29.207 must make a written request to the division for a contested case hearing within thirty days of notice of the results of an administrative review or within ninety days of notice of adverse action.

(3) A party seeking judicial review of a final order of the division after a contested case hearing must file a petition with the workers' compensation court within thirty days after notice of the final order.

(4) A party is considered to have been given notice on the date a written notice is personally delivered or three days after a written notice is mailed to him. A request for administrative review, contested case hearing, or judicial review must be received in the division or court within the time limits set forth above. The time limits for request for administrative review or contested case hearing may be extended by the division for good cause.

3. The rationale for adopting this rule is to set a reasonable time limit on requests for administrative review or contested case hearings in order to establish some finality in the hearing process. This rule is authorized by Section 39-71-203, MCA, and implements Title 2, Chapter 4, Part 6, MCA.

4. Interested parties may submit their data, views or argument concerning this proposed rule in writing to William R. Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, by June 29, 1987.

5. If a person who is directly affected by the proposed adoption wishes to express data, views, and arguments, orally or in writing, at a public hearing, they may make a written request for hearing and submit this request along with any written comments to William R. Palmer, at the address above, no later than June 29, 1987.

6. If the division receives request for a public hearing on the proposed rule from 25 persons who are directly effected by the proposed rule or 10% of the population of the State of Montana, from the Administrative Code Committee of the Legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. The rule will affect insurers, employers, workers, attorneys and other parties who do business with the workers' compensation division. If a hearing is requested, notice of a hearing will be published in the Montana Administrative Register at a later date.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: May 18, 1987

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

In The Matter of Amendment of ARM 24.29.705 and 24.29.3503 Regarding Corporate Officer Coverage Under the Workers' Compensation Act.	))))))	NOTICE OF PROPOSED AMENDMENT OF ARM 24.29.705 and 24.29.3503 (No Public Hearing Contemplated)

TO: ALL INTERESTED PERSONS

1. On July 1, 1987 the Workers' Compensation Division proposes to amend existing rules concerning the coverage of corporate officers under the provisions of the Workers' Compensation Act.

2. The proposed amendments are as follows:

24.29.705 ELECTION NOT TO BE BOUND -- CORPORATE OFFICER (1) through (3) and (5) same as existing rule.

(4) An election under Sections (1) or (3) of this rule is not valid until approved by the division for corporations insured under plan No. 1 and plan No. 2 or until approved by the State Insurance Fund Bureau for corporations insured under plan No. 3.

AUTH: 39-71-203, MCA
IMP: 39-71-410, MCA.

24.29.3503 ELECTION OF CORPORATE OFFICERS NOT TO BE BOUND (1) The election by a corporate officer not to be bound under ~~24.29.3201~~ ARM 24.29.705, may become effective on the effective date of plan 3 coverage, provided a division endorsement form ~~215~~ is received and approved by the state fund prior to or at the time of receipt of the initial deposit. Thereafter, an election is not valid until a division endorsement form ~~215~~ is received and approved by the State Fund. An approved election by a corporate officer not to be bound will remain in effect until the policy is cancelled or the officer notifies the State Fund in writing to cancel such election.

AUTH: 39-71-203 and 39-71-2303, MCA
IMP: 39-71-2303, MCA

3. These rules are being amended to clarify the process by which a corporate officer may elect not to be bound by the Workers' Compensation Act. These amendments clarify that such elections must be presented to the division for those corporations insured under plan No. 1 or plan No. 2 of the Act, and to the state insurance fund bureau for corporations insured under plan No. 3.

4. Interested parties may submit their data, views or comments concerning these changes in writing to William R.

Palmer, Assistant Administrator, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, by June 29, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to William R. Palmer at the address above no later than June 29, 1987.

6. If the division receives requests for a public hearing on the proposed amendments from 25 persons who are directly affected by the proposed amendment or 10% of the population of the state of Montana, from the Administrative Code Committee of the Legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. These amendments will affect all corporate officers and corporations operating in this state. If required, a notice of hearing will be published in the Montana Administrative Register at a later date.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: May 18, 1987

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42.17.105 This amendment is implemented through the TEMPORARY RULEMAKING PROCESS.	NOTICE OF PROPOSED AMENDMENT of Rule 42.17.105 This amendment is implemented through the TEMPORARY RULEMAKING PROCESS.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 29, 1987, the Department of Revenue proposes to amend rule 42.17.105 relating to Withholding Allowances.

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

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of tax withheld per payroll period shall be calculated according to the following four-step formula: (a) remains the same.

(b) $T = Y - 1400N$

where T is the annualized net gross income; and
N is the number of withholding exemptions claimed.

If T in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

(c) $X = A + B(T-C)$ where X is the individual's annualized tax liability the parameters A, B and C are chosen from the following rate schedule:

ANNUALIZED NET
GROSS INCOME T

~~At Least~~	~~But Less Than~~	~~A~~	~~B~~	~~C~~
~~$ 0~~	~~$ 6,590~~	~~$ 0~~	~~2.6%~~	~~$ 0~~
~~6,590~~	~~14,600~~	~~171.34~~	~~4.4%~~	~~6,590~~
~~14,600~~	~~32,000~~	~~523.78~~	~~6.1%~~	~~14,600~~
~~32,000 and over~~		~~1,585.18~~	~~6.5%~~	~~32,000~~

At Least	But Less Than	A	B	C
$ 0	$ 6,590	$ 0.00	3.1%	$ 0
6,590	14,600	204.29	5.3%	6,590
14,600	32,000	628.82	7.3%	14,600
32,000 and over		1,899.02	7.8%	32,000

(d) $W = \frac{X}{P}$

where W is the amount to be withheld for the payroll period;
X is the annualized tax liability; and
P is the number of payroll periods during the year.

(2) This rule is effective for quarters beginning January 1, 1987.

3. It is necessary to amend this rule because the 1987 Legislative Session enacted a 10% surtax on state income taxes effective for the tax year 1987. Since the surtax will be paid on all income earned in 1987, but the increased withholding does not become effective until July 1, 1987, it is necessary for the department to increase the Montana State Income Tax Withholding Tables by 20% for the last six months of calendar year 1987 to balance amounts withheld with the estimated tax liabilities of taxpayers. The department will reevaluate the withholding tables prior to January 1, 1988, to determine the proper withholding needed to balance amounts withheld with final tax liabilities for as many Montanans as is practicable for calendar year 1988.

It is necessary to adopt this temporary rule so that the taxpayers of the State of Montana will have had taxes withheld to insure payment of any state tax liability for tax year 1987. If the amendment to this rule were not made through the temporary rule process and effective by July 1, taxpayers would be confronted with a larger increase in withholding over fewer months of time in 1987.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than June 26, 1987.

5. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than June 26, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published by the department by the means considered most effective and practicable. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed amendments is based on 15-30-305, MCA and Sec. 6, House Bill 904, 1987 Ses. The rules implement 15-30-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 5/18/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through XI - Accommodations Tax. These rules are adopted through the TEMPORARY RULEMAKING PROCESS.	NOTICE OF PROPOSED ADOPTION of Rules I through XI - Accommodation Tax. These rules are adopted through the TEMPORARY RULEMAKING PROCESS.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 29, 1987, the Department of Revenue proposes to adopt Temporary Rules I through XI as described below relating to the Accommodations Tax.

2. The temporary rules are proposed to be adopted to provide for implementation of the Accommodations Tax. The tax was enacted by the 1987 Legislature. It is anticipated rules will be written in the following areas:

RULE NO. I Definitions The rules will define such terms as lodging, average daily accommodation charge, owner/operator.
AUTH: H.B. 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. II COLLECTING THE TAX Specific guidelines will be given the owner or operator to determine whether a facility must collect the tax. This will include the computation of the 60% of the state lodging rate and the length of the rental period.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. III EXEMPT CHARGES Specific information regarding exempt facilities and exempt charges will be provided for the operators. These will include health facilities, youth camps, lodging provided for the federal government, and lodging furnished an Indian on the reservation.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. IV MULTIPURPOSE FACILITIES Treatment of rooms not used for lodging will be clarified.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. V COMBINED SERVICES Guidance will be provided for allocating charges for services combined with lodging.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. VI REGISTRATION PROCEDURES Guidelines for facility registration will be addressed. The Department of Revenue will provide registration forms and instructions.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. VII QUARTERLY REPORTS AND PAYMENTS The requirements for filing and paying the tax collected will be clarified for the owners or operators.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. VIII PENALTIES The penalties for late filing and payment will be clearly explained. The provision for

waiver of penalty will be addressed.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. IX RECORDS REQUIRED FOR AUDIT Owners and operators will be given guidelines for record retention and the types of records needed.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. X FAILURE TO FURNISH REQUESTED INFORMATION Specific information outlining the procedure the department will use to estimate the tax will be provided the owners or operators.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

RULE NO. XI REPORTS PROVIDED DEPARTMENT OF COMMERCE An outline of the timing and requirements for furnishing reports to the Department of Commerce will be provided.
AUTH: HB 84, Sec. 11, SL 1987 IMP: HB 84, Secs. 1-15, SL 1987

Additional temporary rules may be adopted if further study or public comments indicate that other subjects must be clarified if the accommodations tax is to be administered properly.

3. The Department proposes to adopt temporary rules (I through XI) to clarify the collection of the new accommodation tax enacted by the 1987 Legislature. Temporary rules are necessary because there is insufficient time to adopt permanent rules by July 1, 1987, with the effective date of the tax. The regular rules will be adopted on or before October 1, 1987. This notice contains a statement of the description of the intended rules as provided in 2-4-302(1), MCA. Insufficient time has elapsed since HB 84 has been enacted to determine the exact wording of the rules. Hence, the abbreviated notice is necessary in place of a verbatim listing of rules.

4. The Department intends to seek the advice of a group of interested persons prior to June 29, 1987, as provided for in 2-4-304, MCA, in drafting the temporary rules.

5. Rule I is necessary because these terms are used in rules II through XI. House Bill 84, Section 1 does not define all of the terms necessary for the enforcement of this Act.

Rule II is necessary to determine which facilities are required to collect the tax. House Bill 84, Section 1(3) gives general guidance, but doesn't provide specific steps for the facility to follow to make a determination. Rule II will specify what is necessary to make the determination.

Rule III is also necessary to determine which facilities are exempt from collecting the tax. House Bill 84, Section 1(3) is vague in this area. Rule III will combine the information in the Act and the Statement of Intent to make the determination.

Rule IV is necessary to determine if a particular unit in the facility is tax exempt. House Bill 84, Section 2(2) states

that a room used for services other than lodging is exempt. Rule V will explain how to determine if the room is used for services other than lodging.

Rule V is necessary to determine which charges should be included with the room charge and which charges should not be included with the room charge. House Bill 84, Section 1(1) lists certain items to be included or excluded, but the list is not exhaustive. Rule V will give guidelines as to what documentation is necessary to allocate charges.

Rule VI is necessary to explain how to register with the Department. House Bill 84, requires that the taxpayer must register. Rule VI will explain how to apply, when to apply and what information must be furnished when applying for a registration number.

Rule VII is necessary to advise the owner or operator of the due date of the quarterly report, the handling of cash and credit receipts, seasonal filings, and procedures when a due date which falls on a holiday or weekend. House Bill 84, Section 3 merely says the report is due 30 days from the end of the quarter. Rule VII will clarify these issues.

Rule VIII is necessary to notify the owner or operator of the penalties, and when and how they will be applied. Rule VIII will clarify these issues.

Rule IX is necessary to clarify what records to keep and how long to keep them. House Bill 84, Section 4 gives a general description, but does not detail what the records should contain. Rule IX will specify what information is necessary to substantiate tax reports.

Rule X is necessary to inform the owner or operator of the ract that if the records maintained are not adequate to determine the correct amount of tax, the Department may request additional information or make a determination from available records or information. House Bill 84, Section 6(3) only states that the Department may make a determination. Rule X clarifies what action the Department will take to determine the correct tax.

Rule XI is necessary because House Bill 84, Section 8(1) states the Department will furnish a report to the Tourism Advisory Council. Rule XI sets a time period when the Department will furnish the report. Also, the rule establishes the time that the Department will need to change the computer program if the regional boundaries are changed.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than June 26, 1987.

7. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than June 26, 1987.

8. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published by the department by the means considered most effective and practicable. Ten percent of those persons directly affected has been determined to be 25.

9. The authority of the Department to adopt these rules is based on Sec. 11, House Bill 84, 1987 Sess. The rules implement Sec. 1 through Sec. 15, House Bill 84, 1987 Sess.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 5/18/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through XI - Light Vehicle & Motorcycle Tax rules are adopted through the TEMPORARY RULEMAKING PROCESS.	NOTICE OF PROPOSED ADOPTION of Rules I through XI - Light Vehicle & Motorcycle Tax rules are adopted through the TEMPORARY RULEMAKING PROCESS.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 29, 1987, the Department of Revenue proposes to adopt Temporary Rules I through XI as described below relating to the Light Vehicle & Motorcycle Tax.

2. The temporary rules are proposed to be adopted to provide for implementation of Senate Bill 200 which is an act to replace the fee in lieu of tax on light vehicles, motorcycles and quadricycles and to allow a local option vehicle tax. The tax was enacted by the 1987 Legislature. It is anticipated rules will be written in the following areas:

RULE NO. I VALUATION PROCEDURES Specific valuation guidelines will be identified. Those guidelines will address the procedures to be used, in sequential order, for vehicles listed in the appropriate guides, for vehicles not "originally" listed in the guides and for vehicles previously registered that are "subsequently" not listed in the guides.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. II MINIMUM VALUE Since the bill has conflicting language regarding the minimum value, the minimum value will be clarified.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. III PERCENT GOOD SCHEDULE If a vehicle is one year or older in age and it is not listed in any of the appraisal guides, the Department of Revenue is required to determine the depreciation percentage that approximates the average wholesale or trade-in value in the appropriate guides. This rule will contain the schedule which will fulfill that requirement.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. IV BASE VALUE ADJUSTMENTS No adjustments will be made to the base value to reflect optional equipment (such as diesel engines, air conditioning, stereo packages, etc.) or low or high mileage. This rule will reiterate the fact that no adjustments may be made to the base value.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. V VEHICLE AGE DETERMINATION This rule will specify how vehicle age is to be determined. That is important for

both the vehicle ad valorem tax and the fee-in-lieu of tax determination for motor homes, campers and trailers. This rule will indicate that the age of the vehicle, whether it be a 2% tax vehicle or fee-in-lieu of tax vehicle, is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. VI PAYMENT OF NEW CAR SALES TAX AND THE 2% PROPERTY TAX This rule will indicate that new vehicles, never having been registered (registered after June 30, 1987), are only subject to the new use tax. They would pay the 2% property tax in the second year of registration. If the taxpayer's 20 day sticker on their vehicle expires before July 1, 1987 and they have failed to register the vehicle, they would still be subject to both the fee-in-lieu of tax and the new use tax called for under the old system of registration.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. VII FINAL VALUATION AUTHORITY This rule will specify that in situations where a taxpayer disputes the average trade-in value as indicated on the computer-generated registration card, the final authority will be the average trade-in value as found in the appropriate guidebook by department field staff.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. VIII REGISTRATION, EXPIRATION DATE PRIOR TO JUNE 30, 1987 This rule will clarify that taxpayers who have a registration expiration date prior to June 30, 1987 and who attempt to register their vehicle after June 30, 1987 will still be charged the fees that were in effect when they should have registered the vehicle. In those situations the 1987 fee should be charged rather than the 2% property tax.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. IX ANNIVERSARY REREGISTRATION This rule will specify that a taxpayer may not change the anniversary date for reregistration of a vehicle from the effective date of this act, which was April 27, 1987 until January 1, 1988. This rule will specifically address the reregistration of vehicles that are included under the "staggered registration" statute identified in 61-3-315, MCA.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. X EARLY REGISTRATION This rule will allow early registration provided the appropriate manuals are available and provided the county has indicated, in writing, whether they intend to exercise their authority to impose a local option vehicle tax of up to .5% of the value determined under 61-3-503, MCA.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

RULE NO. XI TAX RATE PERCENTAGE This rule will simply specify that Senate Bill 200 does not allow for a tax rate that is less than 2%.

AUTH: 15-1-201, MCA, Ch. 611, SL 1987 IMP: Ch. 611, SL 1987

Additional temporary rules may be adopted if further study or public comments indicate that other subjects must be classi-

fied if the light vehicle & motorcyle tax is to be administered properly.

3. The Department is proposing new rules I through XI to implement the provisions of Senate Bill 200. These rules allow us to fulfill our requirement to establish depreciation schedules and to clarify areas of statute that are difficult for taxpayers, Department field staff, and local government officials. These rules allow us to provide working guidance to county appraisal/assessment field staff. These type of instructions and schedules are required to be adopted pursuant to the Administrative Procedure Act in accordance with a recent District Court decision. These proposed rules and the inclusion of the schedules will formalize the rulemaking procedures.

4. Regarding Rule I, it is necessary to have a specific valuation procedure since the guidebooks do not list all vehicles which are to be valued under SB200. Since the procedure would apply generally to a large group of people in Montana, it meets the requirement of an administrative rule.

Regarding minimum value, it is necessary to have an administrative rule on minimum value since the language of SB200 is internally conflicting. Again, since SB200 affects a large number of citizens in Montana, it meets the requirement of an administrative rule.

Concerning the percent good schedule, it is necessary to have a percent good schedule for the same reasons required for administrative Rule I.

Concerning base value adjustments, an administrative rule was necessary to clarify the base value adjustment procedure as it applies to all vehicles which are assessed. This administrative rule is necessary for the same reasons Administrative Rule I is necessary.

Concerning vehicle age determination, it is necessary to have an administrative rule because the model years for vehicles vary from manufacturer to manufacturer. Interpretation of this procedure will affect a great number of Montana citizens whose vehicles are valued under SB200. Accordingly, the requirements for an administrative rule in this area are identical to the requirements of Rule I.

Concerning Administrative Rule VI, an administrative rule is necessary in this area because of the confusion created in transferring from vehicle fee system to an ad valorem vehicle tax system. The requirements of an administrative rule in this area are identical to the requirements for Rule I.

Concerning final valuation authority, an administrative rule is necessary in this area to resolve any conflicts between the system operated by the Department of Justice and the general assessment authority statutorily provided the Department of Revenue. The requirements for an administrative rule in this area are identical to the requirements for Administrative Rule I.

Concerning Rule VIII, registration, an administrative rule in this area is necessary because of the confusion created in transferring from a fee system to an ad valorem tax system. The requirement for this administrative rule is identical to the requirement for Administrative Rule I.

Concerning anniversary registration, this rule is necessary to define how the staggered registration statute should be coordinated with SB200. The requirement for an administrative rule is identical to the requirements for Administrative Rule I.

Concerning early registration, this rule is necessary to specifically address and define the procedures necessary for early registration of vehicles to comply with other sections of Montana statute concerning early registration. The requirement for this rule is identical to the requirement for Rule I.

Concerning tax rate percentages, an administrative rule in this area is necessary because counties are allowed to impose up to an additional .5% tax rate. The requirement to have an administrative rule in this area is identical to the requirement for Administrative Rule I.

Temporary rules are necessary because there is insufficient time to adopt permanent rules by July 1, 1987, with the effective date of the tax. The regular rules will be adopted on or before October 1, 1987. This notice contains a statement of the description of the intended rules as provided in 2-4-302(1), MCA. Insufficient time has elapsed since SB 200 has been enacted to determine the exact wording of the rules. Hence, the abbreviated notice is necessary in place of a verbatim listing of rules.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than June 26, 1987.

6. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than June 26, 1987.

7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published by the department by the means considered most effective and practicable. Ten percent of those persons directly affected has been determined to be 25.

8. The authority of the Department to adopt these rules is based on 15-1-201, MCA, and Ch. 611, L. 1987. The rules implement Ch. 611, L. 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 5/18/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- MENT of Rule 42.17.131	NOTICE OF PROPOSED AMENDMENT of Rule 42.17.131
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 29, 1987, the Department of Revenue proposes to amend rule 42.17.131 relating to Withholding Allowances.

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

42.17.131 WITHHOLDING ALLOWANCES REVIEW PROCEDURES

(1) through (4) remain the same.

(5) An employer is required to provide a copy of any withholding allowance certificate (W-4) to the Department of Revenue, Helena, Montana, on which an employee has claimed more than ~~9~~ 10 withholding allowances.

AUTH: 15-30-305, MCA IMP: 15-30-202, MCA

3. As a consequence of federal tax law changes, the Internal Revenue Service has lowered from 14 to 10 the number of withholding allowances that triggers a review of a W-4. It is generally desirable and of benefit to employers and taxpayers if state and federal practices conform to each other. The proposed change is necessary to conform to the new federal practice which is close to the prior state practice.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than June 26, 1987.

5. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than June 26, 1987.

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

7. The authority of the Department to make the proposed amendments is based on 15-30-305 MCA. The rules implement 15-30-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 5/18/87.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendments of rules regarding temporary rules, rule types and their location, and updating procedures.	))))))	NOTICE OF PROPOSED AMENDMENT OF ARM 1.2.204 - 1.2.206, 1.2.217 - 1.2.219, 1.2.402 1.2.404, 1.2.411, 1.2.412, 1.2.422, 1.2.519 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 30, 1987, the office of the Secretary of State proposes to amend rules regarding temporary rules, rule types and their location and updating procedures.

2. The proposed amendments provide as follows:

1.2.204 ~~POSITIONING OF CODE ITEMS~~ ARM CONTENT POSITIONS

(1) The total contents of ~~the code~~ ARM appear in order as follows:

(a) Found only in Title 1, following the title page, is ~~inserted~~ "How to Use the Administrative Rules of Montana and the Montana Administrative Register", followed by a chapter table of contents of all chapters found in Title 1 through Title 46~~.~~ , and the preface.

(2) Other than the items listed above all titles ~~have~~ contain the following ~~position of code items~~ . ~~(Each item has a rule describing the typing format under Sub-chapter 5 of this chapter).~~

(a) The ~~T~~title page - ~~this page~~ lists the name of the department, a table of contents indicating the number, name and beginning page number of each chapter in that title.

(b) Chapter 1 - ~~this chapter~~ is reserved for the department's organizational rule. Since this chapter contains only one rule, there is no table of contents or subchapters listed. It begins with the rule number, catchphrase, language of the rule and ends with the history of the rule.

(c) Chapter 2 and remaining chapters - ~~these chapters~~ contain subchapters. The first page of each new chapter contains a subchapter table of contents indicating the rule number and the catchphrase of each rule in each subchapter.

(i) Subchapter table of contents should start on an odd numbered page with the actual text of the subchapter also starting on an odd numbered page.

(d) Cross reference table - ~~this table~~ follows the last chapter in the title and indicates the MCA authority and implementing authority for corresponding ARM rules. The MCA citation numbers are listed in ascending order.

(e) Repealed rule table - ~~this table~~ follows the cross reference table and indicates the repealed rules that were removed during recodification and the effective date of repeal.

(f) Old to new numbering table - ~~this table~~ follows the repealed rule table and indicates the old rule numbers in

ascending order assigned before recodification and the new three part rule number assigned during recodification.

(g) New to old numbering table - ~~this table~~ follows the old to new numbering table and indicates the new rule numbers in ascending order and the rule number assigned before recodification.

AUTH and IMP: Sec. 2-4-306, MCA

1.2.205 RULE TYPES AND THEIR LOCATION (1) There are two categories of rule types. The first category ~~states~~ defines the type of rule in terms of its subject matter. ~~Thus, all~~ Rules are ~~either~~ organizational, procedural, or substantive.

(a) Organizational rules are those which describe the structure of the department and the divisions of function ~~therein~~. There is only one organizational rule for each department which is always stated in Chapter 1 under each title. However, if any agency has been assigned to a department for administrative purposes only, then the board will have its own organizational rule, stated in its first subchapter. Where a board's organization has been delineated in the departmental organizational rule at the board's request, such is indicated by reference.

(b) Procedural rules are of various types including but not limited to the following. There are the procedures covered in the attorney general's model rules (rulemaking, contested cases, declaratory rulings). There are guidelines for public participation, and ~~There are procedures~~ for the formulation of environmental impact statements. These rules are always stated under Chapter 2 of each title. Such rules are controlling for all units of a department, except agencies assigned for administrative purposes. Because of the autonomy of these agencies, they may state their procedural rules in their second subchapter.

(c) remains the same.

(2) The second category ~~types~~ defines rules by their duration. That is, all rules are ~~either~~ temporary, permanent or emergency.

(a) Temporary rules are:

(i) proposed and adopted to implement a statute that is effective prior to October 1 of the year of enactment;

(ii) subject to the temporary rule provision of the Montana Administrative Procedure Act;

(iii) effective immediately upon filing a notice of adoption with the secretary of state or at a stated date following publication in the register and are effective until October 1 of the year of adoption;

(iv) designated as such in the register.

(b) Emergency rules are:

(i) adopted subject to the emergency rule provisions of the Montana Administrative Procedure Act;

(ii) effective immediately upon filing with the secretary of state or at a stated date following publication in the register and automatically expire 120 days after their effective date;

(iii) designated as such in the register.

(c) Permanent rules are rules which have been adopted subject to the provisions of the Montana Administrative Procedure Act.

(d) All initial and subsequent rules are permanent until and unless they are repealed. ~~However, those rules which have been adopted subject to the emergency rules provision of the Administrative Procedure Act automatically expire 120 days after their effective date. An emergency rule is designated as such in the register.~~

AUTH and IMP: Secs. 2-4-303 and 2-4-306, MCA

1.2.206 LOCATION OF RULE CHANGES (1) When changes are made to ~~the code~~ ARM, then the existing page which is affected by the change is redone to accommodate the change and the new page is inserted in lieu of the old page. These changes appear as follows:

(a) New titles, chapters, subchapters, and rules ~~appear~~ are placed in the appropriate place of their respective table of contents, ~~identified by their new symbols~~.

(b) The text of new rules appear within the ~~text~~ body of the chapter in which the rule is included at the appropriate place of its interposition and falling between the two rules which appeared in sequence on the page before it was changed.

(c) An amendatory rule takes the same ~~code~~ number as the rule it has amended. It occupies the same place ~~in the code~~ as it did before its amendment. Only the amended form of the rule appears in ~~the code~~ ARM as updated by the amendment.

(d) remains the same.

(2) Where an existing ~~code~~ page has been redone to accommodate a rule change, then the page number for that page is the same as that which appeared on the superseded page. Where the nature of the change requires more than one replacement page, then the additional pages are indicated as such by the page number of the superseded page followed by a decimal and an Arabic numeral beginning with 1, and continuing in page number order for each additional page. ~~In addition,~~ All changed or new pages have a publication date of the replacement page issue. When an agency is preparing a replacement page, it should check with the secretary of state's office for the date of the next issue of replacement pages for this item. This date appears at the bottom of each replacement page between ~~the code name~~ Administrative Rules of Montana and the page number. ~~Reference to a repealed rule or to a prior form of an amended rule would be made by reference to the page number and issue number date of publication of the page which has been superseded.~~ Where a repealinged rule has eliminated a page or pages, ~~the following pages have not been renumbered. Rather,~~ the page numbers of the eliminated pages are ~~also eliminated.~~ removed, but can be re-used later if needed.

(3) The secretary of state's office suggests that ~~code~~ subscribers maintain a system for preserving superseded pages in an orderly fashion. If such pages are not available, they may be found in the permanent records of the office of the secretary of state by reference to the ~~page~~ rule number and ~~publication~~ effective date of the ~~superseded page~~ rule in question.

AUTH and IMP: Sec. 2-4-306, MCA

1.2.217 RULE HISTORY NOTES (1) through (b) remains the same.

(c) REP - denotes a rule is repealed; ~~and~~

(d) TRANS - denotes a rule is transferred by legislative action or transferred to a different location within a title~~,~~ ;

(e) EMERG - denotes emergency action; and

(f) TEMP - denotes temporary rule before becoming a permanent rule.

(2) through (5) remain the same.

(6) Where the rule change is made pursuant to the temporary rule provision of the Montana Administrative Procedure Act, the history would contain a temporary note only if a permanent rule is adopted. Temporary notation would contain the rule section page number in the Montana Administrative Register where the rule was adopted and the effective date, which is the date the rule became a permanent rule and not the date it was filed as a temporary rule.

Example: (History: Sec. 46-2-114 MCA; IMP, Sec. 46-2-117 MCA; TEMP, NEW, 1987 MAR p. 1923, Eff. 11/9/87.)

~~(6)~~ (7) ~~Chapter 637, L. 1983 (House Bill 47)~~ Section 2-4-308 MCA, (effective 10/1/83) requires the publication of a statement in the rule history note at the end of each adjective or interpretive rule that such a rule is advisory only but may be a correct interpretation of the law.

(a), (b) and example remain the same.

AUTH and IMP: Secs. 2-4-303 and 2-4-306, MCA

1.2.218 PAGE NUMBERING SYSTEM (1) Every page of ~~the code~~ ARM has a page number~~,~~ except reserved chapter pages. ~~For~~ Each title has its own numbers ~~of the code, the pages containing the rules are numbered in order. Each number is~~ which are preceded by the title number under which the page falls. ~~Thus,~~ The first page for the department of livestock would be numbered 32-1, the second page 32-2, the fifty-fifth page 32-55, etc.

(2) remains the same.

(3) If there is a need to add supplemental pages the following ~~outline~~ system should be used:

(a) When supplemental pages are needed then the supplemental pages will take the same page number with the addition of a decimal point and the number 1, 2, 3, etc. ~~, such as~~ ~~(~~Example: 46-74.1, 46-74.2, 46-74.3 and so on~~)~~.

~~When there is need for additional pages between 46-74.1 and 46-74.2 then the pages should be numbered as: (Example: 46-74.1, 46-74.1A, 46-74.1B and so on),~~

~~When additional pages are needed between pages 46-74.1A and 46-74.1B, they should be numbered as: (Example: 46-74.1Aa, 46-74.1Ab, 46-74.1Ac and so on),~~

~~When additional pages are needed between pages 46-74.1Aa and 46-74.1Ab, they should be numbered as: (Example: 46-74.1Aaa, 46-74.1Aab, 46-74.1Aac and so on),~~

AUTH and IMP: Sec. 2-4-306, MCA

1.2.219 TABLE OF CONTENTS, AND CROSS REFERENCE TABLE

(1) Where a new rule has been adopted, ~~amended,~~ or an existing rule ~~has been~~ amended or repealed by agency action, the agency must submit a new replacement page reflecting any changes that should be included in the title chapter table of contents, chapter table of contents or cross reference table. Any new rule will always require a new subchapter table of contents and cross reference table page with the new information inserted in the proper place. These pages must be submitted along with the new ~~rule,~~ amended ~~rule~~ or repealed rule for publication as replacement pages.

(2) If a rule is amended, there is no need to submit the new pages listed above, unless there has been a change in the catchphrase, or a new citation to the MCA which should be included in the cross reference table.

(3) remains the same.

(a) title table of contents page~~:~~ Gcontains all ~~the~~ chapters found in the title, indicating chapter number, name and beginning page number ~~of chapter~~.

(b) chapter table of contents~~:~~ Gcontains subchapter names and numbers ~~of all subchapters~~, and a listing of each ~~rule found in each subchapter indicating~~ rule number and catchphrase.

(c) cross reference table ~~Every department shall prepare a cross reference table which will~~ gives a quick indication of where the ~~code~~ sections from the Montana Code Annotated may be found, interpreted, summarized or implemented, in ~~the administrative rule portion for each department~~ each department's rules. This table will include the MCA sections which are authority for a corresponding ARM rule and the MCA sections which have a corresponding ARM rule which interprets or implements the MCA section.

AUTH and IMP: Sec. 2-4-306, MCA

1.2.402 PREPARATION OF RULE CHANGES FOR INSERTION IN ~~CODE~~ ARM

(1) The ~~code~~ ARM has been set up as a loose leaf service to provide a method of updating. ~~the code. As such,~~ R ~~r~~ule changes ~~may be~~ are made and placed in the appropriate place ~~within the text of the code. Thus, each administrative order for rule changes shall be followed within months by the actual text of the rules which the administrative order is certifying to the secretary of state. These rules must be prepared in the same form as were the initial rules so that they in turn may be photocopied and inserted in the code with uniform results. To accomplish this~~ using the following procedures ~~will be used~~.

(a) Refer to the existing ~~code~~ page to which the new, amending, repealing or transferred rule(s) will be added. The determination as to the proper page is made by interpolating ~~the code number of~~ the rule with the existing rules. The assignment of the ~~code~~ rule numbers to additional rules has been discussed in ~~rule~~ ARM 1.2.202, and 1.2.212.

(b) ~~Supplemental pages:~~ If the additional rule is a new rule or rules transferred to the agency from another agency, then the page upon which that rule will be typed will be retyped down through the existing ~~code~~ rule which immediately precedes

the rule to be added. Then immediately following, type in the new rule exactly in the form that the initial rules were done (i.e. ~~code~~ rule number, catchphrase, text and history note). Then following the new rule, begin typing the rule which had been next on the old ~~code~~ page before the addition of the new rule, and continue typing until you have completed what had been on the old ~~code~~ page. The new page will take the same page number as the old page. In most cases, the addition of a rule would extend the old page ~~such that~~ so the text of the old page would not all fit on the new page. In this case, another sheet(s) of paper will be used but only so far as to finish what had been on the old ~~code~~ page before it had been added to. This second page will take the same page number as the prior page, only such page number will be followed by a decimal point and the number 1. When supplemental pages are needed then the supplemental pages will take the same page number with the addition of a decimal point and the number 1, 2, 3, etc. if there are no reserved pages to work with, ~~such as:~~ (Example: 46-74.1, 46-74.2, 46-74.3 and so on).

(c) The placement of the page numbers and ~~code section~~ rule numbers will always fall on the outside of the page. Department names and chapter names ~~will be~~ are determined by listing the department name on an even numbered page and the chapter name on an odd numbered page and by checking the previous existing pages ~~in the code~~. An even numbered page has the first rule number that appears on that page, while an odd numbered page has the last rule number on the page.

(2) When the remainder of the old page to which the new rule has been added has been completed in this fashion, then the typing should stop on that supplemental page even though the entire page may not have been used. Even though the typing may end in the middle of a rule, or middle of a sentence, the continuation will be found on the next page which originally followed the old ~~code~~ page on which the change was inserted.

(3) The same page extension procedure should be followed when a rule is amended. In the case of an amendment, only the amended form of the rule will be typed. This should be placed in the same location as was the rule before it was amended. Note that the ~~code~~ rule number will remain the same. If the amendment necessitates a new catchphrase, then ~~such~~ the amended catchphrase ~~shall~~ replaces the old.

(4) ~~Examples for retyping~~ To retype pages: Assume that you are going to make a change on existing page 59. And assume that such page contains a continuation of rule 607 from the preceding page and also contains the beginning of the next rule which was 611. Then assume you are going to add a new rule which has been assigned the number 609. This would mean that 609 would have to be typed in between the end of 607 and the beginning of 611. To accomplish this you would take a new sheet of paper and retype what was on page 59, i.e., the continuation of 607. Then at the end of 607 on the new sheet you would double space, change reserved rule notation from rules 608 through 610 reserved, to rule 608 reserved, ~~and~~ begin typing new 609 with the ~~code~~ rule number, catchphrase and text and continue typing until you have completed the rule. At that point, double

space ~~and~~ , add reserved rule note, rule 610 reserved, and retype as much of 611 (the rule which had followed 607 on the old page 59) as appeared on old page 59. This new sheet will also be page numbered 59. Note that where you cannot type in 609 and the part of 611 which had appeared on old page 59 on the first new sheet, then you will have to go to another sheet or sheets. These supplemental sheets will be page numbered 59.1, 59.2 etc. if there are no reserved pages to work with.

(a) When the part of 611 is completed as far as it went on old page 59, then stop typing, even though you may end in the middle of a sentence. The continuation of 611 will appear on page 60 which is already in ~~the code~~ ARM.

~~(b) The page name designations and the code name on the newly prepared pages will be the same as on old page 59 and will be placed in the same position as they were on page 59 before it was changed. The code number page designation will be typed at the top using the same method as used for preparing the initial pages of the code.~~

(5) remains the same.

(6) The above procedures should be used to prepare a rule which repeals an existing rule ~~in entirety~~. For example, assume that existing page 59 contains the beginning of 611, and that 611 is to be repealed entirely. You would retype old page 59 down to the place where 611 had begun, then type in the ~~full code~~ rule number for 611 and the catchphrase, following with the phrase in upper case and underlined (IS HEREBY REPEALED) and the history. You will then stop typing on the new page even though you have not used the full new page. Then, assuming that 611 before its repeal had finished on, for example, old page 60 and 621 had begun on old page 60, then you will have to retype page 60, omitting on the new sheet that portion of 611 which had appeared on old page 60. To do this, you will prepare the new page 60 by moving that part of 621 which had appeared on old page 60, to the top of the new page 60 and type down as much as had appeared on old page 60. At that point, stop, even though the whole page is not used up. Then the continuation of 621 will appear on existing page 61.

(a) A repealed rule number and catchphrase will always remain in ARM; therefore the number cannot be re-used.

(7) Where a particular agency has adopted rules, but subsequent legislative enactment has transferred such rules to another agency, for administrative purposes, then the transferring agency will so indicate in the appropriate place in their section of ~~the code~~ ARM (i.e. the page on which the transferred rule(s) began). Here, the same page preparation process will be used as was used for preparing a repealing rule.

(a) A statement should be placed where rules were originally located. ~~Example: 36.2.1501 through 36.2.1510 are hereby transferred to (name of transferree agency) or (site location within one title). If only one rule is being transferred~~ The rule number, catchphrase and full history appears in the old location with the addition of the transfer information in the history. The transfer should also be noted in the chapter table of contents ~~either~~ by the word TRANSFERRED after the catchphrase of a rule ~~or if a number of rules being~~

~~transferred, the wording, 36.2.1501 through 36.2.1510~~ TRANSFERRED ~~to name of transferee agency or site location within title.~~

AUTH and IMP: Sec. 2-4-306, MCA

1.2.404 ADMINISTRATIVE ORDER (1) When the notice of proposed action ~~procedure~~ results in the adoption, amendment or repeal of a rule, then ~~such~~ action must be certified and transmitted to the secretary of state for filing and publication. This will be accomplished ~~also~~ by an administrative order. Replacement pages will not need an administrative order. Orders will not be numbered but may be cited, if necessary, by date.

(2) remains the same.

(3) Emergency or temporary and permanent rules may not be intermingled on the same order.

AUTH and IMP: Sec. 2-4-303 and 2-4-306, MCA

1.2.411 UPDATING ~~THE--CODE--~~ PROCEDURES (1) As ARM 1.2.206 ~~Location of Rule Changes~~ indicates, rule changes to the initial rules will be accomplished by exchanging new pages for the pages on which the change took place. The Administrative Rules of Montana has been set up as a loose leaf service to accommodate this method of revision.

~~(a)~~ (2) Changes to Administrative Rules of Montana must first be published in the Montana Administrative Register which is explained in ARM 1.2.422. ~~As t~~The secretary of state has the responsibility for distributing ~~the code~~ replacement pages containing the rule changes~~, the following instructions explain how the code subscriber shall make the appropriate insertions to their codes upon receipt of the additional material.~~

~~(b) The secretary of state shall mail to register subscribers an issue of the register on a twice-monthly basis. Included in each register are notice pages, emergency rules, rule section containing rule changes which were certified to the secretary of state during that twice-monthly period, and an interpretation section containing opinions from the attorney general, and declaratory rulings.~~

~~(c)~~ (3) Accompanying the replacement pages which are distributed to ~~the~~ subscribers to the ~~code~~ ARM on a three month basis or more frequently if necessary, will be instructions which indicate where the pages are to be inserted and which ~~pages of the~~ existing ~~code~~ pages have been superseded and should be removed.

AUTH and IMP: Sec. 2-4-306, MCA

1.2.412 HOW TO CITE THE ADMINISTRATIVE RULES OF MONTANA (1) When referring to a rule from the Administrative Rules of Montana, ~~such~~ the rule shall be properly referred to by ARM and its full ~~code~~ number. For example, this rule on how to cite ~~a code section,~~ rule would be referred to as ARM 1.2.412.

AUTH and IMP: Sec. 2-4-306, MCA

1.2.519 BASIC FORMAT INSTRUCTIONS (1) through (l) remain the same.

(m) Sample forms 1 through ~~9~~ 11 pertaining to the typing format for a proposed notice, notice of adoption, emergency or temporary rule, title chapter table of contents, reserved chapter page, first page of chapter, odd numbered page, even numbered page, cross reference page and an administrative order are incorporated in this rule.

AUTH and IMP: Sec. 2-4-303 and 2-4-306, MCA

SAMPLE FORM NO. 10 PROPOSED NOTICE OF TEMPORARY RULES

BEFORE THE (name of agency) --5th line down
OF THE STATE OF MONTANA

In the matter of the adoption of a rule (summary; for ex.: Restricted areas and night closures for parks.	)))	NOTICE OF PROPOSED ADOPTION OF TEMPORARY RULES - RESTRICTED AREAS AND NIGHT CLOSURES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

- Refer to 2-4-303 MCA which describes temporary rules and the attorney general;s sample forms - ARM Title 1, Chapter 3. Select the sample form that is applicable to your notice. (A single notice may combine adoption, amendment and repeal of a group of rules covering related subject matter.)

- Spacing - Follow the spacing as shown for the heading of this sample form. The heading appears on the first page of the notice only. Begin typing on the second page and on all following pages of the notice on the 5th line down. Single space between the paragraphs of a notice and the paragraphs of a rule. At the end of each rule noticed, double space and type the MCA authority and implementing citations for each rule noticed. (See sample below). All paragraphs are indented 5 spaces and should be earmarked.

1½" 3/4"

- If you are noticing a new rule, use a Roman numeral for the rule number; for ex.: RULE I, RULE II. Permanent rule numbers are not assigned to temporary rules.

- The notice number is penciled at the bottom of the first page only.

- The page number is penciled on the top right margin beginning with the second page and on all following pages.

- Proof and submit the notice to the secretary of state in original and one copy.

NEW RULE EXAMPLE - Follow the same spacing.
RULE I RESTRICTED AREAS AND NIGHT CLOSURES (1) No person may enter upon any portion of any area that is posted.
(2) Public recreation areas will be closed nightly.
AUTH: 76-3-777, MCA IMP: 65-98-222, MCA

RULE II OPENING HOURS (1) etc.
End text on this line.

10-5/28/87 MAR Notice No. 44-2-51

1"

SAMPLE FORM NO. 11 RULE SECTION NOTICE FOR TEMPORARY RULES

BEFORE THE (name of agency) --5th line down
OF THE STATE OF MONTANA

In the matter of the (same language as typed on notice of proposed action.)	NOTICE OF ADOPTION OF TEMPORARY RULE I - RESTRICTED AREAS AND NIGHT CLOSURES

TO: All Interested Persons.

- Refer to 2-4-303 MCA which describes temporary rules and the attorney general's sample form for the adoption of rule action. ARM Title 1, Chapter 3, (A single notice may combine the adoption of new, amended and repealed rules covering related subject matter.)

- Spacing - Follow the spacing as shown for the heading of this sample form. The heading appears on the first page of the notice only. Begin typing on the second page and on all following pages of the notice on the 5th line down. Single space between the paragraphs of a notice and the paragraphs of a rule.

- For temporary rules, a permanent rule number is never assigned. They will still be referred to by their Roman numeral in the notice of adoption.

- If changes are made to the rule language since the proposed stage, they are indicated by interlining the language removed and underlining the language added since the proposed notice.

- The effective date of the rule should be shown before the signature in the same way it is shown for an emergency rule.

  The temporary action is effective (date).

- The page number is penciled on the top right margin beginning with the second page and on all following pages.

- There is no notice number on a notice of adoption.

- Submit an administrative order (Sample Form No. 9) designating the rules as temporary rules.

- Proof and submit notice of adoption to the secretary of state in original and one copy.

End text of notice on this line.

MAR Notice No. 44-2-51

10-5/28/87

3. Senate Bill 47 from the 1987 Legislative Session enacted a provision allowing for temporary rules. Changes are being made to accommodate this new provision. The other amendments are housekeeping changes that take out redundancy and obsolete references to "the code".

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Kathy Lubke, Administrative Rules Bureau, Secretary of State, Helena, MT 59620, no later than June 30, 1987.

Dated this 18th day of May, 1987.

JIM WALTERMIRE
Secretary of State

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the repeal of rules 8.26.101 board organization, 8.26.201 and 8.26.202 procedural rules, 8.26.401 substantive rules	)))))	NOTICE OF REPEAL OF RULES 8.26.101 BOARD ORGANIZATION, 8.26.201 AND 8.26.202 PROCEDURAL RULES, 8.26.401 THROUGH 8.26.410 SUBSTANTIVE RULES

TO: All Interested Persons:

1. On April 16, 1987, the Department of Commerce published a notice of proposed repeal of the above stated rules at page 356, 1987 Montana Administrative Register, issue No. 7.

2. The department has repealed the rules exactly as proposed.

3. No comments or testimony were received.

BY: _____
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 18, 1987.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 32.8.202 and 32.8.203 for the purpose of clarifying responsibilities under the rules	)))	NOTICE OF AMENDMENT OF RULES 32.8.202 AND 32.8.203 MILK FRESHNESS DATING

TO: All Interested Persons.

1. On January 29, 1987 at page 88, issue no. 2 of the Montana Administrative Register, the Board of Livestock published notice of the proposed amendment of Rules 32.8.202 and 32.8.203 regarding milk freshness dating and pull dates.

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 18, 1987.

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

In the Matter of Adoption of New Rules and Amendment of Rules Regarding Standards and Procedures for Intrastate Rail Rate Regulation.	))))	NOTICE OF ADOPTION of NEW RULES AND AMENDMENT OF RULES REGARDING INTRASTATE RAIL RATE PROCEEDINGS

TO: All Interested Persons

1. On February 13, 1987, the Department of Public Service Regulation published notice of proposed adoption of new rules and amendment of existing rules regarding standards and procedures for regulation of intrastate rail rates at pages 135-144 of the 1987 Montana Administrative Register Issue Number 3.

2. The Commission has adopted the rules as proposed:

38.4.120 WAIVER OF MONIES DUE TO RAILROAD
38.4.126 INTERMODAL COMPETITION
38.4.127 GEOGRAPHIC COMPETITION
38.4.128 PRODUCT COMPETITION
38.4.143 FILING OF COMPLAINTS
38.4.147 ENFORCEMENT
38.4.148 LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF
38.4.149 SPECIAL TARIFF RULES FOR CONTRACTS
38.4.150 CONTRACT AND CONTRACT TARIFF TITLE PAGE
38.4.151 CONTRACT TARIFF NUMBERING SYSTEM

3. The Commission has adopted the proposed amendments with the following changes:

38.4.141 CONTRACTS (1) Remains the same.

(2) Rail carriers providing transportation subject to the jurisdiction of the commission, shall file with the commission an original and one copy of all contracts entered into with one or more purchasers of rail services. These contracts shall be accompanied by two copies of the contract tariff that contains a summary of the nonconfidential elements of the contract in the format specified in ~~49--CFR--1312.41~~ ARM 38.4.150 through 38.4.152.

(3) (a), (b), (4) Remains the same.

38.4.144 COMMISSION DECISION UPON REVIEW OF CONTRACT

(1) ~~Within-30-days-after-the-date-a-proceeding-is-commenced-to-review-a-contract,-the-Commission-shall-decide-whether-the-contract-violates-the-provisions-of-49-U.S.C.--Sec.-10713.~~ If the commission finds that ~~such-a-violation-exists,~~ the contract violates the provisions of 49 U.S.C. 10713, it shall:

(a), (b), (2) (a) Remains the same.

38.4.145 APPROVAL AND IMPLEMENTATION DATE OF CONTRACTS

(1) Remains the same.

(2) If the commission does institute a proceeding to review a contract, ~~it-shall-be-deemed-approved,~~ it has ju-

risdiction for 60 days after the contract is filed. Under these circumstances the contract will be approved:

(a) on the date the commission approves the contract if the date of approval is ~~30~~ 31 or more days after the filing date of the contract;

(b) on the ~~30th~~ 31st day after the filing date of the contract if the commission approves the contract prior to the 30th day after the filing date of the contract; or

(2), (c) (3), (a), (b), (c), (d) Remains the same.

(e) Except as provided under subsection (f) of this rule, ~~T~~transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

(f) A railroad may apply a contract or amended contract rate rather than an otherwise applicable tariff rate and pay reparations or waive undercharges under the following conditions:

(i) A transportation contract under 49 U.S.C 10713 has been filed with the commission and has been approved by the commission or by operation of law;

(ii) The shipment at issue falls within the terms of the contract; and

(iii) The shipment was transported before the contract was approved but after the contract was signed, or after the parties agreed on the rate to be charged and they either agreed to be bound by the contract or intended the movement to be covered by it.

38.4.152 CONTRACT TARIFF CONTENT (1), (a), (b) Remains the same.

(c) If the commodity identified is an agricultural commodity, ~~the origin station(s) and the destination station(s); otherwise, the words, "Origin/Destination Stations Not Applicable",~~ each specific origin and destination point to and from which the contract applies must be shown. References to tariffs for identification of origins and destinations are not permitted; neither are overly broad descriptions.

(i) Each port must be identified.

(ii) Each transit point must be identified.

(iii) Each shipper facility used for contract origins, destinations, transit points, or otherwise subject to the contract must be identified. "Shipper facility" also includes a reference to shipper equipment to be used in the contract for storage, for example, although the details of the arrangement need not be in the tariff.

(iv) If the commodity identified is a forest product or paper, only the specific origin and destination point to and from which the contract applies must be shown.

(d) The duration of the contract, including the following:

(i) If applicable, the date on which the transportation service has begun under a contract before the date such contract is filed with or approved by the commission.

(ii) The date on which the contract became applicable to the transportation services provided under the contract.

(iii) Termination date of the contract.

(iv) Provisions for optional extension.

(e), (f), (i), (ii), (g), (i), (ii), (iii), (h), (i), (ii) Remains the same.

(i) If the commodity identified is an agricultural commodity the tariff shall identify the base rate for the services provided, presented in the same units (tons, hundredweight, ton-mile, carload, trainload, etc.) as used in the contract. (If the contract utilizes existing tariff rates, appropriate tariff references shall be sufficient.) The tariff shall also state the movement type (e.g., single car, multiple car, unit train), the minimum annual volume, and a summary of escalation provisions. If the commodity identified is a forest product or paper, then the specific base rate and/or charges shall be identified. This is satisfied by identifying the specific tariff provisions which would apply without the contract. The tariff shall also summarize the escalation provisions, and state the movement type, as provided above for agricultural commodities.

(j), (k) Remains the same.

(l) Contract tariffs for other commodities must contain the information required in parts (1)(a), (b), (d), (e), (f), (g) and (h) of this rule. These requirements also apply to amended contract tariffs.

4. The Commission has adopted the following new rules as proposed:

Rule I. 38.4.108 SAVINGS PROVISION

Rule II. 38.4.153 COMMON CARRIER RESPONSIBILITY

Rule IV. 38.4.109 WAIVER OF TARIFF FILING REQUIREMENTS

5. The Commission has adopted the following new rules:

Rule III FILING AND AVAILABILITY OF CONTRACT Deleted in its entirety.

RULE V. 38.4.162 CONTRACT AND CONTRACT SUMMARY AVAILABILITY AND INFORMAL DISCOVERY (1) Except as provided in this rule, the contract filed under these rules shall not be available to persons other than the parties to the contract and authorized commission personnel, except by informal discovery under these rules and/or by commission decision.

(2) A contract and its tariff filed under these rules may be labeled "nonconfidential." Such a designation will permit the general public to inspect the entire contract.

(3) The contract tariff filed under these rules shall not be required to be posted in any stations, but shall be made available upon reasonable request from the carriers participating in the contract.

(4) Prior to filing a petition for formal discovery under these rules, a petitioner shall request discovery from the carrier in the same manner and with the same data as would be presented to the commission under ARM 38.4.163. The carrier must promptly grant or deny the request, and must act in good

faith in determining whether a petitioner has standing and is an affected party. AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

RULE VI. 38.4.163 PRELIMINARY SHOWING REQUIRED FOR FORMAL CONTRACT DISCOVERY (1) A petition to discover contract provisions may be filed with the commission. The petition must show that the petitioner is a shipper or port, has standing to file a complaint under 49 U.S.C. 10713(d)(2)(A) or (B), and is affected by the contract.

(2) An affected party is one which is an actual or potential participant in the relevant market. The following information is relevant to making this determination:

(i) Nature and size of petitioner's business.

(ii) Relevant commodities petitioner ships or receives.

(iii) Comparisons between petitioner's commodities, actual or potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract tariff.

(iv) Showing of an ability to ship the commodity in question at a time generally simultaneous with the contract at issue.

(v) Any additional information petitioner considers appropriate to support its request.

(vi) A showing of injury is not required to satisfy this rule.

(3) A petitioner seeking disclosure of nonagricultural commodity contracts must demonstrate that the particular information sought through discovery is relevant to its potential challenge to the contract. This "demonstrated need" test does not apply to agricultural commodity contracts (excluding forest products and paper). AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

RULE VII. 38.4.164 PROCEDURES FOR FORMAL CONTRACT DISCOVERY (1) Discovery petitions must be filed no later than the 18th day after the contract and tariff are properly filed, and must note on the front page "Petition for Discovery of Rail Contract" and the contract and amendment numbers. The discovery petition must include a skeletal complaint as required under subsection (8) of this rule. Petitioner must certify that copies of the petition and complaint have been sent to the contracting carrier(s) either by hand, express mail, or other overnight delivery service the same day as filed at the commission. Replies shall be served in the same manner.

(2) Replies to the petition are due within five days from the date of filing of the petition and in no event later than noon on the 23rd day following filing of the contract. All petitions, complaints, and replies filed with the commission shall be in an envelope or wrapper marked "Confidential Rail Contract Material."

(3) Motions for reconsideration of a commission decision concerning formal contract discovery will be made in accordance with ARM 38.2.4806, subject to the following exception:

(a) The motion for reconsideration must be received within two days of the commission's decision (anticipated by day 26 after the contract filing date), but in no event later than the 28th day after the contract filing date. Telegraphic notice or its equivalent must be given to the opposing party. Replies to the motion for reconsideration must be received one day after the motion is filed.

(4) If discovery is granted, the carrier must furnish the required information by the 1st working day after the commission issues a final decision.

(5) If confidential contract data or data disclosed pursuant to these rules are filed with the commission in a complaint, petition, reply or other pleading, the party filing these data should submit them as a separate package, clearly marked on the outside "Confidential Material Subject to Protective Order." The order in paragraph (5) of this rule applies to the parties specified in the order who receive confidential information through proceedings before the commission or through informal discovery.

(6) Order. Petitioner and carriers, and their duly authorized agents agree to limit to the discovery/complaint proceeding involving the contract, the use of contract information or other confidential commercial information which may be revealed in the contract, the complaint, reply, or any other pleading relating to the contract. This agreement shall be a condition to release of any contract term by a petitioner/complainant and shall operate similarly on a carrier in possession of confidential information which may be contained in a complaint, petition for discovery, or request for informal disclosure. Any information pertaining to parties to the contract, or subject to the contract (including consignors, consignees and carriers), or pertaining to the terms of the contract, or relating to the petitioner's/complainant's confidential commercial information, must be kept confidential. Neither the information nor the existence of the information shall be disclosed to third parties, except for: (a) consultants or agents who agree, in writing, to be bound by this regulation; (b) information which is publicly available; (c) information which, after receipt, becomes publicly available through no fault of the party seeking to disclose the information after it has become publicly available, or is acquired from a third party free of any restriction as to its disclosure. The petitioner/complainant or carrier must take all necessary steps to assure that the information will be kept confidential by its employees and agents. No copies of the contract terms or other confidential information are to be retained by the parties not originally privy to the data subsequent to the termination of the proceeding or the expiration of commission jurisdiction under ARM 38.4.145.

(7) On receipt of a skeletal complaint with a discovery petition, a complaint proceeding will be instituted to extend

the commission's jurisdiction to 60 days after the contract filing date, regardless of whether a petition for discovery is approved. Approval of the contract is postponed to 60 days after the contract filing date or until the commission issues a decision approving the contract, if earlier. The amended complaint and case-in-chief are due 39 days after the filing of the contract. Replies of the carrier defendant(s) are due 46 days after the filing of the contract.

(8) The skeletal complaint must contain the correct, unabbreviated names and addresses of the complainant(s) and defendant. The complainant must set out the statutory provisions under which it has standing to file a complaint. AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

6. Comments: Comments were filed with the Department by the Union Pacific System (Union Pacific). The comments concerned the apparent conflict between certain of the Department's proposed or amended rules, and recent decisions of the Interstate Commerce Commission (ICC). Specific reference was made to both Ex Parte No. 387 (Sub-No. 958) (November 20, 1985) and Ex Parte No. 387 (December 15, 1986).

The proposed amendments to ARM 38.4.144, 38.4.145 and 38.4.152 have been changed to be consistent with amendments made by the ICC to its rules in Ex Parte No. 387 (December 15, 1986). The changes in the proposed amendments to ARM 38.4.145 also reflect the ICC's decision in Ex Parte No. 387 (Sub-No. 958) (November 20, 1985).

Proposed Rule III has been revised and clarified, resulting in Rules V, VI and VII. This action is consistent with the ICC's decision concerning discovery in Ex Parte No. 387 (December 15, 1986). Originally, Proposed Rule III was modeled after interim discovery rules adopted by the ICC in 1984. In Ex Parte No. 387, the ICC revised these rules. Rules V, VI and VII are patterned after these revised rules. The Department is required, by virtue of its certification under the Staggers Act, to regulate intrastate rail rates in a manner which is consistent with the rules and regulations adopted by the ICC. For a complete analysis of the changes between Proposed Rule III and Rules V, VI and VII, as enacted, interested parties are directed to the decision of the ICC in Ex Parte No. 387 (December 15, 1986).

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE MAY 11, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of Rule 42.11.104 relating to) retail liquor/wine price) restructuring.)	NOTICE OF THE AMENDMENT of Rule 42.11.104 relating to retail liquor/wine price restructuring.

TO: All Interested Persons:

1. On November 28, 1986, the Department published notice of the proposed amendment of rule 42.11.104 relating to retail liquor/wine price restructuring at pages 1952, 1953, 1954 and 1955 of the 1986 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 19, 1986, to consider the proposed adoption of these rules. Several persons attended this hearing and oral and written comments were received.

3. The Department adopts this rule with the following changes:

42.11.104 RETAIL SELLING PRICE (1) ~~Except as provided in subsection (6),~~ ~~the~~ The retail selling price of liquor, other than fortified wine, as defined in ~~16-1-106(9)~~ 16-1-106(11), MCA, is determined by adding:

(a) the department's base case cost; and

(b) the state markup of 40% on the department's base case cost ~~:~~ ; ~~for liquor bottled in the following sizes:~~

~~(i) 1.75 liter is marked up at 40% on the department's base case cost;~~

~~(ii) 1.00 liter is marked up at 40% on the department's base case cost;~~

~~(iii) .750 liter is marked up at 46.01% on the department's base case cost plus 20 cents per bottle;~~

~~(iv) .375 liter is marked up at 52.01% on the department's base case cost plus four cents per bottle;~~

~~(v) .200 liter is marked up at 54.22% on the department's base case cost plus one cent per bottle;~~

~~(vi) .050 liter is marked up at 55.01% on the department's base case cost;~~

~~(c) The retail selling price of liquor that results from adding subsections (a) and (b) is indexed annually as determined in subsection (6).~~

~~(d) The selling price of liquor that results from adding subsections (a) and (b) and indexing in subsection (c) is rounded up to the nickel;~~

(2) ~~Except as provided in subsection (6),~~ ~~the~~ The retail selling price of fortified wine containing more than ~~14%~~ 16% but no greater than 24% alcohol by volume is determined by adding:

(a) the department's base case cost; and

(b) the state markup ~~of 60% on the department's base case cost if less than $10 or 40% on the department's base case cost if equal to or more than $10,~~ for fortified wine bottled in the following sizes:

(i) 1.50 liter is marked up at ~~42.77%~~ 42% on the department's base case cost plus 27 cents per bottle;

(ii) .750 liter is marked up at ~~51.25%~~ 51% on the department's base case plus 12 cents per bottle;

(iii) .375 liter is marked up at ~~59.35%~~ 59% on the department's base case cost plus two cents per bottle ~~.~~.

~~(c) The retail selling price of fortified wine that results from adding subsections (a) and (b) is indexed annually as determined in subsection (6).~~

~~(d) The selling price of fortified wine that results from adding subsections (a) and (b) and indexing in subsection (c) is rounded up to the nickel.~~

~~(e)~~ (c) Fortified wine bottled as .720 liter is marked up the same as .750 liter.

(3) The retail selling price of table wine as defined in 16-1-106(22), MCA, containing not less than ~~7%~~ 0.5% or more than ~~14%~~ 16% alcohol by volume is determined by adding:

(a) the department's base case cost; and

(b) the state markup ~~of 60% on the department's base case cost if less than $10 or 40% on the department's base case cost if equal to or more than $10,~~ for table wine bottled in the following sizes:

(i) 1.50 liter and larger sizes are marked up at ~~41.02%~~ 41% on the department's base case cost plus 68 cents per bottle;

(ii) 1.00 liter is marked up at ~~50.55%~~ 58% on the department's base case cost plus 25 cents per bottle;

(iii) .750 liter and smaller sizes are marked up at ~~49.14%~~ 49% on the department's base case cost plus 49 cents per bottle ~~.~~.

~~(c) The retail selling price of table wine that results from adding (a) and (b) is indexed annually as determined in subsection (6).~~

~~(d)~~ (c) The selling price of table wine that results from adding subsections (a) and (b) ~~and indexing in (c)~~ is rounded up to the nickel.

(4) For liquor and fortified wine, "base case cost" means the supplier's quoted price plus ~~all~~ freight charges from the supplier to the state warehouse and the average freight to all state liquor facilities. For table wine, "base case cost" means the statewide weighted average cost, which is the supplier's quoted price plus ~~all~~ freight charges from the supplier to the state warehouse and the average freight to all state liquor facilities, and applicable taxes as provided in Title 16, chapter 1, part 4, MCA.

(5) For liquor and fortified wine, the cost to the retail purchaser is the retail selling price plus applicable state taxes as provided in Title 16, chapter 1, part 4, MCA, THE TOTAL OF WHICH IS ROUNDED UP TO THE NICKEL. For table wine, the cost to the retail purchaser is the retail selling price as provided in subsection (3).

~~(6)--The state mark up of liquor shall be reduced by 10% as provided in 16-2-202, MCA~~ retail selling price is indexed annually, effective February 1 of each year after 1987, by multiplying the index times the retail selling price determined in subsections ~~(1)(a)~~ and ~~(1)(b)~~, ~~(2)(a)~~ and ~~(2)(b)~~, and ~~(3)(a)~~ and ~~(3)(b)~~.

~~(a)~~ The index is determined by dividing eligible expenses by ~~87%~~ of net sales.

~~(b)~~ Eligible expenses are all expenses charged against the ~~liquor division in a fiscal year~~, provided that expenses other than product costs, freight charges, or expenses allocable to other divisions or the licensing bureau are limited to ~~15%~~ of net sales.

~~(c)~~ Net sales are gross sales less discounts and all taxes collected.

~~(d)~~ Expense and net sales amounts come from the liquor division annual report for the most recent fiscal year.

~~(7)~~ (6) The department may reduce the retail selling price of products which the department has designated for closeout or are determined to be overstocked in order to encourage their purchase and elimination from the state inventory. Closeout products are those that the department has removed from its published listing of classes, varieties, and brands of liquor and table wine to be kept for sale at any state liquor facility. Overstocked products are those classes, varieties, and brands of liquor and table wine which are in the state's inventory in an amount greater than would be sold in a 12-month period.

4. The final rules have been changed from the proposed rules to eliminate a) the changes in markup and prices for liquor products, except for the restructuring of markups for fortified wine and table wine and b) the annual price adjustment. These changes from the original proposal are the direct result of action by the 1987 Legislature changing the liquor profit targets for the 1989 biennium. These changes are explained further in the response to comments on the proposed rules.

In addition, the language in subsection 5 of the rule merely relocates wording contained in the original notice on the rounding of prices up to the nickel.

COMMENT: The proposed price increase for some products will affect sales volume and may cause a decrease in total revenue rather than the increase projected.

RESPONSE: The issue raised in this comment was obviated by the legislature's reduction of the profit target in the 1989 biennium appropriation for the liquor division. This reduction in profit target allows the liquor division to maintain the current markup for liquor other than fortified wine for the near future and to drop the proposed annual price adjustment index. Price

restructuring for fortified wine and table wine is being adopted, however, because the previous markup rates for these products created large markup differences for some products in these categories that otherwise have small base case cost differences. The change in markups for these products achieves a consistent and rational price structure.

COMMENT: The proposed price restructuring will decrease the sales of smaller bottles.

RESPONSE: The proposed price restructuring was intended to have this effect and to encourage purchases in more economical sizes that would return greater profit to the state due to lower handling costs associated with larger products.

COMMENT: The annual price adjustment would create a great deal of uncertainty in the industry since prices would increase one year and decrease the next.

RESPONSE: The proposed adjustment was intended to introduce a rational basis of price changes by fixing prices to legislative appropriation targets. In any case, varying prices up or down are integral to this industry since suppliers frequently change prices with sales promotions, increases to cover costs, and shifts to encourage purchase of more profitable items. Certainty is desirable, but not a reasonable expectation in any enterprise. However, the annual price adjustment has been eliminated from the rule because of the legislature's change in profit targets.

COMMENT: It's a bad time to increase liquor prices due to tough economic times.

RESPONSE: Price increases were reluctantly considered as part of the equation, along with expense reductions, needed to meet revenue targets set by the legislature. The timing was dictated by the combination of factors that left no other alternatives as long as the profit target remained as it was. The legislature's change in the profit target at least postpones the time when an increase in markup for liquor may once again have to be considered.

COMMENT: The percentages in the proposed rule are overly refined.

RESPONSE: The comment is well taken. As a result, the markup percentages for fortified wine and table wine in the proposed rule are truncated to the lower whole percent in the adopted rule.

COMMENT: The proposed table wine markup is more in line with conditions in the competitive market than the previous markup.

RESPONSE: While the previous markup was based on a rationale that was market related many years ago, it no longer is due to changing base case costs since then. The comment reinforces the action being taken in this rule.

4. The authority of the Department to make the proposed amendment is based on 16-1-303, MCA, and the rule implements 16-1-103, 16-1-301, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, and 16-2-301, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 05/18/87

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

In the matter of the amendment of Rule 46.12.3207 pertaining to eligibility determinations for medical assistance - transfer of resources	))))))	NOTICE OF THE AMENDMENT OF RULE 46.12.3207 PERTAINING TO ELIGIBILITY DETERMINATIONS FOR MEDICAL ASSISTANCE - TRANSFER OF RESOURCES

TO: All Interested Persons

1. On April 16, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of ARM 46.12.3207 pertaining to eligibility determinations for medical assistance at page 365 of the 1987 Montana Administrative Register, issue number 7.

2. The Department has amended the rule as proposed with the follow changes:

46.12.3207 TRANSFER OF RESOURCES Subsections (1) through (2)(a) remain as proposed.

(b) The uncompensated value of the transferred non-excluded ~~real or personal~~ property ~~which was transferred~~ shall be counted toward the general resource limitation for medicaid eligibility ~~according to~~ until it is reduced by one or more of the following~~:~~ ~~whichever is applicable:~~

Original subsections (2)(b)(i) through (2)(b)(v) remain deleted as proposed.

~~(i) when the uncompensated value of the transferred property is less than $500, it shall be counted as a resource for one month;~~

(~~i~~i) all or part of the transferred property is returned;

(~~i~~ii) the uncompensated amount is reduced by documented further consideration;

~~(iv) the uncompensated amount is reduced by $500 for each month that passes beginning with the month of transfer;~~

(~~v~~III) the uncompensated amount is reduced by documented household medical expenses incurred beginning with the month of transfer.

(C) IF THE REDUCTIONS IN 2(b) ARE LESS THAN $500 IN ANY MONTH BEGINNING WITH THE MONTH OF TRANSFER, THE UNCOMPENSATED VALUE OF THE TRANSFERRED NON-EXCLUDED PROPERTY SHALL BE REDUCED BY A TOTAL OF $500 FOR EACH OF THOSE MONTHS.

(D) WHEN THE UNCOMPENSATED VALUE OF THE TRANSFERRED PROPERTY IS LESS THAN $500, IT SHALL BE COUNTED AS A RESOURCE FOR ONE MONTH;

Original subsections (2)(c) through (3)(a)(i) remain deleted as proposed. Subsections (3) through (6)(a) remain as proposed.

AUTH: Sec. 53-2-201 and 53-2-601 MCA
IMP: Sec. 53-2-601 and 53-6-113 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: It is unclear whether the reduction factors may be applied to allow an automatic reduction of the uncompensated amount by $500 for each month in addition to reduction by, for example, documented further consideration, return of all or part of the property, etc.

RESPONSE: The automatic $500 per month reduction in uncompensated value cannot be used in conjunction with the other reduction factors. The final rule has been changed to set out the requirements more clearly.

Dave Lewis
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 18, 1987.

VOLUME NO. 42 OPINION NO. 16

LAND USE - Enforceability of planning and zoning master plan;
LAND USE - Review authority of self-governing local government as to proposed division of land;
LOCAL GOVERNMENT - Enforceability of planning and zoning master plan;
LOCAL GOVERNMENT - Review authority of self-governing local government as to proposed division of land;
PROPERTY, REAL - Enforceability of planning and zoning master plan;
PROPERTY, REAL - Review authority of self-governing local government as to proposed division of land;
SUBDIVISION AND PLATTING ACT - Review authority of self-governing local government as to proposed division of land;
MONTANA CODE ANNOTATED - Title 76, chapter 1; sections 1-2-101, 1-2-107, 7-1-111, 7-1-112, 7-1-114, 76-1-103, 76-1-604, 76-1-606, 76-3-102, 76-3-103, 76-3-301, to 76-3-303, 76-3-306, 76-3-402, 76-3-404, 76-3-504, 76-3-505, 76-3-602, 76-3-609, 76-3-611, and 76-3-613;
MONTANA CONSTITUTION - Article XI, section 6;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 68 (1977), 37 Op. Att'y Gen. No. 175 (1978), 38 Op. Att'y Gen. No. 98 (1980), 39 Op. Att'y Gen. No. 14 (1981), 39 Op. Att'y Gen. No. 74 (1981), 40 Op. Att'y Gen. No. 57 (1984), 41 Op. Att'y Gen. No. 86 (1986).

HELD: 1. A local government unit with self-governing powers may not refuse to file a certificate of survey because the involved parcel encompasses less than 40, but equal to or more than 20, acres even if its master plan prohibits divisions of land of such size.

2. A local government which has adopted a master plan to regulate future land-use planning and zoning may condition issuance of permits for the construction, alteration, or enlargement of structures upon compliance with such plan.

13 May 1987

Robert M. McCarthy
Butte-Silver Bow County Attorney
Butte-Silver Bow County Courthouse
Butte MT 59701

Dear Mr. McCarthy:

You have requested my opinion concerning the following questions:

1. May Butte-Silver Bow, a self-governing consolidated governmental unit, refuse to file a certificate of survey because the size of the involved parcel, which is 20 acres or more, is inconsistent with a master plan's requirement?

2. May Butte-Silver Bow refuse to issue permits in connection with the construction, alteration, or enlargement of a structure if such proposed work is inconsistent with its planning and zoning master plan even though zoning regulations have not been adopted?

I conclude that Butte-Silver Bow does not have authority to refuse the filing of a certificate of survey because the involved parcels are not at least 40 acres in size. It may, however, condition issuance of building permits on compliance with the master plan when applicable zoning regulations have not yet been adopted.

Pursuant to section 76-1-604, MCA, Butte-Silver Bow has adopted a master plan to guide present and future land use within its boundaries. The plan requires certain residential parcels created after its effective date in what is termed rural district number 1 to encompass at least 40 acres. Recently, however, a landowner submitted a certificate of survey for several residential parcels located in a rural residential area which are slightly more than 20 acres in size. The first question is whether Butte-Silver Bow may refuse to file the certificate of survey.

Butte-Silver Bow is a charter form of government with self-governing powers. Bukvich v. Butte-Silver Bow, 42 St. Rptr. 293, 294, 696 P.2d 444, 445 (1985). As a self-governing entity, it "may exercise any power or provide any service except those specifically prohibited by the constitution, law, or the [local government's] charter." D & F Sanitation Service v. City of Billings, 43 St. Rptr. 74, 80, 713 P.2d 977, 982 (1986); accord Clopton v. Madison County Commission, 42 St. Rptr. 851, 854, 701 P.2d 347, 350 (1985); Billings Firefighters Local 521 v. City of Billings, 42 St. Rptr. 112, 114, 694 P.2d 1335, 1336 (1985); Tipco Corporation v. City of Billings, 197 Mont. 339, 343, 642 P.2d 1074, 1077 (1982); see generally 37 Op. Att'y Gen. No. 68 at 272, 273 (1977) ("[t]he [constitutional] convention notes to [art. XI, sec. 6, Mont. Const.] clearly indicate that local government units with self-government powers have all powers not specifically denied"). The Montana Legislature has enacted various provisions which deny self-governing units certain powers (§ 7-1-111, MCA), require express legislative delegation as a condition of other powers' exercise (§ 7-1-112, MCA), and subject the authority of such units to state statutes in several specified instances (§ 7-1-114, MCA). Among those matters in which self-governing units are subject to state statutory provisions are "[a]ll laws which require or regulate planning or zoning[.]" § 7-1-114(1)(e), MCA. See 38 Op. Att'y Gen. No. 98 (1980) (section 7-1-114(1)(e), MCA, prohibited Butte-Silver Bow from providing for an optional appeal of decisions from its local board of adjustment); see also 37 Op. Att'y Gen. No. 175 (1978) (applying section 7-1-114(1)(g), MCA).

I previously held in an unpublished opinion dated June 15, 1978, and issued to the Madison County Attorney that "[t]here can be little dispute that subdivision regulation under the [Montana] Subdivision and Platting Act [§§ 76-3-101 to 614, MCA] is part and parcel of the state laws that 'require or regulate planning or zoning.'" In that opinion I found improper the refusal of a county, which had constituted itself as a self-governing unit, to permit the selling or offering for sale of lots in a subdivision before the final plat was recorded--a prohibition inconsistent with section 76-3-303, MCA. While the Montana Supreme Court expressly refused in State ex rel. Swart v. Molitor, 38 St. Rptr. 71, 75-76, 621 P.2d 1100, 1104 (1981), to decide the question of whether "planning and zoning"

includes the function of reviewing certificates of survey under the Subdivision and Platting Act, I adhere to my earlier interpretation of section 7-1-114(1)(e), MCA, since subdivision regulation clearly appears an integral aspect of state and local government land-use planning. See § 76-3-102, MCA; see generally R. Anderson, American Law of Zoning 3d § 25.03 (1986) ("[t]he broad purposes of subdivision controls to guide community development, to protect the prospective residents and neighboring owners from the evils of poorly designed areas, and to advance the orthodox purposes of the police power, have been frequently repeated") (footnotes omitted); P. Rohan, Zoning and Land Use Controls § 45.01 (1986) ("[i]n general, subdivision legislation seeks to guide land development 'through the power to withhold the privilege of public record from plats that do not meet established requirements and standards'") (footnote omitted). Indeed, the Butte-Silver Bow master plan recognizes that subdivision regulation directly affects future land use and attempts to utilize such controls for the purpose of encouraging particular growth patterns and population densities.

Section 76-3-609, MCA, of the Subdivision and Platting Act governs the scope of local authority to review proposed divisions of land creating parcels 20 acres or larger. Subsection 2(a) provides in relevant part that "[t]he governing body's review must be limited to a written determination that appropriate access and easements are properly provided." I recently held that the effect of disapproval by a local governing body of such a proposed division is limited to nonprovision of county services involving the use of access roads or easements found to be unsuitable. 41 Op. Att'y Gen. No. 86 (1986). Implicit in section 76-3-609(2)(a), MCA, as well as my holding in the earlier opinion, are the negative corollaries that a local governing body may not refuse to file a certificate of survey even if access roads and easements are deemed unsuitable and that no such authority exists when the basis for disapproval rests on the fact a parcel is not at least 40 acres in size. The limited authority of Butte-Silver Bow in this regard is further underscored by section 76-3-505(2), MCA, which restricts local governing body review of divisions of land consisting exclusively of 20 acres or more "to a written determination of whether appropriate access and easements are properly provided."

The presence of the 40-acre limitation in a master plan does not broaden Butte-Silver Bow's authority even though section 76-1-606, MCA, permits Butte-Silver Bow to require, upon a properly enacted resolution, that "subdivision plats" conform with its master plan as a condition to their filing. The word "subdivision" is not defined in section 76-1-103, MCA, which contains definitions of various terms used in chapter 1 of Title 76, but the term is defined in section 76-3-103(15), MCA, of the Subdivision and Platting Act. As defined under the latter statute, "subdivision" means, for presently relevant purposes, a division of land "which creates one or more parcels containing less than 20 acres." See 40 Op. Att'y Gen. No. 57 (1984); 39 Op. Att'y Gen. No. 74 (1981); 39 Op. Att'y Gen. No. 14 (1981). That definition, in the absence of a clear contrary intent, should be deemed applicable to the use of the term "subdivision" in section 76-1-606, MCA. § 1-2-107, MCA; see City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971) ("[a]ll acts relating to the same subject, or having the same general purpose as the statute being construed, should be read in connection with such statute"); State ex rel. MacHale v. Ayers, 111 Mont. 1, 5, 105 P.2d 686, 688 (1940) ("[i]t is a general rule of law that all acts relating to the same subject, or having the same subject, or having the same general purpose as the statute being construed, should be read in connection with such statute"). I further note the term "subdivision plats" is used throughout the Subdivision and Platting Act and refers to plats reflecting subdivisions and not simply divisions of land as defined in section 76-3-103(3), MCA. §§ 76-3-301(1), 76-3-302, 76-3-306, 76-3-402(2), 76-3-404(2), 76-3-504(2), 76-3-505(1), 76-3-602, 76-3-611(1) and (2)(a), 76-3-613(1) and (2), MCA. This interpretation of the term "subdivision plat" in section 76-1-606, MCA, finally, harmonizes that provision with sections 76-3-505(2) and 76-3-609(2)(a), MCA--a result consonant with well-accepted rules of statutory construction. § 1-2-101, MCA; Schuman v. Bestrom, 42 St. Rptr. 54, 57, 693 P.2d 536, 538 (1985) ("[w]hen several statutes apply to a given situation, such a construction, if possible, is to be adopted as will give effect to all"). In sum, Butte-Silver Bow may not refuse to file a certificate of survey because the parcel size fails to satisfy master plan requirements.

The mere fact that Butte-Silver Bow may not deny filing to a certificate of survey in connection with a division of land, which is otherwise not a subdivision, because the resulting parcels are less than 40 acres does not, however, proscribe it from conditioning issuance of permits as to proposed construction, alteration, or enlargement of structures on such parcels upon compliance with the master plan. The Supreme Court held in Little v. Board of County Commissioners, 38 St. Rptr. 1124, 1139, 631 P.2d 1282, 1295 (1981), that city officials were authorized to deny a building permit for certain construction on unzoned land when the proposed use was inconsistent with a master plan. The Court apparently reasoned that, because zoning ordinances must substantially comply with a jurisdiction's master plan, such authority was necessary to preserve the master plan's integrity until appropriate zoning regulation was effected. Consequently, Butte-Silver Bow may deny building permits to applicants in connection with construction for uses inconsistent with its master plan.

THEREFORE, IT IS MY OPINION:

1. A local government unit with self-governing powers may not refuse to file a certificate of survey because the involved parcel encompasses less than 40, but equal to or more than 20, acres even if its master plan prohibits divisions of land of such size.

2. A local government which has adopted a master plan to regulate future land-use planning and zoning may condition issuance of permits for the construction, alteration, or enlargement of structures upon compliance with such plan.

Very truly yours,

MIKE GREELY
Attorney General

BEFORE THE BOARD OF LAND COMMISSIONERS

OF THE STATE OF MONTANA

In the Matter of the Lease of State Lands to McFARLAND-WHITE RANCH, Lessee - State Lease No. 2184.	))))	DECLARATORY RULING

The McFarland-White Ranch (hereinafter "lessee") was the lessee of state lease No. 2184. The Department of State Lands (hereinafter "DSL") determined that the lessee had lost the right to exercise the preference right. A letter to this effect, dated February 9, 1987, was sent by DSL to the lessee. The lessee requested a hearing on the matter. DSL denied the request for a hearing. The lessee then submitted an Amended Notice of Appeal, and the Department again denied a hearing on the matter. Lessee then submitted a request for a declaratory ruling. As a result of the request, DSL issues the following:

FACTS

The lessee and DSL entered into a five-year lease for 320 acres of grazing land in Wheatland County, Montana. The legal description for the lease is: W½, Section 16, T6N, R12E. The effective date of the lease was February 28, 1982, with an expiration date of February 28, 1987.

The lease agreement contained the following language at numbered paragraphs 3 and 11:

> 3. SUBLEASING WITHOUT FILING A COPY WITH THE COMMISSIONER OF STATE LANDS AND WITHOUT RECEIVING HIS APPROVAL OR SUBLEASING AT TERMS LESS ADVANTAGEOUS THAN THE TERMS OF THIS LEASE, CANCELS THIS LEASE.
>
> 11. SUBLEASING - The lessee shall have the right to sublease the land to another party upon the same terms and conditions as those upon which he leases it from the state, provided that no such sublease shall be legal until a copy thereof has been filed with the Department of State Lands and approved by the Commissioner.

The lease was signed by Mr. Wilbur White of the McFarland-White Ranch.

In 1986, DSL discovered that the lessee had entered into an agreement with Marjorie Muir Martin, whereby Ms. Martin was allowed to graze her livestock on state land in exchange for the lessee grazing their cattle on Ms. Martin's private land. As noted above, the lease was to expire in February, 1987. Normally, a lessee has the right to meet the highest bid at renewal time. Section 77-6-205, MCA. This is commonly known as the "preference right". As a

result of the subleasing, however, the lessee was informed, by a letter dated February 9, 1987, that it had lost the right to exercise the preference right to meet the highest bid. As stated above, the lessee requested a hearing on the loss of the preference right. DSL denied the request for a hearing because the lessee had not included in the request for a hearing any grounds why the lessee was entitled to a hearing. Further, the lessee had not included any bonafide factual disputes concerning the basis of the loss of the preference right as is required by ARM 26.3.144(6)(a). (See ARM 26.4.108(5), now repealed). It must also be noted that the lessee had never filed a copy of the sublease with DSL nor received its approval for such sublease in apparent violation of section 77-6-208, MCA.

Because of this decision by DSL, lessee filed an Amended Notice of Appeal. This Notice included the following assertions:

1. Lessee purchased real property from Donald MacKay in 1956 and as
part of the transaction received an Assignment of State Lease which included the W½ of Section 16, Township 6 North, Range 12 East, Wheatland County, Montana;

2. Due to the severe terrain in the area, Lessee has continuously since then exchanged use with Marjorie Muir Martin who held the E½ of Section 16, Township 6 North, Range 12 East, Wheatland County, Montana, which is also state land;

3. That the exchange of use included the use by Lessee of real property owned by the Martins. Martins used the Lessee's state land and additional private land owned by Lessee to graze livestock;

4. The above arrangement has been exercised for in excess of 30 years and no notice was given to any party concerning any illegality concerning the arrangement;

5. That Lessee has always timely paid all rental payments due, has always complied with recommendations of the State Department of Lands and the Northeastern Land office and in particular discussed the above issue with Mr. Dwayne Andrews and Mr. Craig Roberts of the Regional office;

6. That upon being informed of the alleged illegality of the arrangement, Lessee immediately notified Northeastern Land Office of his intention to cross fence the property and would not allow livestock other than their own to graze on the property. A copy of Lessee's letter dated November 19, 1986 is attached

hereto as Exhibit "B" and by reference made a part hereof;

7. That several years ago the Martin family became involved with the White family over a road dispute which has generated into a number of other disputes. Those disputes include advising the State Department of Lands that they have been illegally allowing their cattle to run on Lessee's lease when in fact they knew, or apparently knew, this was illegal. If Lessee participated in an illegal act, then certainly the complaining party also participated, perhaps, knowingly, in an illegal act which should also cause the loss of the preference right to their state land;

8. That Lessee protests vehemently the loss of his preference right, which he believes is the taking of a valuable property right, without due process of law and respectfully requests a hearing.

DSL had also received a letter from Ms. Martin to the effect that the Martin-Morse Livestock Co. had grazed their livestock on this state lease in exchange for allowing the lessees to use private land. According to Ms. Martin, this arrangement had been in effect for over eighty years.

DSL again denied a hearing on the loss of the preference right. Because all parties agreed there had been an exchange of use, there was still no bonafide factual dispute concerning any of the pertinent issues. In turn, because there was no factual dispute about the key issues, there was no reason for a hearing.

As a result of this denial, lessee requested a declaratory ruling on the loss of the preference right.

DISCUSSION

The Montana Supreme Court in Jerke v. State Department of Lands, 182 Mont. 294, 597 P.2d 49 (1979), determined that a lessee of school trust land (such as the land in the present case) could not exercise the preference right granted by section 77-6-205(1), MCA, if the lessee had subleased the tract for the duration of the lease term. They held that the preference right was unconstitutional in these circumstances, because the concept of ensuring sustained yield through the preference right was not applicable. The Court said:

> To allow an existing lessee who does not use the land to exercise a preference right constitutes an unconstitutional application of the preference right statute, section 81-405(1), R.C.M. 1947, now section 77-6-205(1) MCA. The only way full market value can be obtained in such a situation is by pure competitive bidding.

This holding was reaffirmed in Skillman v. Department of State Lands, 188 Mont. 383, 613 P.2d 1389 (1980).

Because there are instances where a sublease may not occur over the entire lease term or for the entire lease area, DSL requested and received an Attorney General's Opinion. In Volume No. 39, Opinion 1 (9 January 1981) the Attorney General stated, in part, "It is clear from Jerke and Skillman that a state land lessee who leases the entire tract for the entire lease period is not entitled to exercise the preference right of section 77-6-205, MCA. That was the situation in both of those cases."

In addition, DSL promulgated an administrative rule (ARM 26.3.108(3) now repealed), which provided that the preference right would be lost if the lessee subleased more than 1/3 of the land included in a lease for more than 30% of the term of the lease. ARM 26.3.108 also made it clear that an exchange of use was a type of sublease, which could result in the loss of the preference right. Similar language is now found at ARM 26.3.144.

The foregoing discussion is merely provided as background. It must be remembered that the present case involved a sublease of the entire state tract for the full term of the lease. As a result, the rule providing for the 1/3 and 30% distinction need not be considered. The present case falls directly into the category of subleasing, which is discussed by the Montana Supreme Court in the Skillman and Jerke cases.

The Lessee has alleged that a decision regarding the loss of a preference right requires a hearing. This allegation would be true if there was a bonafide factual dispute as to whether subleasing had occurred. In the present case, however, everyone freely admits that the subleasing has been in existence since at least 1984. As a result, there are no pertinent factual disputes which a hearing would resolve. In other words, Jerke and Skillman and the Attorney General's Opinion are clear. If a lessee subleases the entire tract for the entire term, DSL can not allow the lessee to exercise the preference right at renewal. An evidentiary hearing will not change this conclusion.

The lessee has also stated that the Department's rules are arbitrary and capricious, because they do not allow for a hearing under these circumstances; whereas, a lease cancellation for illegal subleasing requires a hearing pursuant to section 77-6-208 and 77-6-211, MCA. DSL disagrees. Section 77-6-208, MCA, is directed towards a situation where the lease will be lost during the lease term with no right to bid on the lease. ARM 26.3.142(6). On the other hand, if the preference right is lost, the former lessee may still bid on the lease. ARM 26.3.144(4). Given the difference in the penalties; and, more importantly,

given that there are really no facts which the lessee can present in the present case which would allow the lessee to regain the preference right, it can not be said that the rules are arbitrary and capricious.

Finally, lessee has asserted that the exchange of use was not entered into to circumvent DSL regulations and that lessee did not sublease on terms less advantageous than the terms given by the state. While DSL does not attribute any malice to lessee's actions, it must be pointed out that the Jerke decision was decided in 1979 and the Skillman decision was decided in 1980. Also, the pertinent rules were promulgated in 1979 and supplemented in 1982. Therefore, the lessee should have been sufficiently aware that their actions would result in the loss of their preference right.

Furthermore, the predecessor to section 77-6-208, MCA, which requires departmental approval prior to subleasing was enacted in 1937. These are not recent enactments. The lessees did not follow the procedure set forth in section 77-6-208, MCA, and the department could seek cancellation. As the Supreme Court said in the Skillman case:

> Further, if the case is distinguishable and Jerke should not be controlling as precedent, there is even more justification for applying the rationale of Jerke here. In Jerke, although there was a sublease involved, there is no evidence that there was an illegal sublease, as in the case before us. Here the lessee, Foster, sublet his grazing lease without having the sublease approved by the Department of State Lands as required by his lease with the State.

188 Mont. at 385-86.

The same statement can be made in the present case. The lessee was involved in an illegal sublease; therefore, the rationale of Jerke has even more justification under these circumstances.

For the above stated reasons, DSL was correct in determining that the preference right was lost, and that a hearing should not be held.

DATED this 13 day of May, 1987.

Dennis Hemmer, Commissioner

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 March 31, 1987. This table includes those rules adopted during the period March 31, 1987 through June 30, 1987 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1987, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1987 Montana Administrative Register.

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