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ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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NOTICE SECTION

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

In the matter of the adoption of rules pertaining to group coordination of benefits	))))	NOTICE OF PUBLIC HEARING

1. On August 20, 1987, at 9:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building at Helena, Montana, to consider the adoption of rules pertaining to group coordination of benefits.

2. Statement of reasonable necessity. The proposed rules are reasonably necessary to effectuate the purpose of 33-22-502(2), MCA, because they clarify to each employee, member, or employee/member's dependent of an insured group an essential feature of insured groups coverage relating to the coordination of benefits payable under the group coverage.

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

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

RULE I PURPOSE AND SCOPE (1) The purpose of these rules is to adopt the Model Group Coordination of Benefits Regulations, as promulgated by the National Association of Insurance Commissioners. These rules are intended to establish uniformity in the permissive use of overinsurance provisions and to avoid claim delays and misunderstandings that could otherwise result from the use of inconsistent or incompatible provisions among Plans.

(2) A coordination of benefits (COB) provision is one that is intended to avoid claims payment delays and duplication of benefits when a person is covered by two or more plans providing benefits or services for medical, dental or other care or treatment. It avoids claims payment delays by establishing an order in which plans pay their claims and providing the authority for the orderly transfer of information needed to pay claims promptly. It avoids duplication of benefits by permitting a reduction of the benefits of a plan when, by these rules, it does not have to pay its benefits first.

(3) These rules permit, but do not require, plans to include COB provisions.

(4) If a group contract includes a COB provision, it must be consistent with these rules. A plan that does not include such a provision may not take the benefits of another plan as defined in subsection (1) of Rule II into account when it determines its benefits. There is one exception: a contract holder's coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage must be excess to any other parts of the plan provided by the contract holder.

AUTH: 33-1-313, MCA IMP: 33-22-502(2), MCA

RULE II DEFINITIONS (1)(a) A "plan" is a form of coverage with which coordination is allowed. The definition of plan in the group contract must state the types of coverage which will be considered in applying the COB provision of that contract. The right to include a type of coverage is limited by subsection (1) of Rule II.

(b) A group contract that includes a COB provision may use any definition of "plan" that is consistent with the definition of "plan" in these rules.

(c) These rules use the term "plan". However, a group contract may, instead, use "program" or some other term.

(d) Except as provided in subsections (e) and (f) below, "plan" does not mean individual or family:

(i) insurance contracts;

(ii) subscriber contracts;

(iii) coverage through health maintenance organizations (HMOs); or

(iv) coverage under other prepayment, group practice, and individual practice plans.

(e) "Plan" means:

(i) group insurance and group subscriber contracts;

(ii) uninsured arrangements of group or group-type coverage;

(iii) group or group-type coverage through HMOs and other prepayment, group practice, and individual practice plans; and

(iv) group-type contracts.

Group-type contracts are contracts that are not available to the general public and may be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts may be included in the definition of plan, at the option of the insurer or the health service corporation and its contract-client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, "franchise" or "blanket"). The use of payroll deductions by the employee, subscriber, or member to pay for the coverage does not, of itself, make an individual contract part of a group-type plan. This description of group-type contracts is not intended to include individually underwritten and issued, guaranteed renewable policies that may be purchased through payroll deduction at a premium savings to the insured.

(f) "Plan" may mean the medical benefits coverage in group and group-type automobile contracts.

(g) "Plan" may mean medicare or other governmental benefits. That part of the definition of "plan" may be limited to the hospital, medical, and surgical benefits of the governmental program. However, "plan" may not mean a state plan under medicaid or a plan established by law if by law its benefits are excess to those of any private insurance plan or other non-governmental plan.

(h) "Plan":

(i) may not be construed to mean group or group-type

hospital indemnity benefits of $100 per day or less; but

(ii) may be construed to mean the amount by which group or group-type hospital indemnity benefits exceed $100 per day. "Hospital indemnity benefits" are those benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

(i) "Plan" may not mean blanket accident-type only coverages or school accident-type coverages that cover grammar, high school, and college students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis.

(2) "This plan", in a COB provision, means the part of the group contract providing the health care benefits to which the COB provision applies and which may be reduced on account of the benefits of other plans. Any other part of the group contract providing health care benefits is separate from this plan.

A group contract may apply one COB provision to certain of its benefits (such as dental benefits), coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

(3) "Primary plan" means a plan under which benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. There may be more than one primary plan (for example, two plans that do not have order of benefit determination rules). A plan is a primary plan if either:

(a) the plan has no order of benefit determination rules, or it has rules that differ from those permitted by these rules; or

(b) all plans that cover the person use the order of benefit determination rules required by these rules and under those rules the plan determines its benefits first.

(4) "Secondary plan" means a plan that is not a primary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules of these rules decide the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan that, under these rules, has its benefits determined before those of that secondary plan.

(5)(a) "Allowable expense" means a necessary, reasonable, and customary item of expense for health care, if the item of expense is covered at least in part under any of the plans involved, unless a statute requires a different definition. However, items of expense under coverages such as dental care, vision care, prescription drug, or hearing aid programs may be excluded from the definition of allowable expense. A plan that provides benefits only for any such items of expense may limit its definition of allowable expenses to like items of expense.

(b) If a plan provides benefits in the form of services, the reasonable cash value of each service is considered as both an allowable expense and benefit paid.

(c) The difference between the cost of a private hospital room and the cost of a semiprivate hospital room is not considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

(d) If COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of "allowable expense" must include the corresponding expenses or services to which COB applies.

(6) "Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

(a) services (including supplies);

(b) payment for all or a portion of the expenses incurred;

(c) a combination of (a) and (b) above; or

(d) an indemnification.

(7) "Claim determination period" means:

(a) The period of time, which must not be less than 12 consecutive months, over which allowable expenses are compared with total benefits payable in the absence of COB to determine:

(i) whether overinsurance exists; and

(ii) how much each plan will pay or provide. The claim determination period usually is a calendar year, but a plan may use some other period of time that fits the coverage of the group contract. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during the claim determination period.

(b) As each claim is submitted, each plan must determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period. But that determination is subject to adjustment as later allowable expenses are incurred in the same claim determination period.

AUTH: 33-1-313, MCA IMP: 33-22-502(2), MCA

RULE III MODEL COB CONTRACT PROVISION (1) Subsection (4) of this rule contains a model COB provision. Except as provided in subsection (4)(b) and (4)(c) of this rule and in Rule IV, the model COB provision may be used in a group contract.

(2) The COB provision in a group contract does not have to use the words and format shown in subsection (4) of this rule. The language of the COB provision may be changed to fit the language and style of the rest of the group contract or to reflect the difference among plans that:

(a) provide services;

(b) pay benefits for expenses incurred; and

(c) indemnify.

(3) A contract may not provide that its benefits are excess or always secondary to any plan defined in subsection (1) of Rule II, except in accordance with these rules. A group contract may not reduce benefits on the bases that:

(a) another plan exists;

(b) except with respect to part B of medicare, a person

is or could have been covered under another plan; or

(c) a person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

(4) If a plan covering a risk resident or to be performed in this state includes a COB provision, the COB provision must be consistent with the following model COB provision.

(a)(i) This COB provision applies to this plan when an employee or the employee's covered dependent has health care coverage under more than one plan.

(ii) If this COB provision applies, look first at the order of benefit determination rules set forth in subsection (4)(c) of this rule. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:

(A) may not be reduced if, under the order of benefit determination rules, this plan determines its benefits before another plan; but

(B) may be reduced if, under the order of benefit determination rules, another plan determines its benefits first.

(b) Each insurance policy with a COB provision must define the following terms in the manner they are defined in Rule II: plan, this plan, primary plan, secondary plan, allowable expense, and claim determination period.

(c) The order of benefit determination rules are as follows:

(i) When there is a basis for a claim under this plan and another plan, this plan is a secondary plan that has its benefits determined after those of the other plan, unless:

(A) the other plan has rules coordinating its benefits with those of this plan; and

(B) both those rules and this plan's rules, in subparagraph (ii) below, require that this plan's benefits be determined before those of the other plan.

(ii) This plan determines its order using the first of the following rules that applies:

(A) The benefits of the plan that covers the person as an employee, member, or subscriber (that is, other than as a dependent) are determined before those of the plan that covers the person as a dependent.

(B) Except as otherwise provided in these rules, if this plan and another plan cover the same child as a dependent of different persons, not separated or divorced, called "parents":

(I) the benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

(II) if both parents have the same birthday, the benefits of the plan that covered the parent longer are determined before those of the plan that covered the other parent for a shorter period of time.

(C) If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

(I) first, the plan of the parent with custody of the

child;

(II) then, the plan of the spouse of the parent with the custody of the chid; and

(III) finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. This subsection does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

(D) The benefits of a plan that covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan that covers a person as a laid off or retired employee (or as that employee's dependent).

(E) If none of the above rules determines the order of benefits, the benefits of the plan that covered an employee, member, or subscriber longer are determined before those of the plan that covered the person for the shorter time.

(d)(i) This subsection (d) applies when, in accordance with subsection (c), this plan is a secondary plan as to one or more other plans. If this subsection applies, the benefits of this plan may be reduced under this section. Other plans are referred to as "the other plans" in subsection (d)(ii) immediately below.

(ii) The benefits of this plan are reduced when the allowable expense in a claim determination period exceeds the sum of:

(A) the benefits that would be payable for the allowable expenses under this plan in the absence of this COB provision; and

(B) the benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made. In that case, the benefits of this plan are reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

If the benefits of this plan are reduced as described above, each benefit is reduced in proportion and charged against any applicable benefit limit of this plan.

(e) Certain facts are needed to apply these COB rules. [The XYZ Company] has the right to decide which facts it needs. It may obtain needed facts from or provide them to any other organization or person. [The XYZ Company] need not tell, or get the consent of, any person to obtain or provide needed facts. Each person claiming benefits under this plan must provide [The XYZ Company] any facts it needs to pay the claim.

(f) A payment made under another plan may include an amount that should have been paid under this plan. If it does, [The XYZ Company] may pay that amount to the organization that paid it. That amount will then be treated as though it were a

benefit paid under this plan. [The XYZ Company] will not have to pay that amount again. The term "payment made" includes the provision of benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

(g) If the amount of the payments made by [The XYZ Company] is more than it should have paid under this COB provision, it may recover the excess from one or more of:

(i) the persons it has paid or for whom it has paid;

(ii) insurers; or

(iii) other organizations.

The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

AUTH: 33-1-313, MCA IMP: 33-22-502(2), MCA

RULE IV RULES FOR COORDINATION OF BENEFITS (1)(a) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist. A secondary plan may take the benefits of another plan into account only if, under these rules, it is secondary to that other plan.

(b)(i) The word "birthday" in the wording shown in subsection (4)(c)(ii)(B) of Rule III refers only to month and day in a calendar year, not to the year in which the person was born.

(ii) A group contract that includes a COB provision and that is issued or renewed or has an anniversary date on or after the effective date of these rules must include the substance of the provision in subsection (4)(c)(ii)(B) of Rule III.

(c)(i) To determine the length of time a person has been covered under a plan, two plans are treated as one plan if the claimant was eligible under the second plan within 24 hours after the first plan ended. Thus, the start of a new plan does not include:

(A) a change in the amount or scope of a plan's benefits;

(B) a change in the entity that pays, provides, or administers the plan's benefits; or

(C) a change from one type of plan to another (such as, from a single employer plan to that of a multiple employer plan).

(ii) The length of time that a claimant is covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group must be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

(2) A secondary plan may reduce its benefits in the following manner or any manner that is more favorable to a covered person. When this alternative is used, a secondary plan may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than total allowable expenses. The amount by which the secondary plan's benefits have been reduced must be used by the secondary plan to pay allowable expenses, not otherwise

paid, that were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan determines its obligation to pay for allowable expenses based on all claims which were submitted up to that point in time during the claim determination.

(b) When this alternative is used, the suggested contract provision is as shown in subsection (4)(d)(ii) of Rule III.

(c) The last paragraph quoted in subsection (4)(d)(ii) of Rule III may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

(3) A secondary plan that provides benefits in the form of services may recover, from the primary plan, the reasonable cash value of providing the services, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this subsection may be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

(4)(a) Some plans with order of benefit determination rules not consistent with these rules declare that the plan's coverage is "excess" to all others, or "always secondary." This occurs because:

(i) certain plans may not be subject to insurance regulation; or

(ii) some group contracts have not yet been conformed with these rules pursuant to Rule V.

(b) A plan with order of benefit determination rules that comply with these rules (herein called a complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules which are inconsistent with those contained in these rules (herein called a noncomplying plan) on the following basis:

(i) If the complying plan is the primary plan, it must pay or provide its benefits on a primary basis.

(ii) If the complying plan is the secondary plan, it must, nevertheless, pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In such a situation, such payment is the limit of the complying plan's liability.

(iii) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan must assume that the benefits of the noncomplying plan are identical to its own and must pay its benefits accordingly. However, the complying plan must adjust any payments it makes based on that assumption whenever information becomes available as to the actual benefits of the noncomplying plan.

(iv) If:

(A) the noncomplying plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary

plan; and

(B) governing state law allows the right of subrogation set forth below;

then the complying plan must advance to or on behalf of the employee, subscriber, or member an amount equal to such difference. However, the complying plan may not advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid. In consideration of an advance, the complying plan must be subrogated to all rights of the employee, subscriber, or member against the noncomplying plan. An advance by the complying plan must also be without prejudice to any claim it may have against the noncomplying plan in the absence of a subrogation.

(5) A term such as "unusual and customary," "usual and prevailing," or "reasonable and customary," may be substituted for the term "necessary, reasonable and customary." Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the COB provision apply.

(6) The COB concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

AUTH: 33-1-313, MCA IMP: 33-22-502(2), MCA.

5. The Commissioner is proposing these rules because there currently is no uniformity in the permissive use of overinsurance provisions. The rules would provide uniformity in the use of overinsurance provisions and would help avoid claim delays and misunderstandings that could result from the use of inconsistent or incompatible overinsurance provisions among group insurance plans.

6. Interested persons may present their data, views, or arguments either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kathy M. Irigoin, State Auditor's Office, Mitchell Building, P.O. Box 4009, Helena, Montana 59604, no later than August 13, 1987.

7. Tanya Ask has been designated to preside over and conduct the hearing.

8. The authority for the commissioner to adopt the proposed rules is 33-1-313, MCA, and the rules implement 33-22-502(2), MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State this 2nd day of July, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rules I through VIII pertaining to confidentiality of case records containing reports of child abuse and neglect	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I THROUGH VIII PERTAINING TO CONFIDENTIALITY OF CASE RECORDS CONTAINING REPORTS OF CHILD ABUSE AND NEGLECT

TO: All Interested Persons

1. On August 19, 1987, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through VIII pertaining to confidentiality of case records containing reports of child abuse and neglect.

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

RULE I PURPOSE (1) These rules are being adopted to govern the disclosure of case records containing reports of child abuse and neglect.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

RULE II DEFINITIONS (1) For purposes of this part, the following definitions shall apply:

(a) "Case records containing reports of child abuse or neglect" means any case files maintained by the department which include a report or referral alleging child abuse or neglect as defined in section 41-3-201, MCA. Photographs, video and audio tapes may also be included as part of the case record.

(b) "Child placing agency" means any corporation, partnership, association, firm, agency, institution or person who places or who arranges for the placement of any child with any family, person, or facility not related by blood or marriage, either for foster care or for adoption.

(c) "Confidentiality" or "confidential" means to withhold from disclosure.

(d) "Day care facility" means a person, association or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day care home, a day care center, or a group day care home.

It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, or any group facility established chiefly for educational purposes.

(e) "Disclosure" means to release for inspection or copying or to make known or reveal in any manner any information contained in case records containing reports of child abuse or neglect.

(f) "Guardian" means a person appointed by the court to assume the powers and responsibilities of a parent for the child.

(g) "Parent" means the biological or adoptive mother or father of the child.

(h) "Person responsible for a child's welfare" means:

(i) the child's parent, guardian, or foster parent;

(ii) an employee of a public or private residential institution, facility, home, or agency; or

(iii) any other person legally responsible for the child's welfare in a residential setting.

(i) "Reasonable cause to believe" means a belief based upon credible information or facts.

(j) "Reports of child abuse or neglect" means a referral made pursuant to section 41-3-201, MCA alleging that a child is an abused or neglected child as defined by section 41-3-102, MCA.

(k) "Seal" means to make secure against access and withhold from disclosure.

(l) "Subject" means the child alleged to have been abused, dependent or neglected or the parents of the child.

(m) "Substantiated report" means that, upon investigation, the investigating worker has determined there is reasonable cause to believe that the reported child abuse or neglect caused harm to the child's health or welfare as defined in section 41-3-102(3), MCA.

(n) "Unfounded report" means that, upon investigation, the investigating worker has determined there is no reasonable cause to believe that the reported child abuse or neglect has occurred.

(o) "Unsubstantiated report" or "inconclusive report" means that, upon investigation, the investigating worker was unable to determine whether the abuse or neglect occurred or the report was unfounded.

(p) "Youth care facility" means a facility in which substitute care is provided to youth in need of care, youth in need of supervision, or delinquent youth and includes youth foster homes, youth group homes, and child care agencies.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

RULE III RECORDS (1) Only those case records developed by the department may be disclosed.

(2) Records prepared by medical, psychological or other professionals or records received from another state shall be considered the property of the professional preparing the record and may not be released without the written authorization of the professional preparing the record.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

RULE IV CONFIDENTIALITY (1) The child abuse and neglect case records of the department shall be kept confidential except that disclosure may be made to persons specifically identified in section 41-3-205 MCA and Rule V.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

RULE V DISCLOSURE (1) Records may be disclosed to a court for in-camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(2) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization including federal agencies legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records, or other persons responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under section 41-3-108, MCA for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is

based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department of family services or department of social and rehabilitation services if disclosure of the records is necessary for the administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect; or

(k) a foster care review committee established under section 41-3-1115, MCA.

(3) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

(4) Any person who receives all or part of a case record is bound by statute and these regulations to keep the information confidential and may not disclose information in the records to anyone other than the individuals or entities described in Rule V(2)(a).

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

RULE VI PENALTY (1) Any person who permits or encourages the unauthorized dissemination of the contents of a child abuse or neglect case record is guilty of a misdemeanor as provided in section 41-3-205, MCA.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

RULE VII DISCLOSURE PROCEDURES (1) Requests for disclosure may be made orally or in writing to the department.

(a) The department shall respond to a request for disclosure within 30 days of the request.

(b) If the request for disclosure is denied, the department shall notify the person requesting the information in writing of the reasons for denial.

(2) Upon receiving a request for disclosure, the department shall determine if the person or entity who is requesting disclosure is authorized by statute or these rules to receive such information.

(a) Any person who is not authorized to receive the information shall be notified in writing that the information cannot legally be disclosed without a court order.

(b) If the person or entity requesting disclosure is authorized by statute or these rules to receive the requested information, the department shall disclose the information to the requesting person or entity as set forth in Rule V.

(i) The person or entity requesting the information may inspect the records at the department offices and may request copies of any portion of the record.

(ii) No fee will be charged for inspection. The department may charge a reasonable fee for the costs of copying the records.

(iii) If the information cannot be disclosed within thirty (30) days of receiving the request, the department shall notify the requesting person or entity in writing of the reason for the delay.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

RULE VIII AMENDMENT AND SEALING OF THE RECORD (1) The subject of a case record containing a substantiated report of child abuse or neglect has the right, at any time, to request the department to amend or make additions to the case record on the grounds that the information is incomplete, incorrect or is being maintained improperly.

(a) The subject must specifically identify in writing the portions of the record he believes to be in error and must state the specific reasons why he believes the record to be in error.

(b) The department will review the subject's request for amendment and notify the subject in writing of its decision regarding the request for amendment.

(i) If the department determines the information contained in the case record is correct, the department will deny the request for amendment, but will allow the subject to prepare a written statement of the reasons why he believes the records to be in error which will be made a part of the permanent record.

(ii) If the department determines the information contained in the case record is in error, the information will be amended in the case record and a copy of the amended record shall be sent to the subject and person or agency to whom the incorrect information was disclosed.

(c) If the subject is dissatisfied with the decision of the department, he may request an administrative review of the decision. The request for an administrative review must be made in writing within thirty (30) days from the date of the department's response to the request for amendment.

(2) The subject of a case record which contains an unsubstantiated or unfounded report may request the department

to seal the case record if there are no substantiated reports contained in the case record.

(3) Once sealed, the record shall not be disclosed to any person or entity except upon the written approval of the department director.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

3. This rule is necessary to implement House Bill 605 (Chapter 287, Laws of 1987) which authorizes the department to disclose confidential child abuse and neglect records under certain circumstances. The rule sets forth the circumstances under which disclosure will be allowed and the procedures for disclosure, amendment and sealing of the case record.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than September 2, 1987.

5. Legal Counsel for the Department of Family Services has been designated to preside over and conduct the hearing.

Director, Department of Family Services

Certified to the Secretary of State July 6, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendments of Rule 12.6.901 pertaining to water safety regulations	NOTICE OF PROPOSED AMENDMENTS OF RULE 12.6.901 TO CLOSE CRYSTAL LAKE IN FERGUS COUNTY TO MOTOR-PROPELLED WATER CRAFT AND TO ESTABLISH A NO-WAKE SPEED LIMIT ON PORTIONS OF LAKE KOOKANUSA ON CRIPPLE HORSE BAY

NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On August 20, 1987, the Montana Fish and Game Commission proposes to amend Rule 12.6.901 to prohibit Motor-propelled water craft on Crystal Lake, located in Fergus County, except under exceptional circumstances. The rule must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective, as required by Section 87-1-303, MCA.

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

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) The following waters are closed to use for any motor-propelled water craft except in case of use for official patrol, search and rescue, maintenance or hydroelectric projects and related facilities with prior notification by the utility, or for scientific purposes;

Beaverhead County:	Big Hole River
Big Horn County:	Arapooish access area
Cascade County:	Smith River That portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle and that portion of the Missouri River from the Warden Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.
Custer County:	Branum Pond

Deer Lodge County:	Big Hole River
Gallatin County:	Bozeman Ponds
Granite County:	Bear Mouth rest area pond
Hill County:	Bearpaw Lake
Jefferson County:	Park Lake
Lewis & Clark County:	Wood Lake
	Spring Meadow Lake
Madison County:	Big Hole River
Meagher County:	Forest Lake - Smith River
Missoula County:	Frenchtown Pond - Harpers Lake
Ravalli County:	Twin Lakes
Richland County:	Gartside Reservoir
Silver Bow County:	Big Hole River
Toole County:	Henry Reservoir-Fitzpatrick Lake

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horse power, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(i) all rivers and streams in the following counties east of the continental divide:

Silver Bow	Gallatin-exception: Missouri downriver
Beaverhead	from Headwaters state park
Jefferson	Park-exception: Yellowstone downriver
Madison	from I-90 bridge at Livingston
	Broadwater-exception: Missouri downriver
	from the Broadwater-Gallatin county line

(ii) other waters of the state as follows:

Hill County:	Beaver Creek Reservoir
Fallon County:	South Sandstone Reservoir

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Broadwater County:	(A)	on Canyon Ferry Reservoir: White Earth and Goose Bay, within 300 feet of dock or as buoyed;
Carbon County:	(A)	on Cooney Reservoir: all of Willow Creek arm as buoyed;
Daniels County:		Whitetail Reservoir
Fergus County:	(A)	upper & lower Carter Ponds;
	~~(B)~~	~~Crystal Lake 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;~~
Flathead County:	(A)	on Flathead Lake: Bigfork Bay
	(B)	Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;
Hill County:	(A)	Beaver Creek Reservoir
Lewis & Clark Co:	(A)	on Canyon Ferry Reservoir: Yacht Basin, Cave Bay, Little Hellgate, Magpie Bay & Carp Bay within 300 feet of dock or as buoyed;

(B) on Hauser Reservoir: Lakeside marina and Black Sandy beach within 300 feet of the docks or as buoyed;

(C) on upper Holter Lake: Gates of Mountains marina within 300 feet of docks or as buoyed;

(D) on Holter Lake: bureau of land management boat landing as buoyed, Juniper Bay, Log Gulch, Departure Point, Merriweather Camp, and Holter Lake lodge docks.

Lincoln County: (A) Savage Lake during the hours of 5:00 a.m. to 10:00 a.m. and from 7:00 p.m. to 11:00 p.m. each day;

(B) Lake Koocanusa: Cripple Horse Bay, within 300 feet of dock or as buoyed.

Missoula County: (A) Clearwater River from the outlet of Seeley Lake to the first bridge downstream from Camp Paxson swim dock;

(B) on Holland Lake: Holland Lake Lodge and the Bay Loop campground within 300 feet or as buoyed.

(d) The following waters are closed to water skiing;

Lewis & Clark Co: (A) on Saturday & Sunday of each week and on all legal holidays from the mouth of the canyon on upper Holter Lake to Gates of Mountains near Mann Gulch, as marked.

Valley County: (A) Fort Peck Dredge Cut Trout Pond

(e) On the following waters all boats pulling, taking off with, and landing water skiers will travel in a general, consistent counterclockwise direction:

Missoula County: Alva Lake, Inez Lake, Seeley Lake.

Carbon County: Cooney Reservoir

(f) The following waters are limited to manually operated boats and boats powered by electric motors:

Fergus County: (A) Crystal Lake

(2) This rule has been reviewed and approved by the department of health and environmental sciences.

AUTH: 87-1-303, 23-1-106(1), MCA IMP: 87-1-303, 23-1-106, 23-2-501, MCA

3. The Commission is proposing these amendments to bring commission rules into conformity with those of the U.S. Forest Service regarding Crystal Lake. The rule for Cripple Horse Bay is being proposed because of safety concerns in a congested area.

4. Interested persons may submit their data, views and comments concerning the proposed amendments to Eileen Shore, Montana Department of Fish, Wildlife and Parks, 1420 east Sixth Avenue, Helena, Montana 59620, no later than 5:00 p.m. August 18, 1987.

5. If a person who is directly affected by the proposed rules wishes to express data, views, or comments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request to Eileen Shore no later than August 18, 1987.

6. If the Department receives requests for a public hearing from 10% or 25, whichever is fewer, of the persons who will be directly affected by the proposed rules, by a governmental subdivision or agency, by the administrative code committee, or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of Hearing will be published in the Montana Administrative Register.

James W. Flynn, Secretary
Fish and Game Commission

Certified to the Secretary of State July 6, , 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules regulating fishing contests.	)))	NOTICE OF PROPOSED ADOPTION OF NEW RULES REGULATING FISHING CONTESTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 20, 1987, the Fish and Game Commission proposes to adopt the following proposed new rules.

2. The proposed rules do not replace or modify any section found in the Administrative Rules of Montana. The rules must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective, as required by Section 87-1-303, MCA.

3. The proposed rules provide as follows:

RULE I DEFINITION (1) "Fishing Contest" is any event where an entry fee is charged and where 30 or more people are expected to, or do in fact, compete to win prizes or cash worth $200 or more, based on the capture of an individual fish or combination of fish.

AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

RULE II APPLICATION (1) Any individual, club, organization or business wishing to sponsor a fishing contest on a body of water open to public fishing must submit an application to the Department of Fish, Wildlife and Parks at least 90 days but not more than 180 days prior to the scheduled date of the contest.

AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

RULE III APPLICATION FORM (1) Application must be made on the following form:

FISHING CONTEST APPLICATION

Approval of this application does not constitute approval to use any lands or facilities. Any group of 30 or more persons using a department administered recreation area must secure a group user permit from the Parks division. Any commercial activity on a department administered recreation area requires a commercial use permit (user fee and/or security deposit may be assessed). It is the applicant's responsibility to secure all necessary permits prior to holding a fishing contest.

1. Name of contest _____

2. Contest sponsor(s) _____

3. Date(s) and hours contest will be held (including starting and check-in times _____

4. Body of water where contest will be held _____

5. Location of starting and check-in points _____

6. Entry fee _____

7. Description and value of prizes (including amounts of cash prizes) _____

8. Describe contest format including basis for awarding prizes (tagged fish, longest or heaviest individual or combination of fish _____

9. Estimated number of participants _____

10. State owned or managed lands or facilities that would be utilized or affected by contest _____

11. Are conflicts with other users anticipated and what measures are proposed to avoid or reduce conflicts? _____

12. Other comments _____

Department Use Only

Date application received _____

Date transmitted to Fisheries Division and region _____

Date department recommendations forwarded to Commission _____

Date of Commission action _____

Commission decision:

_____ Approved
_____ Approved with modifications
_____ Denied

Comments _____

Date of applicant response _____
(Attach response)

(2) Applications can be ordered from the department.
AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

RULE IV EVALUATION AND RECOMMENDATION (1) The department will evaluate the application and send its evaluation and recommendation to the commission no later than ten days prior to the commission meeting at which the application will be acted upon.

(2) The department will consider:

(a) Impacts of the contest on the fish population of the host body of water, the aquatic ecosystem and the immediate area.

(b) Compatibility of the contest with fisheries management objectives for the water.

(c) Purse or participation limits (Limits may or may not be imposed depending upon public comments received).

(d) Conflicts with other contests proposed or approved for a body of water.

(e) Compliance with information requirements for previously sponsored contests.
AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

RULE V COMPETING APPLICATIONS (1) When two or more contests are proposed on a single body of water the department will recommend approval of applications which have less impact on resources and offer the best opportunities for public benefits by furthering knowledge of angling ethics and aquatic ecology. Modifications to be recommended by the department to the commission will be discussed with the applicant prior to the commission's deliberation.
AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

RULE VI COMMISSION DECISION (1) At least 30 days prior to the scheduled date of the contest, the commission will issue a decision on the application. The commission may approve the application as submitted, approve the application with modifications or deny the application. When an application is approved with modifications, the applicant must respond to the commission at least 10 days prior to the scheduled date of the contest that the modifications are acceptable. Failure to do so will constitute withdrawal of the application.

(2) An application may be denied if in the opinion of the commission any of the following are found to exist:

(a) The contest will have detrimental impacts on fish populations, the aquatic ecosystem or the surrounding area.

(b) The contest would conflict with management goals for the host water.

(c) The contest conflicts with other proposed contests or intended uses of the host water.

(d) The proposed contest would be held during a period of heavy recreational use on the host body of water, increasing the likelihood of conflicts with other users.
AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

RULE VII REPORTING REQUIREMENTS (1) Within thirty days after an approved fishing contest, the sponsor shall report to the department the number of participants, the number of fish caught and the length and weight of the winning fish. The department may require more detailed catch information.
AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

RULE VIII PROHIBITED CONTESTS (1) Contests involving harvest of the following Montana species of special concern are prohibited, regardless of the value of any prize and regardless of any entry fee:

(a) Wild trout (Salmo or Salvelinus) in streams
(b) Native rainbow trout (Salmo gairdneri)
(c) Bull trout (Salvelinus confluentus)
(d) Sturgeon chub (Hybopsis gelida)
(e) Sicklefin chub (Hybopsis meeki)
(f) White sturgeon (Acipenser transmontanus)
(g) Pallid sturgeon (Scaphirhynchus albus)
(h) Paddlefish (Polyodon spathula)
(i) Yellowstone cutthroat trout (Salmo clarki bouvieri)
(j) Westlope cutthroat trout (Salmo clarki lewisi)- includes upper Missouri cutthroat trout
(k) Artic grayling (Thymallus arcticus)
(l) Shortnose gar (Lepisosteus platostomus)
(m) Pearl dace (Semotilus margarita)
(n) Northern redbelly dace (Phoxinum eos) x finescale dace (P.neogaeus)
(o) Trout-perch (Percopsis omiscomaycus)
(p) Shorthead sculpin (Cottus confusus)
(q) Spoonhead sculpin (Cottus ricei)

AUTH: 87-3-121(2), MCA (HB 429, 1987); IMP: 87-3-121(2), MCA (HB 439, 1987)

4. These proposed rules are being proposed to comply with and to implement HB 429 as passed by the 50th Legislature. The proposed rules exempt from regulation smaller contests because the Department believes these do not have a substantial effect on resources it is the intent of the statute to protect.

5. Interested persons may submit their data, views and comments concerning the proposed adoptions to Eileen Shore, Montana Department of Fish, Wildlife and Parks, 1420 east Sixth Avenue, Helena, Montana 59620, no later than 5:00 p.m. August 18, 1987.

6. If a person who is directly affected by the proposed rules wishes to express data, views, or comments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request to Eileen Shore no later than August 18, 1987.

7. If the department receives requests for a hearing from ten persons who will be directly affected by the proposed adoption, by a governmental subdivision or agency, by the administrative code committee, or by an association having not fewer than 25 members who will be directly affected, a hearing will be scheduled. Notice of the hearing will be published in the Montana Administrative Register.

James W. Flynn, Secretary
Fish and Game Commission

Certified to the Secretary of State July 6, 1987.

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

In the matter of the adoption of NEW RULES I through ~~XLI~~ XLX; the amendment of rules 16.28.101, 16.28.201, 16.28.202, 16.28.301 - 16.28.304, 16.28.601 - 16.28.612, 16.28.614, 16.28.616 - 16.28.619, 16.28.621 - 16.28.626, 16.28.628 - 16.28.632, 16.28.634 - 16.28.638, 16.28.1001 - 16.28.1003, 16.28.1005, 16.29.101, & 16.29.102; and the repeal of rules ~~16.28.102~~, 16.28.401 - 16.28.404, 16.28.501 - 16.28.505, 16.28.613, 16.28.615, 16.28.620, 16.28.627, 16.28.633, 16.28.901 - 16.28.903, 16.28.1004, and 16.28.1101 - 16.28.1105; all concerning control measures to prevent the spread of communicable diseases	)	INTERIM NOTICE RESPONDING TO COMMENTS RECEIVED (Communicable Diseases)

To: All Interested Persons

1. On June 25, 1987, the department published notice of proposed adoption, amendment, and repeal of the above-captioned rules concerning control measures for communicable diseases, at page 816 of the 1987 Montana Administrative Register, issue number 12.

2. A substantial number of comments have already been received. In response to those comments, the department proposes the following changes and additions to the rules as originally proposed (new text is capitalized where possible, and matter to be stricken is interlined; text markings used in the initial notice are retained here; section numbers refer to those of the initial notice):

16.28.101 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

~~(1) "Approved vaccine" means an immunizing agent approved by the Bureau of Biologics, Food and Drug Administration, U.S. Public Health Service.~~

~~(2)~~(1) "Blood and body fluid precautions" mean the following requirements to prevent spread of disease through contact with infective blood or body fluids:

(a)-(f) Same as proposed.

(g) Any blood spills must be cleaned up promptly with a solution of 5.25% sodium hypochlorite (FOR EXAMPLE, REGULAR CHLOROX OR PUREX BLEACH) diluted 1:10 with water.

(h) A case must be restricted to a private room if ~~his~~ HIS/HER hygiene is poor, i.e. ~~he~~ S/HE does not wash hands after

touching infective material, contaminates the environment with infective material, or shares contaminated articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.

(3)-(13) (to be renumbered) Same as proposed.

(13) "Drainage and secretion precautions" mean the following requirements to prevent spread of disease through contact with purulent material from an infected body site:

(a)-(b) Same as proposed.

(c) Anyone touching the case or potentially contaminated articles must wash h+s HIS/HER hands immediately afterward and before touching another person.

(d) Same as proposed.

(14) "Enteric precautions" mean the following requirements to prevent spread of disease through feces:

(a)-(c) Same as proposed.

(d) Articles contaminated with infective material must be ~~disregarded or~~ EITHER THOROUGHLY disinfected BEFORE THEY ARE REMOVED FROM THE INFECTED PERSON'S ROOM, OR BAGGED, LABELED, AND BURNED OR DECONTAMINATED.

(e) A case must be restricted to a private room if h+s HIS/HER hygiene is poor, i.e. he S/HE does not wash hands after touching infective material, contaminates the environment with infective material, or shares contaminated articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.

(16)-(23) (to be renumbered) Same as proposed.

(23) "Isolation" means separation during the period of communicability of an infected or probably infected ~~persons~~ person from other persons, in ~~such~~ places and under ~~such~~ conditions approved by the department or local health officer and ~~as will prevent~~ preventing the direct or indirect conveyance of the infectious agent to persons who are susceptible to the infectious agent in question or who may convey the infection to others ~~to the satisfaction of the department or the local health officer~~. Isolation may be either modified or strict, as defined below:

(a) "Modified isolation" means instruction by either the department, a local health officer, or an attending physician, directed to the infected person, any members of h+s HIS/HER family, and any other close contacts, in accordance with "Guidelines for Isolation Precautions in Hospitals" published by the Government Printing Office, July, 1983, setting restrictions on the movements of and contacts with the infected person and specifying whichever of the following are also appropriate:

(i)-(v) Same as proposed.

(b) "Strict isolation" includes the following measures:

(i)-(ii) Same as proposed.

(iii) Each person caring for an infected person must wear a washable outer garment, mask, and gloves, and must thoroughly wash h+s HIS/HER hands with soap and hot water after handling an infected person or an object an infected person may have

contaminated. Before leaving the room of an infected person, a person caring for an infected person must remove the washable outer garment and hang it in the infected person's room until the garment and room are disinfected.

(iv)-(v) Same as proposed.

(25)-(32) (to be renumbered) Same as proposed.

(32) "Respiratory isolation" means:

(a)-(b) Same as proposed.

(c) any person caring for the patient must thoroughly wash his HIS/HER hands after touching the patient or contaminated articles and before touching another person; and

(d) Same as proposed.

~~(35) "Sexually transmitted disease" means A, B, syphilis, gonococcal infection, chancroid, lymphogranuloma venereum, granuloma inguinale, chlamydial genital infections, or genital herpes.~~

(36)-(37) (to be renumbered) Same as proposed.

~~(38) "Suspected case" means a person whose medical history, signs, and symptoms suggest that he may have or may be developing a communicable disease.~~

(39) "Tuberculosis isolation" means:

(a)-(b) Same as proposed.

(c) any person caring for the patient must wash his HIS/HER hands after touching the patient or potentially contaminated articles and before touching another person; and

(d) Same as proposed.

(40) (to be renumbered) Same as proposed.

16.28.102 LOCAL BOARD RULES (Will NOT be repealed but will be retained without amendment.)

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

(a) the information specified in ~~(a)~~ [NEW RULE II(2)] to the department alone, in the case of potential AIDS; or

(b) THE INFORMATION SPECIFIED IN [NEW RULE II(1)(a)-(e)] to the local COUNTY, CITY-COUNTY, OR DISTRICT health officer in every other case OTHER THAN THOSE LISTED IN [NEW RULE I(3)]; OR

(c) IF THE DISEASE IN QUESTION IS LISTED IN [NEW RULE I(3)], THE FACT THAT A CASE HAS OCCURRED TO THE COUNTY, CITY-COUNTY, OR DISTRICT HEALTH OFFICER.

(2) A local COUNTY, CITY-COUNTY, OR DISTRICT health officer must submit to the department, on the schedule noted in [NEW RULE I], the information specified in [NEW RULE II] con-

cerning each confirmed or suspected case of which he S/HE is informed.

(3) Same as proposed.

16.28.202 REPORTABLE DISEASES (1) The following Reportable communicable diseases ~~include~~ are reportable:

Acquired immune deficiency syndrome (AIDS), AS DEFINED BY THE CENTERS FOR DISEASE CONTROL, or potential AIDS, as indicated by the presence of the human immunodeficiency virus antibody

Amebiasis

Anthrax

Botulism (including infant botulism)

Brucellosis

Campylobacter enteritis

~~Carriers~~

Chancroid

Chickenpox

Chlamydial genital infection

Cholera

Colorado tick fever

Conjunctivitis epidemic

CYTOMEGALOVIRAL ILLNESS

Diarrheal disease outbreak

Diphtheria

Encephalitis

Gastroenteritis epidemic

Giardiasis

Gonococcal infection

Gonococcal ophthalmia neonatorum

Granuloma inguinale

HAEMOPHILUS INFLUENZAE B INVASIVE DISEASE (MENINGITIS, EPIGLOTTITIS, PNEUMONIA, AND SEPTICEMIA)

Hansen's disease (leprosy)

Hepatitis A, B, non-A non-B, or unspecified

Herpes, genital

Histoplasmosis

KAWASAKI DISEASE

Influenza

Legionellosis

Leptospirosis

Listeriosis

Lyme disease

Lymphogranuloma venereum

Malaria

Measles (rubeola)

Meningitis, bacterial or viral

Mononucleosis

Mumps

Nongonococcal urethritis

Ornithosis (psittacosis)

~~Paratyphoid~~

Pediculosis (lice)

Pertussis (whooping cough)

Plague
Poliomyelitis, paralytic or non-paralytic
Q-fever
Rabies or rabies exposure (human)
Reye's syndrome
Ringworm epidemic
Rocky Mountain spotted fever
Rubella (including congenital)
Salmonellosis
Scabies
Shigellosis
Smallpox (including vaccinia)
Staphylococcal epidemic
Streptococcal epidemic
Swimmer's itch (cutaneous larva migrans)
Syphilis
Taeniasis
Tetanus
~~Toxic-shock syndrome~~
Trichinosis
Tuberculosis
Tularemia
Typhoid fever
Typhus
Yellow fever
Yersiniosis
Illness occurring in a traveler from a foreign country
An unusual outbreak of any communicable disease in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985.

(2) Same as proposed.

NEW RULE I REPORTS AND REPORT DEADLINES (1) A ~~local~~ COUNTY, CITY-COUNTY, OR DISTRICT health officer or ~~his~~ HIS/HER authorized representative must immediately report to the department by telephone the information cited in [NEW RULE II(1)] whenever a case of one of the following diseases is suspected or confirmed:

(list is same as proposed)

(2) A ~~local~~ COUNTY, CITY-COUNTY, OR DISTRICT health officer or ~~his~~ HIS/HER authorized representative must mail to the department the information required by [NEW RULE II(1)] for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) On the same day information about a case of one of the following diseases is received by the ~~local~~ COUNTY, CITY-COUNTY, OR DISTRICT health officer:

Chancroid
Cholera
Diarrheal disease outbreak
Gastroenteritis epidemic
Gonococcal infection

Gonococcal ophthalmia neonatorum
Granuloma inguinale
HAEMOPHILUS INFLUENZAE B INVASIVE DISEASE (MENINGITIS, EPIGLOTTITIS, PNEUMONIA, AND SEPTICEMIA)
Listeriosis

(remainder of list is same as proposed)

(b) Within 7 calendar days after the date information about a case of one of the following diseases is received by the ~~local~~ COUNTY, CITY-COUNTY, OR DISTRICT health officer:

Acquired immune deficiency syndrome (AIDS)
Amebiasis
Brucellosis
Campylobacter enteritis
~~Gonorrhea~~
Chlamydial genital infection
CYTOMEGALOVIRAL ILLNESS
Encephalitis
Giardiasis
Hansen's disease (leprosy)
Hepatitis, A, B, non-A non-B, or unspecified
Histoplasmosis
KAWASAKI DISEASE
Legionellosis
Leptospirosis
Lyme disease
Malaria
Mumps
~~Nongonococcal urethritis~~

(remainder of list same as proposed)

(3) By Friday of each week during which a suspected or confirmed case of one of the diseases listed below is reported to the ~~local~~ COUNTY, CITY-COUNTY, OR DISTRICT health officer, that officer or his/her authorized representative must mail to the department the total number of the cases of each such disease reported that week:

Chickenpox
Colorado tick fever
Conjunctivitis epidemic
Herpes, genital
Influenza
Mononucleosis
NONGONOCOCCAL URETHRITIS
Pediculosis (lice)
Ringworm epidemic
Scabies
Staphylococcal epidemic
Streptococcal epidemic
Swimmer's itch (cutaneous larva migrans)

(4)-(7) Same as proposed.

NEW RULE II REPORT CONTENTS (1) A report of a case of reportable disease which is required by [NEW RULE I(1) or (2)] must include, IF AVAILABLE:

(a)-(e) Same as proposed.

(2) A report of potential AIDS must include:

(a) the date the test identifying the antibody was performed, IF IT IS AVAILABLE TO THE REPORTER;

(b)-(c) Same as proposed.

(3) The information required by sections (1) through (3) of this rule must be supplemented by any other information in the possession of the reporter which the department requests AND WHICH IS RELATED TO CASE MANAGEMENT.

(4)-(5) Same as proposed.

NEW RULE III CONFIRMATION OF DISEASE (1)(a) SUBJECT TO THE LIMITATION IN (b) BELOW, if a local health officer receives information about a case of any of the following diseases, he S/HE or ~~h~~ HIS/HER authorized representative must obtain and submit to the department a specimen from the case, which will be analyzed to confirm the existence or absence of the disease in question:

Amebiasis
Anthrax
Botulism (including infant botulism)
Brucellosis
Chancroid
Cholera
Diarrheal disease epidemic
Diphtheria
ENCEPHALITIS
Gonococcal infection in a person less than 14 years of age

(remainder of list same as proposed)

(b) IN THE EVENT OF AN OUTBREAK OF DIARRHEAL DISEASE, INFLUENZA, OR MEASLES, ANALYSIS OF SPECIMENS FROM EACH CASE IS UNNECESSARY AFTER THE DISEASE ORGANISM IS DETERMINED BY THE DEPARTMENT.

(2)-(4) Same as proposed.

16.28.301 ~~PUBLIC FOOD HANDLERS~~ SENSITIVE OCCUPATIONS

(1) Same as proposed.

(2) No ~~infected~~ infectious person may engage in any occupation involving the preparation, serving, or handling of food, including milk, to be consumed by others than ~~his~~ HIS/HER immediate family, until a local health officer determines ~~him~~ HIM/HER to be free of the infectious agent or ~~incapable of transmitting~~ unlikely to transmit the infectious agent due to the nature of ~~his~~ HIS/HER particular work.

16.28.302 FUNERALS Same as proposed.

16.28.303 TRANSPORTATION OF COMMUNICABLE DISEASE CASES Same as proposed.

16.28.304 IMPORTATION OF DISEASE (1) Same as proposed.

(2) Whenever a person knows or has reason to believe that an infected person, whether or not infectious, has been brought within such the boundaries of the state, he S/HE shall report the name and location of such the infected person to the department.

NEW RULE IV INVESTIGATION OF A CASE (1) Immediately after being notified of a case, ~~suspected case,~~ or an epidemic of a reportable disease, a local health officer must:

(a) Same as proposed.

(b) If he S/HE finds that the nature of the disease and the circumstances of the case or epidemic warrant such action:

(i)-(ii) Same as proposed.

(iii) take appropriate steps, AS OUTLINED IN THE APHA PUBLICATION "CONTROL OF COMMUNICABLE DISEASES IN MAN, AN OFFICIAL REPORT OF THE AMERICAN PUBLIC HEALTH ASSOCIATION", 14TH EDITION, 1985, to prevent or control the spread of disease; and

(iv) Same as proposed.

(c) Whenever the identified source of a reportable disease or a person infected or exposed to a reportable disease who should be quarantined or placed under surveillance is located outside of his HIS/HER jurisdiction:

(i)-(ii) Same as proposed.

(2) THE DEPARTMENT HEREBY ADOPTS AND INCORPORATES BY REFERENCE "CONTROL OF COMMUNICABLE DISEASES IN MAN, AN OFFICIAL REPORT OF THE AMERICAN PUBLIC HEALTH ASSOCIATION", 14TH EDITION, 1985, WHICH SPECIFIES CONTROL MEASURES FOR COMMUNICABLE DISEASES. A COPY OF THE REPORT MAY BE OBTAINED FROM THE AMERICAN PUBLIC HEALTH ASSOCIATION, 1015 - 15TH STREET NW, WASHINGTON, D.C. 20005.

NEW RULE V POTENTIAL EPIDEMICS (1) Whenever a disease listed in [NEW RULE I(1)] is confirmed or whenever any other communicable disease listed in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985, or other communicable disease which constitutes a threat to the health of the public becomes so prevalent as to endanger an area outside of the jurisdiction where it first occurred, the local health officer of the jurisdictional area in which the disease occurs must notify the department and cooperate with the department's epidemiologist or his HIS/HER representative to control the spread of the disease in question.

(2) Same as proposed.

NEW RULE VI QUARANTINE OF CONTACTS -- NOTICE AND OBSERVATION Same as proposed.

NEW RULE VII ISOLATION OF PATIENT -- NOTICE Same as proposed.

16.28.601 MINIMAL CONTROL MEASURES Same as proposed.

NEW RULE VIII ACQUIRED IMMUNE DEFICIENCY SYNDROME Same as proposed.

16.28.602 AMEBIASIS Same as proposed.

16.28.603 ANTHRAX Same as proposed.

16.28.604 BOTULISM -- INFANT BOTULISM (1) ~~No isolation or quarantine is required for a case of botulism.~~ Concurrent disinfection of feces is required. FECES MUST BE CONCURRENTLY DISINFECTED OR FLUSHED DOWN A TOILET ATTACHED TO A MUNICIPAL OR OTHER SEWAGE SYSTEM APPROVED BY THE DEPARTMENT.

(2)-(3) Same as proposed.

16.28.605 BRUCELLOSIS Same as proposed.

NEW RULE IX CAMPYLOBACTER ENTERITIS Same as proposed.

~~NEW RULE X GAND B AGIS (1) Concurrent disinfection of secretions and contaminated articles is necessary.~~

NEW RULE XI CHANCROID (1) A person infected with chancroid must BE DIRECTED not TO engage in sexual contact until all chancroid lesions are healed.

NEW RULE XII CHICKENPOX (1) A child who contracts chickenpox must be excluded from school for one week after eruption first appears ~~and be kept in strict isolation~~.

(2) RESPIRATORY ISOLATION MUST BE IMPOSED AND DRAINAGE AND SECRETION PRECAUTIONS OBSERVED.

~~(2)~~(3) A person susceptible to chickenpox must avoid contact with the case.

~~(3)~~(4) The bodily discharges of a case must be concurrently disinfected.

NEW RULE XIII CHLAMYDIAL GENITAL INFECTION (1) An individual with a chlamydial genital infection must BE DIRECTED TO avoid sexual contact and undergo appropriate antibiotic therapy until discharges from ~~his~~ HIS/HER genitourinary tract are found to be non-infectious.

(2) Same as proposed.

16.28.606 CHOLERA Same as proposed.

NEW RULE XIV COLORADO TICK FEVER (1) Same as proposed.

(2) The infected person must BE DIRECTED not TO donate blood for four months after the date of diagnosis.

NEW RULE XV CONJUNCTIVITIS EPIDEMIC Same as proposed.

NEW RULE XVI DIARRHEAL DISEASE OUTBREAK Same as proposed.

16.28.607 DIPHTHERIA (1)-(3) Same as proposed.

(4) A contact in a sensitive occupation must be excluded from work until he S/HE is determined not to be a carrier.

(5) Same as proposed.

16.28.608 ENCEPHALITIS (1) ~~No isolation or quarantine is required for a case of encephalitis.~~ The local health officer must search for undetected cases of encephalitis and, IN THE CASES WHERE THE ENCEPHALITIS IS MOSQUITO-BORNE, FOR vector mosquitoes, AS WELL.

NEW RULE XVII GASTROENTERITIS EPIDEMIC Same as proposed.

16.28.609 GIARDIASIS (1) ~~No isolation or quarantine is required for a case of giardiasis.~~ Enteric precautions must be used by a case employed in a sensitive occupation until three post-treatment stool specimens COLLECTED ON 3 SUCCESSIVE DAYS are negative.

(2) Same as proposed.

NEW RULE XVIII GONOCOCCAL INFECTION (1) Same as proposed.

(2) An individual who contracts the infection must be interviewed to determine who his HIS/HER contacts are, and those contacts should be examined and receive the medical treatment indicated by clinical and laboratory findings.

NEW RULE XIX GRANULOMA INGUINALE Same as proposed.

NEW RULE XX HANSEN'S DISEASE (LEPROSY) Same as proposed.

16.28.611 HEPATITIS TYPE A ~~(INFECTIOUS)~~ Same as proposed.

16.28.612 HEPATITIS TYPE B ~~(SERUM)~~ Same as proposed.

NEW RULE XXI HEPATITIS, NON-A NON-B Same as proposed.

NEW RULE XXII HEPATITIS, TYPE UNSPECIFIED Same as proposed.

NEW RULE XXIII HERPES, GENITAL Same as proposed.

NEW RULE XXIV HISTOPLASMOSIS Same as proposed.

NEW RULE XXV INFLUENZA Same as proposed.

16.28.614 ~~LEGIONNAIRE'S DISEASE~~ LEGIONELLOSIS (1) ~~No isolation or quarantine is required for a case of legionnaire's disease.~~ Drainage and secretion precautions must be observed for each case of legionellosis until that person is treated and his HIS/HER discharges are found to be no longer infectious.

16.28.616 LEPTOSPIROSIS (1) ~~No isolation or quarantine is required for a case of leptospirosis.~~ A search AN INQUIRY must be made to determine the infected animal or contaminated water which is the source of the leptospirosis.

NEW RULE XXVI LISTERIOSIS EPIDEMIC Same as proposed.

NEW RULE XXVII LYME DISEASE Same as proposed.

NEW RULE XXVIII LYMPHOGRANULOMA VENEREUM (1) Same as proposed.

(2) An individual who contracts the disease must be interviewed to determine who h~~is~~e HIS/HER contacts are, and those contacts should be examined and receive the medical treatment indicated by clinical and laboratory findings.

16.28.617 MALARIA Same as proposed.

16.28.618 MEASLES -- RUBEOLA (1) A local health officer or the department may shall impose MODIFIED ISOLATION CONSISTING OF RESPIRATORY isolation of a measles case or and quarantine based on the diagnosis of SUSCEPTIBLE contacts whenever a suspected or confirmed case of measles occurs ~~in one or more persons as confirmed by a physician~~. If isolation or AND quarantine is ARE imposed, the local health officer shall post public PROVIDE THE notice of the effective date of the isolation or and quarantine REQUIRED BY [NEW RULES VI AND VII] and make immunizations available, free of charge to extent of his resources, upon request.

~~(2) Susceptible contacts who may be subjected to a quarantine include those individuals who cannot show evidence of immunization with a live vaccine after the first birthday or a previous medical diagnosis of measles.~~

16.28.619 ASEPTIC MENINGITIS -- BACTERIAL OR VIRAL MENINGITIS (1) ~~No isolation or quarantine is required for a~~ A case of aseptic or viral meningitis must be kept in modified STRICT isolation during febrile illness or until the existence of bacterial meningitis is ruled out.

(2) Whenever a case of meningococcal meningitis, meningococcemia, or bacterial meningitis occurs:

(a) modified isolation CONSISTING OF RESPIRATORY ISOLATION, BLOOD AND BODY FLUID PRECAUTIONS, AND DRAINAGE AND SECRETION PRECAUTIONS must be imposed upon the case until 24 hours have passed since the initiation of antibiotic chemotherapy; and

(b) Same as proposed.

NEW RULE XXIX MONONUCLEOSIS Same as proposed.

16.28.621 MUMPS (1) For a case of mumps, the attending physician or the local health officer shall impose modified isolation THE FOLLOWING MEASURES MUST BE IMPOSED:

(a) drainage and secretion precautions must be imposed

until the fever and swelling of the salivary glands have disappeared; AND

(b) RESPIRATORY ISOLATION FOR 9 DAYS AFTER THE ONSET OF SWELLING.

~~(2) No quarantine is required.~~

NEW RULE XXX NONGONOCOCCAL URETHRITIS (1) The infected individual must BE DIRECTED TO avoid sexual contact until his HIS/HER urethral discharges are determined to be no longer infectious.

NEW RULE XXXI OPHTHALMIA NEONATORUM Same as proposed.

16.28.622 ~~PSITTACOSIS (ORNITHOSIS)~~ (PSITTACOSIS) Same as proposed.

~~NEW RULE XXXII PARATYPHOID (1) (2) Same as proposed.~~

~~(3) A close contact of a case may not be employed in a sensitive occupation until cultures of at least two fecal specimens taken at least 24 hours apart are found free of the causative organism.~~

NEW RULE XXXIII PEDICULOSIS (1) The case must be isolated DIRECTED TO REFRAIN FROM HAVING INTIMATE CONTACT OR SHARING PERSONAL ITEMS WITH ANOTHER PERSON for 24 hours after the application of an effective pediculosis insecticide; no other precautions are necessary.

(2) Same as proposed.

(3) ~~If the particular insecticide initially used for treatment is not evicida, the~~ THE case must be retreated with insecticide 7-10 days after the initial treatment occurred.

(4) CLOSE CONTACTS MUST BE EXAMINED TO DETERMINE IF THEY HAVE BEEN INFECTED.

16.28.623 PERTUSSIS (WHOOPING COUGH) (1) ~~For a case of pertussis, the attending physician or local health officer shall impose modified isolation~~ MODIFIED isolation CONSISTING OF RESPIRATORY ISOLATION must be imposed upon a case of pertussis for 7 days after the start of antibiotic therapy, or 21 days after the date of ~~diagnosis~~ ONSET OF SYMPTOMS if no antibiotic therapy is given.

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

16.28.624 PLAGUE (1)-(3) Same as proposed.

(4) AN INVESTIGATION MUST BE CONDUCTED TO IDENTIFY VECTORS AND RESERVOIRS WHENEVER A CASE OF BUBONIC PLAGUE EXISTS.

16.28.625 POLIOMYELITIS (1) For a case of poliomyelitis, ~~the attending physician or local health officer shall impose~~ modified isolation CONSISTING OF ENTERIC PRECAUTIONS must be imposed for 7 days from the onset of illness, or for the duration of fever, if longer.

(2) Same as proposed.

NEW RULE XXXIV Q-FEVER (QUERY FEVER) (1) Same as proposed.

(2) Bodily ~~fluids~~ FLUID DISCHARGES must be concurrently disinfected.

16.28.626 RABIES -- HUMAN Same as proposed.

NEW RULE XXXV RABIES EXPOSURE (1) The following actions must be reported to the local health officer if they are committed by an animal other than a RABBIT, HARE, OR rodent whose species ~~is significantly~~ CAN BE infected with rabies and that is not satisfactorily vaccinated against rabies as specified in ARM 32.3.1205:

(a)-(b) Same as proposed.

(2) Same as proposed.

(3) As soon as possible after receiving a report of possible rabies exposure, the local health officer must inform the exposed person or the individual responsible for that person if he S/HE is a minor whether or not treatment is necessary to prevent rabies.

(4)-(6) Same as proposed.

NEW RULE XXXVI RINGWORM EPIDEMIC (1) ~~Cover infected~~ INFECTED areas MUST BE COVERED and use concurrent disinfection for disposal of the covers USED.

16.28.628 ROCKY MOUNTAIN SPOTTED FEVER (1) ~~No isolation or quarantine is required for a case of rocky mountain spotted fever.~~ Ticks removed from a case must be ~~concurrently disinfected~~ DESTROYED BY CHEMICAL OR PHYSICAL MEANS WHICH ENTIRELY DISPOSE OF THE TICK WHILE AVOIDING SKIN CONTACT.

NEW RULE XXXVII RUBELLA Same as proposed.

16.28.629 RUBELLA -- CONGENITAL RUBELLA (1) ~~For a case of rubella, the attending physician or local health officer shall impose modified isolation for congenitally infected persons for the duration of hospitalization.~~ Modified isolation CONSISTING OF RESPIRATORY ISOLATION must be imposed on any person with congenital rubella during the time they are hospitalized.

(2) Same as proposed.

16.28.630 SALMONELLOSIS (OTHER THAN TYPHOID FEVER) Same as proposed.

NEW RULE XXXVIII SCABIES (1) An infested person must be excluded from school or work ~~for~~ FROM THE DATE OF DIAGNOSIS UNTIL 24 hours after commencement of treatment.

16.28.631 SHIGELLOSIS ~~--BACILLARY DYSENTERY~~ (1) Same as proposed.

(2) A local health officer must not allow an infected person to engage in ~~any~~ a sensitive occupation ~~involving the~~

~~preparation, serving, or handling of food, including those individuals other than his immediate family, not to engage in any occupation involving the care of children~~ until 2 successive authentic specimens of feces taken at an interval of not less than one week 24 HOURS apart, beginning at least one week NO EARLIER THAN 48 HOURS after cessation of specific therapy, have been determined to be free of Shigella organisms.

(3) Same as proposed.

16.28.632 SMALLPOX (INCLUDING VACCINIA) Same as proposed.

NEW RULE XXXIX STAPHYLOCOCCAL EPIDEMIC (1) Same as proposed.

(2) Modified isolation APPROPRIATE TO THE SITE OF THE INFECTION must be imposed until the case has been treated with effective antibiotics for 48 hours.

NEW RULE XL STREPTOCOCCAL EPIDEMIC (1) Same as proposed.

(2) Modified isolation APPROPRIATE TO THE SITE OF THE INFECTION must be imposed until the case has been treated with effective antibiotics for 48 hours.

NEW RULE XLI SYPHILIS (1) A person with a case of infectious syphilis must be instructed to refrain from ACTIVITIES IN WHICH BODY FLUIDS ARE SHARED (SUCH AS sexual intercourse) until ~~the testens heal~~ 48 HOURS AFTER EFFECTIVE TREATMENT HAS BEEN COMMENCED and must either receive treatment or be isolated until he S/HE does.

(2) Same as proposed.

(3) All identified contacts of confirmed cases of early syphilis must be examined to determine if they have syphilis, DIRECTED TO REFRAIN FROM ACTIVITIES IN WHICH BODY FLUIDS ARE SHARED, AND, IF THEY CONSENT, IMMEDIATELY BE GIVEN APPROPRIATE TREATMENT. LABORATORY SPECIMENS MUST BE TAKEN DURING THE EXAMINATION~~, and, if they do, must either receive treatment or be isolated until they receive treatment~~.

NEW RULE XLII TAENIASIS Same as proposed.

16.28.634 TRICHINOSIS (1) ~~No isolation or quarantine is required for a case of trichinosis.~~ Any person, other than the case, who may have eaten the infected food must be identified AND PUT UNDER SURVEILLANCE BY THE LOCAL HEALTH OFFICER.

NEW RULE XLIII TUBERCULOSIS Same as proposed.

16.28.635 TULAREMIA (1) ~~No isolation or quarantine is required for a case of tularemia.~~ Drainage and secretion precautions must be followed whenever open lesions exist or lacrimal sacs are draining (I.E. TEARS ARE PRODUCED).

16.28.636 TYPHOID FEVER (1) Same as proposed.

(2) ~~The attending physician or local health officer shall impose modified quarantine until~~ Enteric precautions must be imposed until specific therapy for the fever has been completed and no fewer than ~~2~~ 3 successive authentic specimens of feces ~~taken at an interval of at least one week, and no less than one week after discontinuation of specific therapy,~~ have been found negative for typhoid organisms, the first of which is taken one month after therapy is discontinued and ~~the other two at intervals at least one week apart~~ FOLLOWED BY THE OTHER 2 AT NO LESS THAN 1-WEEK INTERVALS.

(3) Same as proposed.

16.28.637 TYPHUS FEVER ---FLEA-BORNE--- (LOUSE-BORNE) Same as proposed.

16.28.638 YELLOW FEVER Same as proposed.

NEW RULE XLIV YERSINIOSIS (1) Modified isolation CONSISTING OF ENTERIC PRECAUTIONS must be imposed.

NEW RULE XLV ILLNESS IN TRAVELER FROM FOREIGN COUNTRY Same as proposed.

16.28.1001 ISOLATION OF CASE -- TESTING AND QUARANTINE OF CONTACTS Same as proposed.

16.28.1002 TUBERCULOSIS -- COMMUNICABLE STATE (1) Same as proposed.

~~(1)~~(a) ~~The diagnosis of pulmonary tuberculosis has been established by the demonstration of M. tuberculosis in sputum,~~ laboratory examination of sputa, gastric washings, bronchial washings, or pulmonary tissue by culture shows, in at least one

~~(2) When a positive smear for acid-fast bacilli, has been demonstrated in body tissues or secretion and clinical findings are consistent with the diagnosis of tuberculosis until such time that the physician of the infected person presents evidence acceptable to the department that no growth was obtained by culture of the specimen which was positive on the smear or that the organisms cultured are mycobacteria other than M. tuberculosis~~ SPUTUM SPECIMEN the presence of either acid-fast bacilli or Mycobacterium tuberculosis (M. tuberculosis).

(b)-(c) Same as proposed.

(2) For purposes of this rule, a person diagnosed as having communicable tuberculosis will continue to be regarded as HAVING communicable TUBERCULOSIS until:

(a) a culture of the specimen which was positive for M. tuberculosis or acid-fast bacilli on a smear shows, in a manner acceptable to the department, either no bacterial growth or an organism other than M. tuberculosis, if the diagnosis was based on laboratory analysis of a ~~smear for acid-fast bacilli~~ SPUTUM SPECIMEN;

(b) a tuberculin skin test is negative (induration is

less than 5 millimeters or absent altogether) or AND sputa or gastric specimens taken on 3 consecutive days are found negative for acid-fast bacilli, if the diagnosis was based on chest x-ray results;

~~(4)~~(c) anti-tuberculosis drugs are--being have--been ARE BEING administered and ~~the--infected--person--has-not-as-yet achieved-bacteriologic-negativity~~ tests of sputa or respiratory secretion specimens taken on 3 consecutive days are negative for acid-fast bacilli; or

(d) Same as proposed.

16.28.1003 DIAGNOSIS (1) The procedure and tests needed to diagnose whether or not an individual is infected with tuberculosis or has it in its communicable state, taking into account that person's particular history, are those contained in "Diagnostic Standards and Classification of Tuberculosis and Other Mycobacterial Diseases", a ~~1981~~ 1986 publication of the American Thoracic Society.

(2) Same as proposed.

~~(4)~~(3) A tuberculin skin test shall be--conducted-as-follows include:

(a) an intra-dermal injection of 0.0001 milligrams (5 tuberculin units) OF PURIFIED PROTEIN DERIVATIVE in 0.10 cubic centimeters (cc) of sterile diluent; and

(b) Same as proposed.

(4) The department hereby adopts and incorporates by reference "Diagnostic Standards and Classification of Tuberculosis and Other Mycobacterial Diseases", a ~~1981~~ 1986 publication of the American Thoracic Society which specifies the diagnostic methodology appropriate for tuberculosis. A copy of the above publication may be obtained from the department's Preventive Health Services Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 (phone 406-444-4740).

16.28.1005 EMPLOYEE -- SCHOOLS -- DAY CARE FACILITY (1) A person employed in a public or private institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12, or in a day care facility as defined in section 53-4-401, MCA, must receive tuberculin skin testing either before or within ~~30~~ 7 days after commencing employment unless the person is a known tuberculin reactor, IN WHICH CASE SECTION (3) APPLIES.

(2) If the employee's tuberculin skin test is negative, the employee need not receive further routine tuberculin testing unless ~~he~~ S/HE has frequent or close exposure to a person with a communicable pulmonary tuberculosis.

(3) (a) If the tuberculin skin test ~~is-positive~~ results are significant or if the employee ~~is-a-known~~ has ever, in the past, had a positive tuberculin reactor skin test with purified-protein derivative and has not had adequate chemotherapy chemoprophylaxis, ~~he~~ S/HE must ~~have-a-chest-X-ray-and-an-evaluation~~ be evaluated by a physician, either before or within 4 weeks 1 WEEK after RECEIVING THE RESULTS OF THE TEST, IN THE

CASE OF A TEST WITH SIGNIFICANT RESULTS, OR 1 WEEK AFTER commencing employment, IN THE CASE OF AN UNTREATED PERSON WITH A PAST POSITIVE TEST RESULT, to ascertain whether or not he S/HE has any of the following conditions:

(i)-(iv) Same as proposed.

(v) disease associated with severe immunologic deficiencies (~~+~e.~~E.G., cancer, Reticuloendothelial disease, OR HIV INFECTION);

(vi)-(x) Same as proposed.

(b) If any of the conditions listed in subsection (3)(a) of this rule ~~except--current-disease~~ are present, the tuberculin-positive employee must be counseled that he S/HE is at relatively high risk of developing tuberculosis disease and that he S/HE should complete ~~one--year~~ 6 MONTHS of ~~treatment~~ chemoprophylaxis if he S/HE has not already done so, unless medically contraindicated ACCORDING TO THE STANDARDS CONTAINED IN "TREATMENT OF TUBERCULOSIS AND TUBERCULOSIS INFECTION IN ADULTS AND CHILDREN", A JOINT STATEMENT OF THE CENTERS FOR DISEASE CONTROL AND THE AMERICAN THORACIC SOCIETY ADOPTED MARCH, 1986. ~~If the employee has current tuberculosis disease, he must complete a course of chemotherapy with at least 2 anti-tuberculosis drugs as prescribed by a physician.~~

(c) Further surveillance is not required of a tuberculin positive employee with any condition listed in subsection (3)(a) of this rule who completes ~~one-year~~ 6 MONTHS of ~~treatment~~ chemoprophylaxis ~~or adequate anti-tuberculosis chemotherapy if indicated~~.

(d) A tuberculin positive employee with any of the conditions listed in subsection (3)(a) of this rule who does not complete ~~one-year~~ 6 MONTHS of ~~treatment~~ chemoprophylaxis, with the exceptions mentioned in subsection(3)(c) of this rule, must have a chest X-ray annually during ~~this period~~ his HIS/HER term of employment.

(4) ~~An employee subject to the provisions of this rule with a positive tuberculin test should be referred to his physician immediately if he develops symptoms of pulmonary tuberculosis.~~ If an employee is diagnosed as having communicable tuberculosis or being infected with tuberculosis, the employee may not work in a school or daycare facility unless proper medical treatment is being followed and, if communicable, until he S/HE is no longer communicable.

(5) THE DEPARTMENT HEREBY ADOPTS AND INCORPORATES BY REFERENCE THE PORTION OF THE JOINT STATEMENT OF THE AMERICAN THORACIC SOCIETY AND THE CENTERS FOR DISEASE CONTROL ENTITLED "TREATMENT OF TUBERCULOSIS AND TUBERCULOSIS INFECTION IN ADULTS AND CHILDREN" (MARCH, 1986) WHICH SPECIFIES MEDICAL CONTRAINDICATIONS TO CHEMOPROPHYLAXIS. A COPY OF THE STATEMENT MAY BE OBTAINED FROM THE DEPARTMENT'S PREVENTIVE HEALTH SERVICES BUREAU, COGSWELL BUILDING, CAPITOL STATION, HELENA, MONTANA 59620 (TELEPHONE 406-444-4740).

NEW RULE XLVI TREATMENT STANDARDS Same as proposed.

NEW RULE XLVII FOLLOW-UP AND REPORTING (1) The local health officer must ensure that each case of tuberculosis within ~~his~~ HIS/HER jurisdiction obtains the follow-up tests, treatment, and monitoring recommended by the American Thoracic Society and the Centers for Disease Control in their joint statements "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children", adopted March, 1986, and "Control of Tuberculosis", adopted March, 1983.

(2) The local health officer must submit a report to the department every 3 months documenting the course of treatment of each reported tuberculosis case within ~~his~~ HIS/HER jurisdiction.

(3) Same as proposed.

NEW RULE XLVIII SUBMISSION OF SPECIMENS (1) Whenever a physician diagnoses a case of tuberculosis, ~~he~~ S/HE must ensure that a specimen from the case is sent to the department's microbiology laboratory.

(2) Same as proposed.

NEW RULE XLIX NEWBORN EYE TREATMENT Same as proposed.

16.29.101 DEFINITIONS Same as proposed.

16.29.102 DEATH FROM A SPECIFIED COMMUNICABLE DISEASE Same as proposed.

NEW RULE XLX HAEMOPHILUS INFLUENZA B INVASIVE DISEASE [to be inserted in appropriate alphabetical order] (1) CONTACTS MUST BE IDENTIFIED IN ORDER TO DETERMINE IF CHEMOPROPHYLAXIS IS ADVISABLE.

AUTHORITY: 50-1-202, 50-2-118, MCA
IMPLEMENTING: 50-1-202, 50-2-118, MCA

3. Comments and responses:

Rule 16.28.101

a. Rita Harding, Billings Area Indian Health Service public health nurse, and Maxine Ferguson, department nurse-coordinator of the Montana Perinatal Program, suggested the definition of local health officer be reinstated.

Response: The definition was deleted solely because it unnecessarily repeats statutory language, a practice prohibited by the Administrative Procedure Act; therefore, the definition was not reinstated.

b. Bruce DeSonia pointed out an apparent overlap between the definitions of "case" and "suspected case".

Response: The department agreed the definitions could create confusion and deleted the definition of "suspected case", since "case" includes all individuals in whom a reportable disease is confirmed or suspected.

c. On the department's initiative, the definition of "approved vaccine" is deleted because it no longer appears

anywhere else in the communicable disease rules.

d. Dr. Mark Miles of Ennis suggested adding a separate definition of "AIDS-related complex (ARC)".

Response: The department did not do so because the Center for Disease Control's (CDC) definition of AIDS has been broadened to cover ARC; however, a phrase indicating that AIDS will be defined by CDC was added to 16.28.202.

e. Dr. Miles also suggested adding Hepatitis B to the definition of "sexually transmitted disease".

Response: The phrase "sexually transmitted disease" is used only in NEW RULE I(5) regarding quarterly reports from labs. The department prefers to limit the diseases reported to those primarily sexually transmitted and not to include hepatitis B, which, along with several other diseases, may be, but is not primarily, transmitted sexually.

f. Jackie Stonnell, Gallatin County Human Services Director, requested the reference to 5.25% sodium hypochlorite in subsection (g) of the blood and body fluid precautions contain the brand names of products containing that solution.

Response: While the department felt it was impractical to try to list every product with the solution cited above, the department did add the name of one product as an example.

g. Dr. J. F. Bell, Ravalli County Health Officer, asked, in reference to the blood and body fluid precaution in subsection (2)(h), whether someone who was treated for the disease in question could share a room with an untreated patient.

Response: Since a completely treated patient is no longer infected, the answer is no if the untreated patient fits the description in (2)(h).

h. Regarding the definition of "contamination", Dr. Bell asked if it included the presence of a disease-causing organism on soil or a toilet.

Response: Since soil and toilets are, respectively, an inanimate substance and an inanimate article, the answer is yes.

i. Dr. Bell apparently questioned why "disinfection" had to be by means "directly applied".

Response: Indirect application has proved far less reliable than direct application.

j. Dr. Bell asked whether "occurrence" or "prevalence" would be better terms than "incidence" in the definition of "epidemic".

Response: No, since "incidence" measures the number of new cases within a given period of time -- appropriate to the word being defined -- while "prevalence" means all cases which exist at one point in time, and "incidence" in practice is preferred over "occurrence" in epidemiology.

k. Jackie Stonnell also suggested the requirement in "enteric precautions" that articles be "discarded or disinfected" give more specific directions.

Response: The department agreed and did so.

Rule 16.28.102

Bruce DeSonia and Dennis Lang (Missoula Health Officer)

wondered why ARM 16.28.102 concerning local board rules was repealed and whether it somehow affected what local boards could do.

Response: Repeal of the rule would not affect current statutory authority of local boards to adopt rules and was proposed because it appeared to unnecessarily repeat statutory language in that it stated, as Section 50-2-116, MCA, does, that a local board may adopt communicable disease rules so long as they do not conflict with those adopted by the department. However, giving it a second thought, the rule also states that local board rules must be at least as stringent as the department's, which is a control measure like the rest of these rules and is not a restatement of statutory language. Therefore, the rule will be retained rather than repealed.

Rules 16.28.201, 16.28.202, and NEW RULES I-III

Dr. Bell asked, in regard to 16.28.201(2), which local health officer had to report.

Response: Consideration of that question brought to light the fact that, since city and county health officers are both local health officers by definition, the rules requiring disease reporting (16.28.201, 16.28.202, and NEW RULES I-III) may in effect require a city and county health officer at times to report the same case to the department. Therefore, those rules were altered so that a city health officer reports cases to the county, city-county, or district health officer, who in turn reports to the department. In all the rest of the rules, "local health officer" is as defined by statute (50-2-116, MCA) and includes city health officers.

Rule 16.28.201

a. Dr. Miles and Dennis Lind suggested "potential AIDS" cases be reported to the local health officers as well as the department.

Response: At this point in time, protection of confidentiality in such cases is still of primary concern and no follow-up is yet required -- hence only the department receives the information in order to more easily assure confidentiality is protected. The suggested change was not adopted.

b. Dr. Miles also requested clarification of the identity of the "NEW RULE" referred to in section (3).

Response: When the rules are finally adopted, the new rules will be assigned administrative code numbers and be more easily identified.

c. NOTE: Comment (a) concerning 16.28.202 pertains to this rule as well.

d. Dr. J. Myron Winship of the department's Medical Advisory Committee felt the department was unlikely to get case reporting of diseases like chickenpox and that Colorado tick fever should be reported by incidence only.

Response: The department agreed with Dr. Winship, felt there was little reporting need for anything but numbers of cases, and amended the rule to require that diseases which need to be reported to the department by incidence only (NEW

RULE I(3)) need only be reported to the health officer by incidence as well.

Rule 16.28.202 and NEW RULE I

a. Bruce DeSonia felt nongonococcal urethritis (NGU) did not need to be reportable, and if it remained reportable, only the numbers of such cases needed to be reported since there is no follow-up prescribed currently. Mr. DeSonia approved of the fact that only the number of herpes cases need now be reported.

Response: Nongonococcal urethritis remains reportable, largely because the Centers for Disease Control want incidence reports on it. However, the department agreed only the number of cases occurring needed to be reported, and amended 16.28.201 and NEW RULE I accordingly.

b. Mr. DeSonia also requested Haemophilus influenza B invasive disease be added to the list of reportable diseases because not all incidents of that disease would be meningitis, which is already included.

Response: The department agreed and added control measures and reporting requirements as well.

c. Several individuals suggested Candidiasis was not necessarily a communicable disease and did not belong on the list of reportable diseases. Dr. Miles suggested it be called "systemic Candidiasis".

Response: The department agreed Candidiasis should not be included, and deleted it from the rules altogether, which renders Dr. Miles's suggestion moot.

d. Dr. John Pullman thought Kawasaki's disease and Cytomegaloviral illness should be reportable, the former because it has been epidemic, and the latter, in particular, because of the danger of its spread in daycare sites and of its contraction by HIV-positive individuals.

Response: The department agreed, made them reportable, and required they be reported to the department (in NEW RULE I) within 7 days. No minimum control measures are as yet prescribed for either.

e. Regarding NEW RULE I, Bruce DeSonia thought that, because a quick response to a polio case was appropriate, a case of polio should be reported immediately, rather than at the end of the day the health officer is informed about it.

Response: The department decided not to do so because it is trying to keep the list of those diseases which must be reported immediately to a minimum in order to increase the chances reporters will remember to do so, and because most cases now are vaccine-related since the general population is largely immunized, alleviating the need for an instantaneous response.

f. Dr. Winship asked if mononucleosis was intended to be chronic mononucleosis.

Response: The answer is no.

g. Dr. Winship asked why toxic shock syndrome was reportable, since it didn't appear to be communicable.

Response: The department agreed to delete it for the above reason and because it has received too few reports for

its reporting to be of much value to CDC, which had requested it be reported.

h. Dr. Winship also thought it unnecessary to separately report paratyphoid and typhoid from Salmonellosis.

Response: Paratyphoid was eliminated because its sero-type was unlikely to be separately identified and reporting of Salmonellosis would catch all paratyphoid cases. The separation between Salmonellosis and typhoid was retained because the reservoir for Salmonella typhi is specific to humans and the department wants to identify it separately.

i. Dr. Winship thought that if Rocky Mountain spotted fever were listed, relapsing tick-borne and louse-borne diseases should be as well.

Response: The department made no change because louse- and tick-borne fevers would be reported as typhus and because some doctors might not identify Rocky Mountain spotted fever as typhus, necessitating its separate listing.

j. Dennis Lind wondered what diseases, beyond those already specifically reportable, were included in the category "illness occurring in a traveler from a foreign country."

Response: The catch-all phrase is used by Montana and many other states to cover any exotic, unknown disease, and it is impossible to list all the possibilities.

k. NOTE: Comment (d) concerning 16.28.101 applies to this rule as well.

NEW RULE II

a. Rita Harding thought section (3) needed to be limited, i.e. confidential information unrelated to case management and the names of contacts found to be disease-free should not be shared, and federal confidentiality rules should take precedence over state rules requiring release of information.

Response: The department agreed there was no need for information unrelated to case management and added language accordingly. However, no further changes were made because it does need the names of disease-free contacts for cross-reference purposes, and state disease-control measures do not clearly, as a matter of law, have to bow to federal ones, nor should they.

b. Rick Chiotti raised the question of whether all reporters of cases with potential AIDS (HIV exposure) would have access to the date the antibody test was performed, which the rule requires to be reported.

Response: The department recognized some reporters might not have that information and adopted language exempting them from the date requirement.

NEW RULE III

a. Rita Harding requested that other qualified laboratories, such as those of the Indian Health Service, Medpath, and the National Jewish Research Center, be used in addition to the department lab to confirm prior lab results.

Response: The department declined to make the change; the use of the department lab alone to confirm the

existence or absence of disease was deliberate because of problems in the past with other labs, including some of those labs suggested by Ms. Harding.

b. Ms. Harding felt it was too traumatic to require a second specimen be collected and sent to the state lab when gonorrhea was suspected in a person under 14 years of age, especially if sexual abuse was also suspected.

Response: The provision was retained because the original specimen may be split in order to send a specimen to the state lab -- in other words, there is no need to obtain a second specimen -- and because the cases in question need particularly to be confirmed to prevent trauma where the infection may not be gonorrhea and therefore sexual abuse far less likely.

c. Ms. Harding felt all gonococcal infections should be confirmed, not just those in children under age 14.

Response: While the department agrees, confirmation of the other gonococcal cases may be adequately confirmed by other labs; the special importance attached to such infections in those under 14 has resulted in the requirement that specimens in those cases be confirmed by the state lab.

d. Ms. Harding and Mr. Lind suggested it was unnecessary to require specimens and confirmation of every case where an outbreak occurs if there is an epidemiological link to a confirmed case.

Response: The department agreed insofar as diarrheal disease epidemics, influenza, and measles were concerned, and made appropriate changes to limit the case confirmation necessary. Confirmation of each case of the other diseases listed is still advisable.

e. Bruce DeSonia questioned whether a second specimen had to be collected to send to the department's lab for confirmation.

Response: The same specimen may be split and used both for the original analysis and for confirmation by the department's lab.

f. Mr. DeSonia also suggested it was unnecessary and burdensome to confirm each and every case of influenza.

Response: The department agreed and now requires only that number of cases to be tested as are necessary to determine the causative organism.

g. Dr. Bell questioned why there were several special reporting requirements for AIDS, and why the preoccupation with and emphasis on it.

Response: The main reason for the special handling with AIDS and HIV-positive cases is because the history of those conditions has highlighted the need to protect confidentiality; the result is provisions such as the one requiring HIV-positives to be reported to the department only and without names.

h. Ken Quickenden, Vector Control Section Supervisor for the department's Food and Consumer Safety Bureau, recommended that when encephalitis occurs or is suspected, a specimen be submitted to the department for confirmation to pinpoint the

cases in which the disease is vector-borne and thereby facilitate subsequent vector control measures, and to confirm and define recently discovered types of encephalitis to facilitate diagnosis. He also pointed out that most local labs were not equipped to perform the tests in question.

Response: The department agreed and made the suggested amendment.

i. Ken Quickenden also asked why confirmation was not required of tick-borne diseases.

Response: Rocky Mountain tick fever was not separately listed because it is a kind of typhus, which is on the list. Colorado tick fever rarely needs confirmation by test, being usually confirmed by clinical diagnosis instead.

Rule 16.28.304

Dr. Bell asked how the restrictions on letting a person with a reportable disease into the state could be enforced, who would do it, and what the penalties for violations would be.

Response: Since such cases are only reported to the department, and since the department is the only agency designated to give entry permission, presumably the department would enforce the rule, not local health departments. The law makes violation of a public health rule such as this a misdemeanor (Section 50-1-104, MCA) and gives the department the authority to go to court to enjoin its violation (Section 50-1-103, MCA).

NEW RULE IV

a. Dr. Bell asked which type of local health officer had to perform the duties the rule requires.

Response: Whether a city, county, city-county, or district health officer, whichever health officer is informed of a case or epidemic is responsible for doing what the rule requires.

b. Dr. Bell also thought the requirement in (1)(b)(iii) to "take appropriate steps" to prevent or control disease spread was too vague.

Response: The department agreed and added, as guidelines, those in the American Public Health Association's publication, "Control of Communicable Diseases in Man".

c. Dennis Lind suggested, in subsection (1)(a), that health officers have to take whatever steps are "deemed appropriate" rather than those which are "necessary".

Response: The department didn't make the change because the burden on health officers is already great and, because "necessity" is a more limited requirement than "appropriateness", the change would give local officers even more to do.

d. Jackie Stonnell thought the rules should make some allowance for possible under-staffing and under-funding of health departments and the consequent difficulty they might face in carrying out their duties.

Response: The department recognizes the problem and is faced with the same staffing and funding problems, and has therefore included only the minimum control measures deemed necessary.

e. Ms. Stonnell also thought notification of the health departments of other jurisdictions should be this department's responsibility.

Response: The rule already makes such notification this department's duty.

NEW RULE V

Rita Harding, IHS public health nurse, suggested slightly modifying the language describing the necessary working relationship between local health officers in case of epidemics, by stating, among other things, that they would "work in a mutually cooperative manner to control the spread of the disease in question".

Response: The department did not adopt the suggested language because it did not vary greatly from that proposed and because the purpose of the rule is to make clear what must be done in case of epidemic, and the suggested language is not clearly mandatory.

NEW RULE VIII

Ms. Harding felt contacts of those exposed to the AIDS virus should be found out and offered testing and preventive education.

Response: More than with any other disease, confidentiality has been essential and lack of it potentially cataclysmic in the case of AIDS, so the department feels that requiring contact follow-up may have the effect of deterring individuals from getting tested for the virus. It has chosen instead to rely heavily on public education as a preventive mechanism. However, the fact that contact follow-up is not mandatory does not prevent a local health officer from seeking the voluntary release of contact information.

Rule 16.28.604

Dr. Bell thought concurrent disinfection was unnecessary in the case of botulism since the spores are common in soil everywhere.

Response: The department, while recognizing botulism spores are widespread, feels that careful disposal of feces is still advisable and reasonable, but has added toilet disposal as a handier, yet effective, disposal means.

NEW RULE X

As noted before, several individuals pointed out that Candidiasis is not necessarily a communicable disease and that there is little point in having it reported.

Response: The department agreed and deleted the rule and all other references to Candidiasis in the rest of the rules.

NEW RULE XI

Dr. Bell thought the prohibition against engaging in sexual contact would be tough to enforce and was unrealistic. Ms. Ferguson advised that the language should be altered to require that the infected person be told not to engage in sexual con-

tact, rather than to actually prohibit that person from engaging in it.

Response: As a practical and legal matter, no one --and certainly not a health officer -- is in a good position to prevent a person from actually engaging in sexual contact, but the persons responsible for carrying out these control measures can indeed tell the person what s/he needs to do or not do, which should still be an effective control measure. Therefore, the department added language here and everywhere else in the rules where the infected person was directed to refrain from certain behavior to instead require that person be directed not to do it.

NEW RULE XII

Dr. Winship said chickenpox isolation should be respiratory, not strict, and that drainage and secretion precautions should be observed.

Response: The department agreed and made the changes.

NEW RULE XIII

Jackie Stonnell did not think that local staffing made it practical to do "case finding" in Chlamydia cases.

Response: Follow-up of contacts is recommended but not required, although morbidity may be reduced by follow-up. Case reporting is needed to develop an incidence database, and federal grant money may in part depend upon Montana's ability to do Chlamydia surveillance and control. Therefore, no change was made.

Rule 16.28.608

Ken Quickenden pointed out there was no need to search for vector mosquitoes if the encephalitis in question was not vector-borne. Dennis Lind also wondered if a search was necessary.

Response: The department agreed and added qualifying language.

Rule 16.28.609

Jackie Stonnell suggested the period of time between specimens should be included.

Response: The department adopted the suggestion.

NEW RULE XVIII

Dr. Bell thought it was difficult to know within 24 hours whether an antibiotic was effective against gonococcal infection when so many people were antibiotic-resistant.

Response: The normal procedure is to check for drug resistance first, then administer an antibiotic which is confirmed as effective on the patient in question. Under those circumstances, 24 hours of sexual abstinence after antibiotic administration is sufficient.

Rule 16.28.616

Dr. Bell thought requiring a "search" to determine the

disease source was vague and unrealistic, and that it would be helpful simply to determine the species of Leptospira involved as a means to tell what kind of animal it came from.

Response: The department agreed a physical search was unnecessary and changed "search" to "inquiry". As for the species issue, it was felt that finding it out would not necessarily pinpoint the particular animal causing the problem and was therefore not very helpful.

Rule 16.28.618

a. Ms. Harding felt isolation and quarantine should apply only to susceptible, rather than to all, contacts, and that susceptible contacts should be defined as excluding those born before 1956.

Response: The department agreed with the first suggestion and made the necessary amendment; the second point, however, was not accepted since some rare individuals born prior to 1956 can still be susceptible to measles.

b. Dr. Bell asked where the public notice should be posted.

Response: The department decided to require the same quarantine and isolation notices required for other diseases by NEW RULES VI and VII.

c. The department on its own initiative deleted section (2) because under certain circumstances even those diagnosed as having measles or vaccinated after their first birthday may be susceptible to measles.

Rule 16.28.621

Ms. Harding felt the recommended measures were to also require respiratory isolation for 9 days after the onset of swelling.

Response: The department agreed and added the language.

NEW RULE XXX

Dr. Bell asked who would enforce the rule against sexual contact.

Response: The enforcement problem was eliminated, as noted earlier, by requiring only that the patient be directed to avoid sexual contact.

Rule 16.28.622

Dr. Bell asked whether an inquiry had to be made if the bird in question was a turkey.

Response: The answer is yes.

NEW RULE XXXII

This rule was deleted. An explanation is contained in comment (h) to Rule 16.28.202 and NEW RULE I.

NEW RULE XXXIII

a. Dr. Bell asked if family and contacts should not be examined for infection.

Response: The department agreed it was advisable and

added the requirement that close contacts should be examined also.

b. Ken Quickenden recommended that retreatment for pediculosis not be conditioned upon the failure of the original insecticide treatment to be ovicidal.

Response: The department agreed retreatment was always appropriate and made the change.

Rule 16.28.623

Ms. Harding felt the proper isolation period for an untreated whooping cough case was 21 days after the date symptoms began, rather than after the date of diagnosis.

Response: The department agreed and changed the rule accordingly.

Rule 16.28.624

a. Ken Quickenden of the department's Food and Consumer Safety Bureau thought that when bubonic plague occurs, the local health officer or other responsible person should try to identify its vectors and reservoirs.

Response: The department agreed and added the provisions.

b. Dr. Bell asked who was responsible for enforcement and surveillance.

Response: The primary responsibility for both is the local health officer. In addition, Section 50-2-116(2), MCA, gives local boards specific authority to require isolation and take other disease control measures.

Rule 16.28.625

Ms. Harding felt enteric precautions should be specified as a polio control measure.

Response: The department agreed and added the proper language.

NEW RULE XXXIV

Ms. Ferguson pointed out that in section (2), it appears to require all bodily fluids to be concurrently disinfected, which is obviously wrong.

Response: Accordingly, the department now requires only discharges of bodily fluids to be concurrently disinfected.

NEW RULE XXXV

Dr. Bell asked that a more precise definition of "significantly infected" be provided.

Response: "Significant" being hard to define, the department simplified matters by requiring the control measures any time it is possible for a species to be infected with rabies.

Rule 16.28.626

a. Ms. Ferguson wondered how to "concurrently disinfect" a tick.

Response: The department recognized the wording was a bit strange, given the nature of the thing being "disin-

fected", so substituted more specific and appropriate disposal methods.

b. Dr. Bell thought requiring the tick to be examined would facilitate a diagnosis.

Response: The department did not require tick testing since it is more relevant to research than to disease control; if symptoms exist, a person should be treated for Rocky Mountain Spotted Fever whether the tick is tested or not, since there is no assurance the tick tested is the tick transmitting the disease.

NEW RULE XXXVII

Dr. Bell asked who was responsible for implementing and enforcing the rule.

Response: As noted before, the primary responsibility is the local health officer's.

Rule 16.28.630

Jackie Stonnell asked if the state lab could be used to analyze stool specimens, since such analyses cost $40 in other places.

Response: The department's lab is available for such analysis.

NEW RULE XXXVIII

Bruce DeSonia was concerned that the rule's wording could be interpreted to allow a scabies-infected person to stay at work or school until treatment starts, even after the disease is diagnosed.

Response: The department agreed and filled the loophole.

Rule 16.28.631

a. Ms. Harding felt that the feces testing (Shigellosis) required by section (2) should occur no less than 24 hours apart, beginning no earlier than 48 hours after therapy ended.

Response: Ms. Harding was correct and the change was made.

b. Dr. Bell asked how it was determined whether a feces specimen was authentic, i.e. from the patient.

Response: The health officer should impose some measure, such as requiring the specimen to be taken at his/her office, to ensure authenticity.

Rule 16.28.632

Dr. Bell requested CDC and the department be informed of smallpox cases.

Response: The reporting rules already require the department to be informed, and the department in turn always gives the information to CDC.

NEW RULE XLI

a. Ms. Harding recommended those with syphilis be isolated for 48 hours after antimicrobial therapy begins or until the lesions heal, felt no one should be allowed to choose iso-

lation instead of treatment, and recommended all contacts be treated as soon as they are examined rather than waiting until lab results confirm their infection.

Response: The department accepted the recommendation to require isolation for 48 hours after commencement of therapy. As for requiring everyone to be treated, the department does not feel it has the legal authority to require people to submit to medical treatment, however desirable. In response to the third recommendation, the department added language promoting contact treatment at the time of examination.

b. Dick Paulson, the department's specialist on sexually transmitted diseases, recommended that victims of syphilis also be barred from any activity in which body fluids are shared, as well as intercourse, and that the reference to healing lesions be deleted since the healing is no assurance the person is no longer infectious.

Response: The department agreed and made those changes.

c. Dr. Bell wondered how follow-up of syphilis case contacts could be effective if the contacts were members of the armed forces, National Guard, reserves, etc.

Response: There is already an interstate and international network setup to track them down.

Rule 16.28.634

Dr. Bell inquired what would happen after persons who ate trichinosis-infected food were identified.

Response: The department agreed further action was necessary, so added that the health officer must put those persons under surveillance to monitor their need for treatment.

Rule 16.28.635

Regarding the rule's reference to draining lacrimal sacs, Dr. Bell asked if that meant tear production, and stated streptomycin should be used to ensure a cure.

Response: Regarding the tears, the department included tears as an example of what is meant, since the word is less technical and more popularly understood. As for the streptomycin, these rules contain minimum measures necessary to prevent transmission of communicable diseases, not treatment standards, which are beyond the department's general communicable disease control authority.

Rule 16.28.636

Ms. Ferguson suggested adding words at the end of section (2) to make clear the specimens must follow the one taken 1 month after the end of therapy.

Response: The department did so.

Rule 16.28.1002

a. In section (2), because it does not seem proper to refer to a person, as opposed to a disease, as "communicable", the reference was amended to refer to a person "having communicable tuberculosis."

b. The department on its own initiative amended the rule to refer to "sputum specimen" instead of the inappropriate "smear for acid-fast bacilli".

c. Also on its own initiative, the department corrected subsection (2)(b) to require both a negative skin test and negative sputa or gastric test results.

d. Again on the department's own initiative, subsection (2)(c) was amended to return to the prior language to ensure that treatment continues while tests to determine communicability are being run, in order to avoid a patient's dropping treatment as soon as test results are negative.

e. Dr. John Pullman recommended that a person with communicable tuberculosis be considered to still have it in its communicable state until 2, rather than 1, skin tests plus sputa or gastric specimens are negative [subsection (2)(b)].

Response: While such a 2-step test is increasingly recommended, at least under certain circumstances, it is not yet recognized widely as preferred practice in every case; therefore, the department did not adopt Dr. Pullman's recommendation at this point in time.

Rule 16.28.1003

a. The department on its own initiative updated the diagnostic standards adopted by reference in this rule from the 1981 version to the 1986 version.

b. Steve Linder, the department's Field Health Officer, asked why this rule, in subsection (3)(a), did not refer to an injection of purified protein derivative as rule 16.28.1005 does.

Response: The department agreed it was more accurate to refer to the derivative, and added it.

Rule 16.28.1005

a. Ms. Harding suggested clarification that the medical contraindications referred to in subsection (3)(b) are those contained in CDC and American Thoracic Society standards.

Response: The department accepted the suggestion.

b. Mr. DeSonia did not think it was necessary to require (in subsection (3)(d)) an annual x-ray of a tuberculin-positive employee who doesn't complete therapy.

Response: The rule is not as broad as that, requiring the x-ray only when other specified conditions indicative of tuberculosis exist. In addition, under the circumstances described, the x-ray is recommended in the CDC-American Thoracic Society treatment guidelines and by the department's communicable disease medical advisory committee. Therefore, no change was made.

c. Dr. Winship suggested the period of chemotherapy in section (3) be changed from 1 year to 6 months, which is the currently recommended practice.

Response: The department agreed and did so.

d. Dr. John Pullman suggested adding HIV infection to the examples in subsection (3)(a)(v) of disease associated with severe immunologic deficiencies.

Response: The department agreed the example was appropriate and added it.

e. Steve Linder suggested that, in subsection (3)(a), the doctor's evaluation should occur within a certain period after a positive skin test, rather than after commencing employment.

Response: The department agreed and revised the rule accordingly.

f. Steve Linder also recommended shortening the deadline after employment by which a new employee must have a skin test, from 30 days to 7, since if such a person does have communicable tuberculosis, the shortened period would decrease the chances of their infecting the children and because a shorter period is not unreasonably burdensome.

Response: The department agreed and did so. The phrase at the end of section (1) was also added to clarify what procedure to follow if it were already known that the skin test results would be positive.

General

a. Ms. Harding and Ms. Ferguson recommended that each set of standards which is adopted by reference not be limited to the standards as they existed on a certain date, but rather be automatically updated.

Response: State law prohibits including all future amendments in an adoption by reference, requiring instead that notice be given to the public every time a new edition is to be adopted by reference.

b. Ms. Harding also suggested inclusion of "Recommendations of Centers for Disease Control Advisory Committee on Immunization Practices" along with "Control of Communicable Diseases in Man" as a reference.

Response: The department declined, since the communicable disease rules in this package do not deal with immunizations.

c. Ms. Harding recommended that, whenever the control measures require isolation, the appropriate type of isolation be specified.

Response: The department agrees and has done so.

d. Ms. Harding and Dr. John Lohman objected to the exclusive use of masculine pronouns.

Response: The department philosophically agrees and changed to gender-neutral words and phrases.

e. Barb Saint, Sanders County Public Health Nurse, expressed support for the rules as proposed.

f. Dr. John Lohman, Executive Director of the Montana Dental Association, wanted the rules to explicitly recognize dentists as health care providers, pointing to the fact that only physicians were specifically mentioned.

Response: While dentists are certainly important health care providers, it would be impractical and next to impossible to separately identify each type of care provider in the rules, which is why rule 16.28.601, specifying those responsible for carrying out minimum control measures, uses the

catch-all phrase, "any other person caring for a person with a reportable disease." The fact remains that most of the burden of communicable disease control will fall on physicians and local health officers, which is why they were specifically mentioned.

g. Dr. Winship suggested the rules spell out penalties for their violation, but did not think the penalty should be the same for all diseases.

Response: The department does not have the authority to specify penalties by rule. However, the statutes currently provide enforcement authority, civil and criminal (misdemeanor), in Sections 50-1-103 and 50-1-104, MCA, use of which will naturally depend upon the nature of the violation and the disease in question.

h. Dr. Winship also questioned why we were using the word "laboratorian".

Response: The department retained the word because it is a handy catch-all term and is currently in use in Montana.

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

Certified to the Secretary of State July 6, 1987.

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

In the matter of the proposed amendment of ARM 16.6.301, 16.6.601, 16.6.901, and 16.6.902, concerning birth certificates, marriage application, death and fetal death certificates	NOTICE OF HEARING ON PROPOSED AMENDMENT OF RULES (Records and Statistics)

To: All Interested Persons

1. On August 12, 1987, at 10:00 a.m., the department will hold a hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider amendments it is proposing to ARM 16.6.301 (birth certificates), 16.6.601 (marriage applications), 16.6.901 (death certificates), and 16.6.902 (fetal death certificates).

2. The rules, as proposed to be amended, appear as follows (new material is underlined, matter to be deleted is interlined):

16.6.301 CERTIFICATE OF BIRTH (1)-(2) Same as existing rule.

(3) The certificate must also include the following confidential information, which shall appear only on the department's copy of the certificate:

(a) race, ancestry, and educational background of parents;

(b) whether the mother's blood was tested and her pregnancy history, including date of last normal menses, month of pregnancy in which prenatal care began, number of prenatal visits, whether this was a multiple birth, ~~complications of pregnancy or labor, concurrent illnesses or conditions affecting pregnancy, whether an operation was required for delivery~~ risk factors for this pregnancy, including whether mother was married, obstetric procedures, complications of labor and/or delivery, abnormal conditions of the newborn, and clinical estimate of gestation;

(c) history of past pregnancies of mother; and

(d) Apgar score, congenital ~~malformations~~ anomalies of child, weight at birth, type of prophylactic used in eyes, whether mother or infant were transferred for medical care, and name and location of other facility.

AUTHORITY: 50-15-102, MCA
IMPLEMENTING: 50-15-103, 50-15-109, 50-15-112, 50-15-113, 50-15-201, and 50-15-202, MCA

16.6.601 MARRIAGE APPLICATIONS (1)-(2) Same as existing rule.

(3) The marriage form also contains the following infor-

mation, for the benefit of local officials:

(a) whether prior applications were rejected, and if so, why;

(b) whether either party is under the influence of intoxicating liquor or narcotic drugs;

(c) the future address and telephone number of the parties;

(d) the ~~signature of the parties~~ certification by the parties of the foregoing information; and

(e) signature of the judge where required, and notarization by the clerk of court.

AUTHORITY: 50-15-102, MCA
IMPLEMENTING: 40-1-107, 50-15-103, and 50-15-301, MCA

16.6.901 DEATH CERTIFICATE (1) Every death certificate must include the following information:

(a) decedent's name, sex, age, date of birth, race and ancestry, city and state or country of birth, ~~citizenship~~ marital status, social security number, usual occupation, education, history of military service, residence, date and location of death, and hospital or other institution in which death occurred;

(b) names of decedent's parents and surviving spouse;

(c) name and address of person supplying information;

(d) location, manner and date of disposition of body and name, address, signature, and license number of person in charge of disposition;

(e) certifications by attending physician and or coroner indicating hour of death and date and time of pronouncement of death, whether an autopsy was performed, and if the findings were available prior to completion of the cause-of-death item on the certificate;

(f) details of manner and cause of death, including illness, accident, homicide or suicide, date and place and type of injury, and whether the death was referred to the coroner.

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

AUTHORITY: 50-15-102, MCA
IMPLEMENTING: 50-15-109 and 50-15-405, MCA

16.6.902 FETAL DEATH CERTIFICATE (1) Every fetal death certificate must state the following information:

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

(f) confidential information for medical and health use only, including race, ancestry, and education and occupation of parents, date of last normal menses, month of pregnancy in which prenatal care began, number of prenatal visits, whether it was a multiple birth, weight of fetus, complications of ~~pregnancy~~, labor and delivery, concurrent illnesses or conditions, congenital anomalies of fetus, and prior pregnancy history of the mother, and risk factors for this pregnancy including whether the mother was married and whether the mother's blood was tested.

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

AUTHORITY: 50-15-102, MCA

IMPLEMENTING: 50-15-109 and 50-15-405, MCA

3. The department is proposing these amendments as a result of its periodic review (approximately every 10 years) of the vital statistic report forms and certificates in order to meet the needs of the public and private users of the information gathered. Proposed changes will be for statistical use only. All the new information to be gathered under the changes closely reflect the needs and recommendations of the National Center for Health Statistics.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than 12:00 noon on August 17, 1987.

5. 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 July 6, 1987.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the adoption of a rule requiring the display of monthly or quarterly GVW fee receipts	NOTICE OF PROPOSED ADOPTION OF A RULE REQUIRING THE DISPLAY OF MONTHLY OR QUARTERLY GVW FEE RECEIPTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1987, the Department of Highways proposes to adopt a rule requiring the display of monthly or quarterly GVW fee receipts.

2. The proposed rule provides as follows:

RULE I DISPLAY OF MONTHLY OR QUARTERLY GVW FEE RECEIPTS

(1) Upon application and payment of the applicable gross vehicle weight fees for a one-month or three-month period for vehicles subject to the provisions of section 61-10-209, MCA, the department shall issue a receipt which shows the months for which the vehicle is licensed for gross vehicle weight.

(2) The receipt shall be carried in the vehicle for which it was issued or the towing unit of a combination of vehicles at all times while the vehicle is operated in Montana.

(3) The receipt shall be displayed upon demand for inspection by any peace officer, officer of the highway patrol or employee of the department.

(4) A violation of this rule is punishable under section 61-10-232, MCA.

Auth. 61-10-209, MCA, Imp: 61-10-209, MCA.

3. The department is proposing this rule because in order to ascertain whether the payment of GVW fees has been made, it is necessary to require the operator to display the current receipt to law enforcement officers. Present law does not specifically require the display of gross vehicle weight fee receipts.

4. Interested parties may submit their data, views, or arguments concerning the proposed rule in writing to Jesse Munro, Administrator of the Gross Vehicle Weight Division, Department of Highways, 2701 Prospect Avenue, Helena, MT 59620.

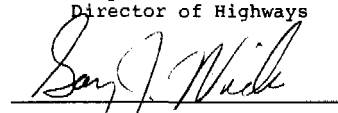
5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Jesse Munro, Department of Highways, 2701 Prospect Avenue, Helena, MT 59620 no later than August 13, 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 by the proposed adoption from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 750 persons based on the estimated number of operators currently paying gross vehicle weight fees on a monthly or quarterly basis.

7. The authority of the department to make the proposed rule is based on section 61-10-209, MCA, and the rule implements section 61-10-209, MCA.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State July 6, 1987.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Amendments of Rules 23.3.118 and 23.3.119. Vision Tests and Vision Standards for Driver Licenses.)	)	NOTICE OF PROPOSED AMENDMENT OF RULES 23.3.118 AND 23.3.119 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 11, 1987, the Department of Justice proposes to amend rules 23.3.118 and 23.3.119 regarding vision tests and vision standards for driver licenses.

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

23.3.118 VISION TEST (1) and (2) Remain the same.

(3) The applicant may wear eyeglasses or contact lenses for the vision test. An applicant wearing telescopic lenses or similar magnifying devices must be tested using the carrier lenses only. Telescopic lenses or similar magnifying devices may not be utilized to increase acuity readings.

(a) "Best corrected vision" is a measure of visual acuity while using eyeglasses, contact lenses, or carrier lenses, not telescopic lenses or similar magnifying devices.

~~(3)~~ (4) Remaining subsections remain same but will be renumbered.

AUTH: 61-5-125, MCA IMP: 61-5-110, 61-5-111, MCA

23.3.119 VISION STANDARDS (1) Remains the same.

(2) If the applicant's uncorrected vision is worse than 20/40 in ~~each eye or~~ both eyes together and the vision can be improved, the applicant may receive a driver~~'s~~ license with corrective lens restrictions.

(3) If the applicant's best corrected vision in both eyes together is worse than 20/40 but 20/70 or better, the applicant may receive a driver~~'s~~ license that restricts him to driving during daylight hours only, 55 miles per hour on the interstate and 45 miles per hour otherwise, and/or forbids him from driving during inclement weather. The applicant ~~must~~ may also be required to pass the driving portion of the examination at renewal.

(4) If the applicant's best corrected vision in both eyes together is worse than 20/70 but is 20/100 or better, an unrestricted driver license will be denied but the applicant may request that a restricted license be issued.

(a) If a restricted license is requested, a ~~A~~ special evaluation will be conducted by the district supervisor or chief examiner to determine whether ~~a~~ need for the license exists.

(i) The factors considered when determining whether or not need for a license exists include but are not limited to:

(A) other transportation available, including other drivers;
(B) proximity to services;
(C) employment requirements;
(D) family needs;
(E) medical transportation needs.

(b) If ~~a~~ need cannot be established the license will be denied.

(c) If ~~the~~ need for a driver license is established, additional factors will be considered to determine whether the need can be satisfied safely by issuance of a restricted license. Such factors ~~shall~~ include but are not limited to:
(i) population and traffic density;
(ii) geographic area; ~~and~~
(iii) type of driving that would be required of the applicant.

(d) A driving test will be given to the applicant over the routes necessary to satisfy the need. Upon demonstration by the applicant of satisfactory driving ability under the existing conditions, a restricted license may be recommended to the Driver Improvement Committee. Restrictions may include but are not limited to:
(i) time of day;
(ii) type of vehicle;
(iii) area;
(iv) routes; ~~and~~
(v) speed limits;
(vi) weather conditions.

(e) The applicant may also be required to pass the driving portion of the examination at renewal.

(5) Remains the same.

(6) If the applicant's vision in one eye is worse than 20/40 and the other eye qualifies, the applicant's license must have a "LEFT OUTSIDE MIRROR" restriction if he or she does not wish to have the poorer eye corrected. If the applicant's best corrected vision in either eye is worse than 20/500 and the other eye qualifies, the applicant's license must have a "LEFT OUTSIDE MIRROR" restriction.

(7), (8), and (9) Remain the same.

~~(10) A license shall be denied to any applicant wearing a telescopic lens, bioptic telescope or similar device.~~

AUTH: 61-5-125, MCA IMP: 61-5-110, 61-5-111, 61-5-113, MCA

3. These amendments are proposed in response to a petition for repeal of a rule filed by three drivers whose best corrected vision in both eyes together is worse than 20/70 but is 20/100 or better. The petitioners objected to the ban in 23.3.119(10) on the use of telebinocular lenses or similar devices for drive tests. The petitioners also requested changes in 23.3.119(4) to provide clearer criteria to determine whether need for a driver license exists and whether the need for a license can be satisfied safely by issuance of a restricted license. The amendments proposed are designed to

meet the concerns of the petitioners and other drivers with vision problems while addressing the safety concerns of the department.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Kathy Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, no later than August 20, 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 Kathy Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, no later than August 20, 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 by the proposed amendment; from the Administrative Code Committee; 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 10 persons based on the Department's estimate that there are at least 100 persons in the state of Montana whose best corrected vision is worse than 20/70 but better than 20/100.

MIKE GREELY
Attorney General

Certified to the Secretary of State July 6, 1987.

BEFORE THE DEPARTMENT OF LABOR & INDUSTRY
OF THE STATE OF MONTANA

In the matter of the promulgation of rules for the New Horizons Program.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO THE NEW HORIZONS PROGRAM.

TO: All Interested Persons

1. On August 6, 1987, at 9:30 a.m., a public hearing will be held in room 108 of the State Capital to consider the proposed adoption of rules pertaining to the New Horizons Program.

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

RULE I DEFINITIONS

(1) "Act" means the New Horizons Act, Ch. 579, Laws of Montana, 1987.

(2) "Program operator" means a displaced homemaker subgrantee with the Department.

(3) "Client" means a displaced homemakers program participant who is eligible for the daycare and incentives programs.

(4) "Daycare provider" means the person and/or place providing supplemental parental care as defined in 53-4-501, MCA.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp. Sections 4, 5 and 6, Ch. 579, Laws of Montana, 1987)

RULE II NEW HORIZONS PROGRAM, ADMINISTRATIVE ENTITY

(1) The Department is the administrative entity for this program.

(2) The administrative entity provides funds to the displaced homemakers centers for incentives and daycare programs.

(3) The administrative entity shall conduct a monitoring report by verifying information and eligibility documentation and outlining program evaluation following the end of the fiscal year.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp: Sections 6 and 7, Ch. 579, Laws of Montana, 1987)

RULE III DISPLACED HOMEMAKERS PROGRAM OPERATORS

(1) Program operators shall carryout the daycare and incentives programs.

(2) Program operators shall perform the following activities:

(a) provide additional counseling and/or services as available;

(b) collect verifying information needed for the payment of daycare information;

(c) conduct eligibility assessment of clients and collect eligibility documentation;

(d) collect and verify information regarding clients' employment for the purposes of the incentives program; and,

(3) provide information and reports on activities as requested by the administrative entity.

(4) Followup activities may be charged as administrative costs and will include subsequent control of clients for the provisions of

service and/or collection of information about the client's circumstances.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp: Sections 2, 4, 5, 6 and 7, Ch. 579, Laws of Montana, 1987)

RULE IV DAYCARE PROVIDERS

(1) The client is responsible for selecting the daycare provider.

(2) Any daycare facility or daycare center as defined in 53-4-501, MCA which is selected must be licensed or in the process of application for license.

(3) Any family daycare home or group daycare home as defined in 53-4-501, MCA must be registered or in the process to be registered.

(4) A relative who only takes care of his or her own children and the client's children may be a provider without a license or registration.

(5) Payment must be made direct to the daycare provider by the Displaced Homemaker program.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp: Section 5, Ch. 579, Laws of Montana, 1987)

RULE V INCENTIVES

(1) Incentives must be used for program, staff, and/or client enhancement.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp: Section 4, Ch. 579, Laws of Montana, 1987)

RULE VI ELIGIBILITY FOR THE DAYCARE PROGRAM

(1) There is no residency requirement for this program.

(2) Program operators shall determine which clients have the demonstrated need for daycare assistance.

(3) Daycare assistance shall be provided for children 12 years of age and younger and for handicapped children requiring aid and attendance up to 21 years of age.

(4) Applicants for daycare assistance shall provide the following documentation:

(a) AFDC enrollment for at least 9 months;

(b) verification of employment to include wages and hours; and,

(c) birth certificates for children 12 years of age and younger or certification of handicap requiring aid and attendance by a physician for children 13 to 21 years of age.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp: Section 5, Ch. 579, Laws of Montana, 1987)

RULE VII ELIGIBILITY FOR THE INCENTIVES PROGRAM

(1) Application for incentive payment shall provide the following documentation:

(a) AFDC enrollment for at least 9 months; and,

(b) certification of employment by the employer(s) for 6 or 12 months for incentive verification.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp: Section 4, Ch. 579, Laws of Montana, 1987)

RULE VIII GAINFUL AND CONSECUTIVE EMPLOYMENT

(1) For the purposes of this act, gainful employment is a minimum of 120 hours per month with a goal of optimum placement but no less than minimum wage.

(2) For the purposes of this act, 6 consecutive months will afford a break of no more than two weeks to allow for job upgrading.

(Auth: Section 7, Ch. 579, Laws of Montana, 1987, Imp: Sections 4 and 5, Ch. 579, Laws of Montana, 1987)

3. The 50th Legislative Session enacted through passage of HB 888, the New Horizons Act, to be administered by this department. These rules implement this program and are proposed to become effective August 27, 1987.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Administrator, Employment Policy Division, Department of Labor & Industry, P.O. Box 1728, Helena, Montana 59624, no later than August 13, 1987.

5. The Employment Policy Division, Department of Labor & Industry has been designated to preside over and conduct the hearing.

Charles L. Hunter for M.M. MARTIN
Commissioner, Department of Labor & Industry

Certified to the Secretary of State July 6, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I relating to Motor Fuel Tax.	NOTICE OF PROPOSED ADOPTION of Rule I relating to Motor Fuel Tax.
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1987, the Department of Revenue proposes to adopt rule I relating to a cardtrol, keylock or similar device used on an unattended pump for motor fuels.

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

RULE I CARDTROL COMPLIANCE AND ADMINISTRATION

(1) A special fuel dealer is responsible for payment of the tax on special fuel dispensed thru a cardtrol, keylock, or similar device from an unattended pump or dispensing unit if the fuel is sold to a customer who has not signed and filed with the dealer a proper affidavit allowing the purchase of fuel without payment of the tax. AUTH Sec. 15-70-104, MCA and Auth. Ext. Sec. 5, Ch. 220, L. 1987, Eff. 10/1/87, IMP, 15-70-321 and 15-70-322, MCA and Sec. 2, Ch. 220, L. 1987.

3. Ch. 220, L. 1987, allows access to a special fuel dealer's unattended pump or dispensing unit through the use of a cardtrol or keylock for the purpose of delivery of special fuel to an authorized user. This rule is reasonably necessary to insure the dealer only permit persons who qualify for the cardtrol or keylock access to the pump through the cardtrol or keylock. This rule also is reasonably necessary to insure collection of the tax as required by 15-70-321 and 15-70-322, MCA.

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 August 13, 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 Cleo Anderson at the above address no later than August 13, 1987.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 7/6/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT to Rule 42.25.1005 and ADOPTION of Rules I through VI relating to Severance Tax. These rules are implemented through the TEMPORARY RULEMAKING PROCESS.)	NOTICE OF PROPOSED AMENDMENT to Rule 42.25.1005 and the ADOPTION of Rules I through VI relating to Severance Tax. These rules are implemented through the TEMPORARY RULEMAKING PROCESS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1987, the Department of Revenue proposes to amend rule 42.25.1005 and adopt rules I through VI relating to severance tax - stripper well and new well incentives.

2. The amendment to rule 42.25.1005 and the rules as proposed to be adopted provide as follows:

42.25.1005 NATURAL GAS EXEMPT FROM SEVERANCE TAX (1) Natural gas produced from a well 5,000 feet deep or deeper which drilling was commenced after December 31, 1976, but before ~~December 31, 1992~~ April 1, 1987, is exempt from all of the severance tax imposed by section 15-36-101, MCA, for three years. This exemption applies only when the gas produced ~~qualifies according to section 15-36-121(2)(a) and (b), MCA~~ from the well is placed into a natural gas system for delivery to consumers and distributed by a natural gas distribution system serving only natural gas consumers a majority of which are in Montana or at least 10,000 natural gas consumers within Montana. The three year exemption period will run for 36 calendar months beginning with the first day of the month following the month in which gas is first placed in a natural gas distribution system.

(2) If drilling on a natural gas well 5,000 feet deep or deeper commenced on or after April 1, 1987, production from the well is not eligible for the three year deep well exemption but may be eligible for the 24 month exemption from severance tax for new production. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP 15-36-121, MCA and Sec. 2, Ch. 656, L. 1987.

RULE I DEFINITIONS (1) "Producing Well" means a well that produced natural gas, petroleum or other crude or mineral oil in the year prior to the current calendar year.

(a) A well that is used for injection purposes only is not a producing well.

(b) A well that produces only water is also not a producing well.

(c) A well that was capable of producing oil or gas but in fact did not produce oil or gas in the year prior to the current calendar year is not a producing well.

(2) If a currently producing well which would not otherwise qualify for the new production exemption is deepened to begin producing from a new formation, the production is not considered new production.

(3) If a currently producing oil well which would not otherwise qualify for the new production exemption begins producing natural gas, the production is not considered new production.

(4) If a well qualifies for the new production exemption, all production from that well is exempt from the oil and gas severance tax for the first 24 months of production. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 4, Ch. 656, L. 1987.

RULE II TREATMENT OF GOVERNMENTAL ROYALTIES (1) Royalties paid to the federal, state, county or municipal governments are deductible from gross value in determining oil or gas severance tax. However, if a portion of the oil or gas production is exempt from severance taxation, the governmental royalties paid on the exempt production is not deductible from the gross value of production that is subject to taxation. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-101, MCA and Sec. 3, Ch. 656, L. 1987.

RULE III REPORTING REQUIREMENT FOR NEW WELLS (1) In order to insure timely processing of new production information operator should notify the department of revenue within 30 days after an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system. The department, however, will accept notifications received beyond the 30 day period. This applies to any well that is completed and first production began after March 31, 1987. An operator must report the following information for a new well:

(a) name of lease the well is located on;
(b) API number;
(c) county in which well is located;
(d) date of first production; and
(e) type of production (oil or natural gas).

(2) This notification is necessary if a well is to qualify for both the 24 month exemption from the state oil and gas severance tax and for the 12 month exemption from the net proceeds tax. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, and Sec. 25, Ch. 655, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA, Sec. 7 and Sec. 10, Ch. 655, L. 1987, Sec. 4, Ch. 656, L. 1987.

RULE IV NEW PRODUCTION TERMINATION (1) The new production exemption will expire for qualifying new wells either:

(a) at the end of the 24 month exemption period; or

(b) on the date the governor certifies by executive order that the price of West Texas intermediate crude oil has reached $25 per barrel as reported in the Wall Street Journal, which ever is earlier.

(2) Once the governor issues the executive order certifying that the price of West Texas intermediate crude oil has reached $25 per barrel as reported in the domestic spot market in the Wall Street Journal, the new production exemption expires permanently for both oil and gas production. The exemption is not reinstated if the price of oil drops below $25 per barrel at a later date. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP 15-36-121, MCA and Sec. 7, Ch. 656, L. 1987.

RULE V STRIPPER TERMINATION (1) The stripper classification on all qualified crude oil production will cease when the governor certifies by executive order that the price of West Texas intermediate crude oil has reached $30 per barrel as reported in the domestic spot market in the Wall Street Journal.

(2) The stripper classification is not reinstated if the price of oil drops below $30 per barrel at a later date. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 7, Ch. 656, L. 1987.

RULE VI AVERAGE DAILY WELL PRODUCTION CALCULATION (1) In determining whether a lease or unit had an average daily production of 10 barrels of crude oil or less per well, only those wells that produced crude oil on the lease or unit shall be used in the calculation.

(2) In determining whether a lease or unit has an average daily production of 60,000 cubic feet or natural gas or less per well, only those wells that produced natural gas shall be used in the calculation. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 4, Ch. 656, L. 1987.

3. It is necessary to amend and adopt these rules for these reasons:

Amendments are necessary to 42.25.1005 because Ch. 656, L. 1987 eliminated the 3 year severance tax exemption on deep gas wells and provided a 24 month exemption on all new gas wells. This amended rule explains the time period for the transition.

Rule I is necessary because the term "producing well" was used in Ch. 656, L. 1987 in describing how to determine if a lease qualified for the stripper classification. This term needed to be defined.

Categories of "new "production" also need to be defined to deal with situations that were not specifically addressed in the statute.

Rule II is necessary to clarify that governmental royalties are deductible only to the extent that they are paid on taxable production.

Rule III is necessary because Ch. 656, L. 1987 provides that an operator must report to the department any wells that qualify as new production. This rule sets forth when they must notify the department and what information needs to be provided. The same notification is also necessary to qualify for the tax benefits under Ch. 655, L. 1987.

Rule IV is necessary to clarify the termination date for the new production classification as set forth in Ch. 656, L. 1987. The price quotation cited in the rule is the only current cash price quoted in the Wall Street Journal as required by Ch. 656, L. 1987.

Rule V is necessary to clarify the termination date for the stripper classification on oil production as set forth in Ch. 656, L. 1987.

Rule VI is necessary to clarify the calculation of average daily production from a well as set forth in Ch. 656, L. 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 August 13, 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 August 13, 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.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 07/06/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I through XIII) relating to Light Vehicle &) Motorcycle Tax - Personal) Property Tax.)	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I through XIII relating to Light Vehicle & Motorcycle Tax - Personal Property Tax.

TO: All Interested Persons:

1. On August 12, 1987, at 9:00 a.m. , a public hearing will be held in Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through XIII relating to Light Vehicle and Motorcycle Tax - Personal Property Tax.

2. The proposed rules I through XIII do not replace or modify any section currently found in the Administrative Rules of Montana. However, they will replace temporary rules which were adopted on 6/29/87 and are effective until October 1, 1987.

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

RULE I VALUATION PROCEDURE (1) This schedule is to be used for vehicles with registration slips indicating expiration dates of June 30, 1987 through and including September 30, 1987. It should also be used for out-of-state vehicles being registered in the State from July 1, 1987 through and including December 31, 1987.

(2) To determine the market value for automobiles and trucks with a rated capacity of 3/4 tons or less, motorcycles and quadricycles, vehicle assessment staff will use the methods in Rules II through VI in a sequential order until a definite value is determined. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE II VEHICLES LISTED IN THE GUIDES (1) Automobiles and trucks with a rated capacity of 3/4 ton and less listed in the guides will be valued using:

(a) The "average trade-in" as listed in the January 1987 Mountain States Edition of the N.A.D.A. Official Used Car Guide. This book values automobiles and trucks with manufacturer's years 1980 through 1986. For 1987 vehicles that were first registered in 1986, have already paid their new vehicle sales tax and that need to be reregistered, staff will use 80% of the manufacturer's suggested list price (M.S.R.P.) as the "average trade-in". Those M.S.R.P.'s can be found in the pink section of the above-listed guide.

(b) The "average trade-in" as listed in the January through April 1987 National Edition of the N.A.D.A. Official Older Used Car Guide. This book values automobiles and trucks with manufacturers' years 1970 through 1979.

(c) If the vehicle cannot be found in the above mentioned guides, staff will use the January through March 1987 Value Guide to Cars of Particular Interest (C.P.I.). If the vehicle is listed in this guide the market value is the "low" value listed.

(2) Licensed motorcycles and licensed quadricycles listed in the guides will be valued using:

(a) The "average trade-in" or wholesale as listed in the January through April, 1987 National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide. This book values motorcycles and quadricycles with manufacturers' years 1972 through 1987. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE III VEHICLES PREVIOUSLY REGISTERED THAT ARE "SUBSEQUENTLY NOT LISTED" IN THE GUIDES (1) Automobiles and trucks with a rated capacity of 3/4 ton and less and licensed motorcycles and licensed quadricycles previously registered and subsequently not listed in the guides will be valued as follows:

(a) For 1987 only, staff will use the "1970 or last known average trade-in" for the same make and model vehicle as the vehicle being assessed and depreciate that value at the rate of 10% per year for each year it has not been listed in the guide until it reaches the minimum value. Vehicles valued by this method will normally be 1969 models and older. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE IV VEHICLES NOT "ORIGINALLY" LISTED IN THE GUIDES (1) Automobiles and trucks with a rated capacity of 3/4 ton and less and licensed motorcycles and licensed quadricycles not originally listed in the guides will be valued as follows:

(a) For vehicles that are less than 1 year of age and that have previously paid the new vehicle sales tax, the average trade-in value will be determined by depreciating the original f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price by 20%.

(b) For vehicles that are 1 year or older in age, the average trade-in value will be determined by depreciating the f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price in accordance with the 1987 trended percent good schedules contained in Rule V.

AUTH 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE V TRENDED PERCENT GOOD SCHEDULES (1) 1987 trended percent good schedule for licensed motorcycles and licensed quadricycles *

Year	Trended % Good
1987	80%
1986	57%
1985	44%

1984	37%
1983	34%
1982	34%
1981	31%
1980	27%
1979	25%
1978	25%
1977	25%
1976	22%
1975	22%
1974	21%
1973	21%
1972 & Older	21%

(2) 1987 trended percent good schedule for automobiles and trucks with a rated capacity of 3/4 ton and less*

Year	Trended % Good
1987	80% of F.O.B.
1986	78%
1985	69%
1984	59%
1983	50%
1982	44%
1981	38%
1980	32%
1979	29%
1978	27%
1977	24%
1976	21%
1975	19%
1974	14%
1973	13%
1972	13%
1971	13%
1970 & Older	11%

*Note: The schedules are only used for vehicles not originally listed in a NADA book or CPI book. AUTH, 15-1-201 and 61-3-506, MCA ,Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE VI MINIMUM VALUE (1) If the market value (average trade-in) as determined by implementing the valuation procedures in Rule I is below $500, a minimum value of $500 will be retained for automobiles and for trucks with a rated capacity of 3/4 ton and less. For motorcycles and quadricycles the minimum value is $250. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE VII BASE VALUE ADJUSTMENTS (1) There will be no adjustment made to the base value to reflect optional equipment or low or high mileage. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE VIII VEHICLE AGE DETERMINATION (1) The age of a vehicle, whether it be an ad valorem tax vehicle or a 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 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE IX PAYMENT OF THE NEW CAR SALES TAX AND THE AD VALOREM TAX (1) New vehicles, never having been registered and registered after June 30, 1987, are subject only to a new vehicle sales tax. Those vehicles are subject to the ad valorem property tax in the second year of registration. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, and 61-3-501, MCA.

RULE X FINAL VALUATION AUTHORITY (1) Should a taxpayer dispute 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 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE XI REGISTRATION, EXPIRATION DATE PRIOR TO JUNE 30, 1987 (1) Taxpayers who have a registration expiration date prior to June 30, 1987 and who register their vehicle after June 30, 1987, will be charged the fees that were in effect when they should have registered the vehicle. For these taxpayers the 1987 fee-in-lieu of tax will be charged instead of the ad valorem property tax. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, and 61-3-314, MCA.

RULE XII ANNIVERSARY REREGISTRATION (1) A taxpayer may not change the anniversary date for reregistration of vehicles pursuant to the provisions of 61-3-315, MCA, (staggered registration) during the period from the effective date of Ch. 611, L. 1987, which was April 27, 1987, until January 1, 1988. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, 61-3-315, and 61-3-501, MCA.

RULE XIII TAX RATE PERCENTAGE (1) Tax rate percentages less than 2% are not authorized under Title 61, Chapter 3, subchapter 5. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

Rule I is reasonably necessary because it is necessary to have a specific valuation procedure since the guidebooks do not list all vehicles to be valued under Ch. 611, L. 1987. Since the procedure would apply generally to a large group of people in Montana, it meets the requirement to an administrative rule.

Rule II is necessary because it resolves valuation conflicts when the valuations are obtained from the guidebooks. It establishes a step by step valuation procedure for those type of vehicles. The rule is also necessary to give direction to field staff concerning 1987 vehicles where no trade-in value is listed in the guides.

Rule III is necessary to resolve valuation conflicts for vehicles previously registered that are subsequently not listed in the guides. The rule identifies the specific valuation process that field staff will use for these vehicles.

Rule IV is necessary to establish the specific process for the valuation of vehicles not originally listed in the guides. The rule specifies what value is to be depreciated to arrive at "average trade-in".

Rule V regarding minimum value is necessary because the language of Chapter 611, L. 1987, is inconsistent conflicting regarding minimum value. The department has selected the lowest minimum values listed in Ch. 611, L. 1987. Again, since Ch. 611, L. 1987 affects a large number of citizens in Montana, it meets the requirement of an administrative rule.

Rule VI concerning the percent good schedules for vehicles not listed in guidebooks were calculated using average depreciation for vehicles listed in N.A.D.A. guidebooks. The vehicles were selected by Property Assessment Division staff to represent, in the judgment of the staff, the general population of vehicles. For the selected vehicles, the "average trade-in value" was divided by the Manufacturer's Suggested Retail Price, and the resulting percentages were divided and rounded to the nearest whole number. The results are the numbers listed in the percent good schedules.

Rule VII concerning base value adjustments, is necessary to clarify the base value adjustment procedure as it applies to all assessed vehicles.

Rule VIII concerning vehicle age determination is necessary because the model years for vehicles vary from manufacturer to manufacturer.

Rule IX is necessary to clarify the treatment of new vehicles registered for the first time after June 30, 1987.

Rule X concerning final valuation authority is necessary to resolve any conflicts between the computer system operated by the Department of Justice and the general assessment authority statutorily provided the Department of Revenue.

Rule XI regarding registration is necessary to resolve issues concerning the treatment of vehicles that should have been reregistered before July, 1987, but were not.

Rule XII concerning anniversary registration is necessary to define how the staggered registration statute should be coordinated with Ch. 611, L. 1987.

Rule XIII concerning tax rate percentages is necessary because counties are allowed to impose up to an additional .5% tax rate.

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

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

no later than August 13, 1987.

6. Michael G. Garrity, Tax Counsel, Department of Revenue, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rules is based on 15-1-201 and 61-3-506, MCA, Auth Ext Sec. 39, Ch. 611, L. 1987, Eff 4/27/87, and implement 15-8-202, MCA and Ch. 611, L. 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 7/6/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I through XI) relating to accommodations) tax for lodging.)	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I through XI relating to accommodations tax for lodging.

TO: All Interested Persons:

1. On August 6, 1987, at 10:00 a.m., a public hearing will be held in Room 306 of the Social and Rehabilitative Services Building, at Helena, Montana, to consider the adoption of rules I through XI, relating to accommodations tax.

2. The proposed rules I through XI do not replace or modify any section currently found in the Administrative Rules of Montana. However, they will replace the temporary rules presently in effect.

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

RULE I DEFINITIONS (1) As used in the regulations "facility" means a building or a group of buildings or an area recognized as a single entity.

(2) The term "lodging facilities" means a unit or units used within a facility. This is also a single area within a campground.

(3) The word "lodging" means accommodation intended for the purpose of sleeping or resting.

(4) As used in the regulations the terms "public" or "general public" are synonymous. If a facility is charging for lodging facilities and other services, it is presumed to serve the general public unless proven otherwise.

(5) The term "owner or operator of a facility" means any person or organization who rents a lodging facility to the public and is ultimately responsible for the financial affairs of the facility. Such person may be an individual, corporation, partnership, estate, trust, association, joint venture or other unincorporated group or entity. Owner or operator also includes all religious, education, charitable and social organizations or societies which are not excluded by the provisions of Title 15, Chapter 65, and all governmental entities at the federal, state and local levels.

(6) The phrase "intended for ... resident dwelling purposes" means a home, some permanent abode or residence, in which one has the intention of remaining.

(7) The term "gross receipts" means total gross accommodation charges for use of lodging facilities, whether the charges were received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature.

(8) The term "non-taxable receipts" means exempt accommodation charges as defined in Rule III of this chapter. Also included are accommodation charges deemed uncollectible and

written off the records of the facility during a specific quarterly period, and any discounts which may have been included in gross receipts but not part of the net accommodation charge to the user.

(9) The average daily accommodation charge" (ADAC) is the average room rate for single occupancy for all units rented for single occupancy in a facility.

For example: 40 unit facility
10 units are never rented for single occupancy
30 units rented for single and other occupancy

of the 30 rented for single and other occupancy:

10 units rent for $15.00/night = $150.00
20 units rent for $12.00/night = 240.00
Total rate charged for all rooms = $390.00
divided by number of units 30 = $13.00 ADAC

(10) The term "user" means the person(s) renting and paying for the lodging facilities. AUTH Sec. 11 Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 1, Ch. 607, L. 1987.

RULE II WHO MUST COLLECT THE TAX AND FILE RETURNS (1) Every owner/operator of a facility operating in Montana must collect a 4% tax, rounded to the nearest penny, from the users of facilities and file returns with the Department of Revenue as required in Rule VII.

(2) To determine taxability of a facility, the owner/operator should consider the type of operation.

If the operation is:	Use Step:
Hotel, motel, hostel, public lodginghouse or bed and breakfast facility	a and b
Resort, condominium inn, dude ranch, guest ranch facility	c
Campground	d
Dormitory	e

(a) Compute the average daily accommodation charge (ADAC). If the ADAC is $14.98 or less per day and the facility is a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility, no further step is required. The owner/operator of the facility is not required to collect the tax. The $14.98 exemption applies only to a hotel, motel, hostel, public lodginghouse or bed and breakfast facility.

(b) If the ADAC is more than $14.98, and the facility is a hotel, motel, hostel, public lodginghouse or bed and breakfast facility, the second step is to look to the length of the rental period of the lodging facilities.

(i) If it is rented solely for 30 days or more the lodging facilities are not taxable.

(ii) If it is rented for less than 30 days the lodging facilities are taxable unless specifically exempted (Rule III).

(c) If the facility is a resort, condominium inn, dude ranch, or guest ranch, look at the length of the rental period of the lodging facilities as stated above in (b)(i) and (ii).

(d) If the facility is owned or operated by a non-profit or religious organization and the lodging facilities are rented primarily to youth under 18 years of age for camping, no further step is needed. The facility is exempt from the tax. If not, look at length of the rental period as stated above in (b)(i) and (ii).

(e) If the facility is a dormitory and the lodging facilities are rented to users enrolled in a regular academic program or a program of continuing education, no further step is needed, charges for the lodging facilities are exempt (see Rule III). If not, tax must be collected on the accommodations charges.

Some Examples:

	Taxable
Health facility	No
Religious Camps - primarily for youth	No
- occasionally for youth	Yes
Youth hostel	Yes
Federal campground	Yes
Campground - overnight trade	Yes
- permanent space	No
Rooms rented to government employees	Yes
Dormitory - lodging facilities rental to non-enrolled students	Yes
- lodging facilities rental to enrolled students	No

(3) Every owner or operator of a facility shall be liable for all amounts required to be collected as a tax under the provisions of Title 15, Chapter 65, and with respect thereto the owner or operator shall be considered a taxpayer.

(4) A taxpayer has the right to request a hearing on a tax liability as provided in 15-1-705, MCA.

(5) If the tax or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, Chapter 1, Part 7. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec., 1 and 2, Ch. 607, L. 1987.

RULE III EXEMPT FACILITIES/ACCOMMODATION CHARGES (1) An owner/operator of a facility or campground shall not collect the tax for lodging if the lodging facilities are rented to the user for a period of 30 consecutive days or more. Rental agreements cannot be combined for the purpose of determining the length of the rental period. Intention to rent for a period of 30 or more continuous days is documented by a lease, contract or historical evidence of continuous rental.

(2) An owner/operator of a health facility shall not collect the tax.

(3) Accommodation charges for lodging facilities at dormitories furnished to the following are exempt:

(a) Persons enrolled in a regular academic program or a program of continuing education; or

(b) Participants in an education program to improve the work of the educational institution by developing the professional knowledge and skills of the employees of the institution hosting the program; or

(c) Participants in an educational program reserved exclusively for students of accredited educational institutions.

(4) An owner/operator of a hotel, motel, hostel, public lodginghouse or bed and breakfast facility whose average daily accommodation charge is less than $14.98 per day is not required to collect the tax.

(5) An owner/operator of a youth camp primarily used by youth (under the age of 18) for camping shall not collect the tax.

(6) Accommodation charges collected before July 1, 1987 even though for reserved lodging after July 1, 1987 are not taxable. Deposits made before July 1, 1987 which include accommodations and other charges must be allocated. The proportionate amount of accommodation charges is deemed collected prior to July 1, 1987.

(7) An accommodation charge for lodging furnished federal government entities is exempt from the tax if and only if the accommodation charge is billed and directly paid by the governmental entity.

(8) An accommodation charge for lodging for an enrolled member of a federally recognized Indian tribe in a facility located within the exterior boundaries of an Indian reservation is exempt from the tax. The owner/operator must record the individual's enrollment number on the record of the accommodation charge.

(9) An accommodation charge for lodging furnished to foreign diplomats, entitled under international law or a bilateral treaty, is exempt upon showing of a tax-exempt card issued by the U.S. State Department.

(10) An owner or operator of a camping area which is temporarily located pursuant to a permit issued by an agency of the U.S. Government is not required to collect the tax. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 1(3), Ch. 607, L. 1987.

RULE IV MULTIPURPOSE FACILITIES (1) An accommodation charge for a room used for a purpose other than lodging (such as meeting rooms) are not subject to the tax.

(2) An accommodation charge for a room used for lodging and another purpose is subject to the tax.

(3) Rooms supplied with beds are presumed to be rented for purpose of lodging unless the contrary is conclusively established by the owner/operator. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 2(2), Ch. 607, L. 1987.

RULE V COMBINED CHARGE FOR SERVICES (1) When accommodations charges are combined with food, beverage, recreation or other charges which are a substantial portion of the charge, the owner or operator may allocate the accommodation charge using one of the following:

(a) A flat rate of $24 per day per person;

(b) 25 percent of all charges per day per person; or

(c) A charge justified by reasonable documentation. An owner or operator must have each charge itemized and available for review.

(2) Accommodation charges do not include separately stated service charges which are not an integral part of the use or occupancy of the room or campground space such as separately stated telephone, television, food, beverage or personal laundry charges.

(3) The department may disallow an owner or operator's method of allocating the accommodation charge under (1) above if the department has reasonable cause to believe that the method of allocation was chosen solely to qualify the facility for a tax exemption on the basis that the ADAC was $14.98 a day or less. In such cases, the department will select a method of allocating the accommodation charge that reasonably reflects the acoommodation charge for comparable facilities.

(4) Accommodation charges do include amounts charged for bath house facilities or temporary use of tangible personal property used in conjunction with the room such as a charge for an extra bed.

(5) In the case of campgrounds charges for water, electrical or sewer hookups and bath house facilities are included in the amount subject to tax. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 2, Ch. 607, L. 1987.

RULE VI FACILITY REGISTRATION (1) Every owner/operator required to impose a 4% accommodation tax must register and file an application for a state identification number on the form provided by the department for each facility owned/operated in Montana.

(2) Any owner/operator who has acquired the business of another facility shall not use his predecessor's state identification number. The owner/operator must register before the due date of the first report. This applies to both new businesses and business which have been purchased.

(3) Each registration application must contain the federal entity identification number assigned by the Internal Revenue Service. For sole proprietorships, this number is a Social Security number. Any entity change requiring a new federal identification number requires a new facility registration.

(4) No registration is considered complete unless the federal identification number appears on the application.

(5) Not being registered does not relieve an owner/operator from the collection and reporting requirements. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 5, Ch. 607, L. 1987.

RULE VII QUARTERLY REPORTS AND PAYMENTS - DUE DATES (1) Every owner/operator is required to make, for each calendar quarter or portion of a quarter in operation, a report to the Department of Revenue, Helena, MT. The report must include gross accommodation charges.

(2) The owner/operator shall remit the amount of said tax with the quarterly report. The report will cover quarterly periods ending March 31, June 30, September 30, and December 31 and must be postmarked no later than the 30th day of the month following the close of the quarter. Reports must be made on forms supplied by the department.

(3) If no tax is collected, the report should so state.

(4) No extension of time for remittance of accommodation tax proceeds may be granted by the department.

(5) If the due date for filing falls on a holiday or weekend, the due date for the return shall be the next business day following such holiday or weekend.

(6) The owner/operator must file a final quarterly report for the last quarter of operation and state the last date of business. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 3, Ch. 607, L. 1987.

RULE VIII PENALTIES AND INTEREST (1) Failure to file the return and/or pay the tax collected, will result in a penalty of 2% of the tax that was collected or that should have been collected.

(2) Interest is 1% per month or any portion of a month on the tax due.

(3) The penalty may be abated pursuant to Administrative Rule 42.3.101-114. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 6(1)(2)(4), Ch. 607, L. 1987.

RULE IX RECORDS REQUIRED - AUDIT (1) Each owner/operator of a facility shall maintain records necessary to document gross receipts from accommodation charges. For example: an owner/operator may be required to substantiate gross receipts reported for a particular quarter. Reconstruction of the reported gross receipts from the original accommodations receipts will be required for audit purposes.

(2) Such records shall include specific documentation of exempt charges.

(3) Beginning 7/1/87 through 6/30/88, the owner or operator of a facility must notify the user of the 4% accommodation charge. After 6/30/88 to insure there is a record of the amount of tax charged, the tax shall be separately stated on the receipt, invoice or other document provided to the user.

(4) The records shall be maintained by the owner/operator of a facility for a period of five years and shall be subject to audit by the Department of Revenue for that period. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 4, Ch. 607, L. 1987.

RULE X FAILURE TO FURNISH REQUESTED INFORMATION (1) The department, for the purpose of determining the correctness of any return, may request additional information to verify amounts or items on the return.

(2) If a return is not filed or information is not supplied, the department will estimate the tax from available information. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 6(3), Ch. 607, L. 1987.

RULE XI SUMMARY REPORT REQUIRED (1) The Department of Revenue shall provide the Tourism Advisory Council a quarterly report within 90 days of the close of a quarter of the tax collected:

(a) within the city limits of cities and consolidated city-counties;

(b) within the counties; and

(c) within tourism regions.

(2) The Tourism Advisory Council must notify the Department of Revenue of any tourism boundary change 30 days before the end of quarter. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP, Sec. 8, Ch. 607, L. 1987.

3. The Department proposes to adopt rules (I through XI) because the 1987 Legislature enacted legislation providing for an accommodation tax.

These proposed rules are based on temporary rules adopted for the adminstion of Ch. 607, L. 1987. The temporary rules were developed with the advice of a group of interested persons as provided in 2-4-304, MCA, and these rules, accordingly have benefitted from that advice.

Rule I is necessary because these terms are used in rules II through XI. Sec. 1, Ch. 607, L. 1987, does not adequately define all of the terms necessary for the enforcement of this Act.

Rule II is necessary to more easily identify, in outline form, which facilities are required to collect the tax, and how the tax must be collected. Sec. 1(3), Ch. 607, L. 1987, gives a general guidance, but does not provide specific steps for the facility to follow to make a determination. Rule II also specifies the hearing and appeal process.

Rule III is also necessary to determine which facilities and lodging facilities are exempt from the tax. Sec. 1(3), Ch. 607, L. 1987, is vague in this area.

Rule IV is necessary to determine if a particular unit in the facility is tax exempt. Sec. 2(2), Ch. 607, L. 1987, states that a room used for other than lodging is exempt. Rule V explains how to determine if the room is used for 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. Sec. 1(1), Ch. 607, L. 1987, merely says to exclude or include certain items, but is not an exhaustive list. Rule V gives guidance for making the allocation and what documentation is necessary to allocate the charges.

The 25% rate was determined using facilities who offered meals, transportation, recreations and other services. Because of the diverse nature of facilities, an estimate felt to be reasonable is as follows:

25% meals
25% recreation
25% other (transportation, child care, etc.)
25% lodging
100%

The $24 per night was selected because it is the state per diem allowance and is lower than the typical accommodation charge in Montana. There are 678 Montana motels/hotels listed in the "1987 Accommodations Guide." There are 180 listings in the "AAA Tour Guide". The 1987 Accommodations Guide" was more representative of the entire state. Of the 678, 374 or 55% were less than $30/night for single occupancy.

Rule VI is necessary to explain how to register with the Department. Chapter 607, L. 1987, requires that the taxpayer must register. Rule VI explains 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 taxpayer on the due date of the quarterly report, how to handle cash and credit receipts, seasonal filings, and a due date which falls on a holiday or weekend.

Rule VIII is necessary to notify the taxpayer what the penalties are, and when and how they will be applied. Sec. 6, Ch. 607, L. 1987, needs additional clarification on these issues.

Rule IX is necessary to advise the owners and operators of what records to keep and how long to keep them. Sec.4, Ch. 607, L. 1987, gives a general description, but does not detail what the records should contain. Rule IX specifies what information is necessary to substantiate tax reports.

Rule X is necessary to inform the taxpayer of the fact 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. Sec. 6(3), Ch. 607, L. 1987, merely states that

the Department may make a determination. Rule X clarifies for the taxpayer what action the Department will take to determine the correct tax.

Rule XI is necessary because Sec. 8(1), Ch. 607, L. 1987, merely 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. It will more adequately specify what is necessary to make the determination.

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

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

no later than August 14, 1986.

6. R. Bruce McGinnis, Tax Counsel, Department of Revenue, has been designated to preside over and conduct the hearing.

7. The authority of the Department to adopt the proposed rules is based on Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87 and implement Sec. 1, Ch. 607, L. 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 7/6/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.105 relating to Computation of Withholding - Income Tax.	NOTICE OF PROPOSED AMENDMENT of ARM 42.17.105 relating to Computation of Withholding - Income Tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 17, 1987, the Department of Revenue proposes to amend ARM 42.17.105 relating to Withholding Allowances.

2. The rule as proposed to be amended provides 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 and 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~~	~~523.70~~	~~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.

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 August 13, 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 August 13, 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, Ch. 666, L. 1987. The rules implement 15-30-202, MCA.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 07/06/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT to 42.25.1005 and ADOPTION of Rules I through VI relating to Severance Tax.	))))	NOTICE OF PUBLIC HEARING on PROPOSED AMENDMENT to 42.25.1005 and the ADOPTION Rules I through VI relating to Severance Tax.

TO: All Interested Persons:

1. On August 13, 1987, at 9:00 a.m. in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana a public hearing will be held regarding the Department of Revenue's proposal to amend rule 42.25.1005 and adopt rules I through VI relating to severance tax - stripper well and new well incentives.

2. The amendment to rule 42.25.1005 and rules I through VI as proposed to be adopted provide as follows:

42.25.1005 NATURAL GAS EXEMPT FROM SEVERANCE TAX (1) Natural gas produced from a well 5,000 feet deep or deeper which drilling was commenced after December 31, 1976, but before ~~December 31, 1992~~ April 1, 1987, is exempt from all of the severance tax imposed by section 15-36-101, MCA, for three years. This exemption applies only when the gas produced ~~qualifies according to section 15-36-121(2)(a) and (b),~~ MCA from the well is placed into a natural gas system for delivery to consumers and distributed by a natural gas distribution system serving only natural gas consumers a majority of which are in Montana or at least 10,000 natural gas consumers within Montana. The three year exemption period will run for 36 calendar months beginning with the first day of the month following the month in which gas is first placed in a natural gas distribution system.

(2) If drilling on a natural gas well 5,000 feet deep or deeper commenced on or after April 1, 1987, production from the well is not eligible for the three year deep well exemption but may be eligible for the 24 month exemption from severance tax for new production. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 2, Ch. 656, L. 1987.

RULE I DEFINITIONS (1) "Producing Well" means a well that produced natural gas, petroleum or other crude or mineral oil in the year prior to the current calendar year.

(a) A well that is used for injection purposes only is not a producing well.

(b) A well that produces only water is also not a producing well.

(c) A well that was capable of producing oil or gas but in fact did not produce oil or gas in the year prior to the current calendar year is not a producing well.

(2) If a currently producing well which would not otherwise qualify for the new production exemption is deepened to begin producing from a new formation, the production is not considered new production.

(3) If a currently producing oil well which would not otherwise qualify for the new production exemption begins producing natural gas, the production is not considered new production.

(4) If a well qualifies for the new production exemption, all production from that well is exempt from the oil and gas severance tax for the first 24 months of production. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 4, Ch. 656, L. 1987.

RULE II TREATMENT OF GOVERNMENTAL ROYALTIES (1) Royalties paid to the federal, state, county or municipal governments are deductible from gross value in determining oil or gas severance tax. However, if a portion of the oil or gas production is exempt from severance taxation, the governmental royalties paid on the exempt production is not deductible from the gross value of production that is subject to taxation. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-101, MCA and Sec. 3, Ch. 656, L. 1987.

RULE III REPORTING REQUIREMENT FOR NEW WELLS (1) In order to insure timely processing of new production information operator should notify the department of revenue within 30 days after an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system. The department, however, will accept notifications received beyond the 30 day period. This applies to any well that is completed and first production began after March 31, 1987. An operator must report the following information for a new well:

(a) name of lease the well is located on;

(b) API number;

(c) county in which well is located;

(d) date of first production; and

(e) type of production (oil or natural gas).

(2) This notification is necessary if a well is to qualify for both the 24 month exemption from the state oil and gas severance tax and for the 12 month exemption from the net proceeds tax. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, and Sec. 25, Ch. 655, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA, Sec. 7 and Sec. 10, Ch. 655, L. 1987, Sec. 4, Ch. 656, L. 1987.

RULE IV NEW PRODUCTION TERMINATION (1) The new production exemption will expire for qualifying new wells either:

(a) at the end of the 24 month exemption period; or

(b) on the date the governor certifies by executive order that the price of West Texas intermediate crude oil has reached $25 per barrel as reported in the Wall Street Journal, which ever is earlier.

(2) Once the governor issues the executive order certifying that the price of West Texas intermediate crude oil has reached $25 per barrel as reported in the domestic spot market in the Wall Street Journal, the new production exemption expires permanently for both oil and gas production. The exemption is not reinstated if the price of oil drops below $25 per barrel at a later date. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP 15-36-121, MCA and Sec. 7, Ch. 656, L. 1987.

RULE V STRIPPER TERMINATION (1) The stripper classification on all qualified crude oil production will cease when the governor certifies by executive order that the price of West Texas intermediate crude oil has reached $30 per barrel as reported in the domestic spot market in the Wall Street Journal.

(2) The stripper classification is not reinstated if the price of oil drops below $30 per barrel at a later date. AUTH 15-1-201, MCA, Auth. Ext. Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 7, Ch. 656, L. 1987.

RULE VI AVERAGE DAILY WELL PRODUCTION CALCULATION (1) In determining whether a lease or unit had an average daily production of 10 barrels of crude oil or less per well, only those wells that produced crude oil on the lease or unit shall be used in the calculation.

(2) In determining whether a lease or unit has an average daily production of 60,000 cubic feet or natural gas or less per well, only those wells that produced natural gas shall be used in the calculation. AUTH 15-1-201, Auth. Ext. MCA, Sec. 5, Ch. 656, L. 1987, Eff. 5/13/87, IMP, 15-36-121, MCA and Sec. 4, Ch. 656, L. 1987.

3. It is necessary to amend and adopt these rules for these reasons:

Amendments are necessary to 42.25.1005 because Ch. 656, L. 1987 eliminated the 3 year severance tax exemption on deep gas wells and provided a 24 month exemption on all new gas wells. This amended rule explains the time period for the transition.

Rule I is necessary because the term "producing well" was used in Ch. 656, L. 1987 in describing how to determine if a lease qualified for the stripper classification. This term needed to be defined.

Categories of "new "production" also need to be defined to deal with situations that were not specifically addressed in the statute.

Rule II is necessary to clarify that governmental royalties are deductible only to the extent that they are paid on taxable production.

Rule III is necessary because Ch. 656, L. 1987 provides that an operator must report to the department any wells that qualify as new production. This rule sets forth when they must notify the department and what information needs to be provided. The same notification is also necessary to qualify for the tax beneftis under Ch. 655, L. 1987.

Rule IV is necessary to clarify the termination date for the new production classification as set forth in Ch. 656, L. 1987. The price quotation cited in the rule is the only current cash price quoted in the Wall Street Journal as required by Ch. 656, L. 1987.

Rule V is necessary to clarify the termination date for the stripper classification on oil production as set forth in Ch. 656, L. 1987.

Rule VI is necessary to clarify the calculation of average daily production from a well as set forth in Ch. 656, L. 1987.

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

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

no later than August 13, 1987.

5. Paul Van Tricht, Tax Counsel, Department of Revenue, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 07/06/87.

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

In the matter of the amendment of Rules 46.12.2003, 46.12.2004, 46.12.2006, 46.12.2007 and 46.12.2008 pertaining to reimbursement for physician services	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.2003, 46.12.2004, 46.12.2006, 46.12.2007 AND 46.12.2008 PERTAINING TO REIMBURSEMENT FOR PHYSICIAN SERVICES

TO: All Interested Persons

1. On August 5, 1987, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.2003, 46.12.2004, 46.12.2006, 46.12.2007 and 46.12.2008 pertaining to reimbursement for physician services.

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

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) The department will pay the ~~lowest~~ lower of the following for physician services not also covered by medicare:

(a) the provider's actual (submitted) charge for the service; or

(b) the department's fee schedule found in rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008 plus 21% for those services for which a dollar amount is specified.

(2) The department will pay the lowest of the following for physician services which are also covered by medicare:

(a) the provider's actual (submitted) charge for the service;

(b) the amount allowable for the same service under medicare; or

(c) the department's fee schedules found in rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008 plus 21% for those services for which a dollar amount is specified. The following reimbursement fee schedule and modifiers apply to all rules in this sub-chapter.

(~~1~~3) Services paid by report (BR) will be paid at ~~the lower of~~ 65.2% of usual and customary charges which are reasonable~~, or 94.6000% of the fees which are comparable to usual and customary charges established by the provider in 1980~~.

(~~2~~4) MODIFIERS

Listed services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of the appropriate

modifier code, which is a two digit number placed after the usual procedure number from which it is separated by a hyphen. If more than one modifier is used, the "Multiple Modifiers" code placed first after the procedure code indicates that one or more additional modifier codes will follow. All procedures where a modifier is used may be paid By Report (BR). Modifiers commonly used are as follows:

-20 Microsurgery: When the surgical service is performed using the technique of microsurgery, including the aid of an operating microscope, modifier '-20' may be added to the surgical procedure. The use of this modifier is not warranted when surgery is done with the aid of a magnifying loupe or magnifying binoculars worn by the surgeon. The necessity of the microsurgical approach should be documented. (Pertains to surgery.)

-22 Unusual Services: When the service(Ss) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier ~~'-22'~~ '-22' to the usual procedure number. A report may also be appropriate. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)

-23 Unusual Anesthesia: ~~Periodically,~~ Occasionally, a procedure, which usually requires either no anesthesia or local anesthesia, because of unusual circumstances must be done under general anesthesia. This circumstance may be reported by adding the modifier '-23' to the procedure code of the basic service. (Pertains to Anesthesia~~, Surgery~~.)

-25 Digital Radiology (e.g., digital subtraction angiography, digital flouroscopy, digital radiography): When this technique is utilized, the modifier '-25' may be appended to the appropriate five digit number of the radiologic procedure to indicate that the digital modality was applied. The modifier would be applied to both the supervision and interpretation service and complete procedure. When the supervision and interpretation service code is utilized and the injection is done by a second physician, the modifier need not be applied to the surgical injection codes. (Pertains to Radiology.)

-26 Professional Component: Certain procedures (e.g., laboratory, radiology, electrocardiogram, specific diagnostic services) are a combination of a physician component and a technical component. When the physician component is reported separately, the service

may be identified by adding the modifier '-26' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)

~~-30 Anesthesia Service: The anesthesia service may be identified by adding the modifier '-30' to the usual procedural code number of the basic service. (Pertains to Anesthesia.)~~

-47 Anesthesia by Surgeon: When regional or general anesthesia is provided by the surgeon, it may be reported by adding the modifier '-47' to the basic service. (This does not include local anesthesia.) (Pertains to ~~Anesthesia,~~ and Surgery.)

-50 ~~Multiple or~~ Bilateral Procedures: ~~When multiple or bilateral procedures are provided at the same operative session, the first major procedure may be reported as listed.~~ Unless otherwise identified in the listings, bilateral procedures requiring separate incisions that are performed at the same operative session should be identified by the appropriate five digit code describing the first procedure. The secondary ~~or lesser~~ (bilateral) procedure~~(s)~~ is ~~may~~ be identified by adding ~~the~~ modifier '-50' to the ~~usual~~ procedure number~~(s)~~. (Pertains to Surgery, ~~and Radiology.~~)

-51 Multiple Procedures: When multiple procedures are performed at the same operative session, the major procedure may be reported as listed. The secondary, additional or lesser procedure(s) may be identified by adding the modifier '-51' to the secondary procedure number(s).

-52 Reduced Services: Under certain circumstances a service or procedure is partially reduced or eliminated at the physician's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of the modifier '-52', signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. (Pertains to Medicine, ~~Anesthesia,~~ Surgery, Radiology, and Pathology and Laboratory.)

Modifiers '-54', '-55' and '-56' remain the same.

-62 Two Surgeons: Under certain circumstances, the skills of two surgeons (usually with different skills) may be required in the management of a specific surgical procedure. Under such circumstances, the separate services may be identified by

adding the modifier '-62' to the procedure number used by each surgeon for reporting his services. (Pertains to Surgery and Radiology.)

-66 Surgical Team: Under some circumstances, highly complex procedures (requiring the concomitant services of several physicians, often of different specialties, plus other highly skilled, specially trained personnel and various types of complex equipment) are carried out under the 'surgical team' concept. Such circumstances may be identified by each participating physician with the addition of the modifier '-66' to the basic procedure number used for reporting services. (Pertains to Surgery, and Radiology.)

Modifiers '-75', '-76' and '-77' remain the same.

-80 Assistant Surgeon: Surgical assistant services may be identified by adding the modifier '-80' to the usual procedure number(s). (Pertains to Surgery, and Radiology.)

Modifiers '-81' and '-90' remain the same.

-99 Multiple Modifiers: Under certain circumstances two or more modifiers may be necessary to completely delineate a service. In such situations modifier '-99' should be added to the basic procedure, and other applicable modifiers may be listed as a part of the description of the service. (Pertains to Medicine, ~~Anesthesia,~~ Surgery, and Radiology.)

-AA Anesthesia services personally furnished by anesthesiologist. (Pertains to Anesthesia and Surgery.)

-AB Medical direction of own employee(s) by anesthesiologist (not more than four individuals). (Pertains to Anesthesia and Surgery.)

-AC Medical direction of other than own employees by anesthesiologist (not more than four individuals). (Pertains to Anesthesia and Surgery.)

-AD Supervision of more than four concurrent anesthesia services by anesthesiologist. (Pertains to Anesthesia and Surgery.)

-PS Professional component charge for separate specimen. (Pertains to Pathology and Laboratory.)

-AF Anesthesia complicated by total body hypothermia. (Pertains to Anesthesia and Surgery.)

-AG Anesthesia for emergency surgery on a patient who is moribund or who has an incapacitating systemic disease that is a constant threat to life. (Pertains to Anesthesia and Surgery.)

-MP Multiple patients seen. (Pertains to Medicine.)

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

46.12.2004 PHYSICIAN SERVICES REIMBURSEMENT/MEDICINE PROCEDURES

"(1) OFFICE MEDICAL SERVICES" through "90240" remain the same.

90250 Limited service - ~~$11.80~~ $15.56

"90260" through "90285" remain the same.

(4) SKILLED NURSING, INTERMEDIATE CARE, AND LONG-TERM CARE FACILITIES

New or Established Patient

Initial Care

90300 Brief history and physical examination, initiation of diagnostic and treatment programs, and preparation of hospital records - ~~$23.34~~ $26.98

90315 Intermediate history and physical examination, initiation of diagnostic and treatment programs, and preparation of hospital records - ~~$38.91~~ $43.37

"90320" remains the same.

Subsequent Care

90340 Brief service - ~~$9.34~~ $13.64

90350 Limited service - ~~$15.57~~ $16.56

90360 Intermediate service - ~~$23.34~~ $25.93

"90370" through "90420" remain the same.

Established Patient

90430 Minimal service - ~~$11.67~~ $14.31

90440 Brief service - $15.57

90450 Limited service - $23.34

90460 Intermediate service - ~~$23.34~~ $24.62

90470 Extended service - $31.13

(6) EMERGENCY DEPARTMENT SERVICES

New Patient

90500 Minimal service - ~~$6.22~~ $15.55

"90505" through "90517" remain the same.

90520 Comprehensive service - BR

Established Patient

90530 Minimal service - ~~$6.22~~ $7.09

90540 Brief service - ~~$9.33~~ $9.34

90550 Limited service - ~~$12.24~~ $12.90

90560 Intermediate service - $15.55

90570 Extended service - $23.34

90580 Comprehensive service - BR

"(7) CONSULTATIONS" through "90630" remain the same.

Other Procedures

90699 Unlisted medical services, general - BR $29.02

(8) IMMUNIZATION INJECTIONS

90701 Immunization, active; diphtheria and tetanus toxoids and pertussis vaccine (DTP) - $13.19

90702 diphtheria and tetanus toxoids (DT) - $8.79

90703 tetanus toxoid - $6.93

90704 mumps virus vaccine, live - $13.89

90705 measles virus vaccine, live, attenuated - $13.75

90706 rubella virus vaccine, live - $13.75

90707 measles, mumps and rubella virus vaccine, live - $15.82

90708 measles and rubella virus vaccine, live - $13.75

90709 rubella and mumps virus vaccine, live - $14.10

90712 poliovirus vaccine, live, oral (any type(s)) - $13.75

90713 poliomyelitis vaccine - $13.75

90714 typhoid vaccine - $13.75

90717 yellow fever vaccine - $13.75

90718 tetanus and diphtheria toxoids absorbed, for adult use (Td) - $8.79

90719 diphtheria toxoid - $8.26

90724 influenza virus vaccine - $13.75

90725 cholera vaccine - $13.75

90726 rabies vaccine - $25.12

90727 plague vaccine - BR

90728 BCG vaccine - BR

90731 hepatitis B vaccine - $13.75

90732 pneumococcal vaccine, polyvalent - $11.02

90733 meningococcal polysaccharide vaccine (any group(s)) - BR

90737 Hemophilus influenza B - $9.17

90741 Immunization, passive; immune serum globulin, human (ISG) - $6.10

90742 specific hyperimmune serum globulin (e.g., hepatitis B, measles, pertussis, rabies, Rho(D), tetanus, vaccinia, varicella-zoster) - $18.10

90749 Unlisted immunization procedure - $9.39

~~90720 Immunizations, each--(includes supply of materials); DPT-DT, tetanus toxoid, oral polio, typhoid, typhus, influenza, or colera---$4.40~~

~~90721 single virus vaccine (ie, measles, mumps, rubella, or smallpox)---$13.75~~

~~90722 double virus vaccine (ie, measles and rubella, mumps and rubella, or measles and mumps) --- $13.75~~

~~90723 triple virus vaccine (ie, measles, mumps and rubella) --- $13.75~~

~~90749 Unlisted immunization procedure --- BR~~

"(9) INFANT, CHILD AND ADOLESCENT CARE" through "90798" remain the same.

90799 Unlisted therapeutic injection - BR $8.64

(11) PSYCHIATRY

General Clinical Psychiatric Diagnosis or Evaluative Interview Procedures

90801 Psychiatric diagnostic interview examination including history, mental status, or disposition (may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies; in certain circumstances other informants will be seen in lieu of the patient) - BR $32.20

"90825" through "90853" remain the same.

Psychiatric Somatotherapy

90862 Chemotherapy management, including prescription, use, and review of medication with no more than minimal medical psychotherapy - BR $15.97

90870 Electroconvulsive therapy - $38.91

90872 Subconvulsive electric shock treatment - BR

Other Psychiatric Therapy

90880 Medical hypnotherapy - BR

90882 Environmental intervention for medical management purposes on a psychiatric patient's behalf with agencies, employers, or institutions - BR $23.42

"90887" through "90954" remain the same.

90955 Hemodialysis, for chronic irreversible renal insufficiency, maintenance for stabilized condition, more

than 4-6 weeks, hospital; patient over 40 kg - ~~$61.16~~ $75.19

"90956" through "90990" remain the same.

90991 Home hemodialysis care, outpatient, for those services either provided by the physician primarily responsible for total hemolysis care or under his direct supervision, and excludes care for complicating illnesses unrelated to hemodialysis - BR $88.51

"90999" through "92230" remain the same.

92235 with fluorescein angiography (includes multiframe photography and medical interpretation) - ~~$35.79~~ $53.55

"92250" through "92396" remain the same.

92499 Unlisted ophthalmological service or procedure - BR $14.26

(15) SPECIAL OTORHINOLARYNGOLOGIC SERVICES

92502 Otolaryngologic examination under general anesthesia - BR

92504 Binocular microscopy (separate diagnostic procedure) - $10.12

92506 Medical evaluation speech, language and/or hearing problems - BR

92507 Speech, language or hearing therapy, with continuing medical supervision; individual - BR $17.05

"92508" through "92566" remain the same.

92567 Tympanometry - BR $6.52

"92568" through "93017" remain the same.

93018 interpretation and report only - ~~$31.12~~ $36.95

93040 Rhythm ECG, one to three leads; with interpretation - ~~$6.53~~ $7.44

93041 tracing only without interpretation and report - $3.27

93042 interpretation and report only - ~~$3.27~~ $7.38

"93045" through "93277" remain the same.

~~Echocardiography~~

~~(See 76601-76620)~~

Cardiac Fluoroscopy

93280 Cardiac fluoroscopy - BR

Echocardiography

93300 Echocardiography, M-Mode; complete - $40.36

93305 limited (e.g., follow-up or limited study) - $22.83

93307 Echocardiography, real-time with image documentation (2D); complete - BR

93308 limited - BR

93309 Echocardiography, M-Mode and real-time with image documentation - BR

93320 Doppler echocardiography - BR

Cardiac Catheterization

93501 Right heart catheterization; only - $272.35

93503 placement of flow directed catheter (e.g., Swan-Ganz), with or without balloon tip, when placed for monitoring purpose, collection of blood, and/or angiography - ~~$81.54~~ $100.91

93505 Endocardial biopsy - $142.64

93510 Left heart catheterization, retrograde, from the brachial artery, axillary artery or femoral artery; percutaneous - ~~$155.63~~ $191.90

"93511" through "93544" remain the same.

93545 for selective coronary angiography (injection of radiopaque material may be by hand) - ~~$115.72~~ $133.98

"93546" remains the same.

93547 Combined left heart catheterization, selective coronary angiography and selective left ventricular angiography (this code number is to be used when

procedure 93510 is combined with procedures 93543 and 93545) - ~~$205.34~~ $300.50

"93548" through "94770" remain the same.

94799 Unlisted pulmonary service or procedure - BR $7.78

"95000" through "95105" remain the same.

95120 Immunotherapy, in prescribing physician's office or institution, allergenic extract; single antigen - BR $2.95

95125 multiple antigens - BR $4.40

"95130" through "95150" remain the same.

95155 multiple antigens, multiple dose vials - BR $35.39

95160 stinging insect antigens, multiple dose vials - BR

95180 Rapid desensitization procedure, each hour (eg, insulin, penicillin, horse serum) - BR

95199 Unlisted allergy/clinical immunologic service or procedure - BR $23.40

"95819" through "96999" remain the same.

(21) PHYSICAL MEDICINE

Modalities

~~97000 Office visit with one of the following--modalities to one area---$9.34~~

~~a.---Hot or cold packs~~
~~b.---Traction, mechanical~~
~~c.---Electrical stimulation (unattended)~~
~~d.---Vasopneumatic devices~~
~~e.---Paraffin bath~~
~~f.---Microwave~~
~~g.---Whirlpool~~
~~h.---Diathermy~~
~~i.---Infrared~~
~~j.---Ultraviolet~~

~~97050 Office visit with two or more modalities to same area---$10.11~~

97010 Physical medicine treatment to one area; hot or cold pack - $9.34

97012 traction, mechanical - $9.34

97014 electrical stimulation (unattended) - $9.34

97016 vasopneumatic devices - $9.34

97018 paraffin bath - $9.34

97020 microwave - $9.34

97022 whirlpool - $9.34

97024 diathermy - $9.34

97026 infrared - $9.34

97028 ultraviolet - $9.34

97039 unlisted modality (specify) - $9.34

Procedures

~~97100 office visit with one of the following procedures to one area: $12.45~~

~~a. Therapeutic exercises~~
~~b. Neuromuscular reeducation~~
~~c. Functional activities~~
~~d. Gait training~~
~~e. Electrical stimulation (manual)~~
~~f. Iontopheresis~~
~~g. Traction, manual~~
~~h. Massage~~
~~i. Contrast baths~~
~~j. Ultrasound~~

~~initial 30 minutes~~

~~97101 each additional 15 minutes $3.89~~

97110 Physical medicine treatment to one area, initial 30 minutes, each visit; therapeutic exercises - $13.49

97112 neuromuscular reeducation - $13.49

97114 functional activities - $13.49

97116 gait training - $13.49

97118 electrical stimulation (manual) - $13.49

97120 iontophoresis - $13.49

97122 traction, manual - $13.49

97124 massage - $13.49

97126 contrast baths - $13.49

97128 ultrasound - $13.49

97139 unlisted procedure (specify) - $13.49

97145 Physical medicine treatment to one area, each additional 15 minutes - $3.89

~~97200 Office visit, including combination of any modality(s) and procedure(s), initial 30 minutes - $12.45~~

~~97201 each additional 15 minutes - $3.89~~

"97220" through "97741" remain the same.

97799 Unlisted physical medicine service or procedure - BR $42.71

(22) SPECIAL SERVICES AND REPORTS

Administrative Services

"99000" through "99012" remain the same.

99025 Initial (new patient) visit when asterisk (*) surgical procedure constitutes major service at that visit - BR $8.60

99050 Services requested after office hours in addition to basic service - BR $9.36

99052 Services requested between 10:00 pm and 8:00 am in addition to basic service - BR $9.69

99054 Services requested on Sundays and holidays in addition to basic service - BR $9.31

99056 Services provided at request of patient in a location other than physician's office which are normally provided in the office - BR

99058 Office services provided on an emergency basis - $10.91

99062 Emergency care facility services: when the nonhospital-based physician is in the hospital, but is involved in patient care elsewhere and is called to the emergency facility to provide emergency services - BR $7.91

99064 Emergency care facility services: when the non-hospital-based physician is called to the emergency facility from outside the hospital to provide emergency services; not during regular office hours - BR $14.08

99065 during regular office hours - BR $15.83

99070 Supplies and materials (except spectacles), provided by the physician over and above those usually included with the office visit or other services rendered (list drugs, trays, supplies, or materials provided) - BR

"99071" through "99090" remain the same.

Prolonged Services

99150 Prolonged physician attendance requiring physician detention beyond usual service (eg, operative standby, monitoring ECG, EEG, intrathoracic pressures, intravascular pressures, blood gases during surgery); 30 minutes to one hour - $38.91

99151 more than one hour - BR $80.21

99155 Medical conference by physician regarding medical management with patient, and/or relative, guardian or other (may include counseling by a physician); approximately 25 minutes - BR $22.67

99156 approximately 50 minutes - BR

Critical Care

99160 Critical care, initial, including the diagnostic and therapeutic services and direction of care of the critically ill or multiple injured or comatose patient, requiring the prolonged presence of the physician; each hour - BR $99.55

"99162" through "99192" remain the same.

99195 Phlebotomy, therapeutic (separate procedure) - ~~BR~~ $9.14

99199 Unlisted special service or report - BR

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

46.1.2006 PHYSICIAN SERVICES REIMBURSEMENT/SURGERY PROCEDURES

(1) INTEGUMENTARY SYSTEM

(a) Skin, Subcutaneous and Areolar Tissues

Incision

"10000" through "10101" remain the same.

10120 Incision and removal of foreign body, subcutaneous tissues; simple - ~~$11.94~~ $12.45

"10121" through "11101" remain the same.

Excision -- Benign Lesions

Excision (including simple closure) of benign lesions of skin or subcutaneous tissues (eg, cicatrical, fibrous, inflammatory, congenital, cystic lesions), including local anesthesia. See appropriate size and area below.

11200 Excision, skin tags, multiple fibrocutaneous tags, any area; up to 15 - ~~$11.92~~ $14.93

"11201" through "11646" remain the same.

(b) Nails

11700 Debridement of nails, manual; five or less - ~~$8.95~~ $10.38

"11701" through "11711" remain the same.

11730 Avulsion of nail plate, partial or complete, simple; single - ~~$11.94~~ $13.09

"11731" through "11954" remain the same.

(d) Repair

Simple

(Sum of lengths of repairs)

12001 Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); up to 2.5 cm - ~~$11.94~~ $14.03

"12002" through "12007" remain the same.

12011 Simple repair of superficial wounds to face, ears, eyelids, nose, lips and/or mucous membranes; up to 2.5 cm - ~~$17.98~~ $19.23

"12013" through "12018" remain the same.

Intermediate

12031 Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); up to 2.5 cm - ~~$20.88~~ $21.60

"12032" through "17000" remain the same.

17001 second and third lesions, each - ~~$8.94~~ $11.55

"17002" through "17100" remain the same.

17101 second lesion - ~~$5.96~~ $6.67

17102 over two lesions, each additional lesion up to 15 lesions - ~~$2.98~~ $5.61

"17104" through "20525" remain the same.

20550 Injection, tendon sheath, ligament or trigger points - ~~$11.92~~ $13.17

"20600" through "20665" remain the same.

20670 Removal of implant; superficial, (eg, buried wire, pin or rod) (separate procedure) - ~~$17.98~~ $23.21

20680 deep, (e.g., buried wire, pin, screw, metal band, nail, rod or plate) - ~~$107.38~~ $118.21

Reimplantation

"20802" through "27372" remain the same.

~~27375 Arthroscopy, knee (separate procedure); --- BR~~

~~27376 with synovial biopsy---$196.87~~

~~27377 with removal of loose body---BR~~

~~27378 with partial meniscectomy---BR~~

Repair, Revision or Reconstruction

"27380" through "27635" remain the same.

~~27635~~
27637 with primary autogenous graft (includes obtaining graft) - $387.77

"27638" through "29440" remain the same.

29450 Application of clubfoot cast with molding or manipulation, long or short leg; unilateral - ~~$11.94~~ $13.21

"29455" through "31899" remain the same.

(e) Lungs and Pleura

Incision

32000 Thoracentesis, puncture of pleural cavity for aspiration, initial or subsequent - ~~$21.47~~ $22.22

32020 Tube thoracostomy with water seal, pneumothorax, hemothorax, empyema (separate procedure) - ~~$35.79~~ $55.18

"32035" through "36299" remain the same.

Venous

36400 Venipuncture, under age 3 years; femoral, jugular or sagittal sinus - ~~$11.94~~ $15.85

36405 scalp vein - $17.90

36410 Venipuncture, child over age 3 years or adult, necessitating physician's skill (separate procedure), for venography (upper extremity, vena cava, adrenal, renal, iliac, femoral, poplieal, tibial, saphenous, jugular, innominate vein). Not to be used for routine venipuncture. - ~~$5.96~~ $8.21

"36420" through "36471" remain the same.

36488 Placement of central venous catheter (subclavian, jugular, or other vein) (e.g., for central venous

pressure, hyperalimentation, hemodialysis, or chemotherapy); percutaneous, age 2 years or under - $30.81

36489 percutaneous, over age 2 - $30.81

36490 cutdown, age 2 years or under - $30.81

36491 cutdown, over age 2 - $30.81

~~36480 Catheterization,--subclavian,--external--jugular--or other-vein,--for-central--venous--pressure-determination,-percutaneous---$23.86~~

~~36485 by-cutdown---$23.86~~

~~36490 Cutdown--placement-of--central--venous--catheter--for hyperalimentation,-age-2-years-or-under---BR~~

~~36491 over-age-2---BR~~

"36500" and "36510" remain the same.

Arterial

36600 Arterial puncture, withdrawal of blood for diagnosis - ~~$5.96~~ $10.55

36620 Arterial catheterization or cannulation for sampling, monitoring or transfusion (separate procedure); percutaneous - ~~$29.82~~ $38.71

36625 cutdown - $41.76

36640 Arterial catheterization for prolonged infusion therapy (chemotherapy), cutdown - BR

36660 Catheterization, umbilical artery, newborn, for diagnosis or therapy - ~~$29.83~~ $40.65

(d) Intervascular Cannulization or Shunt (Separate Procedure)

"36800" through "42815" remain the same.

Excision

42820 Tonsillectomy and adenoidectomy; under age 12 - ~~$119.31~~ $137.23

"42821" through "43228" remain the same.

43235 Esophagogastroduodenoscopy; diagnostic - BR $139.21

"43239" through "49440" remain the same.

Repair Hernioplasty, Herniorrhaphy, Herniotomy

49500 Repair inguinal hernia, under age 5 years, with or without hydrocelectomy; unilateral - ~~$200.00~~ $215.89

"49501" through "51720" remain the same.

51725 Simple cystometrogram (CMG) (e.g., spinal manometer) - $32.73

51726 Complex cystometrogram (e.g., calibrated electronic equipment) - $32.73

51736 Simple uroflowmetry (UFR) (e.g., stop-watch flow rate, mechanical uroflowmeter) - BR

51739 Sound recording of external stream (e.g., Lyons type, Keitzer type) - BR

51741 Complex uroflowmetry (e.g., calibrated electronic equipment) - BR

51772 Urethral pressure profile studies (UPP) (urethral closure pressure profile), any technique - BR

51785 Electromyography studies (EMG) of anal or urethral sphincter, any technique - BR

51792 Stimulus evoked response (e.g., measurement of bulbocavernosus reflex latency time) - BR

51795 Voiding pressure studies (VP); bladder voiding pressure, any technique - BR

51797 intra-abdominal voiding pressure (AP) (rectal, gastric, intraperitoneal) - BR

~~51740 Cystometrogram (separate procedure) --- $29.82~~

~~51750 Uroflowmetric evaluation (separate procedure) --- BR~~

Repair

"51800" through "51980" remain the same.

52000 Cystourethroscopy (separate procedure), office; - ~~$35.79~~ $43.21

52005 with ureteral catheterization, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service - $47.73

52100 Cystourethroscopy, hospital; - ~~$55.00~~ $62.49

"52105" through "53665" remain the same.

53670 Catheterization; simple - ~~BR~~ $6.31

"53675" through "57451" remain the same.

57452 Colposcopy; (separate procedure) - ~~BR~~ $37.70

57454 with biopsies, or biopsy of the cervix - $44.75

(d) Cervix Uteri

Excision

57500 Biopsy, single or multiple, or local excision of lesion, with or without fulguration (separate procedure) - ~~$17.90~~ $22.55

57510 Cauterization of cervix; electro or thermal - $17.90

57511 cryocautery, initial or repeat - ~~BR~~ $32.02

"57520" through "58240" remain the same.

58260 Vaginal hysterectomy; - ~~$477.26~~ $484.60

"58265" through "58845" remain the same.

Endoscopy-Laparoscopy

58980 Laparoscopy for visualization of pelvic viscera; - ~~BR~~ $264.55

"58982" through "58999" remain the same.

(12) MATERNITY CARE AND DELIVERY

Incision

59000 Amniocentesis for diagnosis, abdominal approach - ~~$29.83~~ $36.77

59010 Amnioscopy - BR

59011 Amnioscopy (intraovular) - BR

59020 Fetal oxytocin stress test - BR

59025 Fetal non-stress test - $19.89

"59030" through "59351" remain the same.

Delivery, Antepartum and Postpartum Care

59400 Total obstetric care (all-inclusive, "global" care) includes antepartum care, vaginal delivery (with or without episiotomy, and/or forceps or breech delivery) and postpartum care - ~~$477.26~~ $511.57

59410 Vaginal delivery only (with or without episiotomy, forceps or breech delivery including in-hospital postpartum care (separate procedure) - ~~$298.29~~ $317.36

59420 Antepartum care only ~~(separate procedure)~~ (per visit) - BR $14.46

59430 Postpartum care only (separate procedure) - BR $20.66

Cesarean Section

59500 Cesarean section, low cervical, including in-hospital postpartum care; (separate procedure) - ~~$357.94~~ $383.70

59501 including antepartum and postpartum care - ~~$536.92~~ $575.58

59520 Cesarean section, classic, including in-hospital postpartum care; (separate procedure) - ~~$357.94~~ $383.70

59521 including antepartum and postpartum care - ~~$536.91~~ $575.58

59540 Cesarean section, extraperitoneal, including in-hospital postpartum care; (separate procedure) - ~~$417.60~~ $447.67

59541 including antepartum and postpartum care - ~~$596.57~~ $639.52

59560 Cesarean section with hysterectomy, subtotal, including in-hospital postpartum care; (separate procedure) - ~~$417.60~~ $447.67

59561 including antepartum and postpartum care - ~~$596.57~~ $639.52

59580 Cesarean section with hysterectomy, total, including in-hospital postpartum care; (separate procedure) - ~~$357.94~~ $383.70

59581 including antepartum and postpartum care - ~~$596.57~~ $639.52

Abortion

"59800" through "63746" remain the same.

(c) Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System

Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic Somatic Nerves

64400 Injection, anesthetic agent; trigeminal nerve, any division or branch - $17.90

64402 facial nerve - BR

64405 greater occipital nerve - ~~$17.90~~ $19.43

"64408" through "69205" remain the same.

69210 Removal impacted cerumen (separate procedure), one or both ears - BR $7.08

"69300" through "69435" remain the same.

69437 bilateral - $94.31

"69440" through "70460" remain the same.

70470 without intravenous contrast, followed by intravenous contrast and further sections - BR $63.19

"71000" through "73616" remain the same.

73620 Radiologic examination, foot; anteroposterior and lateral views - ~~$15.57~~ $15.74

"73630" through "76300" remain the same.

76499 Unlisted diagnostic radiologic procedure - BR $58.65

(2) DIAGNOSTIC ULTRASOUND

(a) Head and Neck

"76500" through "76855" remain the same.

76856 Echography, pelvic (non-obstetric), B-scan and/or real time with image documentation; complete - $36.23

76857 limited on follow-up - BR

(d) Vascular Studies

"76900" through "76990" remain the same.

76999 Unlisted ultrasound procedure - ~~BR~~ $48.15

"77260" through "77399" remain the same.

(c) Treatment Management

77400 Daily radiation therapy treatment management; simple - BR

77405 intermediate - ~~BR~~ $48.28

"77410" through "79999" remain the same.

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

46.12.2008 PHYSICIAN SERVICES REIMBURSEMENT/PATHOLOGY AND LABORATORY

(1) AUTOMATED, MULTICHANNEL TESTS

80002 Automated multichannel test; 1 or 2 clinical test(s) - $8.68

80003 3 clinical chemistry tests - ~~$9.00~~ $11.78

80004 4 clinical chemistry tests - ~~$10.37~~ $13.43

80005 5 clinical chemistry tests - ~~$11.67~~ $14.88

80006 6 clinical chemistry tests - ~~$12.97~~ $16.16

80007 7 clinical chemistry tests - ~~$14.26~~ $16.94

80008 8 clinical chemistry tests - ~~$15.55~~ $17.77

80009 9 clinical chemistry tests - ~~$16.85~~ $18.60

80010 10 clinical chemistry tests - ~~$18.15~~ $19.42

80011 11 clinical chemistry tests - ~~$19.45~~ $20.25

80012 12 clinical chemistry tests - ~~$20.75~~ $21.07

80016 13-16 clinical chemistry tests - $22.04

80018 17-18 clinical chemistry tests - $22.04

80019 19 or more clinical tests (indicate instrument used and number of tests performed) - ~~BR~~ $17.79

80055 Obstetric profile - $15.52

80070 Thyroid panel - $16.58

80099 Unlisted panel - $12.52

(2) URINALYSIS

"81000" through "81030" remain the same.

81099 Unlisted urinalysis procedure - ~~BR~~ $5.45

"82000" through "82947" remain the same.

82948 blood, stick test - ~~$2.60~~ $2.72

82949 fermentation - $6.50

82950 post glucose dose (includes glucose) - ~~BR~~ $6.31

82951 tolerance test (GTT), three specimens (includes glucose) - $19.46

82952 tolerance test, each additional beyond three specimens - ~~$4.21~~ $15.26

"82953" through "83534" remain the same.

83540 Iron, serum; chemical - ~~$6.50~~ $7.23

"83545" through "84022" remain the same.

84030 Phenylalanine (PKU), blood; Guthrie - ~~$3.89~~ $4.30

"84031" through "84645" remain the same.

84999 Unlisted chemistry or toxicology procedure - BR $11.85

(4) HEMATOLOGY

"85000" through "85005" remain the same.

85007 differential WBC count (includes RBC morphology and platelet - ~~$2.60~~ $3.19

85009 differential WBC count, buffy coat - ~~$2.60~~ $2.92

85012 eosinophil count, direct - $3.88

85014 hematocrit - ~~$2.60~~ $2.64

85018 hemoglobin, colorimetric - ~~$2.60~~ $2.69

85021 hemogram, automated RBC, WBC, Hgb, Hct and indices only) - ~~$3.89~~ $6.98

85022 hemogram, automated (CBC) with differential WBC count - BR $8.05

"85031" and "85041" remain the same.

85044 reticulocyte count - ~~$4.54~~ $5.31

"85048" through "85635" remain the same.

85650 Sedimentation rate (ESR); Wintrobe type - ~~$3.25~~ $3.81

"85651" through "86004" remain the same.

86006 Antibody, qualitative, not otherwise specified; first antigen, slide or tube - ~~$4.86~~ $4.88

"86007" through "86080" remain the same.

86082 ABO and Pho(D) - ~~$7.46~~ $8.26

"86090" through "86255" remain the same.

86256 titer - ~~$12.97~~ $13.62

"86265" through "86670" remain the same.

86999 Unlisted immunology procedure - BR $6.73

(6) MICROBIOLOGY

"87001" through "87086" remain the same.

87087 commercial kit - ~~$4.86~~ $6.51

87088 identification, in addition to quantitative or commercial kit - ~~$4.86~~ $6.51

"87101" through "87176" remain the same.

87177 Ova and parasites, direct smears, concentration and identification - ~~$6.50~~ $8.85

"87181" through "87999" remain the same.

(7) ANATOMIC PATHOLOGY

(a) Postmortem Examination

"88000" through "88014" remain the same.

~~77016~~
88016 macerated stillborn - BR

"88020" through "88299" remain the same.

(8) SURGICAL PATHOLOGY

88300 Surgical pathology, gross examination only - ~~$6.48~~ $8.50

"88302" through "88329" remain the same.

88331 with frozen section(s) - ~~$36.96~~ $39.04

"88332" through "89399" remain the same.

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

3. Since July 1, 1980, Medicaid reimbursements for physician services have been determined by fee schedules assigned to the various procedure codes. Relative value scales and averaged billed amounts were used to determine fee schedules. Through legislative action, the fee schedules have been frozen at July 1, 1982 levels.

Frozen fee schedules; changes in physician practices; technological improvements; and changes in procedures and definitions have together resulted in disparities among physicians as to their reimbursement levels received by Medicaid. The reimbursement disparities have resulted in some Medicaid

recipients having restricted or limited access to needed physician providers.

A formal survey conducted jointly by the Department and the Montana Medical Association and other contacts with physician providers have indicated that procedures for obstetrical care, immunizations, nursing home visits and those procedures paid by Medicaid at rates significantly less than averaged billed charges require rectification.

The 50th Legislature appropriated an additional 1½% ($178,138) for Medicaid physician fees during FY 88. The Legislature intended this appropriation to "equalize rates among providers with emphasis on specialists". Thus, the $178,138 was targeted to particular procedure types rather than universally applied to all physician procedures.

Procedure codes for obstetrical care are increased 7.2% and utilize $96,551 of the $178,138 appropriation. Immunization fees are increased to at least 80% of averaged billed charges ($15,684 allocated). Nursing home visits are increased to at least 70% of averaged billed charges ($14,698 allocated). Eighty-eight various procedure codes are increased to 50% of averaged billed charges ($50,678 allocated). As a partial update of the physician reimbursement rules not involving appropriations: thirty-nine previously priced codes are corrected as to established fee amounts; forty-five new codes are added and priced to pay by report; thirteen obsolete codes are deleted; and four typographical errors within the rules are corrected.

The above reflected financial impacts represent, in total, both the general and federal fund components of Medicaid financing.

Copies of this rule notice are available at local welfare and human service offices.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than August 13, 1987.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1987.

13-7/16/87 MAR Notice No. 46-2-509

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

In the matter of the amendment of Rules 46.12.401, 46.12.402 and 46.12.404 pertaining to Medicaid sanctions	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.401, 46.12.402 AND 46.12.404 PERTAINING TO MEDICAID SANCTIONS

TO: All Interested Persons

1. On August 5, 1987, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.401, 46.12.402 and 46.12.404 pertaining to Medicaid sanctions.

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

46.12.401 GROUNDS FOR SANCTIONING (1) Sanctions may be imposed by the department against a provider of medical assistance, provided under Title 46, Chapters 12 and 25, of the Administrative Rules of Montana, for any one or more of the following reasons:

Subsections (1) through (18) remain the same in text but will be recategorized as (1)(a) through (1)(r).

(~~19~~s) Failure to correct deficiencies as defined by the ARM or federal regulation after receiving written notice of these deficiencies from the department, or the department of health and environmental sciences. The standards set forth at 42 CFR Part 442 and the Federal Long Term Care Survey Care Guidelines, dated September 1986, which identify deficiencies for providers of long term care facility services, are hereby incorporated by reference. A copy of 42 CFR Part 442 and the Federal Long Term Care Survey Care Guidelines, dated September 1986, are available from the Department of Social and Rehabilitation Services, Economic Assistance Division, P.O. Box 4210, Helena, Montana 59620.

Subsections (20) through (26) remain the same in text but will be recategorized as (1)(t) through (1)(z).

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111 and 53-6-113 MCA; AUTH Extension, Sec. 1, Ch. 370, L. 1985, Eff. 10/1/85

IMP: Sec. 53-2-306, 53-2-801, 53-2-803, 53-4-112 and 53-6-111 MCA

46.12.402 SANCTIONS (1) The following sanctions may be invoked against providers based on the grounds specified in ARM 46.12.401~~:~~:

Subsections (1) through (8) remain the same in text but will be recategorized as (1)(a) through (1)(h).

(i) In addition to the sanctions listed above, long term care facilities shall be subject to termination of participation when the deficiencies resulting from their failure to meet conditions of participation or standards pose immediate jeopardy or the denial of payments for new admissions if the facilities' deficiencies do not pose immediate jeopardy. Federal laws regarding termination from participation and intermediate sanctions provided in 42 U.S.C. 1396a(i), 42 CFR 442.2, and 42 CFR 442.117 through 442.119 are hereby incorporated by reference. A copy of 42 U.S.C. 1396a(i), 42 CFR 442.2, and 42 CFR 442.117 through 442.119 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59620; or

(j) Notification to the public of sanctions taken against a provider.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111 and 53-6-113 MCA
IMP: Sec. 53-2-306, 53-2-801, 53-4-112 and 53-6-111 MCA

46.12.404 SCOPE OF SANCTION Subsection (1) remains the same.

(2) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the department or its fiscal agents for any services or supplies provided to persons eligible for the Montana medical assistance program except for those services or supplies provided prior to the suspension or termination. Providers of long term care facility services may submit claims for supplies and services provided for up to thirty (30) days after the date of termination to allow for the transfer of recipients.

(3) No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the department or its fiscal agents for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the Montana medical assistance program except for those services or supplies provided prior to the suspension or termination. Providers of long term care facility services may submit claims for supplies and services provided for up to thirty (30) days after the date of termination to allow for the transfer of recipients.

Subsection (4) remains the same.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111 and 53-6-113 MCA
IMP: Sec. 53-2-306, 53-2-801, 53-4-112 and 53-6-111 MCA

3. Proposed ARM amendments are intended to incorporate regulations contained in 42 CFR 442.118-119 and 489.60-64 which provide for intermediate sanctions of Medicaid providers. Intermediate sanctions deny Medicaid payment for new admissions to sanctioned facilities for up to eleven months to promote correction of deficiencies without having to exclude providers from the Medicaid program and transfer Medicaid recipients to other facilities. The amendments also impose a shorter notification period before the effective date of termination in the case of deficiencies posing immediate jeopardy to recipients' health and safety.

No overall impact on the Medicaid budget is projected as a result of the rule changes. Invocation of the sanctions will only serve to shift payment for long term care facility services to other providers.

Copies of this rule notice are available for public review at local county welfare and human services offices.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than August 13, 1987.

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

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE BANKING BOARD

In the matter of the emergency adoption of a rule pertaining to chartering of state banks without notice	))))	NOTICE OF EMERGENCY ADOPTION OF NEW RULE

TO: All Interested Persons:

1. The 50th Legislature passed SB 374 which authorizes the state banking board to issue a certificate of authority to operate a state bank without a public hearing in certain circumstances.

2. The board may issue such a certificate only when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose.

3. It is in the best interests of the health, safety and welfare of the public to maintain community banking services and prevent the loss of banking facilities. It is the intent of this emergency rule to provide a procedure enabling another state bank to take over the functions of a closed state bank rapidly so that banking services are maintained.

4. The new rule will read as follows:

"I. STATE BANK ORGANIZED FOR PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK (1) The state banking board is empowered to issue a certificate of authorization without notice or hearing as required by section 32-1-204, MCA.

(2) All provisions of sub-chapter 2, ARM 8.87.202 and ARM 8.87.203, application procedures, apply except subsection (c), summary of evidence demonstrating reasonable public necessity and demand for a new bank; and subsection (4), notification to applicants to perfect application. Sub-chapter 3, new bank charter, ARM 8.87.302, 8.87.303 and 8.87.304 also apply.

(3) Prior to submitting a bid for the assets and liabilities of a closed bank, organizers must:

(a) appoint a spokesperson who is empowered to speak for and sign documents on behalf of the organization;

(b) have written verification in hand that capital for the new bank is on deposit and will be available prior to the new bank opening;

(c) have written verification of blanket bond coverage for the new bank;

(d) provide all details of the proposed purchase arrangement along with a copy of the purchase and assumption agreement and other related documents required by the closed bank receiver.

(4) If the bidder for the closed bank contemplates using an existing state bank to acquire assets and assume liabilities of a closed bank only sub-chapter 3 ARM 8.87.303 applies.

(5) Details of the proposed purchase along with a copy of the purchase and assumption agreement and an application

fee of $1,500 will be submitted to the department prior to submitting a bid for the closed bank.

(6) Approval of charter application under ARM 8.87.501 will be accomplished through a telephone conference call with a quorum of the board participating."

Auth: 32-1-204(6), MCA Imp: 32-1-204(6), MCA

5. This emergency adoption is effective July 1, 1987.

STATE BANKING BOARD
KEITH L. COLBO, CHAIRMAN

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

Certified to the Secretary of State, July 1, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
VIDEO GAMING MACHINES

In the matter of the emergency adoption and amendments of rules pertaining to licensing video gaming machines) NOTICE OF EMERGENCY ADOPTION OF NEW AND AMENDED RULES

TO: All Interested Persons:

1. The 50th Legislature passed several laws (H.B. 66, H.B. 67, and H.B. 863) which require the licensing of certain manufacturers, distributors and suppliers of video gaming machines and equipment. These licenses are renewable on June 30th of each year.

2. Since the legislature also mandated the state to collect revenue from video gaming machines and to distribute revenues to local governments, the public health, safety and welfare will be benefited by immediate licensure to insure the orderly placement, identification and monitoring of these machines and the collection of revenue therefrom. The first distribution of the revenue is in October, 1987.

3. ARM 42.7.102 is amended as follows: (new matter underlined, deleted matter interlined) (These rules have been transferred to the Department of Commerce as of July 1, 1987, but as yet have not been renumbered.)

"42.7.102 DEFINITIONS (1) through (g) will remain the same.

(h) 'Duly authorized representative' means a person or other entity that has been designated in a formal signed written agreement to be a duly authorized representative of the video gaming control bureau. Such designation shall be in effect only during the term of the agreement.

(i) 'Designated representative' means a person designated on forms provided by the department to be a representative of the licensee of a machine. This designation is made for the purposes of filing quarterly reporting documents, receiving of forms, etc. It does not include applications for licensing or necessarily relieve the licensee of responsibility for incorrect information being provided to the department.

(j) 'Valid ticket voucher' is a ticket produced by a machine that is the result of bonafide play of a gaming machine.

(k) 'Video gaming machine' is a machine that is eligible for licensure within the state of Montana. Machines include video draw poker machines, video keno machines, and video bingo machines."

Auth: 23-5-605, MCA, Sec. 8, Ch. 317, L. 1987 Imp: 23-5-602, MCA

4. ARM 42.7.229 is amended as follows: (new matter underlined, deleted matter interlined)

"42.7.229 REGISTRATION OF MANUFACTURERS, SUPPLIERS, OR DISTRIBUTORS OF VIDEO ~~DRAW--POKER~~ GAMING MACHINES (1) Any person desiring to sell, distribute, lease, or rent video ~~draw poker~~ gaming machines in this state must:

(a) and (b) will remain the same.

(c) furnish to the department monthly reports identifying the quantities and models of machines the manufacturer, supplier, distributor, or coin operator ships into Montana or receives from outside Montana, and such other information the department may determine is necessary to regulate and control video ~~draw--poker~~ gaming machines in accordance with the act and these rules.

(2) Any person desiring to participate in the income from a video ~~draw--poker~~ gaming machine by or through ownership, operation, lease, rental, or sharing of the machine with a licensee in this state must:

(a) and (b) will remain the same.

(3) No person shall take revenue from a video ~~draw-poker~~ gaming machine operated in this state or ship a video ~~draw poker~~ gaming machine into this state until his application for registration is granted by the department.

(4) will remain the same.

(5) A person licensed as manufacturer/distributor or as a producer at associated equipment for video draw poker machines is considered to be registered."

Auth: 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987 Imp: Sec. 8, Ch. 603, L. 1987

5. The emergency new rules will read as follows:

"I. MANUFACTURERS/DISTRIBUTORS AND PRODUCERS OF ASSOCIATED EQUIPMENT OF VIDEO DRAW POKER MACHINES (1) The department may issue to an applicant for a manufacturers/distributors license or an applicant for a producer of associated equipment license for video draw poker machines a PROVISIONAL LICENSE pending the results of the investigation into their suitability for licensure. A provisional license will be revoked upon a determination that the applicant does not qualify for licensure. Upon a final determination that the applicant does qualify for licensure the bureau will issue final approval and remove the license from provisional status. This license fee is non-refundable once the bureau has begun processing the application.

(2) The bureau will assess a one-time administrative fee of $45.00 to cover the costs of processing the license.

(3) A person licensed under this section must comply with all laws and rules of the state of Montana and the department of commerce."

Auth: 23-5-605, MCA, Sec. 6, Ch. 317, L. 1987 Imp: Sec. 2 and 6, Ch. 317, L. 1987

"II. VIDEO POKER MACHINES TESTING, FEES (1) Each entity submitting a video draw poker machine or a modification that changes the play or operation of a video draw poker machine for testing and department approval must:

(a) be licensed as a manufacturer/distributor or as a producer of associates equipment within the state of Montana;

(b) at the time of submission deposit with the department a sum of money to cover the costs of the testing service. This sum is to be as follows:

(i) video draw poker machines $2,000.00

(ii) modification to a machine that alters the play or operation of the machine and requires approval 200.00

This account will be charged at the rate of $25.00 per hour.

(c) the bureau will provide an accounting to the submitting person for charges assessed to them and will refund any overpayment at the time department final approval is given. The department will notify the submitting person of any underpayment and collect that money prior to giving any department approval."

Auth: 23-5-605, MCA, Sec. 8, Ch. 317, L. 1987 Imp: Sec. 6, Ch. 317, L. 1987

"III. USED KENO MACHINES (1) A used keno machine as defined by the act must have the following meters:

(a) coins in

(b) credits played

(c) credits awarded

(d) coins paid

(2) These meters may be electronic or mechanical or any combination thereof. These meters are required to verify earning of machines for tax purposes and to verify the 80% payback requirement."

Auth: 23-5-605, MCA, Sec. 11, Ch. 603, L. 1987 Imp: Sec. 8, Ch. 603, L. 1987

6. These emergency amendments and adoptions are effective July 6, 1987.

VIDEO GAMING MACHINES

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

Certified to the Secretary of State, July 6, 1987.

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

In the matter of the amend-	NOTICE OF THE AMENDMENTS OF
of 8.97.402 concerning	8.97.402 CRITERIA FOR DETER-
eligibility, 8.97.411 con-	MINING ELIGIBILITY, 8.97.411
cerning bonds and notes of	BONDS AND NOTES OF BOARD, 8.
board, 8.97.414 concerning	97.414 LOAN LOSS RESERVE
loan loss reserve account,	ACCOUNT FOR THE IN-STATE
8.97.509 concerning applica-	INVESTMENT FUND, 8.97.509
tion and financing fees, 8.	APPLICATION AND FINANCING
97.512 concerning taxable	FEES, COSTS AND OTHER CHARGES,
revenue bond program, 8.97.	8.97.512 TAXABLE REVENUE BOND
709 concerning terms,	PROGRAM, 8.97.709 TERMS,
interest rates, fees and	INTEREST RATES, FEES AND
charges, 8.97.803 concern-	CHARGES, 8.97.803 APPLICATION
ing application procedures -	PROCEDURE TO BECOME A
certified, 8.97.804 con-	"CERTIFIED" MONTANA CAPITAL
cerning application	COMPANY, 8.97.804 APPLICATION
procedures - qualified	PROCEDURE TO BECOME A "QUALI-
	FIED" MONTANA CAPITAL COMPANY

TO: All Interested Persons:

1. On May 28, 1987, the Montana Economic Development Board published a notice of proposed amendments of the above-stated rules at page 636, 1987 Montana Administrative Register, issue number 10.

2. The Board has amended the rules as proposed with the following comments being submitted and considered.

COMMENT: The Administrative Code Committee noted that the authority sections in 8.97.509 and 8.97.512 were incorrect. They also stated that the authority extension in 8.97.512 should be deleted.

RESPONSE: The Board concurred and the authority sections are being changed from 17-6-324, MCA to 17-6-1504, MCA, and the authority Extension in 8.97.512 is being deleted.

COMMENT: The Administrative Code Committee noted that the authority section in 8.97.709 is incorrect. They also noted that the Board did not need to cite SB 230 (17-5-1301, et seq.)

RESPONSE: The Board concurred and the authority section is being changed from 17-6-324, MCA to 17-5-1605, MCA. The cite to SB 230 (17-5-1301, et seq.) is being deleted.

COMMENT: The Administrative Code Committee noted that the authority section in 8.97.803 was incorrect. They also noted that the statement of reasonable necessity was not sufficient.

RESPONSE: The Board concurred and the authority section is being changed from 17-6-324, MCA to 90-8-105, MCA. The statement of reasonable necessity for 8.97.803 should be as

follows: "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. Inactive capital companies have 'reserved' tax credits which are not being used, thus prohibiting other applicants access to these tax credits."

COMMENT: The Administrative Code Committee noted that the statement of reasonable necessity was not sufficient in 8.97.804.

RESPONSE: The Board concurred and the statement of reasonable necessity should read: "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. There are presently more applications for tax credits than there are tax credits available."

COMMENT: The Administrative Code Committee also noted that the amendment to 8.97.414 should be a complete sentence.

RESPONSE: The Board concurred and the change will show as follows:

"8.97.414 LOAN LOSS RESERVE ACCOUNT FOR THE IN-STATE INVESTMENT FUND (1) through (6) will remain the same.
~~(7) Providing for an effective date of 10/1/87.~~
(7) This will be effective 10/1/87."
Auth: 17-6-324, MCA Imp: 17-6-315, MCA

3. No other comments or testimony were received.

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 July 6, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of rules pertaining to personal flotation devices and life preservers.	))))	NOTICE OF THE AMENDMENT OF RULE 12.6.701

TO: All Interested Persons:

1. On March 26, 1987, the Department of Fish, Wildlife and Parks gave notice of proposed adoption of amendment to Rule 12.6.701 to allow for the use of Type V devices, on page 308 of the Montana Administrative Register, issue number 6.

2. No public hearing was held nor was one requested. The department has received no written or oral comments concerning these rules.

3. Based on the foregoing, the department hereby adopts the rule as proposed.

Robert Jensen, Chairman
Fish and Game Commission

Certified to the Secretary of State, July 6, 1987.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.6.703 pertaining to requirements for fire extinguisher on motorboats and vessels.	)))))	NOTICE OF THE AMENDMENT OF RULE 12.6.703

TO: All Interested Persons:

1. On April 16, 1987, the Fish and Game Commission gave notice of proposed adoption of amendment to Rule 12.6.703 to exempt certain small motorboats and vessels from the requirements for fire extinguisher, on page 363 of the Montana Administrative Register, issue number 7.

2. No public hearing was held nor was one requested. The department has received no written or oral comments concerning these rules.

3. Based on the foregoing, the department hereby adopts the rule as proposed.

Robert Jensen
Fish and Game Commission

Certified to the Secretary of State, July 6, 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, 16.32.137, & 16.32.140, concerning criteria and procedures for review of certificates of need for health care facilities.	)	NOTICE OF AMENDMENT OF RULES (Certificate of Need)

To: All Interested Persons

1. On May 28, 1987, the department published notice of proposed amendments of the above-captioned rules (with the exception of 16.32.140) concerning criteria and procedures for review of certificates of need for health care facilities, at page 641 of the 1987 Montana Administrative Register, issue number 10.

2. The department has amended the rules with the following changes, and has added the amendment noted below to rule 16.32.140 for consistency (new text is capitalized where possible, and matter to be stricken is interlined; text markings used in the initial notice are retained here):

16.32.101 DEFINITIONS Same as proposed.

16.32.102 LONG-TERM AND PERSONAL CARE -- ~~DEFINITION~~ WHERE ~~PROVIDED~~ ALLOWED (1) Same as proposed.

(2) A ~~health care~~ facility may provide long-term care OR PERSONAL CARE only if:

(a) it is licensed ~~as a long-term care facility~~ TO PROVIDE THE LEVEL OF CARE IN QUESTION; or

(b) IN THE CASE OF LONG-TERM CARE, it has received certificate of need approval pursuant to ARM 16.32.128 for the establishment of swing beds, is certified to provide long-term care in such swing beds, and the provision of long-term care is limited to such swing beds.

16.32.103 SUBMISSION OF LETTER OF INTENT

~~(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 is 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 OR THE ADDITION OF A NEW SERVICE;

(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) NEW CONSTRUCTION;

~~(vi)~~(vii) other (explain);

(d) Same as proposed.

(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 THE CONSTRUCTION OF any building, INCLUDING REMODELING, necessary to house it;

(f)-(m) Same as proposed.

(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 objected for or purchased with no a health care facility's first year for a program, service, department, or plan. WILL INCLUDE IN THE COST CALCULATION THE COST OF ANY SUPPORT EQUIPMENT NECESSARY TO THE PROPER FUNCTION OF THE ITEM OF MAJOR MEDICAL EQUIPMENT IN QUESTION.

(3) Any person or persons desiring to acquire or enter into a contract to acquire 50% or more of an existing health care facility (WHETHER THROUGH A SINGLE TRANSACTION OR BY ADDING TO A PORTION ALREADY OWNED) must submit to the department a written letter noting intent to acquire the facility and containing the following:

(a)-(c) Same as proposed.

(4) Same as proposed.

(5) WITHIN 15 CALENDAR DAYS AFTER RECEIPT OF A LETTER OF INTENT, The 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.

(6)-(8) Same as proposed.

16.32.106 BATCHING PERIODS; SUBMISSION OF APPLICATIONS

(1)-(8) Same as proposed.

(9) If the application is received without the full fee required by ~~Chapter 477, Section 8, Laws of 1987~~ ($500 OR 0.3% OF THE APPLICATION'S PROJECTED CAPITAL EXPENDITURE, WHICHEVER IS LARGER), 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.

(10)-(14) Same as proposed.

16.32.107 NOTICE OF ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES (1) Same as proposed.

~~(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.---Consideration-of-the-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 notice of acceptance~~,~~ and published in a newspaper of general circulation in the service area affected.

16.32.109 INFORMATIONAL HEARING PROCEDURES

(1)-(4) ~~Same as proposed~~.

(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.

(6) The hearing will be informal and neither the Montana Administrative Procedure Act nor the Rules of Civil Procedure will apply.

(7) ANY PERSON WISHING TO MAKE A FACTUAL ALLEGATION AT THE HEARING MUST FIRST SWEAR OR AFFIRM THAT HIS TESTIMONY IS TRUE.

(8) ~~Any-affected--person~~ NO PERSON OTHER THAN THE DEPARTMENT may conduct reasonable questioning of any person who makes relevant factual allegations.

16.32.110 CRITERIA AND FINDINGS Same as proposed.

16.32.111 DEPARTMENT DECISION Same as proposed.

16.32.112 APPEAL PROCEDURES

(1) Same as proposed.

(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]~~ $500, IF THAT PERSON IS OTHER THAN THE DEPARTMENT OR AN APPLICANT WHOSE PROPOSAL IS APPROVED AND WHO DOES NOT REQUEST THE HEARING, 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 $9987~~ (2) ABOVE 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)-(10) Same as proposed.

16.32.114 ABBREVIATED REVIEW

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

(a)-(e) Same as proposed.

(f) an addition of a health service described in 50-5-301(1)(c), MCA, WHICH IS NOT OTHERWISE SUBJECT TO REVIEW.

(2)-(7) Same as proposed.

16.32.118 DURATION OF CERTIFICATE; TERMINATION; EXTENSION

(1) Same as proposed.

(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~~ AND MUST BE RECEIVED BY THE DEPARTMENT BY 5:00 P.M. ON THE EXPIRATION DATE IF IT IS TO BE CONSIDERED.

(b)-(d) Same as proposed.

(3) A CERTIFICATE OF NEED, ONCE GRANTED, MAY NOT BE TRANSFERRED TO ANOTHER HOLDER. IN ADDITION TO A TRANSFER FROM ONE PERSON TO ANOTHER, SUCH A TRANSFER WILL BE CONSIDERED TO HAVE TAKEN PLACE IF THERE IS A CHANGE OF OWNERSHIP OF 50% OR MORE OF THE ENTITY HOLDING THE CERTIFICATE.

16.32.136 CERTIFICATE OF NEED APPLICATION: INTRODUCTION AND COVER LETTER (1)-(2) Same as proposed.

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

(a)-(c) Same as proposed.

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

(i) Same as proposed.

(ii) the acquisition of equipment and the construction, INCLUDING REMODELING, of any building necessary to house the equipment requiring a capital expenditure of more than ~~$500,000~~ $750,000;

(iii)-(vii) Same as proposed.

(e)-(k) Same as proposed.

16.32.137 CERTIFICATE OF NEED APPLICATION -- REQUIRED INFORMATION Same as proposed.

16.32.107 NOTICE OF ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES (1) Same as proposed.

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

16.32.109 INFORMATIONAL HEARING PROCEDURES

(1) ~~(4)~~ Same as proposed.

(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.

(6) The hearing will be informal and neither the Montana Administrative Procedure Act nor the Rules of Civil Procedure will apply.

(7) ANY PERSON WISHING TO MAKE A FACTUAL ALLEGATION AT THE HEARING MUST FIRST SWEAR OR AFFIRM THAT HIS TESTIMONY IS TRUE.

(8) Any affected person NO PERSON OTHER THAN THE DEPARTMENT may conduct reasonable questioning of any person who makes relevant factual allegations.

16.32.110 CRITERIA AND FINDINGS Same as proposed.

16.32.111 DEPARTMENT DECISION Same as proposed.

16.32.112 APPEAL PROCEDURES

(1) Same as proposed.

(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~~ $500, IF THAT PERSON IS OTHER THAN THE DEPARTMENT OR AN APPLICANT WHOSE PROPOSAL IS APPROVED AND WHO DOES NOT REQUEST THE HEARING, 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~~ (2) ABOVE 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)-(10) Same as proposed.

16.32.114 ABBREVIATED REVIEW

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

(a)-(e) Same as proposed.

(f) an addition of a health service described in 50-5-301(1)(c), MCA, WHICH IS NOT OTHERWISE SUBJECT TO REVIEW.

(2)-(7) Same as proposed.

16.32.118 DURATION OF CERTIFICATE; TERMINATION; EXTENSION

(1) Same as proposed.

(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~~ AND MUST BE RECEIVED BY THE DEPARTMENT BY 5:00 P.M. ON THE EXPIRATION DATE IF IT IS TO BE CONSIDERED.

(b)-(d) Same as proposed.

(3) A CERTIFICATE OF NEED, ONCE GRANTED, MAY NOT BE TRANSFERRED TO ANOTHER HOLDER. IN ADDITION TO A TRANSFER FROM ONE PERSON TO ANOTHER, SUCH A TRANSFER WILL BE CONSIDERED TO HAVE TAKEN PLACE IF THERE IS A CHANGE OF OWNERSHIP OF 50% OR MORE OF THE ENTITY HOLDING THE CERTIFICATE.

16.32.136 CERTIFICATE OF NEED APPLICATION: INTRODUCTION AND COVER LETTER (1)-(2) Same as proposed.

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

(a)-(c) Same as proposed.

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

(i) Same as proposed.

(ii) the acquisition of equipment and the construction, INCLUDING REMODELING, of any building necessary to house the equipment requiring a capital expenditure of more than ~~$500,000~~ $750,000;

(iii)-(vii) Same as proposed.

(e)-(k) Same as proposed.

16.32.137 CERTIFICATE OF NEED APPLICATION -- REQUIRED INFORMATION Same as proposed.

16.32.140 ANNUAL REPORTS BY LONG-TERM CARE AND PERSONAL CARE FACILITIES Every long-term care AND PERSONAL ~~CARE FACILITY~~ shall submit an annual report to the department no later than January 31 of each year on forms provided by the department. The annual report must be signed by the facility administrator and must include the following information:

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

3. Comments and the responses:

Rule 16.32.102

a. Sue Weingartner, representing the Montana Health Care Association, objected to the deletion of the phrase "personal care" from the definition of "long-term care" because she felt it created a question of whether personal care facilities were still subject to certificate of need (CON) review and licensure standards.

Response: With the passage of Senate Bill 246 by the 1987 legislature, the definitions of long-term care and personal care facilities were made separate for CON purposes, although the licensure statutes continue to include personal care facilities within the definition of long-term care facilities. The law still clearly requires a personal care facility to be licensed and to undergo CON review exactly as a long-term care facility such as a nursing home must. "Personal care" was deleted from the definition of "long-term care" in the rule simply to reflect the above statutory change. However, since it is apparent that the deletion has caused some confusion and since the original purpose of the rule was to clarify the circumstances under which a hospital may offer personal care as well as nursing care to patients needing only that level of care, the department amended the rule to ensure that personal care services offered by a health care facility continue to be affected by the rule.

b. Pat Melby, Esq., inquired whether the deletion of "personal care" from the definition of "long-term care" meant that the department no longer considered personal care beds built to institutional standards to count against the long-term care bed need delineated in the state health plan.

Response: The answer is no. The reason for the deletion of "personal care" is explained above and neither relates to nor impacts the guideline Mr. Melby mentioned. The latter is contained in the personal care component of the 1985 state health plan and continues to guide departmental decisions.

c. Mona Jamison, Esq., wondered why the phrase defined was "long-term care" instead of "long-term care facility", the latter phrase being the one defined in the CON statutes.

Response: Since the purpose of the rule is to clarify the circumstances under which a hospital may offer a level of care less than acute care, a definition of "long-term care" rather than "long-term care facility" was more appropriate.

Rule 16.32.103

a. Sue Weingartner suggested the letter of intent described in section (1) should also indicate whether new construction or the addition of a new service is proposed.

Response: The department agreed and added both items.

b. Tony Welliver and Jim Ahrens of the Montana Hospital Association suggested subsection (1)(e) be clarified to indicate whether remodeling was covered and to avoid implying that the cost of existing buildings used to house new major medical equipment was to be included in the capital expenditure calculation.

Response: The department agreed and did so.

c. The Hospital Association asked for clarification of how the department actually "aggregates the total cost" of equipment, as stated in section (2).

Response: The department found the language in question was confusing and inaccurately described the factors it would consider while determining the actual cost of a piece of equipment; consequently, it amended section (2) to provide the requested clarification.

d. The Hospital Association also proposed that the "letters of intent" referred to in sections (3) and (4) (for the acquisition of facilities and the addition or relocation of small numbers of beds) be called something else to distinguish them from the standard "letter of intent" submitted under all other circumstances (specified in section (1)).

Response: The department made no change since the rule contains cross-references to avoid confusion about what must be included in a letter of intent given the nature of the proposal, and the law itself requires a "letter of intent" to be submitted in all three cases.

e. Mr. Melby suggested language be added to section (3) indicating that any acquisition transaction which results in the ownership of 50% or more of a facility requires a letter of intent (e.g., acquisition of an additional 1/3 of a facility when 1/3 is already owned), in order to make clear that gradual acquisitions may ultimately require at least a letter of intent.

Response: The department agreed and did so.

f. Mr. Melby also pointed out situations in which it may be unclear whether a section (3) letter of intent is necessary, such as when the majority of shares in a corporation owning a facility change hands or when such a corporation is in turn bought by another corporation.

Response: The department acknowledges many types of ownership and changes of ownership exist, particularly those involving corporations, in which it may be difficult to decide if 50% or more of a facility has changed hands, but did not further amend section (3) because of the apparent impossibility, at least at this time, of pinpointing and addressing each potential ownership variation.

g. The Hospital Association asked the department to define the situations in which it would consider the relocation

or addition of beds described in section (4) to "significantly increase the cost of care" (in which case the law would require CON review of the proposal).

Response: Because of the variability of circumstances where beds are relocated or added, the department does not feel that a rule can be written that would be appropriate in all cases. Sufficient protection should be provided by the fact that the rule also gives the applicant the right to a hearing before the department if it does not agree with the health planning staff's assessment that there is likely to be a significant increase in cost and CON review is necessary.

h. The Hospital Association also requested that, in section (5), the department set a deadline by which it must notify those submitting letters of intent whether their proposals are subject to CON review.

Response: The department agreed and set a 15 calendar day deadline for itself.

Rule 16.32.106

a. The Hospital Association questioned the department's need for 9 copies of the application.

Response: The additional copies are justified by the routine level of demand for copies and the fact that the department now has fewer staff members and less funding for photocopying.

b. The Hospital Association also requested that section (9), instead of referring simply to the fee set by statute, state what the fee should be, since many facilities would not have easy access to the law itself.

Response: An explanatory amendment was added.

Rule 16.32.107

Sue Weingartner felt the requirement in section (2) that notice of an application go to all licensed health care facilities "of the type affected by the application" might be interpreted too restrictively, e.g., only nursing homes might be informed of a nursing home application, whereas a given application may affect facilities of several types.

Response: The department agreed and deleted the phrase "of the type", leaving the requirement that every facility affected by the application get notice.

Rule 16.32.109

Mr. Melby and Ms. Jamison requested that all witnesses testifying during an informational hearing do so under oath, and pointed out that if anyone other than the department were allowed to question witnesses, something approaching an adversarial hearing would likely result, especially if attorneys were present.

Response: The department agreed to have all witnesses swear or affirm the truth of what they said, and amended the rule so that the department alone may question witnesses.

Rule 16.32.110

Mr. Melby thought it advisable to add a criterion concerning whether competition would help hold down health care costs.

Response: The department did not add such a criterion because it felt the effect of competition could already be adequately addressed pursuant to the criterion contained in Section 50-5-304(5) of the Montana Code Annotated (as it reads July 1, 1987).

Rule 16.32.112

a. The Hospital Association requested, as it did for rule 16.32.106, that the required fee be described in the rule rather than by reference to statute.

Response: The department made the requested change.

b. Ms. Jamison and Mr. Melby had found a pre-hearing memorandum from the department to be of value in the past and requested the department to continue to submit one, rather than exempting itself from the requirement.

Response: The department conceded.

Rule 16.32.114(1)(f)

The Hospital Association wondered why the addition of a health service described in Section 50-5-301(1)(c), MCA, is subject only to abbreviated review, and Sue Weingartner thought such services almost always should receive full review.

Response: Subsection (1)(f) is there because Senate Bill 246, passed by the 1987 legislature, authorized abbreviated review of 50-5-301(1)(c) new services. However, in regard to Ms. Weingartner's concern, it should be noted that many new services would be subject to full review because they fit other reviewable categories in the statute, e.g., the addition of a skilled nursing wing by a hospital, which would add beds. Given the foregoing, the department made no change other than to clarify that abbreviated review would apply only to those new services which were not also subject to review under some other category.

Rule 16.32.118

a. Sue Weingartner felt the rule should require any request for extension of a CON to be made prior to its expiration.

Response: The department agreed and added appropriate language.

b. Pat Melby felt the certificate of need law by implication prohibited the transfer of a CON to someone other than the original applicant and that the rules should give notice of that fact.

Response: The department agreed and added language to that effect.

Rule 16.32.136(3)(d)(ii)

The Hospital Association's comment regarding remodeling in rule 16.32.103 applies here as well.

Response: As with rule 16.32.103, the department added

language clarifying that remodeling constitutes a type of "construction".

Rule 16.32.140

Although this rule was not originally slated to be amended, Ms. Weingartner pointed out that the fact that a personal care facility is no longer a long-term care facility as well means that the annual report required of long-term care facilities will now no longer apply to personal care facilities unless the rule is amended to specifically mention them.

Response: The department recognized the failure to amend rule 16.32.140 was an oversight and that an annual report from each personal care facility remained desirable; therefore, appropriate amendments were made to maintain the status quo.

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

Certified to the Secretary of State June 30, 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 ADOPTION OF TEMPORARY RULE

TO: ALL INTERESTED PERSONS

1. On May 28, 1987, the Workers' Compensation Division published notice of public hearing on the proposed adoption of a temporary rule regarding distribution of benefits from the uninsured employers fund at page 662 of 1987 Montana Administrative Register issue no. 10.

2. A public hearing was held on the proposed temporary rule on June 10, 1987, at 9:00 a.m. in room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana. No public comments were received on the proposed temporary rule at the hearing or in writing.

3. The Division of Workers' Compensation adopts the temporary rule as proposed effective July 1, 1987. This rule shall remain in effect until October 1, 1987, or until superseded by adoption of a permanent rule.

4. The rationale for adopting this rule is to establish a means for distribution of benefits from the uninsured employers fund. 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 the Laws of 1987. This rule implements Section 34 of Chapter 464 of Laws of 1987. This rule is adopted as a temporary rule pursuant to Chapter 8 of the Laws of 1987.

ROBERT J. ROBINSON
Administrator
Workers' Compensation Division

CERTIFIED TO SECRETARY OF STATE: June 29, 1987

BEFORE THE WORKERS' COMPENSATION DIVISIO
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 ADOPTION OF TEMPORARY RULE

TO ALL INTERESTED PERSONS:

1. On May 28, 1987, the Workers' Compensation Division published notice of the proposed adoption of a rule regarding an impairment rating dispute procedure at page 660 of 1987 Montana Administrative Register issue no. 10.

2. A public hearing was held on the proposed rule on June 10, 1987, at 11:00 a.m. in room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana to receive comments on the proposed rule.

3. The Division of Workers' Compensation adopts the temporary rule as proposed effective July 1, 1987, or until superseded by adoption of a permanent rule.

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 or board eligible 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) through (5) same as proposed rule.

(6)(a) through (c) same as proposed rule.

(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.

(7) same as proposed rule.

4. The rationale for adopting this rule is to establish procedures for resolution of impairment rating disputes under the provisions of the workers' compensation act. This rule is necessary because Section 24(4), Chapter 464, requires the division to adopt rule setting forth qualifications of evaluators and the location of examinations. The rule is further needed to define processing of documentation. The amended law is effective July 1, 1987 and rules are needed to implement the law on that date. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5 Chapter 464, of the Laws of

1987 and by Section 24 of Chapter 464 of the Laws of 1987. This rule implements Section 24 of Chapter 464 of Laws of 1987. This rule is adopted as a temporary rule pursuant to Chapter 8 of the Laws of 1987.

5. The following comments were received on the proposed rule and considered by the Division:

(a) COMMENT: Paragraph (6)(b) and (6)(f) should allow a party fifteen days after receipt of a report or allow mailing days in addition to the fifteen days before action is required.

RESPONSE: Section 24(3)(b)(i) and (6) of Senate Bill 315 specifies 15 days from the mailing date.

(b) COMMENT: The rule should indicate the payment allowed to physicians for their evaluations.

RESPONSE: Payment amounts allowed physicians is not considered within the scope of the present rule. Provision for payment is outlined in Section 24(5) of Senate Bill 315.

(c) COMMENT: Allow board eligible as well as board certified physicians to be evaluators

RESPONSE: Agreed. The rule is amended.

(d) COMMENT (Administrative Code Committee): Paragraph 6(d) requiring Division approval before the third evaluator seeks other consultation conflicts with Section 24(3)(b)(ii) of Chapter 464 because the statute authorizes the third evaluator to seek other consultation.

RESPONSE: Agreed. The affected sentence in (6)(d) is deleted.

(e) COMMENT (Administrative Code Committee): Paragraph 3 is not a sufficient statement of reasonable necessity for the temporary rule.

RESPONSE: Agreed. The paragraph is amended.

ROBERT J. ROBINSON
Administrator
Workers' Compensation Division

CERTIFIED TO SECRETARY OF STATE: June 29, 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 Rules Regarding Rehabilitation	))))	NOTICE OF ADOPTION OF TEMPORARY RULES

TO ALL INTERESTED PERSONS:

1. On May 28, 1987, the Workers' Compensation Division published notice of the proposed adoption of rules regarding rehabilitation at page 664 of 1987 Montana Administrative Register issue no. 10.

2. A public hearing was held on the proposed rule on June 10, 1987, at 10:00 a.m. in room 303 of the workers' compensation building, 5 South Last Chance Gulch, Helena, Montana to receive comments on the proposed rule.

3. The Division of Workers' Compensation adopts the temporary rule as proposed effective July 1, 1987. This rule shall remain in effect until October 1, 1987, or until superseded by adoption of a permanent rule.

4. The rationale for adopting these rules is to establish procedures for the operation of rehabilitation panels and to detail substantive provisions of the rehabilitation statutes within the workers' compensation act. These rules are necessary to define proper presentation of documents, proper notice of panel functions, required content of panel reports and conditions for use of auxiliary benefits. The amended law is effective July 1, 1987 and rules are needed to implement the law on that date. These rules are 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. These rules implement sections 34, 35, 36, 38, 39, 40, 42, 44, 46, and 48 of chapter 464 of Laws of 1987. These rules are adopted as temporary rules pursuant to chapter 8 of the Laws of 1987.

5. The following comments were received on the proposed rule and considered by the Division:

1. COMMENT: The panel should include rehabilitation providers.

RESPONSE: Section 39(2) of Senate Bill 315, defines composition of panels. Division will retain discretion to include others on a case-by-case basis.

2. COMMENT: The term "appropriate" in Rule I (3)(b)(i) should be defined.

RESPONSE: Section 36(2) of Senate Bill 315 defines appropriate options.

3. COMMENT: Job pool information referred to in Rule I (3)(c)(iii) should be standardized and identified.

RESPONSE: Job pool information may be standardized and identified through coordination with job service. Experience is not sufficient at this time to determine which source(s) of job information will yield the best results.

4. COMMENT: If the injured worker is receiving total rehabilitation benefits and if for reasons beyond the worker's control a 26 week eligibility period for total benefits lapses prior to the issuance of the panel's report, this should be the basis for an automatic extension of total benefits.

RESPONSE: The division or insurer may extend for good cause per section 44(3), Senate Bill 315 but there is no provision for automatic extension.

5. COMMENT: The claimant should be encouraged to attend the panel meeting and his cost of attendance should be paid for by the insurer.

RESPONSE: Rule I (2)(c) provides claimant will be notified in writing of date and place of panel meetings. There is no statutory basis for payment.

6. COMMENT: Rule I (2)(b) should specify a 26-week maximum of benefit eligibility.

RESPONSE: This is defined in the statutes.

7. COMMENT: Rule II (1) should refer to the $4,000.00 maximum statutory benefit limit.

RESPONSE: This is defined in the statutes.

8. COMMENT: The five round trips provided for in Rule II (3) may be excessive. The trips should be limited to claimant's job pool area and the insurer's authorization should be obtained to go out of state.

RESPONSE: Rule II (1) requires insurer's authorization.

9. COMMENT (Administrative Code Committee): Paragraphs 3 and 6 should refer to "these rules" instead of "this rule." Precise sections the rules implement should be stated in paragraph 3. Paragraph 3 is not a sufficient statement of reasonable necessity for the temporary rule.

RESPONSE: Agreed. The paragraphs are amended.

ROBERT J. ROBINSON
Administrator
Workers' Compensation Division

CERTIFIED TO SECRETARY OF STATE: June 29, 1987

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of rules 24.9.201, 24.9.202, 24.9.204-24.9.210, 24.9.212-24.9.227, 24.9.230 and 24.9.231, relating to procedures for investigation and conciliation of complaints filed with the Commission	NOTICE OF AMENDMENT OF RULES 24.9.201, 24.9.202, 24.9.204-24.9.210, 24.9.212-24.9.227, 24.9.230 AND 24.9.231 (PROCEDURES FOR INVESTIGATION AND CONCILIATION)

TO: All Interested Persons.

1. On April 30, 1987, the Human Rights Commission published notice of proposed amendments to rules 24.9.201, 29.9.202, 24.9.204 - 24.9.209, 24.9.212 - 24.9.227, 24.9.230 and 24.9.231, at page 431 of the Montana Administrative Register, Issue No. 8. In addition, the Commission proposed to extend the provisions of rules 24.9.210, 24.9.215 and 24.9.217 to implement its authority under Title 49, Chapter 3, MCA. All rules relate to the procedures used by the Commission in handling complaints prior to the formal contested case hearing. Rules 24.9.201, 202, 24.9.205, 24.9.212-221, 24.9.223-229, are amended as proposed.

2. The Human Rights Commission has adopted the proposed amendments with the following changes:

24.9.204 COMPLAINT; WHO MAY FILE (1) and (2) same as proposed.

(3) A complaint must be filed within ~~one-hundred eighty-(180)~~ days of the alleged act of discrimination or the cessation of a pattern of discrimination UNLESS THE COMPLAINANT HAS INITIATED EFFORTS TO RESOLVE THE DISPUTE UNDERLYING THE COMPLAINT BY FILING A GRIEVANCE IN ACCORDANCE WITH ANY GRIEVANCE PROCEDURE ESTABLISHED BY A COLLECTIVE BARGAINING AGREEMENT, CONTRACT, OR WRITTEN RULE OR POLICY. IF SUCH A PROCEDURE IS INITIATED, THE COMPLAINT MAY BE FILED WITHIN 180 DAYS AFTER THE CONCLUSION OF THE GRIEVANCE PROCEDURE IF THE GRIEVANCE PROCEDURE CONCLUDES WITHIN 120 DAYS AFTER THE ALLEGED UNLAWFUL DISCRIMINATORY PRACTICE OCCURRED OR WAS DISCOVERED. IF THE GRIEVANCE PROCEDURE DOES NOT CONCLUDE WITHIN 120 DAYS, THE COMPLAINT MUST BE FILED WITHIN 300 DAYS AFTER THE ALLEGED UNLAWFUL DISCRIMINATORY PRACTICE OCCURRED OR WAS DISCOVERED.
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-304, MCA.

24.9.206 DIVISION COMPLAINTS; CLASS ACTIONS BY INDIVIDUALS OR GROUPS (1) ~~The Commission Staff,~~ When ~~it~~ the DIVISION ~~staff~~ has reason to believe that any person or organization is or has been engaged in a discriminatory practice in violation of the act, it may file a complaint with the Commission alleging that the respondent is or has

been engaged in a practice which violates the act. Such a complaint must be filed within ~~one-hundred-eighty-(180)~~ days of the most recent occurrence of the actions or practices complained of UNLESS THE COMPLAINANT HAS INITIATED EFFORTS TO RESOLVE THE DISPUTE UNDERLYING THE COMPLAINT BY FILING A GRIEVANCE IN ACCORDANCE WITH ANY GRIEVANCE PROCEDURE ESTABLISHED BY A COLLECTIVE BARGAINING AGREEMENT, CONTRACT, OR WRITTEN RULE OR POLICY. IF SUCH A PROCEDURE IS INITIATED, THE COMPLAINT MAY BE FILED WITHIN 180 DAYS AFTER THE CONCLUSION OF THE GRIEVANCE PROCEDURE IF THE GRIEVANCE PROCEDURE CONCLUDES WITHIN 120 DAYS AFTER THE ALLEGED UNLAWFUL DISCRIMINATORY PRACTICE OCCURRED OR WAS DISCOVERED. IF THE GRIEVANCE PROCEDURE DOES NOT CONCLUDE WITHIN 120 DAYS THE COMPLAINT MUST BE FILED WITHIN 300 DAYS AFTER THE ALLEGED UNLAWFUL DISCRIMINATORY PRACTICE OCCURRED OR WAS DISCOVERED. ~~A-division-complaint-need-not-identify-any-person-aggrieved-by-the-practice-or-action-but-must-allege-sufficient-facts-to-indicate-the-basis-for-its-charge.~~ A complaint filed by the DIVISION ~~Division staff~~ may seek relief authorized by law for any and all persons adversely affected by the practice or actions complained of. Division complaints shall be filed by the division administrator.

(2) and (3) same as proposed.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501, 49-2-505, 49-3-304 and 49-3-308, MCA.

24.9.207 COMPLAINT; ~~PLACE-AND-MANNER~~ DATE OF FILING

Original subsection (1) deleted as proposed.

~~(2)~~(1) EXCEPT AS PROVIDED IN (2) AND (3), a complaint is considered to be filed on the date received by the Human Rights Division. ~~Except-that~~

(2) In the case of a complaint which is mailed within THE APPROPRIATE PERIOD BUT NOT RECEIVED BY THE DIVISION WITHIN THIS TIME PERIOD, THE COMPLAINT IS DEEMED FILED WHEN MAILED. ~~one-hundred-eighty-(180)-days-of-the-most-recent-act-of-discrimination-alleged-but-which-is-not-received-by-the-division-within-this-time-period,-the-complaint-is-deemed-filed-when-mailed.~~

(3) In the case of a complaint which is deferred or transmitted to the Human Rights Commission by any government agency pursuant to any ~~deferral~~ agreement entered into between the agency and Commission, the complaint is deemed filed as of the date it was filed with or received by the agency which deferred or transmitted the complaint.

Original subsection (3) deleted as proposed.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-304, MCA.

24.9.208 COMPLAINT; CONTENTS (1) EXCEPT AS PROVIDED IN 24.9.209(2), a complaint shall contain the following:

(a) through (d) same as proposed.

Auth: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-305, MCA.

24.9.209 COMPLAINT; PLACE AND MANNER OF FILING, INSUFFICIENCY, EFFECTIVE DATE OF AMENDMENTS (1) same as proposed.

(1)(2) ~~Notwithstanding the requirements of Section 24.9.208 supra, A complaint is deemed filed when the division receives a~~ A SIGNED PRELIMINARY INQUIRY, INTAKE FORM OR OTHER written statement MAY BE DEEMED A COMPLAINT IF IT SUFFICIENTLY IDENTIFIES PARTIES AND DESCRIBES THE ACTIONS BEING COMPLAINED OF. If the description does not state facts establishing an unlawful practice over which the Commission has jurisdiction, the division shall attempt to promptly contact the charging party to ascertain if other facts exist which, when added to the complaint, would describe such an unlawful practice. If such facts do not exist, the staff will notify the charging party ~~will be notified~~ that the Commission has no jurisdiction over the complaint, and the case will be ~~administratively closed~~ dismissed. If such facts do exist or are alleged to exist, the complaint may be amended. Any amendments to cure defects, omissions, OR VERIFICATION, including facts added to establish jurisdiction ~~and verification~~, will relate back to the original filing date.

Second paragraph of (2) deleted as proposed.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501, 49-3-304 and 49-3-305, MCA.

24.9.222 INVESTIGATION; FAILURE OF CHARGING PARTY OR AGGRIEVED PERSON TO COOPERATE ~~WITH DIVISION INVESTIGATION, OR FAILURE TO PROCEED TO HEARING~~ (1) Whenever any charging party or (in the case of a complaint filed on behalf of anyone) any person alleged to be aggrieved shall refuse to comply with a request by the division for information or evidence reasonably necessary for the investigation, conciliation, or litigation of the complaint, the division administrator may ~~administratively close~~ dismiss the case AND ISSUE A RIGHT TO SUE LETTER for failure of the charging party (or aggrieved person) to cooperate with the division, or may dismiss so much of the complaint as relates to that charging party or aggrieved person.

~~If reasonable cause is found and conciliation efforts have been unsuccessful as set forth in ARM 24.9.230 but the charging party is unwilling to proceed to a hearing before the Commission, the division administrator shall also administratively close the case, or so much of the complaint as it relates to that charging party or aggrieved person.~~

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504 and 49-3-307, MCA.

24.9.225 PROCEDURE ON FINDING OF NO CAUSE (1) If a finding of no cause is made by the division in regard to any complaint, notice of the ~~Division~~ finding shall be served on all parties. The notice shall include a statement of the

reasons for the finding. ~~and~~ THE NOTICE MAY BE ACCOMPANIED BY A RIGHT TO SUE LETTER OR, IN THE ALTERNATIVE, THE NOTICE SHALL BE ACCOMPANIED BY a statement ~~informing the parties~~ explaining the right of the charging party's or aggrieved person's ~~right~~ to ~~seek a reconsideration of the finding~~ request a hearing. ~~A reasonable time, of at least ten (10) days shall be given to the Charging Party or aggrieved person from the date of service of the notice to request an appeal of the no cause determination. The request shall be in writing.~~ The notice shall specify the time in which the charging party or aggrieved person must file a written request for hearing OR FOR A RIGHT TO SUE LETTER which in no case shall be less than 14 days from the date the notice of the finding was mailed to the parties.

Original subsections (2) through (4) deleted as proposed. New subsection (2) same as proposed.

~~(6)~~ (3) If ~~no conference is requested or, subsequent to a conference,~~ no written request for hearing OR RIGHT TO SUE LETTER is made in the time stated in the notice, the ~~division administrator~~ staff shall issue AN ~~a dismissal~~ order on behalf of the Commission in which the no cause finding is adopted as the final order of the Commission AND THE CASE IS DISMISSED WITH PREJUDICE. Notice of the dismissal order shall be sent to all parties.

New subsection (4) same as proposed.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA.

24.9.226 ~~PREHEARING;~~ CONCILIATION (1) through (7) same as proposed.

~~(9)~~ (8) ~~Nothing in this section shall prohibit the division, on the request of any party, from undertaking efforts to achieve a voluntary resolution of a case at any time after the charge is filed and before a final order is issued. Any settlement of a case, agreed to prior to or after the conciliation period, shall be subject to approval by the division administrator on behalf of the Commission, and shall be enforceable in the same manner as other conciliation agreements provided for in these rules. The Commission must be informed~~ The parties must inform the Commission of ~~any~~ ALL TERMS OF ANY settlement entered into after the Commission has issued a final order.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA.

24.9.230 CERTIFICATION OF A CASE TO COMMISSION FOR HEARING (1) Whenever the division ~~administrator~~ has ~~determined~~ ISSUED A FINDING that substantial evidence (reasonable cause) exists to believe that a respondent has engaged in a discriminatory practice in violation of the act or code and that conciliation efforts have been unsuccessful, the administrator shall notify the Commission that the case should be set for hearing, ~~providing that the~~

~~charging party is willing to proceed to a hearing before the Commission at that time~~. In addition, if the division ~~administrator~~ has ~~determined~~ ISSUED A FINDING that no substantial evidence (no reasonable cause) exists to believe that a respondent has engaged in a discriminatory practice in violation of the act OR CODE, but the charging party nevertheless wishes to proceed to a hearing before the Commission, the case shall also be certified for hearing UNLESS THE DIVISION HAS ISSUED A RIGHT TO SUE LETTER.

24.9.231 NOTICE OF CERTIFICATION FOR HEARING (1) Same as proposed.

(2) The division administrator shall notify the parties of the certification for hearing. ~~if applicable.~~

(3) Same as proposed.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-505 and 49-3-308, MCA.

3. The Commission adopts these amendments as part of a review of its procedural rules in order to incorporate legislative changes to the Human Rights Act and Governmental Code of Fair Practices, streamline its procedures, eliminate redundant and unnecessary material, provide clear distinctions between the investigation/conciliation stage and the contested case hearing stage of processing, and clarify that the Commission's procedural rules are intended to implement Chapter 3 of Title 49, MCA.

4. The Commission received written comments. The Commission's response to those comments is summarized as follows:

(a) The Commission received comments from its staff regarding changes the 1987 legislature had made to the Human Rights Act and Governmental Code of Fair Practices, Ch. 511, 1987, Laws of Montana and Ch. 415, 1987 Laws of Montana. These legislative changes to the Act and Code occurred after the Commission had approved the Notice of Proposed Amendment to these rules. The staff comments are incorporated in the rules as adopted.

(b) The Commission received a comment from the Department of Institutions requesting the Commission to amend rule 24.9.219 to allow 30 days for response to information requests. Presently, the rule does not provide any time limitations to answer information requests. The Division does, however, request responses within 10 days. Extensions are liberally granted and the Division has demonstrated flexibility. In some cases, application of a 30 day rule would not be appropriate. The Commission seriously discussed this suggestion and concluded that allowing all respondents 30 days would unnecessarily prolong the process. For the foregoing reasons the Commission rejected this suggested amendment.

5. The authority of the Commission to make the amendments is based on sections 49-2-204 and 49-3-106, MCA. The rules as amended implement sections 2-4-603, 49-2-101,

49-2-203, 49-2-501 - 49-2-506, 49-3-101 and 49-3-304 - 49-3-309, MCA.

In the matter of the repeal of rules 24.9.203, 24.9.211 and 24.9.228, relating to Commission prehearing procedures	))))	NOTICE OF REPEAL OF RULES 24.9.203, 24.9.211, and 24.9.228 (PREHEARING PROCEDURES)

To: All Interested Persons.

1. On April 30, 1987, at page 452, the Human Rights Commission proposed to repeal rules 24.9.203, found on page 24-362, Administrative Rules of Montana, 24.9.211, found on page 24-367, Administrative Rules of Montana, and 24.9.228, found on page 24-380, Administrative Rules of Montana, relating to the procedures used by the Commission on handling complaints prior to the formal contested case hearing.

2. The Commission has repealed the rules as proposed.

3. The Commission received no comments in opposition to the proposed repeal of these rules.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

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

Certified to the Secretary of State July 6, 1987.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of Human Rights Commission rule regarding age discrimination in housing	NOTICE OF REPEAL OF RULE 24.9.1107 BY LEGISLATIVE ACTION

To: All Interested Persons.

On April 17, 1987 at Ch. 527, Laws of Montana, 1987, the fiftieth legislature repealed the administrative rule that prohibits an owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property from refusing to make the housing accommodation or property available to a person or persons with a child or children. The act repealed rule 24.9.1107 found at 24-503, Administrative Rules of Montana, with an effective date of April 17, 1987. The legislature found that Rule 24.9.1107, directly conflicted with the public policy expressed by the Legislature because the rule failed to incorporate the application of reasonable grounds exceptions as provided for in section 49-2-305, MCA.

MONTANA HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

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

Certified to the Secretary of State July 6, 1987.

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

In the matter of the amendment of Rules 36.22.501 and 36.22.502 pertaining to location limitations and plugging and abandonment procedures for seismic shot holes.	NOTICE OF ADOPTION OF AMENDMENTS TO RULES 36.22.501 SHOT LOCATION LIMITATIONS AND 36.22.502 PLUGGING AND ABANDONMENT

TO: All Interested Persons:

1. On May 14, 1987 the Board of Oil and Gas Conservation published a notice of proposed amendment of rules 36.22.501 and 36.22.502 at page 520 of the 1987 Montana Administrative Register Issue No. 9. That notice did not contemplate a public hearing.

2. The board adopted the amendments to ARM 36.22.501 exactly as proposed. The board adopted ARM 36.22.502 with the following changes:

36.22.502 PLUGGING AND ABANDONMENT The first paragraph and subsections (1), (2), (3) and (4) are amended as proposed.

(5) A seismic shot hole may be left unplugged at the request of the surface owner for conversion to a fresh water well provided the surface owner executes a release on Form No. 19 relieving the party otherwise responsible for the plugging and abandonment of the hole from any liability for damages that may thereafter result from the hole remaining unplugged. This release will cite the date, location, surface elevation, depth to aquifer **~~or gas emitting strata~~**, and any action taken. This information shall be furnished by the geophysical operator. The surface owner must also notify and file within 30 days appropriate forms with the Water Rights Bureau of the Department of Natural Resources and Conservation. The surface owner must also apply for a permit from the Board of Water Well Contractors, and explain in detail the procedures to be used in constructing the well. This is to insure that the shot hole is properly constructed, cased and developed into a water well, according to the minimum construction standards for water wells, as adopted by the Board of Water Well Contractors.

3. The above change was adopted to clarify the language pertaining to surface owner requirements for shot holes which they request to be left unplugged for conversion to fresh water wells.

4. The board received a number of comments concerning its proposed amendments to the seismic rules. Summaries of these comments and the board responses follows:

A. ARM 36.22.501

COMMENT: Vibroseis should not be allowed as close as 330 feet to a water well or spring.

RESPONSE: The representatives of the landowners associations and the seismic contractors who worked on these rules are in agreement, that properly conducted vibroseis within 330 feet of a water well or spring should not harm that water well or spring. The board recognizes that unusual conditions may exist where harm could be caused by vibroseis even at greater distances than 330 feet. The requirement is a minimum and is not a finding or a warranty by the board that that distance will prevent all seismic caused injury to water wells or springs. However, the Board believes, that in most instances, such will be the case.

B. ARM 36.22.502

COMMENT: The board has no authority to adopt this rule in that Section 82-1-104(2), MCA, provides only that shot holes shall be plugged "in such a manner as shall be specified by the board."

RESPONSE: The board recognizes that Section 82-1-104(2), MCA, could be clearer in directing and authorizing the board to adopt rules on this subject. However, this is a change in an existing rule that was originally adopted in 1977 and subsequently amended in 1982, 1983 and 1984. The legislature may be imputed to be aware of the existing rule and has not deemed it necessary to amend the Board's authority to enforce the rule in any of the succeeding sessions following adoption of the rule in 1977. The board believes the legislature intended it to have this authority and it is essential that it be exercised.

5. No other comments were received.

6. The authority of the Board to make the proposed amendments is based on Section 82-1-101, MCA and the rules implement Sections 82-1-101 and 82-1-104, MCA.

James C. Nelson

James C. Nelson, Chairman
Board of Oil and Gas Conservation

By: Dee Rickman

Dee Rickman

Certified to the Secretary of State, July 6, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Interested Persons:

1. On May 28, 1987, The Department of Revenue published notice of proposed adoption of Temporary Rules I through XI relating to the Accommodations tax on pages 674 through 677 of the 1987 Montana Administrative Register, Issue No. 10.

2. The temporary rules are adopted as follows:

RULE I DEFINITIONS (1) As used in the regulations "facility" means a building or a group of buildings or an area recognized as a single entity.

(2) The term "lodging facilities" means a unit or units used within a facility. This is also a single area within a campground.

(3) The word "lodging" means accommodation intended for the purpose of sleeping or resting.

(4) As used in the regulations the terms "public" or "general public" are synonymous. If a facility is charging for lodging facilities and other services, it is presumed to serve the general public unless proven otherwise.

(5) The term "owner or operator of a facility" means any person or organization who rents a lodging facility to the public and is ultimately responsible for the financial affairs of the facility. Such person may be an individual, corporation, partnership, estate, trust, association, joint venture or other unincorporated group or entity. Owner or operator also includes all religious, education, charitable and social organizations or societies which are not excluded by the provisions of Title 15, Chapter 65, and all governmental entities at the federal, state and local levels.

(6) The phrase "intended for ... resident dwelling purposes" means a home, some permanent abode or residence, in which one has the intention of remaining.

(7) The term "gross receipts" means total gross accommodation charges for use of lodging facilities, whether the charges were received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature.

(8) The term "non-taxable receipts" means exempt accommodation charges as defined in Rule III of this chapter. Also included are accommodation charges deemed uncollectible and written off the records of the facility during a specific quarterly period, and any discounts which may have been included

in gross receipts but not part of the net accommodation charge to the user.

(9) The average daily accommodation charge" (ADAC) is the average room rate for single occupancy for all units rented for single occupancy in a facility.

For example: 40 unit facility
10 units are never rented for single occupancy
30 units rented for single and other occupancy

of the 30 rented for single and other occupancy:

10 units rent for $15.00/night = $150.00
20 units rent for $12.00/night = 240.00
Total rate charged for all rooms = $390.00
divided by number of units 30 = $13.00 ADAC

(10) The term "user" means the person(s) renting and paying for the lodging facilities. AUTH Sec. 11 Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 1, Ch. 607, L. 1987.

RULE II WHO MUST COLLECT THE TAX AND FILE RETURNS (1) Every owner/operator of a facility operating in Montana must collect a 4% tax, rounded to the nearest penny, from the users of facilities and file returns with the department of revenue as required in Rule VII.

(2) To determine taxability of a facility, the owner/operator should consider the type of operation.

If the operation is:	Use Step:
Hotel, motel, hostel, public lodginghouse or bed and breakfast facility	a and b
Resort, condominium inn, dude ranch, guest ranch facility	c
Campground	d
Dormitory	e

(a) Compute the average daily accommodation charge (ADAC). If the ADAC is $14.98 or less per day and the facility is a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility, no further step is required. The owner/operator of the facility is not required to collect the tax. The $14.98 exemption applies only to a hotel, motel, hostel, public lodginghouse or bed and breakfast facility.

(b) If the ADAC is more than $14.98, and the facility is a hotel, motel, hostel, public lodginghouse or bed and breakfast facility, the second step is to look to the length of the rental period of the lodging facilities.
(i) If it is rented solely for 30 days or more the lodging facilities are not taxable.

(ii) If it is rented for less than 30 days the lodging facilities are taxable unless specifically exempted (Rule III).

(c) If the facility is a resort, condominium inn, dude ranch, or guest ranch, look at the length of the rental period of the lodging facilities as stated above in (b)(i) and (ii).

(d) If the facility is owned or operated by a nonprofit or religious organization and the lodging facilities are rented primarily to youth under 18 years of age for camping, no further step is needed. The facility is exempt from the tax. If not, look at length of the rental period as stated above in (b)(i) and (ii).

(e) If the facility is a dormitory and the lodging facilities are rented to users enrolled in a regular academic program or a program of continuing education, no further step is needed, charges for the lodging facilities are exempt (see Rule III). If not, tax must be collected on the accommodations charges.

Some Examples:

	Taxable
Health facility	No
Religious Camps - primarily for youth	No
- occasionally for youth	Yes
Youth hostel	Yes
Federal campground	Yes
Campground - overnight trade	Yes
- permanent space	No
Rooms rented to government employees	Yes
Dormitory - lodging facilities rental to non-enrolled students	Yes
- lodging facilities rental to enrolled students	No

(3) Every owner or operator of a facility shall be liable for all amounts required to be collected as a tax under the provisions of Title 15, Chapter 65, and with respect thereto the owner or operator shall be considered a taxpayer.

(4) A taxpayer has the right to request a hearing on a tax liability as provided in 15-1-705, MCA.

(5) If the tax or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, Chapter 1, Part 7. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 1 and 2, Ch. 607, L. 1987.

RULE III EXEMPT FACILITIES/ACCOMMODATION CHARGES (1) An owner/operator of a facility or campground shall not collect the tax for lodging if the lodging facilities are rented to the user for a period of 30 consecutive days or more. Rental agreements cannot be combined for the purpose of determining the length of the rental period. Intention to rent for a period of 30 or more

continuous days is documented by a lease, contract or historical evidence of continuous rental.

(2) An owner/operator of a health facility shall not collect the tax.

(3) Accommodation charges for lodging facilities at dormitories furnished to the following are exempt:

(a) Persons enrolled in a regular academic program or a program of continuing education; or

(b) Participants in an education program to improve the work of the educational institution by developing the professional knowledge and skills of the employees of the institution hosting the program; or

(c) Participants in an educational program reserved exclusively for students of accredited educational institutions.

(4) An owner/operator of a hotel, motel, hostel, public lodginghouse or bed and breakfast facility whose average daily accommodation charge is less than $14.98 per day is not required to collect the tax.

(5) An owner/operator of a youth camp primarily used by youth (under the age of 18) for camping shall not collect the tax.

(6) Accommodation charges collected before July 1, 1987 even though for reserved lodging after July 1, 1987 are not taxable. Deposits made before July 1, 1987 which include accommodations and other charges must be allocated. The proportionate amount of accommodation charges is deemed collected prior to July 1, 1987.

(7) An accommodation charge for lodging furnished federal government entities is exempt from the tax if and only if the accommodation charge is billed and directly paid by the governmental entity.

(8) An accommodation charge for lodging for an enrolled member of a federally recognized Indian tribe in a facility located within the exterior boundaries of an Indian reservation is exempt from the tax. The owner/operator must record the individual's enrollment number on the record of the accommodation charge.

(9) An accommodation charge for lodging furnished to foreign diplomats, entitled under international law or a bilateral treaty, is exempt upon showing of a tax-exempt card issued by the U.S. state department.

(10) An owner or operator of a camping area which is temporarily located pursuant to a permit issued by an agency of the U.S. government is not required to collect the tax. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 1(3), Ch. 607, L. 1987.

RULE IV MULTIPURPOSE FACILITIES (1) An accommodation charge for a room used for a purpose other than lodging (such as meeting rooms) are not subject to the tax.

(2) An accommodation charge for a room used for lodging and another purpose is subject to the tax.

(3) Rooms supplied with beds are presumed to be rented for purpose of lodging unless the contrary is conclusively established by the owner/operator. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec 2(2), Ch. 607, L. 1987.

RULE V COMBINED CHARGE FOR SERVICES (1) When accommodations charges are combined with food, beverage, recreation or other charges which are a substantial portion of the charge, the owner or operator may allocate the accommodation charge using one of the following:

(a) A flat rate of $24.00 per day per person;

(b) 25 percent of all charges per day per person; or

(c) A charge justified by reasonable documentation. An owner or operator must have each charge itemized and available for review.

(2) Accommodation charges do not include separately stated service charges which are not an integral part of the use or occupancy of the room or campground space such as separately stated telephone, television, food, beverage or personal laundry charges.

(3) The department may disallow an owner or operator's method of allocating the accommodation charge under (1) above if the department has reasonable cause to believe that the method of allocation was chosen solely to qualify the facility for a tax exemption on the basis that the ADAC was $14.98 a day or less. The department will, in such cases, select a method of allocating the accommodation charge that reasonably reflects the accommodation charge for comparable facilities.

(4) Accommodation charges do include amounts charged for bath house facilities or temporary use of tangible personal property used in conjunction with the room such as a charge for an extra bed.

(5) In the case of campgrounds charges for water, electrical or sewer hookups and bath house facilities are included in the amount subject to tax. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 2, Ch. 607, L. 1987.

RULE VI FACILITY REGISTRATION (1) Every owner/operator required to impose a 4% accommodation tax must register and file an application for a state identification number on the form provided by the department for each facility owned/operated in Montana.

(2) Any owner/operator who has acquired the business of another facility shall not use his predecessor's state identification number. The owner/operator must register before the due date of the first report. This applies to both new businesses and business which have been purchased.

(3) Each registration application must contain the federal entity identification number assigned by the Internal Revenue Service. For sole proprietorships, this number is a Social Security number. Any entity change requiring a new federal identification number requires a new facility registration.

(4) No registration is considered complete unless the federal identification number appears on the application.

(5) Not being registered does not relieve an owner/operator from the collection and reporting requirements. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 5, Ch. 607, L. 1987.

RULE VII QUARTERLY REPORTS AND PAYMENTS - DUE DATES (1) Every owner/operator is required to make, for each calendar quarter or portion of a quarter in operation, a report to the Department of Revenue, Helena, MT. The report must include gross accommodation charges.

(2) The owner/operator shall remit the amount of said tax with the quarterly report. The report will cover quarterly periods ending March 31, June 30, September 30, and December 31 and must be postmarked no later than the 30th day of the month following the close of the quarter. Reports must be made on forms supplied by the department.

(3) If no tax is collected, the report should so state.

(4) No extension of time for remittance of accommodation tax proceeds may be granted by the department.

(5) If the due date for filing falls on a holiday or weekend, the due date for the return shall be the next business day following such holiday or weekend.

(6) The owner/operator must file a final quarterly report for the last quarter of operation and state the last date of business. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 3, Ch. 607, L. 1987.

RULE VIII PENALTIES AND INTEREST (1) Failure to file the return and/or pay the tax collected, will result in a penalty of 2% of the tax that was collected or that should have been collected.

(2) Interest is 1% per month or any portion of a month on the tax due.

(3) The penalty may be abated pursuant to Administrative Rule 42.3.101-114. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 6(1)(2)(4), Ch. 607, L. 1987.

RULE IX RECORDS REQUIRED - AUDIT (1) Each owner/operator of a facility shall maintain records necessary to document gross receipts from accommodation charges. For example: an owner/operator may be required to substantiate gross receipts reported for a particular quarter. Reconstruction of the reported gross receipts from the original accommodations receipts will be required for audit purposes.

(2) Such records shall include specific documentation of exempt charges.

(3) Beginning 7/1/87 through 6/30/88, the owner or operator of a facility must notify the user of the 4% accommodation charge. After 6/30/88 to insure there is a record of the amount of tax charged, the tax shall be separately stated on the receipt, invoice or other document provided to the user.

(4) The records shall be maintained by the owner/operator of a facility for a period of five years and shall be subject to audit by the department of revenue for that period. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 4, Ch. 607, L. 1987.

RULE X FAILURE TO FURNISH REQUESTED INFORMATION (1) The department, for the purpose of determining the correctness of any return, may request additional information to verify amounts or items on the return.

(2) If a return is not filed or information is not supplied, the department will estimate the tax from available information. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 6(3), Ch. 607, L. 1987.

RULE XI SUMMARY REPORT REQUIRED (1) The department of revenue shall provide the tourism advisory council a quarterly report within 90 days of the close of a quarter of the tax collected: (a) within the city limits of cities and consolidated city-counties; (b) within the counties; and (c) within tourism regions.

(2) The tourism advisory council must notify the department of revenue of any tourism boundary change 30 days before the end of quarter. AUTH Sec. 11, Ch. 607, L. 1987, Eff. 7/1/87, IMP Sec. 8, Ch. 607, L. 1987.

3. The Department proposed 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, the effective date of the tax. The regular rules will be adopted on or before October 1, 1987.

4. The Department sought the advice of a group of interested persons as provided for in 2-4-304, MCA, in drafting the temporary rules. Comments were received by the Montana University System and the Missoula Hospitality Association. Neither group had negative comments to these rules.

The University system made suggestions concerning the exemption of charges for use of dormitories. Those suggestions were substantially accepted and are reflected in Rule III(3)(a), (b), and (c). Rule III(3)(b) is more restrictive than the suggestion of the University system to insure that convention type use of the dormitory facilities are taxable, while meetings designed to improve the professional skills of university and college staff would be exempt.

Rule I is necessary because these terms are used in rules II through XI. Section 1 of Chapter 607, L. 1987 does not adequately define all of the terms necessary for the enforcement of this Act.

Rule II is necessary to more easily identify, in outline form, which facilities are required to collect the tax, and how the tax must be collected. Section 1(3) of Chapter 607, L. 1987, gives a general guidance, but does not provide specific steps for the facility to follow to make a determination. Rule II also specifies the hearing and appeal process.

Rule III is also necessary to determine which facilities and lodging facilities are exempt from the tax. Section 1(3) of Chapter 607, L. 1987, is vague in this area.

Rule IV is necessary to determine if a particular unit in the facility is tax exempt. Section 2(2) of Chapter 607, L. 1987, states that a room used for other than lodging is exempt. Rule V explains how to determine if the room is used for 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. Section 1(1) of Chapter 607, L. 1987, merely says to exclude or include certain items, but is not an exhaustive list. Rule V gives guidance for making the allocation and what documentation is necessary to allocate the charges.

The 25% rate was determined using facilities who offered meals, transportation, recreations and other services. Because of the diverse nature of facilities, an estimate felt to be reasonable is as follows:

25%	meals
25%	recreation
25%	other (transportation, child care, etc.)
25%	lodging
100%	

The $24 per night was selected because it is the state per diem allowance which is lower than the typical accommodation charge in Montana. There are 678 Montana motels/hotels listed in the "1987 Accommodations Guide." There are 180 listings in the "AAA Tour Guide". The 1987 Accommodations Guide" was more representative of the entire state. Of the 678, 374 or 55% were less than $30/night for single occupancy. Thus, the $24 flat rate was considered reasonable.

Rule VI is necessary to explain how to register with the Department. Chapter 607, L. 1987, requires that the taxpayer must register. Rule VI explains 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 taxpayer on the due date of the quarterly report, how to handle cash and credit receipts,

seasonal filings, and a due date which falls on a holiday or weekend.

Rule VIII is necessary to notify the taxpayer what the penalties are, and when and how they will be applied. Section 6 of Chapter 607, L. 1987, needs additional clarification on these issues.

Rule IX is necessary to advise the owners and operators of what records to keep and how long to keep them. Section 4 of Chapter 607, L. 1987 gives a general description, but does not detail what the records should contain. Rule IX specifies what information is necessary to substantiate tax reports.

Rule X is necessary to inform the taxpayer of the fact 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. Section 6(3) of Chapter 607, L. 1987, merely states that the Department may make a determination. Rule X clarifies for the taxpayer what action the Department will take to determine the correct tax.

Rule XI is necessary because Section 8(1) of Chapter 607, L. 1987, merely 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. It will more adequately specify what is necessary to make the determination.

3. The authority of the Department to adopt these rules is based on Sec. 11, Ch. 607 L. 1987. The rules implement Sec. 1 through Sec. 10, Ch. 607 L. 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/30/87.

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 ADOPTION of Rules I through XI - Light Vehicle & Motorcycle Tax rules are adopted through the TEMPORARY RULEMAKING PROCESS.

TO: All Interested Persons:

1. On May 28, 1987, the Department of Revenue published notice of the proposed adoption of Temporary Rules I through XI relating to the Light Vehicle & Motorcycle Tax at pages 678 through 682 of the 1987 Montana Administrative Register, Issue No. 10.

2. The temporary rules I through XI do not replace or modify any section currently found in the Administrative Rules. However, permanent rules will be noticed for adoption prior to October 1, 1987.

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

RULE I VALUATION PROCEDURE (1) (a) This schedule is to be used for vehicles with registration slips indicating expiration dates of June 30, 1987 through and including September 30, 1987. It should also be used for out-of-state vehicles being registered in the state from July 1, 1987 through and including December 31, 1987.

(b) To determine the market value for automobiles and trucks with a rated capacity of 3/4 tons or less, motorcycles and quadricycles, vehicle assessment staff will use the following methods in a sequential order until a definite value is determined.

(2) (a) Automobiles and trucks with rated capacity of 3/4 ton and less listed in the guides will be valued using:

(i) The "Average Trade-in" as listed in the January 1987 Mountain States Edition of the N.A.D.A. Official Used Car Guide. This book values automobiles and trucks with manufacturer's years 1980 through 1986. For 1987 vehicles that were first registered in 1986, have already paid their new use tax and that need to be reregistered, staff will use 80% of the manufacturer's suggested list price (M.S.R.P.) as the "Average Trade-in". Those M.S.R.P.'s can be found in the pink section of the above-listed guide.

(ii) The "Average Trade-in" as listed in the January through April 1987 National Edition of the N.A.D.A. Official Older Used Car Guide. This book values automobiles and trucks with manufacturers' years 1970 through 1979.

(iii) If the vehicle cannot be found in the above mentioned guides, staff will use the January through March 1987 Value Guide to Cars of Particular Interest (C.P.I.). If the vehicle is listed, the market value is the "Low" value listed in this guide.

(b) Licensed Motorcycles and Licensed Quadricycles listed in the guides will be valued using:

(i) The "Average Trade-in" or wholesale as listed in the January through April, 1987 National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide. This book values motorcycles and quadricycles with manufacturers' years 1972 through 1987.

(3) Automobiles and trucks with rated capacity of 3/4 ton and less, and licensed motorcycles and licensed quadricycles, previously registered that are subsequently not listed in the guides will be valued as follows:

(a) For 1987 only, vehicles that are no longer listed in any of the guides (this would normally mean the vehicle would be 1969 and older), staff will use the "1970 or last known average trade-in" for the same make and model vehicle as the vehicle being assessed and depreciate that value at the rate of 10% per year for each year it has not been listed in the guide until it reaches the minimum value.

(4) Automobiles and trucks with rated capacity of 3/4 ton and less, and licensed motorcycles and licensed quadricycles, not originally listed in the guides will be valued as follows:

(a) For vehicles that are less than 1 year of age and that have previously paid the new car sales tax, the average trade-in value will be determined by depreciating the original f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price by 20%.

(b) For vehicles that are 1 year or older in age, the average trade-in value will be determined by depreciating the f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price in accordance with the 1987 trended percent good schedules contained in New Rule III. AUTH 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP 15-8-202, MCA.

RULE II MINIMUM VALUE (1) If the market value (average trade-in) as determined by implementing the valuation procedures in New Rule I is below $500, a minimum value of $500 will be retained for automobiles and for trucks with a rated capacity of 3/4 ton and less. For motorcycles and quadricycles the minimum value is $250. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE III PERCENT GOOD SCHEDULES (1) 1987 trended percent good schedule for licensed motorcycles and licensed quadricycles

Year	Trended % Good
1987	80%
1986	57%

1985	44%
1984	37%
1983	34%
1982	34%
1981	31%
1980	27%
1979	25%
1978	25%
1977	25%
1976	22%
1975	22%
1974	21%
1973	21%
1972 & Older	21%

(2) 1987 trended percent good schedule for automobiles and trucks with a rated capacity of 3/4 ton and less*

Year	Trended % Good
1987	80% of F.O.B.
1986	78%
1985	69%
1984	59%
1983	50%
1982	44%
1981	38%
1980	32%
1979	29%
1978	27%
1977	24%
1976	21%
1975	19%
1974	14%
1973	13%
1972	13%
1971	13%
1970	12%
& Older	11%

*Note: The schedules are only used for vehicles not originally listed in a NADA book or CPI book. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE IV BASE VALUE ADJUSTMENTS (1) There will be no adjustment made to the base value to reflect optional equipment or low or high mileage. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE V VEHICLE AGE DETERMINATION (1) The age of a vehicle, whether it be an ad valorem tax vehicle or a 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 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE VI PAYMENT OF THE NEW CAR SALES TAX AND THE 2% TAX (1) New vehicles, never having been registered and registered after June 30, 1987, are only subject to a new use tax. Those vehicles would pay the ad valorem property tax in the second year of registration.

(2) For taxpayers whose 20 day sticker on their new vehicle expires before July 1, 1987 and who have failed to register their vehicle, that taxpayer is subject to both the fee-in-lieu of tax and the new use tax required by the system of registration provided for prior to July 1, 1987. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, and 61-3-501, MCA.

RULE VII FINAL VALUATION AUTHORITY (1) Should a taxpayer dispute 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 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE VIII REGISTRATION, EXPIRATION DATE PRIOR TO JUNE 30, 1987 (1) Taxpayers who have a registration expiration date prior to June 30, 1987 and who register their vehicle after June 30, 1987, will be charged the fees that were in effect when they should have registered the vehicle.

(2) For those taxpayers described in subsection (1), the 1987 fee-in-lieu of tax should be charged rather than the ad valorem property tax. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, and 61-3-314, MCA.

RULE IX ANNIVERSARY REREGISTRATION (1) A taxpayer may not change the anniversary date for reregistration of vehicles pursuant to the provisions of 61-3-315, MCA, (staggered registration) during the period from the effective date of Ch. 611, L. 1987, which was April 27, 1987, until January 1, 1988. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, 61-3-315, and 61-3-501, MCA.

RULE X EARLY REGISTRATION (1) For vehicles with a registration expiration date on or after June 30, 1987, taxpayers may not reregister the vehicle and pay the ad valorem property tax before July 1, 1987 unless the county commissioners for the county in which the vehicle is being registered have indicated, in writing, prior to July 1 whether the county intends 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 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

RULE XI TAX RATE PERCENTAGE (1) Tax rate percentages less than 2% are not authorized under Title 61, Chapter 3, subchapter 5. AUTH, 15-1-201 and 61-3-506, MCA, Auth Ext, Sec. 39, Ch. 611, L. 1987, Eff. 4/27/87, IMP, 15-8-202, MCA.

Rule I is necessary because the department must have a specific valuation procedure since the guidebooks do not list all vehicles which are to be valued under Ch. 611, L. 1987. Since the procedure would effect a large group of people in Montana, it meets the requirement for promulgating a rule.

Rule II regarding minimum value is necessary because the language of Ch. 611, L. 1987, is inconsistent conflicting regarding minimum value. The department has selected the lowest minimum values listed in Ch. 611, L. 1987. Again, since Ch. 611, L. 1987, affects a large number of citizens in Montana, it meets the requirement of an administrative rule.

Rule III concerning the percent good schedules for vehicles not listed in guidebooks were calculated using average depreciation for vehicles listed in N.A.D.A. guidebooks. The vehicles were selected by Property Assessment Division staff to represent, in the judgment of the staff, the general population of vehicles. For the selected vehicles, the "average trade-in value" was divided by the Manufacturer's Suggested Retail Price, and the resulting percentages were divided and rounded to the nearest whole number. The results are the numbers listed in the percent good schedules.

Rule IV concerning base value adjustments is necessary to clarify the base value adjustment procedure as it applies to all vehicles which are assessed.

Rule V concerning vehicle age determination is necessary 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 Ch. 611, L. 1987.

Rule VI is necessary because of the confusion created in transferring from a vehicle fee system to an ad valorem vehicle tax system.

Rule VII concerning final valuation authority is necessary to resolve any conflicts between the computer system operated by the Department of Justice and the general assessment authority statutorily provided the Department of Revenue by statute.

Rule VIII regarding registration is necessary because of the confusion created in transferring from a fee system to an ad valorem tax system.

Rule IX concerning anniversary registration is necessary to define how the staggered registration statute should be coordinated with Ch. 611, L. 1987.

Rule X concerning registration prior to July 1 is necessary to coordinate early registration of vehicles with the authority of counties to adopt an additional vehicle tax and to insure payment of the proper tax.

Rule XI concerning tax rate percentages 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 rule I.

4. No comments were received on the notice to adopt these rules as published on May 28, 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/29/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Interested Persons:

1. On May 28, 1987, the Department of Revenue published notice of proposed amendment to 42.17.105 relating to Withholding Allowances through the temporary rulemaking process at page 672 of the Montana Administrative Register, Issue No. 10.

2. The Department has adopted the rule as proposed.

3. No comments were received.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 6/30/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.131 relating to withholding allowance review procedures.	NOTICE OF AMENDMENT of of ARM 42.17.131 relating to withholding allowance review procedures.

TO: All Interested Persons:

1. On May 28, 1987, the Department of Revenue published notice of the proposed amendment to ARM 42.17.131 relating to Withholding Allowances at page 683 of the 1987 Montana Administrative Register, Issue No. 10.

2. The department has amended the rule as proposed.

3. No comments were received for this amendment.

JOHN D. LaFaver, Director
Department of Revenue

Certified to the Secretary of State 07/06/87.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rules regarding temporary rules, rule types and their location, and updating procedures.	))))))	NOTICE OF AMENDMENT OF ARM 1.2.204 - 206, 1.2.217 - 219, 1.2.402, 1.2.404, 1.2.411, 1.2.412, 1.2.422, 1.2.519

TO: All Interested Persons.

1. On May 28, 1987, the office of the Secretary of State published a notice of proposed amendment of rules regarding temporary rules, rule types and their location and updating procedures on page 685 of the Montana Administrative Register, Issue No. 10.

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

3. No comments or testimony were received.

JIM WALTERMIRE
Secretary of State

Dated this 6th day of July, 1987

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

In the matter of the amendment of Rules 46.6.1501, 46.6.1502, 46.6.1503, and 46.6.1504 pertaining to the program for persons with severe disabilities	))))	NOTICE OF THE AMENDMENT OF RULES 46.6.1501, 46.6.1502, 46.6.1503 AND 46.6.1504 PERTAINING TO THE PROGRAM FOR PERSONS WITH SEVERE DISABILITIES

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules as listed above pertaining to the program for persons with severe disabilities at page 524 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.6.1501, 46.6.1502, 46.6.1503 and 46.6.1504 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: A definition of "severe disability" is needed if providers are to meet the needs of new groups being served based upon these rule changes.

RESPONSE: For purposes of this program, "severely disabled person" and "disability" are defined at 53-19-102, MCA.

COMMENT: The change from "physical" to "severe" will increase the populations served under independent living funds. Based upon these changes, developmental disability funding should also be shared with new populations to be served such as the learning disabled. In any case, these rule changes require more money to meet both the increased population demands on programs and the need to develop expertise and awareness concerning issues relevant to the new populations served.

RESPONSE: The language change from "physical" to "severe" implements the federal authority relating to the program. In order to be in compliance with federal authority, the Department must serve the designated population of severely disabled persons. The Department does not, however, anticipate any increased funding needs due to the change.

Director, Social and Rehabilitation Services

Certified to the Secretary of State _____, 1987.

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

In the matter of the amendment of Rules 46.12.302, 46.12.590, 46.12.591, 46.12.592 and 46.12.599 pertaining to inpatient psychiatric services	)))))	AMENDED FINAL NOTICE OF THE AMENDMENT OF RULES 46.12.302, 46.12.590, 46.12.591, 46.12.592 AND 46.12.599 PERTAINING TO INPATIENT PSYCHIATRIC SERVICES

TO: All Interested Persons

1. On June 25, 1987, the Department of Social and Rehabilitation Services published notice of the amendment of the rules cited above for inpatient psychiatric services. The rules had an effective date of June 30, 1987, and, as indicated in paragraph 5 on page 904 of issue number 12 of the Montana Administrative Register, were to be applied retroactively to April 1, 1987.

2. After further discussion with the Health Care and Financing Administration (HCFA) regional office in Denver, the Department has been informed that federal financial participation would be available for an inpatient psychiatric service rule change and state plan change prior to the first date of the current calendar quarter (April 1, 1987).

3. The Department is hereby amending paragraph 5 of the rule notice cited above to reflect that the rule changes will be applied retroactively to March 16, 1987.

4. The authority of the Department to make these changes is based upon 53-2-201 and 53-6-113 MCA and the rules implement 53-6-101, 53-6-111 and 53-6-141 MCA.

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1987.

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

In the matter of the amendment of Rule 46.25.728 pertaining to eligibility determinations for General Relief Assistance	))))	NOTICE OF THE AMENDMENT OF RULE 46.25.728 PERTAINING TO ELIGIBILITY DETERMINATIONS FOR GENERAL RELIEF ASSISTANCE

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.25.728 pertaining to eligibility determinations for General Relief Assistance at page 527 of the 1987 Montana Administrative Register, issue number 9.

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

46.25.728 INCOME AND RESOURCE COMPUTATION Subsections (1) through (1)(b) remain as proposed.

(c) The first fifty dollars ($50) of ~~earned~~ income ~~for each~~ EARNED EACH MONTH BY ANY household member shall be excluded in determining eligibility and assistance amounts.

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

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 19, Ch. 670, L. 1985, Eff. 7/1/85; Sec. 6, Ch. 10, Sp. L. June, 1986, Eff. 6/30/86; Sec. 3, Ch. 614, L. 1987, Eff. 7/1/87

IMP: Sec. 53-3-205, 53-3-209 and 53-3-311 MCA; Sec. 1, Ch. 614, L. 1987, Eff. 7/1/87

3. The Department has thoroughly considered all commentary received:

COMMENT: The proposed rule does not clearly specify that the $50 deduction is only excluded from the earnings of each employed household member.

RESPONSE: The rule has been rewritten to provide further clarification.

4. This rule change will be applied retroactively to July 1, 1987.

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 6, 1987.

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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