MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of new rules, amendment of Rules 2.44.303, 2.44.401, 2.44.402, 2.44.404, 2.44.407, 2.44.505, 2.44.506, 2.44.509, 2.44.510, and repeal of rules 2.44.301, 2.44.302, 2.44.501, and 2.44.508 relating to the Teachers' Retirement System	NOTICE OF PUBLIC HEARING ON PROPOSED NEW RULES, PROPOSED AMENDMENT OF RULES AND REPEAL OF RULES relating to the Teachers' Retirement System

TO: All Interested Persons

1. On October 19, 1987 at 9 A.M. a public hearing will be held in the office of the Teachers' Retirement System, at 1500 6th Avenue, Helena, Montana, to consider the adoption of rules I, II, III, IV, V, VI, VII, VIII, and IX; the amendment of rules 2.44.303, 2.44.401, 2.44.402, 2.44,404, 2.44.407, 2.44.503, 2.44.505, 2.44.506, 2.44.509, 2.44.510; and the repeal of rules 2.44.301, 2.44.302, 2.44.501 and 2.44.508.

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

3. The rules as proposed provide as follows:

RULE I DEFINITIONS For the purpose of this chapter, the following definitions apply: (1) "board" or "retirement board" means the teachers retirement board as provided for in 2-5-1010 MCA.

(2) "enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

(3) "service credits" or "creditable service" means the number of years credited to a member's account for which contributions have been received as required by statute or rule.

(4) "school term" means the fiscal year July 1 through June 30. (History: Sec. 19-4-201 MCA; IMP, Title 19 Chapter 4 MCA)

RULE II QUALIFICATION OF THE ACTUARY (1) The actuary designated by the Teachers' Retirement Board must meet the qualification of an "enrolled actuary".

(2) Upon request of the Board, proof of certification as an "enrolled actuary" must be provided.(History: Sec. 19-4-201 MCA; IMP, 19-4-203(4) MCA)

This rule is proposed to implement House Bill 171 which requires the Teachers' Retirement Board adopt rules regarding the qualifications of the actuary designated by the Teachers' Retirement Board.

RULE III WITHHOLDING OF GROUP INSURANCE PREMIUM FROM RETIREMENT BENEFIT (1) A retiree who belongs to an employer sponsored group insurance plan that provides for retirees to

continue participation, may elect to have monthly premiums withheld from their retirement allowance.

(2) Retirees must enroll in such plans through their previous employers.

(3) The employer will provide the following information to the Teachers' Retirement Board:

(a) Certification of eligibility for all retirees electing to have the premium withheld from the monthly retirement allowance.

(b) Name, social security number, carrier and monthly premium amount for each retiree.

(4) Notification of changes in the premium amount shall be provided by employer to both the retiree and the Teachers' Retirement Board 30 days prior to the effective date.

(a) If 30 days notification cannot be provided to the Teachers' Retirement Board, the employer must make arrangements with the retiree for payment of the correct premium amount. (History: Sec. 19-4-201 MCA; IMP, 19-4-1101 MCA)

This rule is proposed to implement House Bill 181, which provides for withholding of group insurance premiums from retirement benefits.

RULE IV OPTIONAL RETIREMENT PROGRAM FOR CERTAIN MEMBERS OF THE MONTANA UNIVERSITY SYSTEM (1) Each unit of the university system shall provide the Teachers' Retirement Board with a monthly report of all members participating in the optional retirement program and remit the employer contributions due. The report shall contain the following and be in alphabetical order:

(a) Last name, first name

(b) Social security number

(c) Salary earned

(2) Members of the Montana University System, electing to participate in the optional retirement program, will not be eligible for retirement benefits under Title 19, Chapter 4, Parts 8 and 9 until they have terminated their employment.

(3) Retirees returning to employment within a unit of the university system and electing to participate in the optional retirement program will be reinstated to the status of an inactive vested member of the Teachers' Retirement System and their monthly benefit will be cancelled. (History: Sec. 19-4-201 MCA; IMP, 19-4-302(1) MCA)

This rule is proposed to define the reporting procedure for units of the university system and to specify when members participating in the optional retirement program may be eligible for retirement benefits.

RULE V PURCHASE OF SUBSTITUTE TEACHING SERVICE AND PART-TIME EMPLOYMENT (1) A member employed 30 days or less as a substitute teacher or part-time employee who elected not to become a member may receive service credit provided they contribute an amount equal to the combined employee and employer contributions which would have been made had they been covered at the time of employment,plus the interest the contributions would have earned had they been on deposit with the Teachers' Retirement System. (History: Sec. 19-4-201 MCA; IMP, 19-4-302(3) MCA)

This rule is proposed to define when a member is eligible to purchase their substitute or part-time teaching service which had not been previously covered.

RULE VI LUMP SUM PAYMENTS AT THE END OF THE SCHOOL TERM (1) Lump sum payments made under contract at the end of the school term for unused personal leave days or for accruals of leave in excess of that allowed under contract will be treated as earned compensation unless paid on account of termination. When paid as a result of termination, all payments will be considered as termination pay as defined under 19-4-101(5) MCA.

(2) No service credit shall be awarded for lump sum payments made under contract at the end of the school term or on account of termination. (History: Sec. 19-4-201 MCA; IMP, 19-4-101(8) MCA)

This rule is proposed to define lump sum payments as earned compensation when not made on account of termination.

RULE VII CORRECTION OF ERRORS ON CONTRIBUTIONS (1) Corrections of errors may be made by the employer on subsequent monthly reports via a letter of explanation and credit taken or additional payment remitted. Corrections reducing an employee's contributions cannot be accepted if the employee has received a refund. (History: Sec. 19-4-201 MCA; IMP, 19-4-208 MCA)

This rule is proposed to establish procedures for correcting errors on contributions made.

RULE VIII REFUND OF EMPLOYER CONTRIBUTIONS MADE ON TERMINATION PAY (1) Employer contributions made under 19-4-101(5) MCA may be refunded to the employer if the member subsequently elects not to use the termination pay in the calculation of average final compensation or does not retire.

(2) The contributions will be refunded when it is determined by the Teachers' Retirement System that the termination pay is not used in the calculation of average final compensation.

(3) To be eligible for a refund of contributions on termination pay, the employer contribution, must have been reported under code 029 on the monthly retirement report. (History: Sec. 19-4-201 MCA; IMP, 19-4-101(5) and 19-4-208 MCA)

This rule will establish procedures for refunding employer contributions made on termination pay, when termination pay is not used in the calculation of average final compensation.

RULE IX FORMULA FOR DETERMINING CONTRIBUTIONS DUE ON TERMINATION PAY (1) The formula for determining the contributions due for option (i) 19-4-101(5) (a) shall be 5.75% times the termination pay, times the total years of creditable service. The member shall pay 2.80% times the termination pay times the total years of creditable service; the employer shall pay 2.95% times the termination pay times the years of creditable service. (History: Sec. 19-4-201 MCA; IMP, 19-4-101(5) MCA)

This rule is proposed to define the employee and employer contributions as required under 19-4-101(5) MCA.

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

2.44.303 MEMBERSHIP OF PART-TIME AND FEDERALLY PAID EMPLOYEES (1) A non-member, who has not retired from this system and is not teaching under contract on a full-time basis, will be considered an active member after completing 30 days of actual teaching. ~~(2) When a teacher becomes an active member under this rule, employer and employee contributions will be due from the first date of employment.~~

(2) The board will decide eligibility for membership of those receiving partial payment in federal funds.

(3) Part-time, post graduate instructors in the university system are not eligible for membership. (History: Sec. 19-4-201 MCA; IMP, 19-4-205 and 19-4-302 MCA)

AUTH: 19-4-201; IMP: 19-4-205 and 19-4-302 MCA

This amendment is being proposed to comply with the provisions of House Bill 215 which gives substitute teachers the option to belong to Teachers' Retirement on the first day of employment and eliminates the requirement that contributions be made retroactive to the first day of employment.

2.44.401 CALCULATING ~~FRACTIONAL EMPLOYMENT~~ SERVICE CREDITS (1) The ~~fraction of a year credited for substitute work or part-time employment shall be the ratio of the total number of days worked to 180.~~ basic period of time for calculating service credit shall be the school term July 1 through June 30. Service credit in the Montana Teachers' Retirement System shall be based upon the following unless otherwise provided by rule or statute:

(a) nine (9) months or 180 days shall equal 1.0 year service credit for any employment eligible to be qualified under the Teachers' Retirement System.

(b) twelve (12) months or 360 days in a school term shall equal 1.0 year service credit for military service qualified in the Teachers' Retirement System.

(c) twelve (12) months or 260 days in a fiscal year shall equal 1.0 year service credit for P.E.R.S. service qualified in the Teachers' Retirement System unless the P.E.R.S. service was with a school district in which case nine (9) months or 180 days shall equal 1.0 year service credit.

(2) A member employed part-time during the school term shall receive service credit based on the total full-time equivalent verified by his employer divided by the number of months reported. For the purpose of this subsection, seven(7) hours shall be considered one (1) day.

(3) For employees of the university system, where the above criteria is not applicable, part-time service credit shall be awarded by dividing the contracted credit hours taught and compensated for by 45. (History: Sec. 19-4-201 MCA; IMP, Title 19, Chapter 4, Part 4 MCA)

AUTH: 19-4-201; IMP: Title 19, Chapter 4, Part 4 MCA

This amendment is being proposed to clarify and define the calculations of service credit in the Teachers' Retirement Act.

2.44.402 CREDIT FOR MILITARY SERVICE (1) For those eligible, military credit will be given for service in World War II from October 1940 through June 1947, and for service in the Korean Conflict from June, 1950 through January, 1955.

(2) Verification of military service should be submitted on form DD 214, or if not applicable, a form which certifies the date of entry into active military duty and the date of separation. A form should be provided for each term of active duty.

(3) The period of time used for crediting military service shall be the fiscal year of July 1 through June 30. Military service shall be credited on the basis of twelve (12) full months of active duty equals one year of creditable service or a proportion thereof, based on the number of full months to twelve (12). A partial month will be credited on the basis of the number of active duty days divided by 360. (History: Sec. 19-4-201 MCA; IMP, 19-4-404 MCA)

AUTH: 19-4-201; IMP: Title 19, Chapter 4, Part 4 MCA

This amendment is proposed to define the requirements for qualifying military service under the Teachers' Retirement Act and the basis for calculating service credit.

2.44.404 PARTIAL PURCHASE OF ADDITIONAL CREDIT AT DEATH OR DISABILITY (1) In the event of the death or disability of a member who was in the process of purchasing service credits, his additional service shall be determined by the fraction of the total payment which had been paid at the date of his death or disability.

(2) If the member or anyone acting on his behalf pays the agreed upon balance due prior to the payment of benefits the additional service may be credited to the member's account in full. (History: Sec. 19-4-201 MCA; IMP, 19-4-401 MCA)

AUTH: 19-4-201; IMP: 19-4-401 MCA

This amendment is proposed to allow beneficiary's of a deceased member or disabled member to complete payment for additional service credit.

2.44.405 INTEREST ON NON-PAYMENT FOR ADDITIONAL CREDITS (1) Interest will be charged on July 1 of each year on the outstanding balance of any amount owed by members for the purchase of additional ~~creist~~ credit.

(2) Interest will not be charged on payments received within one year of eligibility to purchase additional service. (History: Sec. 19-4-201 MCA; IMP, Title 19, Chapter 4, Part 4)

AUTH: 19-4-201; IMP: Title 19, Chapter 4, Part 4 MCA

This amendment is proposed to correct a typographical error in the rule and to specify the period of time that a member has to purchase additional service credit before interest is charged.

2.44.407 CREDITABLE SERVICE FOR EMPLOYMENT IN PRIVATE EDUCATIONAL INSTITUTIONS Paragraphs 1 through 2(b) remain unchanged.

(c) kindergarten teachers must instructs children ~~of the compulsory attendance age as required~~ who will be eligible the following year to attend first grade as permitted by the law of the state in which the institution operates; and

(d) is not operated in a private home. (History: Sec. 19-4-201 MCA; IMP, 19-4-408 MCA)

AUTH: 19-4-201; IMP: 19-4-408 MCA

This amendment is proposed to establish requirements for

qualifying kindergarten teaching service in the Montana Teachers' Retirement System.

2.44.505 ELIGIBILITY FOR SURVIVOR BENEFITS (1) A beneficiary will be first eligible for survivor benefits on the first of the month following the month of the deceased member's death.

(2) A birth certificate or some evidence of his/her birth date is required for each beneficiary eligible to receive the survivor benefit. (History: Sec. 19-4-201 MCA; IMP, 19-4-1001 MCA)

AUTH: 19-4-201; IMP: 19-4-1001 MCA

This proposed amendment further defines the requirements for applying for survivor benefits.

2.44.506 BENEFIT PAYMENTS (1) The first benefit will be payable the last day of the month in which the benefit began and future benefits will be payable the last day of each succeeding month.

(2) Monthly benefits will be paid based upon estimates provided by the Teachers' Retirement System until final salary information and contributions are received.

(3) Adjustments will be retroactive to the retirement effective date. (History: Sec. 19-4-201 MCA; IMP, 19-4-703 MCA)

AUTH: 19-4-201; IMP: 19-4-703 MCA

This amendment is proposed to establish procedures for paying benefits based upon estimated salaries and adjusting retroactive after the final salary information is received from the employer.

2.44.507 PAYMENT OF CHILDREN'S BENEFITS (1) The child's benefit of $100.00 per month will be last payable the month in which he attains age 18.

(2) A birth certificate or some evidence of birth date is required for each child eligible to receive the child benefit of $100.00 per month. (History: Sec. 19-4-201 MCA; IMP, 19-4-1002 MCA)

AUTH: 19-4-201; IMP: 19-4-1002 MCA

This amendment is proposed to require that a birth certificate or some other evidence of birth be submitted before payments are made to a dependent child.

2.44.509 COMPUTATION OF SALARY EARNED (1) ~~If a member, out of necessity, does not complete the full academic year, he may elect to use his current earnable compensation in determining his average final compensation, provided the full employee contributions have been received on this compensation.~~ The average final compensation of a member who retires or dies during a school or fiscal year, shall be the highest consecutive 36 full months of wages paid for which contributions were received. A member who retires or dies during a month will be allowed to use the 36 full months of wages paid preceding his retirement or death.

(2) Only salaries earned under contract on which contributions have been made can be used to determine the average salary. (History: Sec. 19-4-201 MCA; IMP, Title 19, Chapter 4, Part 8

MCA)
AUTH: 19-4-201; IMP: Title 19, Chapter 4, Part 8 MCA
This proposed amendment further defines the period that will be used in the calculation of average final compensation for a member who retires or dies during the school year.

2.44.510 ADJUSTMENT OF BENEFITS (1) A retired member, employed as a teacher in Montana, upon receiving salary or other compensation in an amount in excess of one-~~fourth~~third of his average final compensation, plus normal annual salary increases of the employer that employed the member or one third of the median average final compensation for members retired during the preceding fiscal year shall be removed from retirement beginning the month in which he earns an aggregate amount which is greater than one-~~fourth~~third of ~~his final average compensation~~ the above, and for each month thereafter that he continues to teach.

(2) The employer shall deduct from the member's earnings in excess of one-~~fourth~~third of his final average compensation or one-third (whichever is greater) of the median average finals compensation, an amount determined by the current rate of employees contribution, ~~but no employer shall make deductions for any member who has rendered at least 35 years of service if such member elects not to contribute~~. The employer shall also pay an amount based on the member's earnings in excess of the greater of one-~~fourth~~third of his ~~final average~~ average final compensation or one-third of the median salary of those members retired during the preceding fiscal year at ~~and~~ the ~~then~~ current rate of employer contribution. (History: Sec. 19-4-201 MCA; IMP, 19-4-804 MCA)
AUTH: 19-4-201; IMP: 19-4-804 MCA
This amendment is proposed to bring this rule into compliance with statutory changes made during the 1983 Legislative Session.

7. The rules proposed to be repealed can be found on pages 2-3243, 2-3263 through 2-3263.1 of the Montana Administrative Rules.

These rules are proposed to be repealed because legislative proposals have changed the requirements for membership and eligibility for benefits.

8. 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 Beda Lovitt, Chief Legal Counsel, Department of Administration, Helena, MT 59620, no later than October 22, 1987.

9. Beda Lovitt has been designated to preside over and conduct the hearing.

By: David L. Senn
DAVID L. SENN, EXECUTIVE SECRETARY
TEACHERS' RETIREMENT DIVISION

Certified to the Secretary of State September 14, 1987.

MAR NOTICE NO. 2-2-168

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

In the matter of the proposed amendment of rules pertaining to fees) NOTICE OF PUBLIC HEARING FOR AMENDMENT OF 8.58.411 FEE SCHEDULE

TO: All Interested Persons:

The notice of proposed agency action published in the Montana Administrative Register on August 13, 1987, issue number 15, is amended as follows because an association having no less than 25 members, who will be directly affected, has requested a public hearing:

1. On October 14, 1987, at 9:00 o'clock, a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building located at 1424 9th Avenue, Helena, Montana, to consider the amendment of ARM 8.58.411, Fee Schedule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1605, Administrative Rules of Montana)

"8.58.411 FEE SCHEDULE (1) through (3) will remain the same.

(4)	For each rescheduling of examination	~~$20.00~~	$25.00
(5)	For each original resident broker's license	~~$50.00~~	$65.00
(6)	For each annual renewal of a resident broker's license	~~$30.00~~	$65.00
(7)	For each original non-resident broker's license	~~$50.00~~	$65.00
(8)	For each annual renewal of a non-resident broker's license	~~$30.00~~	$65.00
(9)	For each original salesman's license	~~$25.00~~	$35.00
(10)	For each annual renewal of salesman's license	~~$15.00~~	$35.00
(11)	For each additional office or place of business, an annual fee	~~$25.00~~	$30.00
(12)	For each change of place of business or change of employer or contractual associate	~~$25.00~~	$30.00
(13)	For each duplicate license, where the original is lost or destroyed	~~$10.00~~	$15.00
(14)	For each duplicate pocket card, where the original is lost or destroyed and affidavit is made thereof	~~$10.00~~	$15.00
(15)	Notice of intention	~~$50.00~~	$65.00
(16)	Questionnaire	~~$100.00~~	$125.00

(17)	Application for registration of subdivided lands	~~$500.00~~	$600.00
(18)	Reinstatement of a license suspended or revoked within a license period	~~$25.00~~	$50.00
(19)	For placing active license on inactive status	~~$-5.00~~	$10.00

(20) will remain the same."

Auth: 37-51-203, MCA Imp: 37-51-207, MCA

3. The amendment is being proposed because for the past seven years the Board of Realty Regulation has been practicing deficit spending to eliminate the large cash surplus that had accumulated in the Board's cash reserve. The Board no longer has a cash reserve and must increase fees to meet Board expenses.

4. 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 Grace Berger, Administrative Assistant, Board of Realty Regulation, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than October 22, 1987.

5. Martin Jacobson, staff attorney, Department of Commerce, Professional and Occupational Licensing Bureau, 1424 9th Avenue, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

BOARD OF REALTY REGULATION
JOHN DUDIS, CHAIRMAN

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

Certified to the Secretary of State, September 14, 1987.

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

In the matter of the proposed amendment of a rule pertaining to loans) NOTICE OF PROPOSED AMENDMENT OF 8.97.409 LOAN PARTICIPATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 26, 1987, the Montana Economic Development Board proposes to amend the above-stated rule.

2. The proposed amendment of 8.97.409 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3492, Administrative Rules of Montana)

"8.97.409 LOAN PARTICIPATIONS (1) through (8) will remain the same.

(9) Working capital secured by contracts receivable may be financed at the discretion of the board ~~only in conjunction with loans for real or personal property, in a ratio to be determined by the board~~.

(10) through (13) will remain the same."

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

REASON: The Board has had several requests from lenders to finance working capital for borrowers bidding on Department of Defense contracts. By changing this rule the Board will be able to assist borrowers and small town banks to obtain financing not otherwise available. As the rule reads now, these borrowers are restricted from obtaining financing which would enable them to bid on larger contracts and thus, employ a greater number of Montanans.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Investments, Department of Commerce, 555 Fuller, Helena, Montana 59620, no later than October 22, 1987.

4. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Investments, Department of Commerce, 555 Fuller, Helena, Montana 59620, no later than October 22, 1987.

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

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

BOARD OF INVESTMENTS
JOSEPH REBER, CHAIRMAN

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

Certified to the Secretary of State, September 14, 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 Test and Vision Standards for Driver Licenses.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES 23.3.118 AND 23.3.119

TO: All Interested Persons.

The notice of proposed agency action published in the Montana Administrative Register on July 16, 1987, is amended as follows because a governmental agency, the Rehabilitative Services Division/Visual Services Division of the Department of Social and Rehabilitation Services, and eight persons directly affected by the proposed amendments, have requested a public hearing:

1. On October 27, 1987, at 10 a.m., a public hearing will be held in the Auditorium in the Scott Hart Building, 303 Roberts, Helena, Montana, to consider the amendments of rules 23.3.118 and 23.3.119, ARM, concerning 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 the 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 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 Seeley, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, no later than October 27, 1987.

5. Joe Roberts, Assistant Attorney General, 215 North Sanders, Helena, Montana 59620-1401, has been designated to preside over and conduct the hearing.

By: Mike Greely
MIKE GREELY
Attorney General

Certified to the Secretary of State September 14, 1987.

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

In the Matter of Proposed Amendment of Rule 38.5.2502(5) Pertaining to Responsibility for the Expense of Maintaining Water Utility Service Pipes from the Water Main to the Consumer's Property Line.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 38.5.2502(5), EXPENSE FOR NEW WATER SERVICE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 30, 1987 the Department of Public Service Regulation proposes to amend rule 38.5.2502(5) which states that a water utility consumer is responsible for all the expenses of both constructing and maintaining the service pipes from the mains to the consumer's premise. The consumer's property line has no significance in this rule.

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

38.5.2502 APPLICATION FOR WATER SERVICE (1), (2), (3), (4) No change.

(5) When an application for new water service has been accepted, the utility at its own expense will tap the main and furnish corporation cock, and clamp when necessary, and any other material used or labor furnished in connection with the tapping of the main. ~~All expense of laying and maintaining the service pipes from the mains to the premises of the consumer must be borne by the consumer.~~ The consumer of water service is responsible for the cost of constructing water service pipelines from the main to his premises and for maintaining water service pipelines from his property line to his premises. The private water service provider is responsible for the cost of maintaining water service pipelines from the main to the consumer's property line, except that the consumer shall pay for pipe and other supplies used in maintaining water service lines between the main and his property line. The utility shall assist consumers and/or excavation contractors in locating water service mains and lines prior to the consumer beginning excavation in order to avoid water service interruptions due to broken mains and lines. The service pipe must be laid below street grade, on the premises of the consumer and at a standard depth designated by the utility to prevent freezing. A curb cock and curb box of approved pattern must be installed by the consumer at a point designated by the utility. Whenever a tap is made through which regular service is not immediately desired, the consumer will bear the entire expense of tapping, subject to a refund whenever regular service is begun.

(6), (7) No change. AUTH: Sec. 69-3-102, MCA; IMP, Chapter No. 184, Montana Session Laws 1987.

3. Rationale: This amendment is required by the Legislature in Senate Bill 28, to be codified as an integral part of Title 69, chapter 4, part 5.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than October 23, 1987.

5. If a person who is directly affected by the proposed amendments and adoptions wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than October 23, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment or 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 more than 25 persons based on the number of customers of private water utilities in Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 14, 1987.

Reviewed By

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

In the Matter of Repeal of ARM Sections 38.5.1801 through 38.5.1811.	) NOTICE OF PROPOSED REPEAL) OF PUBLIC SERVICE COMMIS-) SION RULES PROHIBITING THE) NONESSENTIAL USE OF NATURAL) GAS FOR OUTDOOR LIGHTING) NO PUBLIC HEARING) CONTEMPLATED

TO: All Interested Persons

1. On October 30, 1987 the Department of Public Service Regulation proposes to repeal rules 38.5.1801 through 38.5.1811, inclusive, found on pages 38-681 through 38-687, Administrative Rules of Montana. These rules prohibit the nonessential use of natural gas for outdoor lighting.

2. Rationale: The purpose of rules 38.5.1801 through 38.5.1811, ARM, is to implement Section 402 of Public Law 95-620, the Powerplant and Industrial Fuel Use Act of 1978. On May 21, 1987, legislation was signed into law which repealed Section 402 of the Fuel Use Act. The purpose for rules 38.5.1801 through 38.5.1811, ARM, has therefore been eliminated.

3. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than October 23, 1987.

4. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Robin A. McHugh, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than October 23, 1987.

5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 more than 25 persons based on the number of natural gas customers in the State of Montana.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.

CLYDE JARVIS, Chairman

Reviewed By

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 14, 1987.

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

In the matter of the amendment of Rules 2.52.310 and 2.52.348 of the Workers' Compensation Court	NOTICE OF AMENDMENT OF RULES 2.52.310 AND 2.52.348 OF THE WORKERS' COMPENSATION COURT

TO: All Interested Persons

1. On July 30, 1987, the Workers' Compensation Court published a Notice of Proposed Amendment of Rules ARM 2.52.310 and 2.52.348 at page 1149, of the 1987 Montana Administrative Register, issue number 14.

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

3. Mary McCue, Attorney for the Legislative Council, notified the Court of a typographical error in the authority and implementation cite. The error is corrected to show Section 2-4-201.

The amendment to ARM 2.52.310 is to avoid delay in scheduling matters before the Court. The amendment to ARM 2.52.348 is to conform with the rules of the Montana Supreme Court.

4. Authority and implementation, Section 2-4-201; MCA, Sections 39-71-2901 through -2909, MCA.

TIMOTHY W. REARDON, JUDGE

September 14, 1987
CERTIFIED TO THE SECRETARY OF STATE

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the amendment of 8.22.1804 concerning twin trifecta) NOTICE OF AMENDMENT OF 8.22.1804 TWIN TRIFECTA

TO: All Interested Persons:

1. On June 11, 1987, the Board of Horse Racing published a notice of proposed amendment of the above-stated rule at page 739, 1987 Montana Administrative Register, issue number 11.

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

3. No comments or testimony were received.

BOARD OF HORSE RACING
HAROLD GERKE, CHAIRMAN

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

Certified to the Secretary of State, September 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING

In the matter of the amendment and adoption of rules pertaining to applications, certificates, renewals and verification of licenses	)))))))	NOTICE OF AMENDMENT OF 8.32.306 APPLICATION FOR RECOGNITION, 8.32.407 CERTIFICATE OF NURSE-MIDWIFERY, 8.32.411 RENEWALS AND THE ADOPTION OF NEW RULE I (8.32.416) VERIFICATION OF LICENSE TO ANOTHER STATE

TO: All Interested Persons:

1. On August 13, 1987, the Board of Nursing published a notice of amendment and adoption of the above-stated rules at page 1253, 1987 Montana Administrative Register, issue number 15.

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

3. No comments or testimony were received.

BOARD OF NURSING
DONNA MAE SNODGRASS, RN
PRESIDENT

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

Certified to the Secretary of State, September 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE PASSENGER TRAMWAY ADVISORY COUNCIL

In the matter of the transfer and amendment of tramway rules	)	NOTICE OF TRANSFER AND AMENDMENT OF 8.72.101 THROUGH 8.72.110

TO: All Interested Persons:

1. On July 30, 1987, the Passenger Tramway Advisory Council published a notice of transfer and proposed amendment of the above-stated rules at page 1159, 1987 Montana Administrative Register, issue No. 14.

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

3. No comments or testimony were received.

PASSENGER TRAMWAY ADVISORY COUNCIL
W. JAMES KEMBEL, ADMINISTRATOR

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

Certified to the Secretary of State September 14, 1987.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.101.101, repeal of 10.101.202, and adoption of new rules I-III relating to the Montana Library Services Advisory Council and Library Services and Construction Act (LSCA) Grants)	NOTICE OF THE AMENDMENT OF ARM 10.101.101 ADOPTION OF NEW RULES 10.101.204 - 10.101.206 AND REPEAL OF 10.101.202.

TO: All Interested Persons

1. On March 26, 1987, the Montana State Library Commission published notice of the proposed amendment of ARM 10.101.101, repeal of 10.101.202, and adoption of new rules I - III at page 302 of the 1987 Montana Administrative Register, issue number 6.

2. The Commission has repealed Rule 10.101.202 as proposed.

3. The Commission has adopted new Rules I - 10.101.206, II - 10.101.204 and III - 10.101.205 as proposed.

4. The Commission has amended Rule 10.101.101 as proposed with the following changes:

10.101.101 AGENCY ORGANIZATION Subsections (1) and (2) remain the same. Subsections (3) and (3) (a) remain as proposed.

(b) The composition of the council shall be ~~eighteen~~ fifteen members. ~~Seventeen~~ Fourteen shall serve for two years and may be reappointed for a second term. ~~Represented on the council are~~ and may represent: users of public library services in each federation area, disadvantaged persons, local public libraries, school libraries, academic libraries, special libraries, library service to the institutionalized, library service to the disabled, state employees, state agency libraries, Montana participation in WCHLIST (White House Conference on Libraries), and the Montana legislature. The president of the Montana library association shall serve a one year term on the council during the presidency of the association.

Subsection (c) remains as proposed.

AUTH: 22-1-103 MCA
IMP: 22-1-103 MCA

5. The Commission made the change to enable the council to be of a more workable size.

6. No comments or testimony were received.

Sheila Cates
Library Development

Certified to the Secretary of State September 11, 1987.

BEFORE THE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules in Chapter 101, subchapter 1 concerning the organizational rule; and Chapter 1 and 11 concerning general policy and public library development	NOTICE OF THE AMENDMENT AND REPEAL OF RULES IN CHAPTER 101, SUBCHAPTER 1 CONCERNING THE ORGANIZATIONAL RULE; AND CHAPTER 102, SUBCHAPTERS 1 AND 11 CONCERNING GENERAL POLICY AND PUBLIC LIBRARY DEVELOPMENT

TO: All Interested Persons

1. On March 26, 1987, the Montana State Library Commission published notice of the proposed amendment and repeal of rules in Chapter 101, subchapter 1 concerning the organizational rule; and Chapter 102, subchapter 1 and 11 concerning general policy and public library development at page 283 of the 1987 Montana Administrative Register, issue number 6. A notice of extension of comment period was published on page 741 of the 1987 Montana Administrative Register.

2. The Commission has amended Rules 10.101.203, 10.102.101, 10.102.1101-10.102.8001 as proposed.

3. The Commission has repealed Rules 10.102.1114, 10.102.1115, 10.102.1123, 10.102.1124, 10.102.1125, 10.102.1127, 10.102.1128, 10.102.1131, 10.102.1132, 10.102.1139, 10.102.3601, 10.102.3602, 10.102.3603 and 10.102.5208.

4. The Commission received no comment.

Sheila Cates
Library Development

Certified to the Secretary of State September 11, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF
THE STATE OF MONTANA

In the matter of the adoption of Rules 11.7.401 through 11.7.412 pertaining to youth placement committees	))))	NOTICE OF ADOPTION OF RULES 11.7.401 through 11.7.412 pertaining to YOUTH PLACEMENT COMMITTEES

TO: All Interested Persons

1. On July 30, 1987, the Department of Family Services published notice of the proposed adoption of Rules I through VIII pertaining to Youth Placement Committees at page 1169 of the Montana Administrative Register, issue number 14.

2. The Department has adopted the following rules as proposed:

Rule I 11.7.401 DEFINITIONS
Rule III 11.7.404 REFERRALS TO THE COMMITTEE
Rule IV 11.7.406 PROCEDURES FOR YOUTH PLACEMENT COMMITTEE MEETINGS
Rule VI 11.7.408 PLACEMENT RECOMMENDATIONS
Rule VII 11.7.410 TEMPORARY AND EMERGENCY PLACEMENTS
Rule VIII 11.7.412 CONFIDENTIALITY OF COMMITTEE MEETINGS AND RECORDS

AUTH: Sec. 53-1-103(17), MCA
IMP: Sec. 41-5-527 through 529, MCA

3. The Department has adopted the following rules with the changes shown:

RULE II 11.7.402 COMPOSITION AND MEMBERSHIP REQUIREMENTS

Subsections (1), (2) and (3) have been deleted in their entirety.

(41) The department representative shall act as coordinator for the committee and shall be responsible for performing the following tasks:

(a) convene meetings within time guidelines established by ~~[Rule IV]~~ ARM 11.7.406;

(b) notify all committee members of scheduled meetings;

(c) provide referral packet to all committee members;

(d) record information relating to committee deliberations; and

(e) forward recommendations to the department, the county attorney, THE YOUTH'S ATTORNEY and the youth court judge.

(52) A simple majority of appointed members constitutes a quorum. A quorum must be present to conduct a meeting.

(63) Committee members shall service a term of two (2)

years; however, a member may be reappointed to additional terms.

(74) Committee members shall serve without compensation.

AUTH: Sec. 53-1-103(17), MCA
IMP: Sec. 41-5-527 through 529, MCA

RULE V DUTIES OF THE COMMITTEE has been deleted in its entirety.

4. The Department has thoroughly considered all commentary received:

COMMENT: Comments were received from the Administrative Code Committee. The Committee noted that the Department was given authority to adopt rules to implement only Section 17-19, Ch. 609, L. 1987 (now Sections 41-5-527 through 529, MCA). Therefore, the Committee commented that the Department was without authority to adopt Rules II (1) and (2) and Rule V, since the rules pertained to Sections 15 and 16, Ch. 609, L. 1987 (now Sections 41-5-525 and 526, MCA). The Committee also requested that the citations to the statutes implemented in the rule history be corrected to refer only to Sections 41-5-527 through 529, MCA.

RESPONSE: The Department has made the corrections and changes requested by the Administrative Code Committee.

No other testimony or comments was received.

Eugene Huntington
Director, Department of Family Services

Certified to the Secretary of State September 14, 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 ADOPTION OF) NEW RULES REGULATING) FISHING CONTESTS

TO: All Interested Persons:

1. On July 16, 1987, the Fish and Game Commission published notice of proposed adoption of new rules regulating fishing contests, at page 959 of the 1987 Montana Administrative Register, issue no. 13.

2. The rules have been reviewed and approved by the Department of Health and Environmental Sciences before becoming effective, as required by Section 87-1-303, MCA. The Commission has adopted the rules as proposed with the following changes based on comments received.

3. The rules provide as follows:

RULE I (12.7.801) DEFINITION (1) "Fishing contest" is, except as otherwise specifically noted, 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 429, 1987)

COMMENT: The Dillon Rotary Club recommended that the rule be amended to require a permit for all fishing contests regardless of size.

Keith Powell suggested that use of individual purse limits rather than aggregate limits would lessen abuses.

RESPONSE: The Commission has not adopted the Club's suggestion because it does not wish to impose an unnecessary burden on small contests that have no significant impact on natural resources. Because the Commission does not understand the reasoning behind Mr. Powell's suggestion, it was not adopted. The additional language was added to clarify that all contests are subject to Rule 12.7.807, regardless of the number of participants or the size of the cash prizes.

RULE II (12.7.802) 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~~ 180 days but not more than ~~180~~ 365 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 429, 1987)

COMMENTS: The Garfield County Commercial Club recommended that the rule be amended to allow applications 365 days in advance of the proposed contest.

Walleyes Unlimited recommended that there be no limit to how far in advance an application can be filed.

RESPONSE: The Commission adopted the Garfield Club's suggestion. It did not adopt an unlimited application period because it believes such a provision would allow applications so far in advance of the contest that it would be difficult to estimate the potential impact on natural resources. The 90 day deadline was changed to 180 days because proposed Rule 12.7.805 was changed to require a Commission decision at least 90 days prior to the proposed date of the fishing contest.

RULE III APPLICATION FORM The department has decided not to adopt the proposed rule because the Secretary of State does not require publication of the application form.

COMMENT: Walleyes Unlimited recommended that the introductory paragraph specifically identify the Parks division as a division of the Department of Fish, Wildlife and Parks.

RESPONSE: The Commission will adopt this suggestion for the application form.

RULE IV (12.7.803) 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 429, 1987)

COMMENT: The Garfield Club recommended that the rule be amended to include as criteria the overall quality of the proposed event and the economic enhancement it would provide the area.

RESPONSE: The Commission did not adopt the suggestion because it views its role as assuring that contests do not adversely affect natural resources.

RULE V (12.7.804) 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. More than one contest will be allowed on overlapping dates if both meet the criteria and the Commission determines that natural resources will not be adversely affected. 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 429, 1987)

COMMENT: The Garfield Club recommended that the rule be clarified to allow two contests to be held on large bodies of water. RESPONSE: The Commission adopted the suggestion.

RULE VI (12.7.805) COMMISSION DECISION (1) ~~At least 30 days prior to the scheduled date of the contest,~~ Within 90 days of receipt of an application, 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 429, 1987)

COMMENTS: The Dillon Club recommended that the Commission decision be made at least ninety days before the proposed date of the derby.

Walleyes Unlimited recommended that the Commission make a decision at least sixty days prior to the contest date.

The Garfield Club recommended that the Commission make a decision within thirty days after the department receives an application.

RESPONSE: The Commission adopted the Garfield Club's approach, but added sixty days to allow the department and Commission to fully evaluate an application. The waiver provision in the new Rule 12.7.808 was added to allow the Commission to extend the time to cover the situation where an application is filed too soon after a previous contest to allow the department to evaluate its impact. The Commission believes the rule as amended addresses the concerns of the other clubs that they must have a substantial period of time to organize a contest. As amended, the rule allows the clubs to choose the time they have between approval and the date of the contest by choosing the time of the application.

RULE VII (12.7.806) 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, or the average length and aggregate weight of the winning fish, and the number of fish caught and released. The department may require more detailed catch information.

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

COMMENT: Walleyes Unlimited suggested the change in language.

RESPONSE: The Commission adopted the suggestion.

RULE VIII (12.7.807) 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 429, 1987)

(12.7.808) WAIVER (1) Upon a showing of good cause, the Commission may waive the application of any rule except where waiver is precluded by statute.

This rule was adopted partially in response to the need for flexibility regarding time limitations. The comments also highlighted that since the Commission has not regulated fishing contests, there may well be unanticipated problems which will require waiver of any of the rules.

GENERAL COMMENTS:

COMMENT: The Dillon Club recommended that purses be limited to $1,000.00 and that the number of participants be limited to one thousand.
RESPONSE: The Commission did not adopt this suggestion because the club offered no justification for its adoption, and the Commission knows of no reason why it should be adopted. The Garfield Club specifically recommended against any upper limit on the grounds that the body of water will be self limiting and organizers will not try to expand a contest beyond the water's capacity. Although the Commission does not know if the Club is correct, it believes that the rules as adopted provide adequate protection against over-use.

COMMENT: The Garfield Club commented that the rules raise the potential for lobbying efforts to obtain a tournament.
RESPONSE: The comment does not specify how the rules encourage "lobbying." By its adoption of these rules, the Commission has made it clear that it intends to follow the criteria listed in Rule 12.7.805 as the basis for its decision.

COMMENT: The Garfield Club recommended a rule that would allow the filing of two to five year plans which would be tentatively approved, while still requiring an annual application. Those who have submitted plans would be given a preference if a competing application were filed.
RESPONSE: The Commission has not adopted this suggestion because it believes that by allowing an application up to a year in advance of the contest, long term planning will be sufficiently encouraged without adopting a potentially cumbersome long term scheme. Should experience suggest the need for such an approach, the Club is invited to resubmit the suggestion.

COMMENT: Keith Powell requested that it be the policy of the Department to have an official on duty at each contest to witness the release of tagged fish and assure that any fish submitted for an award came from the contest area.

RESPONSE: The Commission rejects this suggestion. Filling the role proposed by Mr. Powell is not necessarily appropriate for Department personnel. The Commission believes that contest organizers can make arrangements on a case by case basis with unbiased individuals from a variety of sources.

Robert Jensen, Chairman
Fish and Game Commission

Certified to the Secretary of State September 14, 1987.

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

In the matter of the amendment of rule 24.16.9007	)))))	NOTICE OF THE ADOPTION AMENDMENTS TO RULE 24.16.9007, REQUIRING THE ADOPTION OF PREVAILING RATE OF WAGES

TO: All Interested Persons

1. On July 30, 1987, the department of labor and industry published proposed amendments to ARM 24.16.9007 eliminating December first as the effective date for adoption of the prevailing rates of wages, providing that rates are effective until superceded, and providing for the rollover of temporary rates until new rates can be established under new legislation effective October 1, 1987. The notice was published at page 1177 of the 1987 Montana Administrative Register, issue no. 14.

2. The department of labor and industry has amended ARM 24.16.9007 as proposed, with the following change in the catchphrase of the rule:

24.16.9007 ~~ANNUAL~~ ADOPTION OF STANDARD PREVAILING RATE OF WAGES (1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, shall be adopted in accordance with the Montana Administrative Procedure Act and rules implementing the act.

(a)-(d) same as proposed rule.

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

3. No formal public hearing was held. However, two written comments were received: one from Pat Bauer representing the Roofers Local 189; and the other from the department of administration.

The Roofers Local 189 questioned the adoption of the temporary rollover rates because it had not been notified in the telephone survey on which the original rates were based and because its collective bargaining agreement had not been considered in establishing the original rates. The Roofers requested that the rates set for roofers be modified to reflect the rates in its collective bargaining agreement.

The Roofers request is partially accepted. The Roofers failed to provide a list of employers actually covered by its collective bargaining agreement and, therefore, it presented insufficient information to warrant a complete acceptance of its proposed changes. Nevertheless, because of the confusion arising from the setting of the rate with

respect to fringe benefits, the commissioner has decided to increase the proposed rate for roofers in regions 1, 2, and 3. Under agreements that provide for a $1.00 deduction for vacation, the proposed hourly rate for roofers is increased by $1.00 in regions 1, 2, and 3. The rate for roofers as published in the supplement to the proposed rates will be $7.00 for region 1, $8.00 for region 2, and $11.00 for region 3.

The department of administration submitted a list of occupations to the commissioner for addition to those occupations listed in the proposed rates. The commissioner adopts the additional occupations suggested by the department of administration except for those occupations that may be considered office or clerical positions which are expressly excluded from prevailing wage rates under section 18-2-401(1), MCA, and except for those occupations that may be placed under previously established occupational titles. For example, the department of administration suggested the addition of an occupation entitled "sprinkler serviceman/repairman". This occupation is currently found in the proposed rates under "sprinkler fitters." The new occupational titles will be published in a supplement to the proposed rates.

4. The authority to amend ARM 24.16.9007 is contained in 18-2-431, MCA.

Mary M. Hartmann

MARY M. HARTMANN
Commissioner

Certified to the Secretary of State September 14, 1987.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the amendment of ARM 36.21.415 concerning the fee schedule and the adoption of new rules relating to monitoring well constructor licenses	))))))))	NOTICE OF AMENDMENT OF ARM 36.21.415, FEE SCHEDULE, AND ADOPTION OF NEW RULES UNDER SUB-CHAPTER 7 RELATING TO MONITORING WELL CONSTRUCTOR LICENSES; 36.21.701 VERIFICATION OF EXPERIENCE, 36.21.702 APPLICATION APPROVAL AND EXAMINATION, 36.21.703 CONTENTS OF LICENSE

TO: ALL INTERESTED PERSONS:

1. On July 30, 1987, the Board of Water Well Contractors published a notice of proposed amendment of ARM 36.21.415 and proposed adoption of new rules, 36.21.701 through 36.21.703, relating to monitoring well constructors licenses on page 1180, Montana Administrative Register, issue number 14.

2. A comment was received from Larry O'Dell, PE, with Northern Testing and Engineering in Billings. Mr. O'Dell commented that firms should be licensed to install monitoring wells, and then the firm would be responsible for training and developing personnel in accordance with the act.

Section 37-43-104, MCA, provides in part that a firm may engage in the business of installing monitoring wells provided a licensed constructor is in charge of all monitoring well installation. The statute provides that individuals shall be licensed, not firms. Therefore the board cannot, by rule, provide for companies to be licensed.

A request for a hearing was received from Bruce Thorson, P. E. with Braun Engineering Testing of Montana, Inc., Billings, Montana. Mr. Thorson also recommended that firms should be licensed. He was concerned that new license examination would favor members of the National Water Well Association and the Montana Water Well Drillers Association. He also stated he felt the motivation for the legislation was to further economic gain for water well drillers.

Again, the legislation prevents firms from being licensed. Second, the examination is written in terminology familiar to both geotechnical engineers and water well drillers. Finally, the board does not feel the legislation will result in economic gain for water well contractors. Instead, the purpose of the legislation was to allow geotechnical firms the opportunity to be licensed to drill monitoring wells.

No other comments or testimony were received.

3. The rules are amended and adopted as proposed.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BY: Wesley Lindsay
WESLEY LINDSAY, CHAIRMAN
BOARD OF WATER WELL CONTRACTORS

Certified to the Secretary of State, September 14, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through XI (42.14.101 through 42.14.111) relating to Accommodations Tax for Lodging.	NOTICE OF THE ADOPTION of Rules I through XI (42.14.101 through 42.14.111) relating to Accommodations Tax for Lodging.

TO: All Interested Persons:

1. On July 16, 1987, the Department published notice of the proposed adoption of Rules I through XI (42.14.101 through 42.14.111) relating to Accommodations Tax for Lodging at pages 1020 through 1028 of the 1987 Montana Administrative Register, issue no. 13.

2. The Department has adopted these rules as proposed.

3. A public hearing was held on August 6, 1987, to consider the proposed adoption of these rules.

4. Oral comments presented at the hearing were from the following persons:

COMMENT: Tom Metzger, Vice President, Kalispell Regional Hospital, Kalispell; Jean Sandefer, Glacier Gateway Motel, Kalispell; Bernard St. Goddard, Tribal Councilman, Browning; Vern Sitters, Montana Innkeepers Assn., Helena, testified that they felt the accommodation charges for lodging facilities provided outpatients (and their families) of health facilities should be exempt from the accommodation tax.

RESPONSE: The exemption of such lodging facilities requires legislative action. The charges are not exempted under 50-5-101, MCA, as health facilities or in any section of the law.

COMMENT: Clayton Daylin, Branding Iron (Campground), Helena testified on the need for uniform enforcement of the accommodations tax in campgrounds. A specific area of concern to him is the state campgrounds where users are not informed of the 4% tax. In addition, he expressed concerns regarding rest areas and other areas used for overnight camping were mentioned.

RESPONSE: It is the department's intent to uniformly enforce the statute and rules related to accommodations tax. Because of the timing of passage of HB 84, a moratorium of one year (until 7/1/88) was given before the tax had to be separately stated on accommodations receipts. Therefore, it is perceived by users and some competitors the tax is not being collected when, in fact, it is. We will not know until quarterly reports are filed who is complying with the law. At that point we will begin enforcement.

With regard to the concerns regarding the rest area signs and the overnight parking allowed in noncamping areas, the department does not have jurisdiction over these particular problems. The income tax division has, however, written letters to the Highway Department and the City of Helena making them aware of the concerns expressed by the tourism industry about disregarded regulations.

COMMENT: Vern Sitter, Montana Innkeepers Assn., Colonial Inn, Helena presented oral testimony that accommodation charges for lodging furnished employees of the federal government should be exempt. This same comment was presented by Larry McRae, President, Montana Innkeepers Assn., Helena in written form.

RESPONSE: The bill does not specifically exempt federal employees as users from payment of the accommodations tax. No other overriding law exempts the employees as well. In fact, the per diem rate recently set for federal employees specifically includes taxes in the $35 allowable rate.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I (42.15.106) relating) to the 10% Income Tax Surtax.)	NOTICE OF THE ADOPTION of Rule I (42.15.106) relating to the 10% Income Tax Surtax.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I (42.15.106) relating to the 10% Income Tax Surtax at pages 1192 and 1193 of the 1987 Montana Administrative Register, issue no. 14.

2. The Department has adopted these rules as proposed.

3. A public hearing was held on August 24, 1987, to consider the proposed adoption of these rules. No persons appeared to testify on the proposed rule. Bob Turner and David Olsen of the Income Tax Division appeared on behalf of the Department. No other comments or testimony were received.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I (42.15.117) relating) to the Capital Gain Exclusion)	NOTICE OF THE ADOPTION of Rule I (42.15.117) relating to the Capital Gain Exclusion.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I (42.15.117) relating to the Capital Gain Exclusion at pages 1190 and 1191 of the 1987 Montana Administrative Register, issue no. 14.

2. A public hearing was held on August 20, 1987 to consider the adoption of this rule. Public comments were received at the hearing. At the hearing, the department proposed a minor, technical amendment to section (7) of the rule which is now moot because of the removal of that section in response to hearing testimony. Also proposed by the department at the hearing was the final minor change to section (8).

3. Oral comments received at the hearing are addressed as follows:

COMMENT: Gary F. Demaree, representing the Montana Society of CPA's, appeared as a proponent of the rule at the hearing and commented that because of a recent federal court case, section (7) which contains "or takes subject to" should be excluded.

RESPONSE: The recent federal case removes the necessity for section (7). Therefore, the department is removing section (7) from the rule. However, if the decision is overturned at a later date this rule will have to be amended to incorporate that decision.

COMMENT: Gary F. Demaree, Montana Society of CPA's also had a concern about installment sales which occurred on December 31, 1986.

RESPONSE: The department feels that it was not the intent of the legislature to have a 364 day tax year. Therefore, the department is adding the words "on or" following the word "exchanged" in section (1).

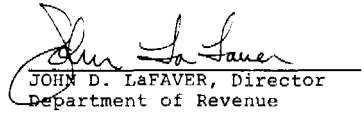
4. The amended rule will read as follows:

42.15.117 CAPITAL GAIN EXCLUSION (1) Adjusted gross income for tax years beginning after December 31, 1986 does not include 40% of the deferred capital gain on assets sold or exchanged ON OR before December 31, 1986.

(2) through (6) remains the same.

(7) deleted in its entirety.

~~(8)~~ (7) When married filing separate returns, the deferred capital gain exclusion may be divided equally when there is jointly owned property involved. Otherwise, the exclusion must be taken by the person who ~~owns~~ OWNED the property.



JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.15.427) relating to the Income Tax Deduction for Household and Dependent Care Expenses.	NOTICE OF THE ADOPTION of Rule I (42.15.427) relating to the Income Tax Deduction for Household and Dependent Care Expenses.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I (42.15.427) relating to the Income Deduction for Household and Dependent Care Expenses at pages 1188 and 1189 of the 1987 Montana Administrative Register, issue no. 14.

2. The Department has adopted these rules as proposed.

3. Comments were received from the following persons:

COMMENT: Representative Joan Miles stated she had had an opportunity to review the proposed rule relating to the income tax deductions for dependent care expenses, and the proposed rule is consistent with the intent of the legislature. She stated she supported the rule as drafted.

COMMENT: The Legislative Code Committee pointed out that the implementation section should only reference 15-30-121, MCA and not the subsequent reference to the session law which amended 15-30-121, MCA.

RESPONSE: The department concurs with this observation and will make the change to the implementing section of the rule.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through III (42.17.136 through 42.17.138) relating to Withholding Tax-lien Affidavit.	NOTICE OF THE ADOPTION of Rules I through III (42.17.136 through 42.17.138 relating to Withholding Tax-lien Affidavit.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rules I through III (42.17.136 through 42.17.138) relating to Withholding Tax-lien Affidavit at pages 1194 and 1195 of the 1987 Montana Administrative Register, issue no. 14.

2. The Department has adopted these rules as proposed with a few minor changes as follows:

RULE II 42.17.137 AFFIDAVIT - TIME PERIOD FOR EXECUTION (1) The affidavit of exemption from the grantor must be executed and WITNESSED OR notarized prior to the filing date AND TIME of the warrant for distraint to exempt affected property from withholding tax liens under the provisions of 15-30-208, MCA.

RULE III 42.17.138 RECORD OF AFFIDAVIT - NOTICE (1) Any person or firm claiming an exemption from withholding tax liens based upon an affidavit provided by this ~~act~~ SECTION shall be required to provide a copy of such affidavit to the department within 30 days of written request from the department. If said affidavit or a reasonable explanation for failure to provide the affidavit is not received within the 30 day period the department may assume the lien against the property is valid and commence to enforce the ~~lien~~ LIEN.

3. A public hearing was held on August 24, 1987, to consider the proposed adoption of these rules. Oral comments were received at the hearing and written comments were received both prior to and after the hearing. Those comments are addressed as follows:

Rule I Comments:

COMMENT: Bill Gowen, Helena Abstract and Title representing Montana Land Title Association - (oral testimony at hearing) expressed concern about the information required in the affidavit in accordance with proposed rule I, indicating that the requirement for such information was not the intent of the law. He referenced a letter dated August 14, 1987 from Loren Solberg, Chairman, Legislative Committee, Montana Land Title Association.

COMMENT: Written testimony after hearing from William F. Gowen - With regard to the Form and Content of the "Affidavit"; I believe it should be kept simple and contain the name, address, telephone number, and signature of the grantor. The signature of the grantor should be acknowledged in the proper

form. It should also contain the proper legal description of the real property affected. Item (d) in the notice is also acceptable. As you can see, we in the land title industry, are primarily interested in the protection of a third party purchasing real property for value. Rule II should refer to the "date and time" of the filing of the warrant for distraint.

RESPONSE: Mr. Gowen's final testimony (written testimony which modified his original comments at the hearing) supports Rule I subsections (1)(a) and (d). It also supports subsection (c)(iv). The other parts of subsection (c) deal with personal property transfers and do not apply to real property transfers handled by title companies.

Mr. Gowen didn't address subsection (b). This subsection requires the grantor to include on the affidavit the name and address of the party receiving the property. This information is needed by the department to identify the receiving party to secure a copy of the affidavit. Therefore, subsection (b) must remain in the rule.

The department believes that Mr. Gowen's final testimony does not require a change in Rule I.

COMMENT: Loren Solberg, Montana Land Title Association - (written comment prior to the hearing) Rule I would put the onus on the grantee to ascertain the veracity of the Affidavit, and thus incomplete or erroneous Affidavits could work to the detriment of third parties not owing the withholding taxes in question in the first place. This is contrary to the intent and spirit of the law, and to public policy. I emphasize that the tax in question would be owed by the grantor, and any complication in the form of the Affidavit could work to the owing party's advantage in allowing the lien to be enforced or collected against an innocent third party, to that party's detriment and to the advantage of the actual debtor.

Rule I should thus be amended to provide that the Affidavit include only a statement that the person signing it owes no withholding taxes, that penalties are provided for in the event of false affidavits, and be dated and signed by the Affiant. We would not object to an acknowledgement as provided by statute.

COMMENT: Written comment after the hearing from Loren Solberg - We will concur with the written testimony presented by Wm. F. Gowen to the extent will not object to the inclusion of the legal description as contained in Rule I(1)(c)(iv). This is on the presumption and condition that the wording in Rule I(1) ". . . as much as available of the following information:" is retained.

RESPONSE: Mr. Solberg's final testimony supports Mr. Gowen's final testimony. The department's response to Mr. Gowen's comments also apply to Mr. Solberg's. Thus, we

understand that the final comments from Mr. Solberg constituted a withdrawal of his initial comments concerning the "onus on the grantee" and the content of the affidavit.

In addition, Mr. Solberg asked the department to retain the wording in Rule I ". . . as much as available of the following information:". The department will leave this language in the rule.

Rule II comments:

COMMENT: Loren Solberg, Montana Land Title Association - (written testimony prior to the hearing) Rule II should be amended by inserting in line 3, following "date" and preceding "of the warrant" the words "and time". This is merely in keeping with the recording statutes.

RESPONSE: The department accepts Mr. Solberg's suggestion to include "and time" in Rule II.

COMMENT: Bill Gowen, Helena Abstract and Title representing the Montana Land Title Association - (written testimony after the hearing) Rule II should refer to the "date and time" of the filing of the warrant for distraint.

RESPONSE: The department accepts Mr. Gowen's suggestion to include reference to "time" in Rule II.

COMMENT: Code Committee - Rule I of the notice refers to the withholding tax lien affidavit being either witnessed or notarized, but Rule II refers only to notarization. The Committee suggested we make the two rules consistent with each other. Rule III has wording "provided by this act" which is not appropriate to a rule.

RESPONSE: The department concurs with these suggestions and will make the changes as suggested.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through XIII (42.21.301 through 42.21.313) relating to Light Vehicle & Motorcycle Tax - Personal Property Tax.	NOTICE OF THE ADOPTION of Rules I through XIII (42.21.301 through 42.21.313) relating to Light Vehicle & Motorcycle Tax - Personal Property Tax.

TO: All Interested Persons:

1. On July 16, 1987, the Department published notice of the proposed adoption of Rules I through XIII (42.21.301 through 42.21.313) relating to Light Vehicle & Motorcycle Tax - Personal Property Tax at pages 1014 through 1019 of the 1987 Montana Administrative Register, issue no. 13.

2. The Department has adopted these rules as proposed.

3. A public hearing was held on August 12, 1987, to consider the proposed adoption of these rules. No persons appeared to oppose the proposed adoptions. Leslie Saisbury and Michael Noble of the Property Tax Division appeared on behalf of the Department. No other comments or testimony were received.

Staff of the Revenue Oversight Committee did prepare, subsequent to the close of the comment period, a memorandum taking issue with the department's view that the law contained a technical flaw with regard to the minimum value of vehicles. The department's view on the subject was presented in the notice proposing these rules.

The Revenue Oversight Committee met on September 11, 1987 and discussed this issue. The Committee did not request the department to change its proposed rules, nor did it choose to poll legislators concerning their intent concerning the minimum value of vehicles.

4. Therefore the department adopts the rules as proposed in the notice on July 16, 1987.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) 42.25.1005 and ADOPTION of) Rules I through VI (42.25.1201;) through 42.25.1206) relating) to Severance Tax.)	NOTICE OF THE AMENDMENT of 42.25.1005 and ADOPTION of Rules I through VI (42.25.1201 through 42.25.1206 relating to Severance Tax.

TO: All Interested Persons:

1. On July 16, 1987, the Department published notice of the proposed amendment to 42.25.1005 and adoption of Rules I through VI (42.25.1201 through 42.25.1206) relating to Severance Tax at pages 1031 through 1034 of the 1987 Montana Administrative Register, issue no. 13.

2. A hearing was held on August 13, 1987, at 9:00 a.m., in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana.

3. The Department has amended 42.25.1005 and adopted rules I through VI (42.25.1201 through 42.25.1206) with the following changes reflective of comments received.

RULE III 42.25.1203 REPORTING REQUIREMENTS FOR NEW WELLS (1) In order to insure timely processing of new production information THE 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 modifications 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) through (2) remain the same as proposed.

RULE VI 42.25.1206 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 DURING THE PRIOR CALENDAR YEAR shall be used in the calculation.

(2) In determining whether a lease or unit has an average daily production of 60,000 cubic feet of natural gas or less per well, only those wells that produced natural gas DURING THE PRIOR CALENDAR YEAR shall be used in the calculation.

4. Comments were received at the hearing and in writing from the following:

COMMENT: Senator Delwyn Gage - "The only comment I have would have to do with the termination of the provisions when the price of oil reaches $25.00 per barrel. Your (2) of rule IV indicates that both oil and gas will be affected by this price. You cannot find any place in the bill that indicates that gas

will also be affected. In fact we were aware that the provisions of the bill only referred to oil and we did not amend the bill to include gas. There is no relationship between the price of oil and gas. In fact it is conceivable that when the price of oil gets to $25.00 the price of gas could be lower than it was when the bill was passed. I strongly object to this provisions for it is certainly not in conformity with the bill nor with the intent of the bill as far as my understanding is concerned.

I do not see anything on it in the proposed rules but I was told that the Dept. was planning to use a rolling year to determine stripper status of wells. If that is so I would also object to that as it was the intent that the previous calendar year would be used and if a well qualified as a stripper well the previous calendar year it would continue to be a stripper well during the following calendar year.

RESPONSE: Section 7, subsection 2 of HB 776 states that the tax exemption for all new production as defined in 15-36-121(2) terminates when the price of oil reaches $25 per barrel. Gas production is included in the definition of new production under 15-36-121(2). Thus, the law clearly provides for the termination of the tax exemption for gas as well as oil. The Department's rules follow the exact letter of the law. With regard to stripper production, the department agrees that the $30 per barrel price limit only applies to oil production and that gas production will always receive the preferential tax treatment if production averages less than 60,000 cubic feet per day per well.

In response to the second concern, the department does not plan on using a rolling year to determine stripper status of wells. The department agrees with Senator Gage that the stripper classification should be based upon the previous calendar year.

COMMENT: Montana Petroleum Association - Amendment Suggestions:

Rule III: "the" should be inserted between "information" and "operator" on the second line.

Rule VI(1) should specify the production period, i.e., "only those wells that produced crude oil on the lease or unit during the prior calendar year shall be used in the calculation." Similar wording should be included in section (2) for gas.

RESPONSE: The department concurs with the suggested changes and have made these changes to the rules.

COMMENT: Phillips Petroleum Company - Suggested that Rule I (2) be amended to read: New production may include production from currently producing wells deepened to a new formation.

Only that portion of the production attributable to the new formation and determined by separate measurement, well test or other acceptable means is eligible for the new production exemption.

RESPONSE: This suggested change cannot be implemented. The statute is quite clear that any well that had production in the five years immediately preceding the first month of qualified new production cannot be new production.

During final consideration of HB 776, the department met with Senator Gage, a co-sponsor of the bill, and other supporters of the legislation including representatives of the industry. The department proposed an amendment to the bill that would have made wells deepened to tap new formations eligible for the 2-year exemption. The proposal was rejected, and the law was adopted in a form that precludes the Phillips Petroleum request.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.25.1207) relating to Severance Tax - Stripper Exemptions.	NOTICE OF THE ADOPTION of Rule I (42.25.1207) relating to Severance Tax - Stripper Exemptions.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I (42.25.1207) relating to Severance Tax - Stripper Exemptions at pages 1198 and 1199 of the 1987 Montana Administrative Register, issue no. 14.

2. A hearing was held on August 25, 1987, at 10:00 a.m., in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana.

3. The Department has adopted rule I (42.25.1207) as proposed.

4. No one presented testimony at the hearing and the only comment received was from the Code Committee which is as follows:

COMMENT: The reference to Sec. 4, Ch. 656, L. 1987 in the implementing section should be eliminated. That section amended 15-36-121, MCA, which was included in the proposed rule's citation.

RESPONSE: The department concurred with the Code Committee's observation and made the change to the implementing section of the rule.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I (42.28.122) relating) to Motor Fuel Tax Bonds -) Problem Accounts.)	NOTICE OF THE ADOPTION of Rule I (42.28.122) relating to Motor Fuel Tax Bonds - Problem Accounts.

TO: All Interested Persons:

1. On July 30, 1987, the Department published notice of the proposed adoption of Rule I (42.28.122) relating to Motor Fuel Tax Bonds - Problem Accounts at pages 1196 and 1197 of the 1987 Montana Administrative Register, issue no. 14.

2. The Department has adopted rule I (42.28.122) as proposed with one minor change. Rule I 42.28.122 SPECIAL FUEL USER TAX BONDS - PROBLEM ACCOUNTS (1) through (5) same as proposed.

(6) If ~~an agreement~~ a taxpayer is required to have a bond a second or subsequent time, the special fuel user shall be required to maintain timely filings and payments for three calendar years before making application for the bond requirement to be removed. AUTH, 15-70-104, MCA, Auth. Ext. Sec. 2, Ch. 262, L. 1987, Eff. 10/1/87, IMP 15-70-304, MCA, and Sec. 1, Ch. 262 L. 1987.

3. Comment was received from the Legislative Code Committee.

COMMENT: The Committee suggested that in subsection (6) the words "an agreement" should be deleted and "a taxpayer" inserted in their place.

RESPONSE: The department concurs with the suggested change and has amended the rule accordingly.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 09/14/87.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal of rules regarding repealed rules and official reports from agencies required during recodification.	)	NOTICE OF REPEAL OF ARM 1.2.331 REMOVAL OF REPEALED RULES FROM ARM, AND ARM 1.2.341 OFFICIAL REPORT OF THE RECODIFICATION OF TITLE

TO: All Interested Persons.

1. On August 13, 1987, the office of the Secretary of State published notice of the proposed repeal of ARM 1.2.331 and ARM 1.2.341 regarding repeal of rules and official reports from agencies required during the recodification of the Administrative Rules of Montana at page 1299 of the 1987 Montana Administrative Register, issue number 15.

2. The Secretary of State has repealed the rules as proposed.

3. No comments or testimony were received.

JIM WALTERMIRE
Secretary of State

Dated this 14th day of September, 1987

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

In the matter of the amended notice of the transfer of rules from the Community Services Division of the Department of Social and Rehabilitation Services (SRS) to the Department of Family Services (DFS)	))))))	AMENDED NOTICE OF THE TRANSFER OF RULES FROM THE COMMUNITY SERVICES DIVISION OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (SRS) TO THE DEPARTMENT OF FAMILY SERVICES (DFS)

TO: All Interested Persons

1. The Department of Social and Rehabilitation Services' rule notice published at page 1492, 1987 Montana Administrative Register, issue number 16, listed the numbers of rules transferred from SRS to DFS. During preparation of replacement pages, numerous DFS rule numbers were changed to accommodate expected future research needs by placing all subject-related rules together.

2. All rule numbers will remain as noticed in issue number 16 except those specifically listed below. The rule numbers changed are as follows:

SRS	DFS	SRS	DFS
46.4.129	to 11.4.399	46.5.613	to 46.12.298
46.4.201	to 11.5.596	46.5.617	to 46.12.297
46.4.202	to 11.5.597	46.5.619	to 46.12.499
46.4.203	to 11.5.598	46.5.621	to 11.12.296
46.4.204	to 11.5.599	46.5.650	to 11.12.401
46.5.119	to 11.5.595	46.5.651	to 11.12.402
46.5.401	to 11.11.197	46.5.652	to 11.12.404
46.5.402	to 11.11.198	46.5.653	to 11.12.405
46.5.403	to 11.11.199	46.5.654	to 11.12.407
46.5.505	to 11.12.697	46.5.655	to 11.12.409
46.5.506	to 11.12.698	46.5.656	to 11.12.410
46.5.507	to 11.12.699	46.5.657	to 11.12.413
46.5.531	to 11.7.601	46.5.658	to 11.12.415
46.5.532	to 11.7.602	46.5.659	to 11.12.416
46.5.533	to 11.7.604	46.5.660	to 11.12.420
46.5.534	to 11.7.608	46.5.801	to 11.18.197
46.5.535	to 11.7.609	46.5.802	to 11.18.198
46.5.536	to 11.7.611	46.5.803	to 11.18.199
46.5.537	to 11.7.615	46.5.813	to 11.18.113
46.5.538	to 11.7.616	46.5.903	to 11.14.299
46.5.539	to 11.7.617	46.5.911	to 11.14.297
46.5.608	to 11.12.299	46.5.912	to 11.14.298

AUTH: Sec. 113, Ch. 609 (HB 325), L. of 1987, Eff. 7/1/87
IMP: Sec. 11, Ch. 609 (HB 325), L. of 1987, Eff. 7/1/87

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 14, 1987.

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

In the matter of the amendment of Rules 46.10.321, 46.12.3401, 46.12.3403 and 46.12.3804 pertaining to Medicaid coverage of pregnant women, unborn children and eligible individuals under 21 years of age	))))))	NOTICE OF THE AMENDMENT OF RULES 46.10.321, 46.12.3401, 46.12.3403 AND 46.12.3804 PERTAINING TO MEDICAID COVERAGE OF PREGNANT WOMEN, UNBORN CHILDREN AND ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE

TO: All Interested Persons

1. On August 13, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.10.321, 46.12.3401, 46.12.3403 and 46.12.3804 pertaining to Medicaid coverage of pregnant women, unborn children and eligible individuals under 21 years of age at page 1300 of the 1987 Montana Administrative Register, issue number 15.

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

46.10.321 NEEDY PREGNANT WOMAN Subsections (1) through (1)(c)(i) remain as proposed.

AUTH: Sec. 53-6-113 and 53-4-212 MCA; AUTH Extension, Sec. 3, Ch. 53, L. of 1985, Eff. 3/11/85 and Sec. 2, Ch. 403, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-4-231 and 53-6-131, MCA

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (1)(b) remain as proposed.

(i) those individuals who are not receiving an AFDC check solely because the grant amount was IS less than $10;

(ii) ~~pregnant women who would be eligible for an AFDC grant under ARM 46.10.321 except for the prohibition against such grants being made any earlier than the third month prior to the month in which the child is expected to be born;~~ an otherwise eligible pregnant women WOMAN with no other children receiving AFDC when the pregnancy has been verified by a physician or his designee;

Subsections (1)(b)(iii) through (2)(f)(iii) remain as proposed.

(G) INDIVIDUALS WHO WOULD BE ELIGIBLE FOR AFDC EXCEPT THAT INCOME AND RESOURCES OF A SIBLING MUST BE USED TO DETERMINE ELIGIBILITY.

Subsections (3) through (7)(a) remain as proposed.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 3, Ch. 53, L. of 1985, Eff. 3/11/85 and Sec. 2, Ch. 403, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-4-231 and 53-6-131 MCA

46.12.3403 FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (4) remain as proposed.

AUTH: Sec. 53-6-113 and 53-4-212 MCA; AUTH Extension, Sec. 3, Ch. 53, L. of 1985, Eff. 3/11/85 and Sec. 2, Ch. 403, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-4-231 and 53-6-131 MCA

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) through (5) remain as proposed.

AUTH: Sec. 53-6-113 and 53-4-212 MCA; AUTH Extension, Sec. 3, Ch. 53, L. of 1985, Eff. 3/11/85 and Sec. 2, Ch. 403, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-4-231 and 53-6-131 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: An attorney from Legislative Council noted several corrections to the authorities and implementing statutes were needed.

RESPONSE: The Department has complied with the attorney's direction. The changes are included on this notice.

COMMENT: The Secretary of State's office suggested some grammatical changes.

RESPONSE: The Department has complied with the suggestions. The grammatical changes are included on this notice.

COMMENT: A Department staff person noted that the Ninth Circuit Court of Appeals ruled recently that the income and resources of one child need not disqualify the other members of the household for purposes of Medicaid coverage. If at all possible, this concept should be included in this rule change.

RESPONSE: The Department agrees. Since the concept is an expansion of existing eligibility standards, is substantively consistent with the scheme of changes proposed and does not work to deprive any current recipient of benefits, this would

be an appropriate and convenient time and area in which to incorporate the change.

Gal Seay
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 14, 1987.

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

In the matter of the amendment of Rules 46.12.503 and 46.12.509 and adoption of Rules I and II pertaining to establishment of an inpatient hospital reimbursement system based upon Diagnosis Related Groups (DRGs) for the Montana Medicaid program	))))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.503 AND 46.12.509 AND ADOPTION OF RULES (I) 46.12.508 AND (II) 46.12.505 PERTAINING TO ESTABLISHMENT OF AN INPATIENT HOSPITAL REIMBURSEMENT SYSTEM BASED UPON DIAGNOSIS RELATED GROUPS (DRGs) FOR THE MONTANA MEDICAID PROGRAM

TO: All Interested Persons

1. On August 13, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.503 and 46.12.509 and adoption of Rules I and II pertaining to establishment of an inpatient hospital reimbursement system based upon Diagnosis Related Groups (DRG's) for the Montana Medicaid program at page 1304 of the 1987 Montana Administrative Register, issue number 15.

2. The Department has adopted Rule (I) 46.12.508, OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT, as proposed.

3. The Department has amended ARM 46.12.509 as proposed.

4. The Department has adopted Rule (II) 46.12.505 as proposed with the following changes:

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsection (1) remains as proposed.

(a) Inpatient hospital services provided within the state of Montana will be reimbursed under the prospective payment system using the methodology in subsection (2) of this rule~~,~~, EXCEPT FOR CERTIFIED REHABILITATION UNITS WHICH WILL BE REIMBURSED ON A RETROSPECTIVE BASIS. ALLOWABLE COSTS WILL BE DETERMINED IN ACCORDANCE WITH ARM 46.12.509(2). Subsequent references to rule subsections refer to subsections of this rule unless otherwise specifically identified. In addition to the prospective rate, the following are reimbursable:

Subsections (1)(a)(i) through (1)(a)(iii) remain as proposed.

(iv) for sole community providers, AND neonate DRG's (~~386~~385-390) ~~and--rehabilitation--units~~, a stop-loss reimbursement as set forth in subsections (5) and (6).

Subsections (1)(b) through (2)(b) remain as proposed.

(c) The department computes a Montana average base price per case. This average BUDGET NEUTRAL base price per case is ~~$1,228.39~~ $1,248.10 for fiscal year ending June 30, 1988.

Subsections (2)(d) through (5)(a) remain as proposed.

(b) The department determines the outlier reimbursement for day outliers for all hospitals and distinct part units, except for ~~rehabilitation-units,~~ neonate DRGs (~~386~~385-390) and sole community providers by:

Subsections (5)(b)(i) through (5)(b)(iv) remain as proposed.

(c) The department determines the outlier reimbursement for day outliers for ~~rehabilitation--units,~~ neonate DRGs (~~386~~385-390) and providers who maintain sole community hospital designation for medicare as the greater of:

Subsections (5)(c)(i) through (6)(a) remain as proposed.

(b) The department determines the outlier reimbursement for cost outliers for all hospitals and distinct part units, except for ~~rehabilitation-units,~~ neonate DRGs (~~386~~385-390) and sole community providers by:

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

(c) The department determines the outlier reimbursement for cost outliers for ~~rehabilitation--units~~, neonate DRGs (~~386~~385-390) and providers who maintain sole community hospital designation for medicare as the greater of:

Subsections (6)(c)(i) through (8)(b) remain as proposed.

(9) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 46.12.303. The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest in writing TO the principal diagnosis, secondary diagnoses, and names of procedures performed. The following statement must immediately precede the physician's signature: "I certify that the ~~identification~~ NARRATIVE DESCRIPTIONS of the principals and secondary diagnoses and the MAJOR procedures performed ~~is~~ ARE accurate and complete to the best of my knowledge." ~~Intentional--misrepresentation,--concealment,--or falsification--of--this--information--may,--in--the--case--of-a medicaid-beneficiary,-be-punishable-by-imprisonment,--fine,-or civil-penalty.~~" IN ADDITION, WHEN THE CLAIM IS SUBMITTED, THE HOSPITAL MUST HAVE ON FILE A CURRENT SIGNED ACKNOWLEDGEMENT FROM THE ATTENDING PHYSICIAN THAT THE PHYSICIAN HAS RECEIVED THE FOLLOWING NOTICE: "NOTICE TO PHYSICIANS: MEDICAID PAYMENT TO HOSPITALS IS BASED IN PART ON EACH PATIENT'S PRINCIPAL AND SECONDARY DIAGNOSES AND THE MAJOR PROCEDURES PERFORMED ON THE PATIENT, AS ATTESTED TO BY THE PATIENT'S ATTENDING PHYSICIAN BY VIRTUE OF HIS OR HER SIGNATURE IN THE MEDICAL RECORD. ANYONE WHO MISREPRESENTS, FALSIFIES, OR CONCEALS ESSENTIAL INFORMATION REQUIRED FOR PAYMENT OF FEDERAL FUNDS, MAY BE SUBJECT TO FINE, IMPRISONMENT, OR CIVIL PENALTY UNDER APPLICABLE FEDERAL LAWS." THE ACKNOWLEDGEMENT MUST HAVE BEEN

COMPLETED WITHIN THE YEAR PRIOR TO THE SUBMISSION OF THE CLAIM. The provider may, at its discretion, add to the language of this statement the word "medicare" so that two separate forms will not be required by the provider to comply with both state and federal requirements. In addition, the provider may not submit a claim until the recipient has been either:

Subsections (9)(a) through (10)(a) remain as proposed.

(i) the recipient must utilize a ventilator for a continuous period of not less than eight (8) hours in a twenty-four (24) hour period; OR

~~(ii)~~ require at least ten (10) hours of direct nursing care in a twenty-four (24) hour period. "Direct nursing care" means the care given directly to the patient which requires the skills and expertise of an RN or LPN;

Subsections (10)(a)(iii) through (11)(a) remain as proposed. Subsections (10)(a)(iii) and (10)(a)(iv) will be recategorized as (10)(a)(ii) and (10)(a)(iii).

(b) MONTANA MEDICAID DRG RELATIVE WEIGHT VALUES, AVERAGE LENGTH OF STAY (ALOS) AND DAY OUTLIER THRESHOLDS

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
DRGs 1 through 357 remain as proposed.				
358	Uterus & Adenexa Proced. for Non-Malignancy ~~Except Tubal Interrupt~~ AGE > 69 or C.C.	1.2798	4.72	21
359	~~Incisional Tubal Interruption for Non-Malignancy~~ UTERUS & ADENEXA PROCED. FOR NON-MALIGNANCY AGE < 70 W/O C.C.	0.6813	2.07	14
360	Vagina, Cervix & Vulva Procedures	0.6676	2.46	20
361	Laparoscopy & ~~Endoscopy (Female) Except~~ INCISIONAL Tubal Interruption	0.8100	2.40	21
362	~~Laparoscopic~~ ENDOSCOPIC Tubal Interruption	0.4734	1.30	14
DRGs 363 through 400 remain as proposed.				
401	Lymphoma or NON-ACUTE Leukemia with Other O.R. Procedure ~~Age---69 and/or~~ WITH C.C.	~~2.9336~~ 3.0884	~~9.89~~ 16.92	~~30~~ 32
402	Lymphoma or NON-ACUTE Leukemia with Other O.R. Procedure ~~Age---70~~ w/o C.C.	~~1.8652~~ 1.5972	~~8.14~~ 6.54	28
403	Lymphoma or NON-ACUTE Leukemia ~~Age Greater Than 69 and/or~~ WITH C.C.	~~2.4564~~ 1.8108	~~11.23~~ 11.76	31
404	Lymphoma or NON-ACUTE Leukemia ~~Age 18 69~~ w/o C.C.	~~1.4734~~ 1.0759	~~6.65~~ 5.97	27
405	~~Lymphoma or~~ ACUTE Leukemia ~~Age 0 17~~ W/O MAJOR O.R. PROCEDURE AGE 0-17	~~1.1639~~ 1.2286	~~5.60~~ 16.39	26
DRGs 406 through 456 remain as proposed.				

MONTANA MEDICAID DRG RELATIVE WEIGHT VALUES, AVERAGE LENGTH OF STAY (ALOS) AND DAY OUTLIER THRESHOLDS

DRG	DESCRIPTION	WEIGHT	ALOS	DAY OUTLIER THRESHOLD
457	Extensive Burns W/O O.R. PROCEDURE	~~11.5233~~ 2.5298	~~29.36~~ 10.53	~~48~~ 46
DRGs 458 through 471 remain as proposed.				
472	EXTENSIVE BURNS WITH O.R. PROCEDURE	15.0619	37.93	66
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE > 17	3.1692	20.72	29

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

5. The Department has amended ARM 46.12.503 as proposed with the following changes:

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITIONS

Subsections (1) through (3) remain as proposed.

(4) "Sole community hospital" is a hospital classified as such by HCFA in accordance with 42 CFR 412.92(a) thru (d) (1986). AND/OR HOSPITALS WITH LESS THAN 51 BEDS.

Subsections (5) through (10) remain as proposed.

(11) "BUDGET NEUTRALITY" MEANS THE DRG-BASED REIMBURSEMENT SYSTEM DESCRIBED AT ARM 46.12.505 SHALL BE ADJUSTED TO COMPENSATE IN THE AGGREGATE, AN EQUAL AMOUNT FOR ALL INPATIENT HOSPITAL SERVICES AS WOULD HAVE BEEN EXPENDED, IN THE AGGREGATE, UNDER AN ALLOWABLE COST-BASED REIMBURSEMENT SYSTEM DESCRIBED AT ARM 46.12.509(2) IN THE FIRST YEAR FROM THE EFFECTIVE DATE.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L, 1985, Eff. 10/1/85
IMP: Sec. 53-6-101 and 53-6-141 MCA

6. The Department has thoroughly reviewed all comments received. Due to the length of the comments and Department response, an index is provided for convenience followed by the comments and responses.

I. REQUEST FOR EXTENSION OF COMMENT PERIOD

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A. Sole Community Hospital Stop-loss
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IX. MISCELLANEOUS COMMENTS

A. Obstetrical Service Rates
B. Rural Facilities - Volume Considerations
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D. Base Data Was Not Representative of Medicaid Population
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F. DRG Grouper Version 4.0
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H. Rule Authority
I. Neonatal Intensive Care

I. REQUEST FOR EXTENSION OF COMMENT PERIOD

A. Extension Request

COMMENT: Several commentors requested extension of the comment period to October 2, 1987. The reasons given for the

request are related to providing a time period to perform a study of economic impact on hospitals by the proposed DRG system. The commentor believed that the Department did not provide adequate information to the hospitals to determine the impact of DRGs nor did the Department allow an adequate comment period prior to the public hearing.

RESPONSE: The Department will extend the comment period to September 13, 1987. The Department disagrees with the commentor that adequate time and information were not provided to hospitals. On a provider training tour completed July 10, 1987, the Department attempted to provide all necessary information and urged hospitals to review and comment on the proposal. The sessions were well attended by the hospitals but failed to elicit much response. Prior to the provider training, the hospitals received an information packet regarding the proposed change. In publishing the proposed rule, the Department made copies available to providers one week in advance of formal publication.

B. Test of Data Validity/Financial Performance

COMMENT: One commentor stated that the proposed DRG system must address three questions in order to be acceptable to the hospital community. These items are:

1. The system should provide data adequate to assist providers in measuring the impacts of the system.
2. The system must successfully compensate all hospitals equitably for the provision of medical care. That is, the system must not create big "winners" and "losers".
3. The system must expend an amount equal to the current system during the first year. This is, the system must truly be budget neutral. Further, the system should be expected to reimburse the full amount of the appropriation available to the Medicaid program.

In evaluating the proposed system on these points, several commentors have expressed concern that the Department has proposed a base price which will substantially under-reimburse facilities compared to the current cost-based reimbursement system. The commentors noted that the Department used the DRI hospital market basket inflation index rather than the actual inflation incurred by providers.

RESPONSE: The Department agrees that the potential for inflation indexes to misstate the exact base price exists. One premise of the proposed system is that it be budget neutral. That is, during the first year the proposed system would pay an amount equal to the amount that would have been paid under the existing reimbursement system. While the use of the DRI

inflation index was considered to be a reasonable estimate of inflation of actual allowable costs, an error may in fact exist. In response to the comment, the Department is amending the proposed rule to provide for a modification of the base price to correct any error in the estimated inflation and actual inflation of allowable costs.

COMMENT: The Montana Hospital Association (MHA) questioned whether the proposed DRG system was tested against true numbers to determine if a fair and equitable system was being implemented. The MHA expressed concern that this review was either not performed or not shared with providers.

RESPONSE: The Department did review the financial impact analysis of DRGs produced by the consultant firm assisting on the development of DRGs. This included a test of policies on the base year (1983) data. This analysis is included in the findings document which was offered to the MHA and its ad hoc review committee in a June 9, 1987 letter. The representatives of the MHA declined to review this document.

COMMENT: The Department has supplied MHA with a simulation of the proposed system. The Association was given the data with the caveat that it was not intended to predict who would win or who would lose under the system but "to see if the system would explode." Based upon its analysis, MHA submits that if the system has not already exploded, it is so unstable that it will explode if it is ever put to use. MHA extrapolated the Department's six-month simulation to a one-year period. The methodology for doing so is as follows:

1. Total claim payment with outliers and without capital from the SRS report is multiplied by 1.1 in order to inflate the DRG payment to include capital. The Department estimates that capital payments to hospitals will average 10 percent.

2. From the figure calculated in step 1, the estimated payment based on the current interim rate is subtracted. A negative result means that DRG-based payments are less than an estimate of cost-based reimbursement. A positive result means that DRG-based payments are more than the estimated cost-based reimbursement. At this point in the analysis, the Department cautions providers that the cost-based payments are likely overstated because Tax Equity and Fiscal Responsibility Act (TEFRA) limits have not been applied. MHA suggests that the estimated cost-based reimbursement from the Department's simulation may in fact be a good estimate, if not somewhat understated. This is the logic for that claim: The estimate of cost-based payments was prepared by the

Department by multiplying the facility's interim rate by actual charges for the first half of 1986. The figure with which it is being compared is the DRG price for FY 1988. This price was calculated by inflating the standardized 1983 average cost through 1988. In essence, the comparison with DRGs in the Department's simulation is one of cost-based reimbursement frozen in 1986. The question in the analysis then is are the TEFRA limits from 1984-1988 more or less generous to cost-based reimbursement than a virtual freeze on payments at 1986 levels? MHA would claim that TEFRA limits are more generous than a two year freeze. Therefore, MHA chooses to accept the Department's estimate of cost reimbursement as a good, if somewhat conservative, estimate.

3. The result from step 2 is then divided by .675 in order to inflate which are the number of cases from roughly 2,700 to roughly 4,000 the number of cases estimated by the Department to have actually occurred in the period. This step is valid if the 2,700 sample provided by the Department is a representative sample as it is alleged to be. If it is not a representative sample, the extrapolation is incorrect. It should be pointed out that if the sample is not representative, it is worthless for any model or simulation purposes. It could not, for example, tell the Department whether or not the system would "explode".

4. The result from step three equals the net gain or loss from the DRG system when compared to cost reimbursement for one-half of a year. In order to estimate the gain or loss for a year, the result of step 3 must be multiplied by two.

RESPONSE: The Department disagrees with the method and specific data used in the extrapolation of the 1986 data simulation. Specifically:

- 1986 data was used as a representative group of claims which would approximate performance of the proposed DRG price and weights. This data does not provide adequate base information to test such issues as "winners and losers" or budget neutrality.
- The Department does not estimate that 4,000 discharges approximate 6 months data. In 1983, there were 8,600 discharges. In 1986, there are an estimated 14,000 discharges.
- Capital costs vary widely from provider to provider. Overall, 1983 capital costs approximated 10% of reim-

bursable cost. In maintaining this relationship, the extrapolation should calculate 10% of estimated cost rather than inflating the DRG payment by 10%. In measuring any particular providers "bottom line" that providers estimated capital cost should be used rather than an estimate of 10%.

. The Department rejects the extrapolation of data to contend any single provider would be a net "winner" or "loser". Such extrapolation ignores the effect of solitary outliers, changes in caseload, actual capital cost and affect of TEFRA cost limits versus the estimated costs.

. The aggregate difference between the MHA extrapolation and an extrapolation of the 1986 data corrected by the Department's caseload estimate and treatment of capital totals $13,057,432.

The two methods compared are as follows:

Description	MHA	Department
1986 Claims	2,700	2,700
Total 1986 Claims	8,000	14,000
Conversion Factor	.3375	.1929
Total Payment 2,700 Claims	4,096,436	4,096,436
Divided by Conversion Factor	.3375	.1929
Total 1986 DRG Payment	12,137,588	21,236,060
Total Capital 2,700 Claims	409,644	463,892
Divided by Conversion Factor	.3375	.1929
Total 1986 Capital	$1,213,760	$2,404,832
Total 1986 Payment X 1.269 Legislative Increase in Caseload	13,351,348	23,640,892
Total Extrapolation	16,942,860	30,000,292
Difference	13,057,432	

The Department believes this data reflects a reasonable assert in that the proposed system will distribute all available appropriation.

COMMENT: Through this analysis, MHA discovered that four hospitals experienced significant losses from cost reimbursement under the Department's simulation. Hospital 60 lost $371,000, hospital 42 lost $285,000, hospital 26 lost $182,000 and hospital 24 lost $95,000. A representative from the Department has indicated that these losses may be explained away because of bad management.

RESPONSE: The Department disagrees with the provider's contention regarding the likelihood that the hospitals would experience significant losses. As stated previously, the extrapolation of claims is an inappropriate extension of data. For example, hospital 60 had two outlier cases totaling $83,719 in "loss". Through extrapolation by the MHA method, the loss from 2 cases represents $272,862 of the $371,000 in lost reimbursement. Hospital 42 is currently subject to a substantial TEFRA cost limit penalty.

Further, no representative of the Department indicated that these projected "losses" were explainable by bad management. A Department representative did indicate that in modeling the proposed DRG system a provider should measure the actual additional capital payment and compare DRG payments to TEFRA costs.

COMMENT: The Department will be less successful at explaining the following increases from cost reimbursement based upon the model: hospital 34 gained $112,000, hospital 3 gained $104,000, hospital 4 gained $78,000, hospital 27 gained $69,000 and hospital 32 gained $68,000.

RESPONSE: Again, the Department disagrees that the extrapolation of data to contend a provider would be a "winner" is inappropriate. It is, however, interesting to note that hospital 3 is a substantial benefactor of the sole community hospital "stop loss" provision. This benefit would account for $37,932 in reimbursement for outliers qualifying for the stop-loss provision.

C. Opportunity of Hospital Review

COMMENT: One commentor stated that hospitals have not been given an opportunity to analyze the financial impact of the proposed DRG rule because the Department deliberately published the proposed base price in error. Because hospitals did not have the necessary data, no analysis of the proposal was possible.

RESPONSE: The Department disagrees with the comment. Hospital training sessions were scheduled and held at various sites around the State. These sessions concluded on July 10, 1987,

at which time providers were informed that for purposes of financial analysis, the published base price could be relied on to allow hospitals to determine how they might perform under the proposed rules. The hospitals were encouraged to share any results they may achieve with the Department. As of September 10, 1987, one provider has presented a very brief approximation of the financial impact of DRGs and one provider has presented an estimate of how the proposed system would impact the facility's rehabilitation unit.

II. REQUEST FOR ONE YEAR PHASE IN

A. Use of a Floor on Losers and Cap on Winners

COMMENT: Two commentors have suggested that the Department institute a DRG system with a "floor" and "ceiling" on reimbursement ranging from 2.5 to 5 percent variance on cost. This proposal specifically calls for a settlement at which time the DRG payment would not be less than 95% of allowable cost nor more than 105% of allowable cost. The intent of this proposal is to avoid large "winners" and "losers" from prospective payment. In effect, a safety net would be created until such time as the policies of the system are shown to be fair and equitable.

RESPONSE: The Department views this request as an extension of the current cost-based system while the various DRG policies illustrate the distribution of monies among the hospitals. To some extent the distribution of funds under prospective payments is controlled by the underlying policies. While the request for a safety net is not identifying specific policies causing fear of inappropriate distribution a presumption is made that after one or two years of operation problem policies would become apparent.

The policies reflected in the proposed reimbursement system represent a balance of risk among the State, small hospitals and large hospitals. Modification of any given policy will create impact on one or more members of the group. For example, the stop-loss provision for outliers enriches hospitals who experience outlier cases at the expense of remaining facilities' base price. Special exemptions of distinct part units increases budget risk to the state; and diminishes the impact of prospecting payment.

To provide a safety net to the DRG system would ultimately lead to request for modification of underlying policies to one group or individual hospital's advantage. The Department believes that it is important to commence prospective payment with the proposed policies in place. When there is a

preponderance of evidence that a particular policy is unfair and/or is identified for review and modification a request by any hospital or group would be entertained.

The Department declines to place a safety net provision in the rule at this time. The Department will continue to review the necessity of a safety net if the underlying policies are shown to be unfair or in need of modification.

Distribution of funds among hospitals creates "winners" and "losers". The distribution is controlled through policy decisions.

The Department has included language to define budget neutrality and shall retroactively adjust the base price upon determination of the aggregate reimbursement amount for Inpatient Hospital services. This guarantees a system that during the initial year will pay no more or no less than the existing cost-based system in the aggregate.

COMMENT: Several commentors also suggested that hospitals be phased in by their respective fiscal year ends. This would require less administrative burden because of partial year cost reports.

RESPONSE: The Department intends to bring all facilities on to the prospective reimbursement system on October 1, 1987, staggered implementation would result in a delay in evaluating the prospective system, and be unfair to some providers by requiring some providers to be subject to prospective payment for eleven months before other providers. The Department will not require partial year cost reports, however, should facilities wish to file partial year costs reports, they may. Allocation of costs will be made using settlement claims summaries produced by the Department's Management Information System.

III. INCLUSION OF DISTINCT PART PSYCHIATRIC UNITS

Several comments were received regarding the proposal to include distinct part psychiatric units in the Medicaid DRG prospective payment system.

A. Compensation Level of Proposed System

COMMENT: The proposed DRG classification system and relative weights will not adequately compensate providers for providing care. One commentor indicated the proposed system would reimburse less than fifty percent of charges.

RESPONSE: The Department included psychiatric unit costs and claims in the development of the base price and relative weights. Information from other states used to supplement Montana Medicaid data were from states with similar prospective payment policies. To evaluate the reasonableness of this policy, one must consider how total facility reimbursement performs. This is true because psychiatric unit costs are included with the general acute care costs in establishing the base price. To evaluate the impact of reimbursement of the psychiatric unit alone without considering total facility impact will result in a invalid result. This contention is supported by the testimony of one commentor who testified that while his facility's psychiatric unit did not perform as well under prospective payment as under allowable cost reimbursement, the overall facility showed an overall surplus of $154,000 under prospective payment. A second commentor who indicated their facility's psychiatric unit would receive substantially less reimbursement under prospective payment also reported substantial improvement in reimbursement when the complete facility reimbursement is considered.

B. Validity of the Average Length of Stay

COMMENT: The proposed DRG classifications average lengths of stay for psychiatric units do not reflect the length of stay actually provided in psychiatric units. No data was submitted in support of this contention.

RESPONSE: The average length of stay values included in DRGs 424-432 range from 4.37 to 10.91 days. According to data from the MT-WY Foundation for Medical Care, the average length of stays throughout Montana for psychiatric care is 5.422. For the three major psychiatric units providing services to Medicaid recipients, the average length of stay for all of 1986 were 8.648, 6.287 and 7.53 days respectively. The Department has concluded that the length of stay in the proposed DRG classifications are adequate and reflect actual length of stay currently provided.

C. Administratively Necessary Days

COMMENT: Two comments received cited the lack of Medicaid reimbursement for administratively necessary days (ANDS). ANDS are described as patient days provided to patients ready for discharge but are awaiting appropriate discharge placement. It was suggested that the Department loosen the requirements for swing bed reimbursement to cover ANDS. This change was suggested to give hospitals increased flexibility for discharge management.

RESPONSE: A state Medicaid agency may provide compensation for ANDS if the agency's state plan provides coverage for ANDS. The prospective reimbursement system is not intended to implement an expansion of the current Medicaid program. The Department has no data to support the need for this change. Medicaid recipients may be placed in an appropriate nursing home setting anywhere within the boundaries of Montana; they are not limited to placements within 100 miles as Medicare recipients are. Swing beds are intended solely to address the issue of lack of available of appropriate nursing home beds. Therefore, the current policy regarding ANDS and swing bed reimbursement will remain unchanged.

D. Alternative Placement Opportunity for Children

COMMENT: One commentor testified that there was inadequate placement alternatives for children under 21 years of age. Because of this, the Department should not include psychiatric units in prospective reimbursement. Failure to exempt psychiatric units will cause hospitals to provide care in excess of the prospective payment amount. The commentor indicated that it is of utmost importance that the care and treatment of the mentally ill must be in the most appropriate setting.

RESPONSE: The Department concurs with the commentors that the care and treatment of mental illnesses should be provided in the most appropriate setting. Freestanding psychiatric hospitals designed for treatment of longer lengths of stay are not included in the PPS proposal. The Department disagrees with the contention that there is a lack of adolescent and children's hospital alternatives. There are currently two in-state and one out-of-state childrens psychiatric hospitals participating in the Montana Medicaid Program. The 40 bed hospital for adolescents located in Billings is considering expansion to 80 beds. The 12 bed hospital for children under 13 years old located in Helena intends to expand to 21 beds. A third such hospital is currently under construction in Butte. The planned 48 bed hospital will treat both adolescents and children. In addition, out-of-state providers are currently available for placement. In contrast to the short term acute care hospitals, these facilities will specialize in the intermediate and long length of stay. As such, they provide a needed discharge alternative to the short term acute care hospitals.

E. Institutions for Mental Disease, Age Greater Than 65 and Other State's Medicaid Reimbursement Methods

COMMENT: Several commentors stated that the Department should maintain consistency with the Medicare program by exempting

distinct part psychiatric units. The comments indicated that neither Medicare nor any other State DRG payment system had included psychiatric units in the plan. The commentors indicated that DRGs do not appropriately reimburse psychiatric unit services.

RESPONSE: The documentation provided by the commentor pertains to state's reimbursement policies for inpatient psychiatric services for persons under 21. This service may be separately defined and reimbursed in short acute care distinct part units or freestanding psychiatric hospitals such as exist in Billings and Helena. This policy summary does not address itself to the reimbursement method for acute care inpatient hospital services. In the case of psychiatric hospital care for persons under 21 years old Montana Medicaid has a reasonable cost based reimbursement system. Distinct part psychiatric units do not qualify for this type of service reimbursement.

Several states, in designing prospective payment systems utilizing DRG classification systems have included distinct part psychiatric units. These states included Georgia, Maryland, Michigan, Ohio, South Carolina, South Dakota and Utah.

In designing the Montana Medicaid prospective payment system the Department considered exemption of special care units. Unlike Medicare, Medicaid cost reports were never produced segregating special care unit costs (SCU). Therefore, exemption was not considered a practical alternative because of the considerable increase in administrative burden required of hospitals to amend their 1983 Medicaid cost reports. In addition to the problem of segregating SCU costs the Department wanted to maintain the simplest system possible and address the pressure placed on utilization review resources in reviewing inappropriate and/or excessive utilization of distinct part unit care.

F. Reinstitutionalization

COMMENT: One commentor suggested that for some cases the Average Length of Stay reflected in the proposed DRG system would encourage physicians to seek commitment to the Montana State Hospital rather than provide treatment locally.

RESPONSE: The Department disagrees that prospective payment will lead to an increase in commitment of persons to the Montana State Hospital. Commitment proceedings require that a person be determined to be seriously mentally ill, pose a danger to themselves and/or others and that alternative place-

ment in outpatient and short term inpatient hospital settings are medically inappropriate.

It has been our experience that many such placements are administratively delayed. DRG reimbursement will provide a definite incentive to hospitals to seek timely referral to any appropriate discharge settings. This experience is substantiated by the large number of denials of Medicaid reimbursement for extended psychiatric unit stays caused by administrative delay in achieving discharge. This problem is further reflected in the testimony by one such provider who estimated that the administrative days not covered by Medicaid totalled $350,000 per year.

G. Unbundling of Psychotherapist Services

COMMENT: Several comments were received that the proposed rules appear to include licensed clinical psychologist, licensed clinical social worker, and some clinic services reimbursement in the DRG rate. This would seem to require that a hospital use its own staff or contracted psychotherapists to provide necessary psychologist/social worker psychotherapeutic services to psychiatric patients in an inpatient psychiatric unit of a hospital.

Under the Medicaid contract that each mental health center has with the Department of Social and Rehabilitation Services, each center is eligible for Medicaid reimbursement for supplying pschotherapy to its patients who are in an inpatient setting. Most of the centers' clients who are on Medicaid are chronically mentally ill (CMI). The conditions and problems of those clients are known well by their mental health center therapists.

There are trust relationships between the CMI patient and the therapist which are difficult if not impossible for a new therapist in an inpatient unit to duplicate. It would be virtually impossible to maintain a continuity of care if the Medicaid rules discourage the use of a CMI patient's current therapist when the patient is hospitalized. That, in fact, would be the effect of the proposed rules.

RESPONSE: The proposed DRG system is intended to pay a flat amount to a hospital for all medical services provided. The concept of unbundling services diminishes the effectiveness of the reimbursement system in assuring that only medically appropriate services are delivered. The commentor failed to explain why the advent of DRGs reimbursement would make continuity of care virtually impossible. On the contrary, the incentive provided by DRGs is to encourage the most efficient and medically appropriate services, including the use of

psychotherapists and clinical social workers, to achieve an appropriate patient outcome and timely discharge.

The Department currently has a contractual arrangement allowing for Mental Health Center personnel to provide inpatient services. Until such time as the contract expires, this arrangement will be allowed to continue. It is the intent of the Department to allow this period of time for the Mental Health Center organization to implement effective working relationships with the hospitals. At expiration of the current contract, these services will no longer be unbundled from the DRG payment.

H. Residential Treatment Versus Outpatient Care

COMMENT: One commentor was concerned with the upgrading of mental health services for children and youth and whether the rule changes lead to increased placement of youth in residential treatment, as has been suggested. If residential placements should increase, the commentor feared that therapeutically-undesirable choices were being made. That is, a youth who could best be treated while residing at home would be placed in residence to obtain Medicaid funding.

RESPONSE: The Department does not believe that DRG reimbursement for distinct part psychiatric units will cause an increased placement in residential treatment. Long term psychiatric hospitals for children are not considered an appropriate replacement for community based mental health services. The current Medicaid preadmission criteria include a determination that alternative settings (i.e. short term acute care and outpatient settings) have been exhausted or would not be appropriate prior to approving hospitalization on a long term basis.

IV. HOSPITAL RESIDENTS

The Department recognized during the development of DRGs that a special payment policy would need to be developed for the few persons who "reside" in hospitals. These are people who have substantial acute medical conditions of a long term nature which prevent their discharge to a lesser level of care setting. As DRG reimbursement prohibits interim billing these costs would not be adequately handled by DRG payments. To alleviate the problem the Department requested that hospitals suggest criteria to identify persons who are "residents" and how to reimburse for their care. As no hospitals responded to this request, the criteria as stated in the original notice were proposed by the Department.

A. Request to Reduce Length of Stay Requirement

COMMENT: The Department should reduce the length of stay requirement from 9 months to as low as 90 days. The long period of time will cause a cash flow burden on hospitals.

RESPONSE: The Department does not intend for this policy to apply to persons who have extended lengths of stay. Rather, the policy is intended for those persons who are likely to be in a hospital setting beyond 9 months. In recognization of the cash flow burden the Department proposes to allow hospital residency status to be conveyed after 6 months of occupancy and allow cycle billing every 30 days thereafter.

B. Request to Modify Medical Criteria

COMMENT: The Department should not rely on indicators such as direct nursing care requirements for a person to qualify for "resident" status. Rather, the Department should utilize more general requirements.

RESPONSE: The Department's proposal is attempting to describe medical treatments which indicate acute level care is being provided rather than subacute level care. The commentor failed to explain why the Department's proposal was too restrictive or what general requirements would successfully describe "residents". Therefore, the policy will remain as proposed.

COMMENT: Several comments were received regarding modifying the medical criteria as it is too restrictive.

RESPONSE: The Department agrees and has inserted language into the rule to require utilization of a ventilator or 10 hours of direct nursing care rather than both.

C. Request for Clarification of Discharge Requirements

COMMENT: One commentor suggested that SRS has the responsibility to determine the appropriate level of care, discharge needs and placement alternatives. As such, the requirement of the hospital to determine whether alternative placement resources are available should be removed.

RESPONSE: Hospitals are required by Title 42 of the Code of Federal Regulations Part 482.21(b) to "have an ongoing discharge planning program which facilitates the provision of follow-up care. In meeting this requirement hospitals are required to transfer or refer patients to appropriate facilities, agencies or outpatient services as necessary. The Department is requiring hospitals to show evidence of this

activity as a condition of qualifying for the special payment provision. The policy will remain as proposed.

V. ADMINISTRATION OF DRG SYSTEM

A. Concern Regarding Ability of Fiscal Agent

COMMENT: One comment was received regarding the ability of the fiscal agent to process claims in a timely manner on the scheduled implementation date.

RESPONSE: The Department has contracted with the fiscal agent to provide this capability. Work is proceeding on schedule and failure of the contractor to fulfill the terms of this contract is not expected. Should the situation arise that claims could not be priced by the prospective method within the terms of the contract or within the federal guidelines, interim payments could be made using the percentage of charge system that is currently in place. The contractor has given the Department assurances that the MMIS system will be available on schedule.

COMMENT: Concern was voiced regarding cash flow slowdowns because of implementation of the new system.

RESPONSE: The current contract for claims processing and federal regulations regarding claims processing set forth guidelines for claims processing. These will be used to determine if claims payments are not being made in accordance with these guidelines. Should a situation arise where these requirements are not met, the existing percent of charge reimbursement method would be used to make interim payments.

B. Physician Attestation

COMMENT: Several commentors suggested that the Department modify the physician attestation requirements to conform with the Medicare requirements. The resulting change would provide less controversy, more efficient administration and allow the same protection against incorrect billing as the Department's current requirement.

RESPONSE: The Department concurs with the suggestion. Language which conforms the physician attestation requirement will be added to the rule.

C. Readmission Policy

COMMENT: Several commentors suggested the Department reduce the readmission policy by reducing the readmissions subject to review from 30 days to 14 days in conformity with Medicare

policy. The commentors believed this change would reduce the administrative burden of utilization review.

RESPONSE: The Department may review any admission and subsequent admission without regard to stated time frame. The current policy will provide a more complete admission pattern from which to select cases for review. The primary cases which will be reviewed by the Department are those cases in which admission patterns are influencing pricing of services or create a question of quality control. A side benefit of the current policy will be the ability of the Department to detect abusive admission patterns and/or recipient "shopping" of medical care. As such, the current policy will remain as proposed.

COMMENT: One comment was received that readmission review should be performed retroactively with a retroactive adjustment and that this was not reflected in the rule.

RESPONSE: The Department feels that the proposed language agrees and reflects the policy of retroactive review and adjustment independent of the initial payment process.

D. Unbundling Policy

COMMENT: One commentor requested clarification of the policy on unbundling of claims. Specifically, the commentor questioned whether the 7 days prior to admission and 7 days after discharge presented a delay to claims processing.

RESPONSE: The Department will review all claims within 7 days of an admission or discharge as well as any claims received during a period of hospitalization to detect unbundling of services. The DRG payment is payment in full for all inpatient services. Any claims for services conflicting with the DRG payment will be denied. Services provided outside of the period of hospitalization will be reported to the Department, but will not be denied. This activity will provide information about care patterns and help detect abusive recipient "shopping" of care. This policy will not delay claims processing.

E. Transfer Policy

COMMENT: A comment was received that transfer patients require extreme high utilization of resources in determining the appropriate location for treatment and that the reimbursement proposal penalizes each hospital that does an appropriate job of preparing a patient in critical condition for transfer to the appropriate facility.

RESPONSE: The policy adopted by the Department is to pay the hospital that transfers a patient a per diem based on the DRG plus any appropriate outlier the average length of stay and the length of stay in the transferring hospital. It also pays the discharging hospital the full DRG. This method pays up to two full DRGs in these cases. This method is similar to Medicare. Medicare originally intended to pay a single DRG for the transferring and discharging hospital and this method was proposed to allow hospitals time to establish administrative arrangements regarding transfers of Medicare patients. Should Medicare change its policy in this area, Medicaid would review its policy and decide whether to change or remain the same.

F. Secondary Payor (Third Party Liability)

COMMENT: A comment was received regarding the pricing of Medicaid claims as a secondary payor (third party liability).

RESPONSE: The processing for Medicaid secondary payor claims will not be changed from the existing policy which is to deduct third party payments from the amount Medicaid would reimburse to compute the payment amount. Medicare Part A/Medicaid "crossovers" will still be reimbursed the Medicare deductible and co-insurance.

G. Late Charges/Claim Corrections

COMMENT: A comment was received regarding how late charges and claims corrections would be handled.

RESPONSE: No change from the current process is expected for late charges and adjustments.

VI. UTILIZATION REVIEW

A. Preadmission Requirements

COMMENT: Two commentors question the need for authorization of a hospital admission and/or length of stay prior to or during the hospitalization once a prospective payment system is implemented.

RESPONSE: Authorization of hospital admissions and/or length of stay prior to or during a recipient or applicant's hospitalization was mandated by the 1987 Legislature. It is a requirement under ARM 46.12.504 and became effective 7/1/87. No comments were received prior to or during the hearing process for this rule to indicate that this would be an undue hardship on the provider community. This requirement will

continue to be necessary for hospitals with one modification. Hospitals and/or hospital units not reimbursed by Medicaid under the prospective payment system will continue to need to obtain length of stay authorizations but hospitals and/or hospital units which are reimbursed under the prospective payment system will be required only to obtain admission authorization. ARM 46.12.504 is being amended to reflect this change.

B. Denial Letter

COMMENT: Several commentors have requested that Medicaid develop a policy similar to Medicare's to outline whether hospitals may issue a denial letter to Medicaid recipients in the following two instances:

A. When the Medicaid recipient has been discharged but opts not to leave the facility.

B. When the Medicaid recipient's admission has been determined by the hospital or Medicaid agency or its designee to not be medically necessary yet the recipient and the physician opt to proceed with the admission.

RESPONSE: The Department's current policy is that the decision to issue denial letters is the responsibility of the individual provider. The Medicaid staff is developing in conjunction with the Department's legal staff a more detailed policy to address these issues.

C. On-Site Record Review

COMMENT: Several commentors have requested that Medicaid develop a policy similar to Medicare's to outline whether hospitals may issue a denial letter to Medicaid recipients in the following two instances:

A. When the Medicaid recipient has been discharged but opts not to leave the facility.

B. When the Medicaid recipient's admission has been determined by the hospital or Medicaid agency or its designee to not be medically necessary yet the recipient and the physician opt to proceed with the admission.

RESPONSE: The Department's current policy is that the decision to issue denial letters is the responsibility of the individual provider. The Medicaid staff is developing in conjunction with the Department's legal staff a more detailed policy to address these issues.

COMMENT: A commentor asked for clarification as to whether the majority of retroactive review of medical records will be

performed on-site at the provider's facility or will require that the hospital send copies of the medical record to the Department or its designee.

RESPONSE: It is the Department's intent to perform retrospective review on-site at the provider's facility to the greatest degree possible. The Department, however, reserves the right to request copies of medical records as needed.

D. Reimbursement for Copying Costs

COMMENT: Several commentors have questioned whether Medicaid will reimburse providers for the costs of copying medical records should they be requested for review by the Department or its designee.

RESPONSE: The Department has historically required providers to furnish medical records upon request for retroactive review. The costs for these copies are reflected in the current base price and any payment we would make for these costs would result in a decrease in this base price.

VII. REHABILITATION UNITS

Reimbursement of Certified Rehabilitation Units

The original policy for the reimbursement of certified rehabilitation units of acute care general hospitals was to include this type of service in the prospective DRG reimbursement system. This policy was updated to provide the 60% stop-loss consideration to outliers and just recently an option to provide 70% stop-loss consideration to outliers with lengths of stays over 90 days with a ceiling on total facility reimbursement of TEFRA costs. The 70% stop-loss consideration was proposed as a method to reduce the risk of catastrophically long stays without affecting the base price.

COMMENT: One commentor responded that the 70% outlier provision would be adequate if the 90 day length of stay threshold were eliminated. The commentor stated that this threshold was arbitrary and established for the purpose of reducing manual claims processing and would result in eliminating 19 of 23 Medicaid Rehab unit discharges. This would provide little opportunity to rectify the rehab reimbursement inequity.

Several commentors responded that the 60% is inadequate for Rehab units. One comment called for the exemption of Rehab units from the prospective reimbursement system because the

present DRG system is not sufficiently accurate to project normative consumption of resources for rehab patients.

RESPONSE: DRG's provide a classification system based on the rationale that patients can be divided into clinically coherent groups with reasonably similar resource consumption. Patients receiving rehabilitation care services cannot always be placed in clinically coherent groups for a number of reasons:

- The type of treatment provided in these units is generally long term with great variations in length of stay.
- The focus of the DRG system has been on patients in acute care facilities and there is a limited database on the resource needs of patients in rehab units.

It is also important to note that there are no rehab diagnosis or DRGs per se. At least part of rehabilitation is a normal part of treatment in a short term general hospital. At times the rehabilitation will be consistently related to the DRG and, at times, it will not.

In response to these comments, the Department will provide rehabilitation units the exemption from the proposed rules. These facilities will remain subject to TEFRA limits issued Rehab unit provider numbers similar to Medicare and costs for these units will be aggregated for future policy review.

VIII. SPECIAL PAYMENT PROVISIONS

A. Sole Community Hospital Stop-loss

COMMENT: One commentor requested special consideration for all hospitals under 50 beds and sole community providers.

RESPONSE: The Department agrees to grant stop-loss to facilities with sole community providers designation and providers with less than 51 beds. Any necessary change in the base price will be made in the calculation of budget neutrality.

B. Technical Adjustment Process

COMMENT: One commentor questioned how future base prices would be calculated.

RESPONSE: The Department will review technical adjustments such as case mix changes, productivity, coding efficiency,

inflation and legislative appropriations. These changes will be subject to the rulemaking process including comment and response.

C. Base Rate Calculation

COMMENT: One commentor questioned the computation of the base price. The base price systems from cost reporting data of 1983 indexed forward by the DRI, which is tied to inflation. Decreasing inpatient census and other market factors unrelated to inflation have driven the cost per case up 10-11 percent since 1983. Using inflation factors will only allow for a 5-6 percent increase. Although the commentor had not seen how the rate was exactly ascertained, strong reservations as to its pertinence were voiced. The commentor also disagreed with the use of a statewide average rate for all hospitals stating that the cost to treat cases varies greatly from hospital to hospital.

RESPONSE: The Department feels that the method for computing the base rate results in an adequate price for economically and efficiently operated hospitals. The fact remains that Medicaid prospective payment systems are limited by federal regulations to pay no more in the aggregate than what would have been paid under a TEFRA cost based system. The Department feels that prospective payment will allow economical and efficient hospitals to recover costs.

The Department has had information regarding the development of the prospective payment system available for review as early as March of 1986. To date, no requests for this information have been received.

Although Medicare and some other states' Medicaid programs have used hospital specific factors in the calculation of their rates, Medicare is proceeding toward a national average. It should also be noted that the hospitals in Montana that participate in Medicaid are a fairly cohesive group. As stated by another commentor, 87% of Medicaid reimbursement goes to ten facilities. These facilities have a major effect on determination of the base price. The base price is expected to benefit the smaller facilities, but the effect of this benefit is not at the risk of under-reimbursing the larger facilities because of the low percentage of Medicaid cases in the small facilities.

IX. MISCELLANEOUS COMMENTS

A. Obstetrical Service Rates

COMMENT: One commentor noted that on every DRG examined, the reimbursement rate will be less than the cost of providing the

service. Obstetrical services is the worst case in which reimbursement would be 25% less than cost.

RESPONSE: The Department disagrees. Both base year modeling and FY 86 modeling indicate that prospective payment for obstetrical care would closely assimilate cost reimbursement. Because of concerns raised about reimbursement of neonatal intensive care, the policy was revised below.

COMMENT: One commentor recommended the Department add DRG 385 to the list of neonate intensive care DRGs subject to special outlier consideration.

RESPONSE: The Department concurs. In reviewing the impact of the change on the system, the Department raised the outlier set aside and recalculated the base price to be $1,248.10.

B. Rural Facilities - Volume Considerations

COMMENT: One comment was received stating that prospective payment requires that for hospitals to recover their costs, they require a significant volume of patients to create an average. The commentor noted that 10 hospitals receive 87% of the Medicaid reimbursement while 46 hospitals receive less than 13% of the reimbursement.

RESPONSE: The Department disagrees. Prospective payment requires an adequate rate rather than a high volume of cases. The Department feels that the use of a statewide average rate provides an adequate rate for all hospitals.

C. Using the Mean Versus the Median Averages

COMMENT: One comment was received that the Department is inappropriately using averages to determine reimbursement levels. The commentor further noted that the Department capriciously diluted the mathematical computations and reduced the reimbursement to rural facilities by using a mean average rather than a median. The comment contended that when there is a deviant population, such as in health care, that a median average should be used.

RESPONSE: The Department disagrees with this comment. The use of a statewide average base price results in an increase in the reimbursement to rural facilities in general. Averages are also used in lengths of stay which affects reimbursement for outlier payments. While health care may have a statistically deviant population, the prospective payment system was designed to reduce the affects of an extreme case through the use of day and cost outliers.

D. Base Data Was Not Representative of Medicaid Population

COMMENT: One comment was received that the base data that was used in the design of the system was not representative of a Medicaid population.

RESPONSE: The base data used in the design of the program was all Medicaid data, Medicaid claims, Medicaid cost report information and Medicaid information from other states. We feel that this is one of the most important design features. This reimbursement system was designed to fit the Montana Medicaid program.

E. Administrative Burden Versus Medical Outcome

COMMENT: One comment was received that the Department is continually increasing the administrative costs of complying with Medicaid recipients.

RESPONSE: The Department has proposed this rule and made changes in response to comments with efforts to utilize existing administrative structure whenever possible. It is not the intent of the Department to place undue administrative burden on the provider.

F. DRG Grouper Version 4.0

COMMENT: A comment was received that the published rule had several DRGs that had different descriptions from Version 4 as published by HCFA effective October 1, 1986. A comment was also received that changes to relative weights were presented at the public hearing and that adequate time to respond to these changes was not available.

RESPONSE: The Department agrees that descriptions were different and has changed the descriptions for the final rule. The Department did make changes to DRG 401-405, 457, 472 and 473 at the public hearing in response to comments received before the hearing. This was done for the purpose of allowing response to these changes during the comment period rather than making the change during the comment period and not affording a opportunity to respond.

COMMENT: A comment was received that several of the group descriptions had not been updated to version 4.0 of the H.S.I. Grouper. These included 358, 359 and 361.

RESPONSE: The Department has updated these descriptions to conform with changes made by the Health Care Financing Administration.

G. Training and Education

COMMENT: One comment was received that it will be necessary to hold education and training session regarding the technical aspects, processes of billing, collections and follow-up on the DRG system. The commentor suggested 60 day time period be provided between the training sessions and implementation.

RESPONSE: The Department plans to hold training sessions regarding DRG implementation. The Department will schedule these sessions at a later date. The Department does not feel that the changes to billing and claims processing will necessitate a lengthy or complex session.

H. Rule Authority

COMMENT: An attorney from Legislative Council suggested a correction to the rule authorities.

RESPONSE: The Department agrees and the suggested correction has been made.

I. Neonatal Intensive Care Units

COMMENT: One commentor suggested excluding neonate intensive care units of general acute hospitals.

RESPONSE: The Department has provided signficiant risk protection to neonate intensive care DRGs (385-390) and does not agree that these units should be excluded. The costs associated with this care were included in the calculation of the weights and base price and would require recalculation of the weights and price to accomplish. As such, the proposal will remain the same.

7. These rules will be effective October 1, 1987.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 14, 1987.

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

In the matter of the adoption of Rules I through IV and amendment of Rules 46.12.204, 46.12.501 and 46.12.502 pertaining to Medicaid reimbursement for the services of nurse specialists	NOTICE OF THE ADOPTION OF RULES (I) 46.12.2010, (II) 46.12.2011, (III) 46.12.2012 AND (IV) 46.12.2013 AND AMENDMENT OF RULES 46.12.204, 46.12.501 AND 46.12.502 PERTAINING TO MEDICAID REIMBURSEMENT FOR THE SERVICES OF NURSE SPECIALISTS

TO: All Interested Persons

1. On August 13, 1987, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules (I) 46.12.2010, (II) 46.12.2011, (III) 46.12.2012 and (IV) 46.12.2013 and amendment of Rules 46.12.204, 46.12.501 and 46.12.502 pertaining to Medicaid reimbursement for the services of nurse specialists at page 1331 of the 1987 Montana Administrative Register, issue number 15.

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

46.12.204 RECIPIENT REQUIREMENTS, CO-PAYMENTS Subsections (1) through (4) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-141 MCA

46.12.501 SERVICES PROVIDED Subsections (1) through (2) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension, Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87
IMP: Sec. 53-6-103 and 53-6-141 MCA

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM Subsections (1) through (3)(d) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 113, Ch. 609, L. of 1987, Eff. 4/24/87
IMP: Sec. 53-2-201, 53-6-103, 53-6-141 and 53-6-402 MCA

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

46.12.2010 NURSE SPECIALIST SERVICES, REQUIREMENTS Subsection (1) remains as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension, Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. of 1985, Eff. 10/1/85
IMP: Sec. 53-6-101 MCA

46.12.2011 NURSE SPECIALIST SERVICES, DEFINITIONS Subsections (1) and (1)(a) remain as proposed.

(b) "Medical protocol" means an agreement~~(s)~~ or standing order~~(s)~~ between the physician and the nurse practitioner or midwife which defines the medical functions, hospital procedures, referrals, communications, consultations and backup arrangements for the nurse practitioner or midwife.

Subsections (1)(c) through (1)(j) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension, Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. of 1985, Eff. 10/1/85
IMP: Sec. 53-6-101 MCA

46.12.2012 NURSE SPECIALIST SERVICES, ADDITIONAL REQUIREMENTS Subsections (1) through (2) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension, Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. of 1985, Eff. 10/1/85
IMP: Sec. 53-6-101 MCA

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT Subsections (1) through (7)(h) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension, Sec. 4, Ch. 329, L. of 1987, Eff. 10/1/87; Sec. 2, Ch. 77, L. of 1985, Eff. 10/1/85
IMP: Sec. 53-6-101 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The Department did not require the supervising physician for the Nurse Anesthetist to be an anesthesiologist.

RESPONSE: The Department intends to allow flexibility as to the speciality of supervising physician in order to allow Certified Registered Nurse Anesthetists (CRNA) to practice. By limiting the supervising physician to an anesthesiologist, there are certain geographic locations where a nurse anesthetist could not provide services because no anesthesiologist is available. The definition of the supervisory role must be agreed upon between the professionals, not by the Department.

Therefore, the Department intends to have the rules remain as proposed.

COMMENT: It is unclear why the reimbursement level for nurse specialists is not the same fee as the physician receives although the nurse specialist is providing the same service.

RESPONSE: During the lobbying efforts in support of Senate Bill 176, the nurses promoted their services as being cost effective because their charges were less than a physician's usual and customary charges for the same service. The Department's proposed reimbursement methodology for establishing a Medicaid rate is the same method currently used within physician services for newly established procedures.

The cap of 80% of the physician's fee is the Department's effort to develop a cost containment component for a newly established provider.

Therefore, the Department intends to have the rules remain as proposed.

COMMENT: An attorney from Legislative Council suggested numerous changes in authority and implementation citations and a grammatical change.

RESPONSE: The Department has complied with the reviewing attorney's request.

5. These rules will be effective October 1, 1987.

Gail Gray
Director, Social and Rehabilitation Services

Certified to the Secretary of State September 14, 1987.

VOLUME NO. 42 OPINION NO. 25

BANKS AND BANKING - Appropriate institutions for deposit of county, school district, and protest fund moneys;
CREDIT UNIONS - Appropriate institutions for deposit of county, school district, and protest fund moneys;
PUBLIC FUNDS - Appropriate institutions for deposit of and permitted types of investment for county funds;
SCHOOL DISTRICTS - Appropriate institutions for deposit of funds;
SECURITIES - Permitted types of investments for county moneys;
UNITED STATES - Treasury investment growth receipts as reflecting ownership in a direct obligation of; what constitutes an agency of;
CODE OF FEDERAL REGULATIONS - 12 C.F.R. § 611.400(a) (1987), 24 C.F.R. § 390.1 to 390.45 (1986);
MONTANA CODE ANNOTATED - Sections 7-6-201, 7-6-202, 7-6-206, 7-6-207, 7-6-213, 15-1-402, 17-6-103, 17-6-204, 20-9-212, 20-9-213, 32-1-105, 32-1-107, 32-1-108;
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 60 (1986), 42 Op. Att'y Gen. No. 16 (1987);
UNITED STATES CODE - 12 U.S.C. §§ 1431, 1452, 1455, 1717, 1718, 1721, 1722, 1723, 1723a, 2002, 2012, 2013, 2055, 2072, 2073, 2079, 2122, 2124, 2134, 2153, 2155; 28 U.S.C. §§ 451, 1349.

HELD: 1. A county treasurer may utilize the services of an investment or brokerage firm to purchase securities of the kind specified in section 7-6-202, MCA.

2. A county treasurer may not invest in private mutual funds which contain only those kinds of securities specified in section 7-6-202, MCA.

3. Securities issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank Board, the Federal National Mortgage Association, and Farm Credit System banks are permissible investments under section 7-6-202, MCA. Mortgage-backed certificates issued by a private entity but guaranteed by the Government National Mortgage Association are not permissible investments under section 7-6-202, MCA. Treasury investment growth receipts represent investments in direct

obligations of the United States government permissible under section 7-6-202, MCA.

4. The permissible alternatives for deposit or investment of county general fund moneys, protest fund moneys, and school district moneys differ and are governed, respectively, by sections 7-6-202 to 213, 15-1-402, and 20-9-213(4), MCA.

11 September 1987

James C. Nelson
Glacier County Attorney
Glacier County Courthouse
Cut Bank MT 59427

Dear Mr. Nelson:

You have requested my opinion concerning the following questions:

1. May a county treasurer utilize the services of an investment or brokerage firm to purchase securities of the kind specified in section 7-6-202, MCA?

2. May a county treasurer invest public money in private mutual funds which, in turn, contain only securities of the kind specified in section 7-6-202, MCA?

3. Are the following investments "securities issued by agencies of the United States" under section 7-6-202, MCA: (a) mortgage-backed certificates guaranteed by the Government National Mortgage Association; (b) mortgage-backed certificates issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; (c) bonds or other securities issued by the Federal Home Loan Bank Board or the several banks of the Farm Credit System; and (e) treasury investment growth receipts?

4. Are there any differences in the kinds of investments which may be made by a county treasurer with respect to school district moneys, tax protest fund moneys, and general fund moneys?

A response to these questions requires analysis of state and federal statutory provisions, federal regulations, and related decisional authority.

I.

The deposit or investment of public money held by a county or city treasurer is largely governed by sections 7-6-201 to 213, MCA. Such moneys not necessary for immediate use may be placed into savings or time deposits in banks, building and loan associations, or credit unions located in the involved county, city, or town. §§ 7-6-201(2), 7-6-206(1), 7-6-213, MCA. Repurchase agreements may be entered into, after a bidding process, with any financial institution licensed (a) to do business in the state, (b) to accept demand payments, and (c) to buy and sell securities (§ 7-6-213(5), MCA); such an agreement is defined in section 7-6-213(2), MCA, as "a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms." Financial institutions so qualifying include commercial banks, trust companies, and investment companies as defined in sections 32-1-105, 32-1-107, and 32-1-108, MCA. Public money not necessary for immediate use may also be invested "in direct obligations of the United States government and securities issued by agencies of the United States." § 7-6-202, MCA. Finally, such money may be placed into the state pooled investment fund established under section 17-6-204, MCA.

The investment limitations under section 7-6-202, MCA, are directed only to the types of securities which may be purchased. There is no express or implied limitation on the involved treasurer's ability to utilize the services of an investment company for the purpose of buying those securities. Indeed, use of an investment company to purchase securities is clearly incidental to

the exercise of the specific grant of authority in section 7-6-202, MCA, and no policy or statutory ground exists to foreclose that use. I note, however, that a treasurer may not use an investment company for the purpose of making demand or time deposits since, as stated above, that form of transaction is restricted to banks, savings and loan associations, and credit unions.

II.

The second question must be answered negatively. Even though the mutual fund may be limited in its holdings to investments in which the treasurer could directly invest under section 7-6-202, MCA, the actual security being purchased is an interest in an investment company. E.g., United States v. National Association of Securities Dealers, 422 U.S. 694, 697-98 (1975); see generally T. Hazen, The Law of Securities Regulation § 17.5 (1985) (discussing federal regulation of distribution and pricing of investment company shares). No statutory provision extends to a county or city treasurer the authority to make that form of investment, and there is no basis for inferring such power.

III.

The term "agency of the United States" as used in section 7-6-202, MCA, is not defined. However, section 17-6-103(3), MCA, does designate various entities as "agencies of the United States" in connection with identifying securities which may be used to secure the deposit of public funds by the State Treasurer:

> The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:
>
> ....
>
> (3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:
>
> (a) commodity credit corporation;

(b) federal intermediate credit banks;
(c) federal land bank;
(d) bank for cooperatives;
(e) federal home loan banks;
(f) federal national mortgage association;
(g) government national mortgage association;
(h) small business administration;
(i) federal housing administration; and
(j) federal home loan mortgage corporation[.]

County treasurers are also authorized to require security for deposits of public money under certain circumstances, and such security must consist either of those instruments specified in section 17-6-103, MCA, or cashiers checks issued to the depository institution by a federal reserve bank. § 7-6-207(1), MCA. Consequently, if the Legislature intended the term "agencies of the United States" in sections 7-6-202 and 17-6-103(3), MCA, to be applied identically, securities issued by the entities listed in your third question would be deemed appropriate forms of investment under section 7-6-202, MCA.

Nonetheless, a somewhat different conclusion as to the meaning of the term "agencies of the United States" is supported by an analysis of federal statutes, regulations, and decisional authority. 28 U.S.C. § 451 defines the term "agency," as used in Title 28 of the United States Code, to include "any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense." 28 U.S.C. § 1349 further states that federal "district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock." As a general matter, these provisions require an analysis of the involved entity's function, operation, management and, as to corporate entities, ownership status. See Rauscher Pierce Refsnes, Inc. v. Federal Deposit Insurance Company, 789 F.2d 313, 314 (5th Cir. 1986); Acron Investments v. Federal Savings & Loan Insurance Corporation, 363 F.2d 236, 239-40 (9th Cir.), cert. denied, 385 U.S. 970 (1966).

As to most of the entities listed in the third question, the determination of agency status under 28 U.S.C. § 451 is relatively straightforward. The Government National Mortgage Association (GNMA) has been recognized as a "wholly owned government corporation within the Department of Housing and Urban Development" (Rockford Life Insurance Company v. Illinois Department of Revenue, 55 U.S.L.W. 4747, 4747-48 (June 8, 1987)) and an agency of the United States under 28 U.S.C. § 451 (Government National Mortgage Association v. Terry, 608 F.2d 614, 617-20 (5th Cir. 1979)). See 12 U.S.C. §§ 1717(a)(2)(A), 1723(a). Unlike GNMA, the Federal National Mortgage Association (FNMA) is a corporation which, although established pursuant to federal statute, is privately owned. 12 U.S.C. §§ 1717(a)(2)(B), 1718, 1723(b), 1723a(d)(2); see Roberts v. Cameron-Brown Company, 556 F.2d 356, 359 (9th Cir. 1977); Northrip v. Federal National Mortgage Association, 527 F.2d 23, 32 (6th Cir. 1975); Farmers & Traders State Bank v. Johnson, 121 Ill. App. 3d 43, 76 Ill. Dec. 565, 458 N.E.2d 1365, 1369 (1984). FNMA is therefore not an agency of the United States for federal jurisdiction purposes. The Federal Home Loan Bank Board (FHLBB) and the Federal Home Loan Mortgage Corporation (FHLMC) are indisputably federal agencies. See 12 U.S.C. § 1437(b) (expressly deeming FHLBB an independent agency within the executive branch); 12 U.S.C. § 1452(e) (expressly deeming FHLMC an agency under 28 U.S.C. §§ 1345 and 1442). Because GNMA, FHLMC, and FHLBB are "agencies of the United States" under any interpretation of that term, securities issued by them pursuant to 12 U.S.C. §§ 1431(b), 1455(a), and 1721(b) are proper investments under section 7-6-202, MCA.

The Farm Credit System includes, inter alia, federal land banks, federal intermediate banks, and federal banks for cooperatives. See 12 U.S.C. § 2002; 12 C.F.R. § 611.400(a) (1987); see generally 11 N. Harl, Agricultural Law § 100.03 (1986) (describing the operation of the several Farm Credit System banking institutions). Each of these entities "is an instrumentality of the United States, created to carry out the congressional policy and objectives of the [Farm Credit] Act." 12 C.F.R. § 611.400(a); see Memphis Bank & Trust Company v. Garner, 457 U.S. 392, 395 n.4 (1983). All Farm Credit System banks are authorized to issue bonds or other securities, and all such obligations are "deemed to be instrumentalities of the Government of the

United States" whose principal and interest are generally exempt from federal, state, and local taxation. 12 U.S.C. §§ 2012(10), 2055, 2072(10), 2079, 2122(10), 2134, 2153(b). Despite the largely tax-exempt status of such securities, they are not guaranteed by the United States, and the issuing banks are discrete corporate entities whose capital stock is privately held. 12 U.S.C. §§ 2013(b), 2073(b), 2124(c), 2155(d); see H.R. Rep. No. 425, 99th Cong., 1st Sess. 5, reprinted in 1985 U.S. Code Cong. & Ad. News 2587, 2591. The Farm Credit System banks are thus, as stated in Federal Land Bank of Columbia v. Cotton, 410 F. Supp. 169, 171 (N.D. Ga. 1975), with reference to a federal land bank, "obviously meant to be ... private, rather than governmental, corporation[s] which would merely be subject to various federal regulations." They are consequently not agencies of the United States within the meaning of 28 U.S.C. § 451.

While the issue is close, I conclude that the term "agencies of the United States" in sections 7-6-202 and 17-6-103(3), MCA, should be applied similarly. First, section 17-6-103, MCA, was initially enacted by 1975 Mont. L. ch. 298, § 4, and the Legislature was presumably aware of its provisions when section 7-6-202, MCA, was amended by 1985 Mont. L. ch. 620, § 1, to add the words "and securities issued by agencies of the United States." It is thus reasonable, under accepted canons of statutory construction, to conclude that these sections should be read harmoniously. See 42 Op. Att'y Gen. No. 16 (1987) (the definition of the term "subdivision" in the Subdivision and Platting Act should be deemed applicable to the use of such term in a related statutory provision). Second, irrespective of the technical status of the FNMA and the Farm Credit System banks as agencies of the United States for federal jurisdiction purposes, the Legislature obviously viewed them as federal instrumentalities when section 17-6-103, MCA, was adopted in 1975, and the nature of these entities has not materially changed thereafter. In this latter regard, it must be emphasized that FNMA assumed its present form in 1968 (Pub. L. No. 90-448, § 801, 82 Stat. 476, 536; H.R. Rep. No. 1585, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. & Admin. News 2873, 2943-44) and that all Farm Credit System banks had become privately owned by the same year. It appears probable, therefore, that the Legislature utilized the term "agencies of the United

States" without precise regard to whether the involved entity was within the executive branch of the federal government or otherwise federally owned, and, at least to the extent a particular entity is listed in section 17-6-103(3), MCA, it should be deemed a federal agency under section 7-6-202, MCA.

Irrespective of GNMA's status as an agency of the United States, privately issued mortgage-backed certificates guaranteed by it pursuant to 12 U.S.C. § 1721(g)(1) are inappropriate for investment under section 7-6-202, MCA. The issuer of such certificates is not GNMA but, rather, "a private party, generally a financial institution, that possesses a pool of federally-guaranteed mortgages." Rockford Life Insurance Company v. Illinois Department of Revenue, 55 U.S.L.W. at 4748; see New York Guardian Mortgagee Corporation v. Cleland, 473 F. Supp. 409, 411 (S.D.N.Y. 1979); Montgomery Ward Life Insurance Company v. Illinois 89 Ill. App. 3d 292, 44 Ill. Dec. 607, 411 N.E.2d 973, 977 (1980). Since section 7-6-202, MCA, requires the involved security to be issued by an agency of the United States, such mortgage-backed guaranteed instruments fall outside the provision's scope.

Treasury investment growth receipts (TIGRs) are a form of investment in United States Treasury bonds offered by a particular investment firm; other such firms offer similar investments under different names. TIGRs evidence the holder's ownership of future interest and principal payments on specific United States Treasury obligations which, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in certificate or book-entry form with the Federal Reserve Bank of New York. The holder otherwise has all rights and privileges ordinarily attendant to ownership of the bond. Should default occur, the holder has recourse only against the United States as the obligor on the bond. TIGRs, or like instruments, accordingly represent investments in direct obligations of the United States government permissible under 7-6-202, MCA.

IV.

The final question is partially answered by 41 Op. Att'y Gen. No. 60 (1986), in which I held that funds in

protest accounts established under section 15-1-402, MCA, were not "public money" subject to the deposit and investment provisions of sections 7-6-202 to 213, MCA. I further stated that such protested funds could only be deposited into interest-bearing accounts of local banks or savings and loan associations (§ 15-1-402(6), MCA) or into the state unified investment program (§ 15-1-402(7), MCA). Therefore, the investments alternatives permitted under 7-6-202, MCA, for "public money" in the possession of the county treasurer as part of the general fund are inapplicable to county or municipal taxes paid under protest pursuant to section 15-1-402, MCA.

Under section 20-9-212(10), MCA, a county treasurer is required to "invest the money of any [school] district as directed by the trustees of the district within 3 working days of such direction." The investment or deposit discretion of the trustees is limited by section 20-9-213(4), MCA, to (a) direct obligations of the United States government, payable within 180 days from the time of investment; (b) savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration and located in the same county as the school district or, in some instances, an adjacent county; and (c) the state unified investment program. The various differences between such investment or deposit alternatives and those in sections 7-6-201 to 213, MCA, are clear and need not be detailed.

THEREFORE, IT IS MY OPINION:

1. A county treasurer may utilize the services of an investment or brokerage firm to purchase securities of the kind specified in section 7-6-202, MCA.

2. A county treasurer may not invest in private mutual funds which contain only those kinds of securities specified in section 7-6-202, MCA.

3. Securities issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank Board, the Federal National Mortgage

Association, and Farm Credit System banks are permissible investments under section 7-6-202, MCA. Mortgage-backed certificates issued by a private entity but guaranteed by the Government National Mortgage Association are not permissible investments under section 7-6-202, MCA. Treasury investment growth receipts represent investments in direct obligations of the United States government permissible under section 7-6-202, MCA.

4. The permissible alternatives for deposit or investment of county general fund moneys, protest fund moneys, and school district moneys differ and are governed, respectively, by sections 7-6-202 to 213, 15-1-402, and 20-9-213(4), MCA.

Very truly yours,

MIKE GREELY
Attorney General

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Application of)
THE MONTANA DEPARTMENT OF INSTITUTIONS) DECLARATORY RULING
(NOW DEPARTMENT OF FAMILY SERVICES),)
for a Declaratory Ruling.)

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

The petition was filed on July 7, 1986, and it seeks a determination as to whether an exception should be granted for the purposes of recruiting, appointing, assigning, and hiring only females for employment as cottage life attendants for shifts including coverage of a cottage by only one individual in its juvenile correctional institution, Mountain View School. Following notice to interested parties and notice to the general public a hearing was conducted on October 14, 1986. The Department appeared through its attorney, Karl Nagel, Esq., and through department representatives. No interested party appeared to request intervention in the case by testimony or otherwise. Five exhibits were offered and admitted into evidence: Ex. 1, layouts of cottage buildings at the school; Ex. 2, the position description of cottage life attendants; Ex. 3, the school policy for living area and personal searches; Ex. 4, cottage staffing schedules; and, Ex. 5, excerpts from the Juvenile Detention Facility standards of the American Correctional Association. Copies of those exhibits are available in the Office of the Director of Family Services and the Montana Human Rights Commission.

The Department made written submissions of proposed findings of fact and law, and to the extent any particular finding is not addressed here, it shall be deemed irrelevant or rejected.

Having considered the hearing examiner's proposed order and no exceptions being filed, the Commission now makes the following:

FINDINGS OF FACT

1. Mountain View School is a facility of the Department of Institutions located northeast of the City of Helena, and its purpose is to provide services to children between the ages of 10 and 21 years by means of diagnosis, care, training, education and rehabilitation. §§53-1-202(1)(d), 53-30-202(1), MCA.

2. The school is operated to house and provide services for female youths who are committed there by Youth Courts of the Montana District Courts in adjudications of delinquency or for evaluation.

3. While the school is the most secure facility for female youths in Montana, it is an "open" facility without

restrictive security at which ingress and egress is easily possible.

4. The school has a capacity for approximately 60 youths, and it currently has 53 female youths in residence, generally ranging from the ages of 13 through 18 years of age, with an average age of 16.

5. The residents are housed in three buildings called "cottages," the Cottonwood Cottage (an intensive care facility for five to twelve residents), the Maple Cottage (for up to 35 residents) and the Spruce Cottage (for up to 24 residents). There is an Aspen Cottage, which is not used for residence because of inadequate funding.

6. Due to the statutory mandate that the school provide diagnosis, care, training, education and rehabilitation, the school's programs and staffing are based upon an evaluation and treatment model to deal with the particular problems found in individual residents.

7. When a youth is placed in the school she is given an evaluation for information used to formulate an appropriate individual treatment plan, and that plan is implemented through a four-stage incremental system beginning with an intensive care and supervision stage in the Cottonwood Cottage (Level 1), progressing to a less intensive stage of close supervision (Level 2) and then to two levels which anticipate future aftercare facility or community placement (Levels 3 and 4). These levels are geared to decreasing levels of supervision and increasing levels of personal privileges allowed the students.

8. The average stay of a youth in the school is approximately nine months.

9. Most of the female youths placed in the school have a lengthy history of inappropriate or self-destructive behavior, and normally placement is made only after the failure of community programs in dealing with that behavior.

10. The school's superintendent and director of clinical services make a "moderate estimate" that 90% of the young women in the school have been the victims of some form of sexual abuse, including abuse by males in protective or authority figure relationships, incest and some rapes.

11. They estimate that 95% of the young women have been victims of physical abuse, causing low self-esteem and resulting in self-abusive behavior which includes self-mutilation, substance abuse, the confusion of affection and abuse, misinterpreting the motives and actions of others in a harmful way and a frequent history of two or three attempts or gestures at suicide.

12. Among the programs of treatment to deal with these and other problems are evaluations to interpret individual behavior, behavior modification, the development and implementation of treatment plans, family therapy, and instruction in skills needed for appropriate adjustment to the community.

13. Given the background of sexual and physical abuse, victimization, emotional disturbance, low self-esteem,

inappropriate and self-destructive behavior and substance abuse, the school has concerns of privacy, protection and security, guidance, and example in the operation of the residence cottages.

14. A privacy concern is the need for close supervision of the residents in their individual rooms, in showers and in dressing areas.

15. The residents are in need of protection and security, and intimate supervision in areas where the young women may be in states of undress is needed to deal with situations of self-mutilation or attempted self-destruction, interpersonal violence or substance abuse and bringing in contraband. There are considerations both of modesty and response to a same sex supervisor in this.

16. The guidance required on a daily basis involves personal matters such as discussing and dealing with appropriate sexuality, feminine hygiene and personal care, and even age-appropriate hairstyles, dress and cosmetics.

17. Since the facility is open there are opportunities for the residents to return with contraband from visits to the City of Helena or receive it from visitors, and the staff of the school is required to regularly conduct personal and living area searches.

18. Of primary concern in the implementation of a treatment model is the provision of counselling, advice and guidance that would normally be provided by a parent or family member to deal with adolescent problems with sexuality, appropriate behavior for the age, relationships with others and other female-to-female guidance given in society by female mentors.

19. The school's director of clinical services stresses that it is preferable and appropriate to have male staff members to provide male role models and serve as the male mentors needed in normal society, and she would prefer to staff cottage shifts with at least two women and one man, however this cannot be done due to the treatment needs described and inadequate funding.

20. The situation at the school is in stark contrast with situations involving adult detention facilities because of the age and sex appropriate treatment model and attention to the individual in attempts to rehabilitate and change inappropriate behavior rather than simply detain.

21. The school employs 19 cottage life attendants each of whom serve on five eight-hour shifts in the three cottages, normally with one attendant per cottage on shift.

22. The general duties of the attendants include serving residents in much the same manner as parents, providing informal counselling and close supervision, dispensing medications and personal hygiene supplies, giving personal hygiene and care instruction and providing protection and security for the residents.

23. The essence of the operation of the school is contained in its statutory mandate to provide diagnosis,

care, training, education and rehabilitation for the young women who are placed there.

24. Given the needs of the residents, the physical layout of the cottages and the amount of money provided to operate the school, the essence of operation would be undermined if the school was not permitted to exclusively hire female cottage life attendants for single coverage shifts.

25. There is a factual basis for believing and concluding that under the given circumstances men would be unable to perform the tasks which have enumerated with the kinds of efficiency required and in the interests of the physical and emotional safety of the female residents of the cottages.

26. Due to funding limitations and current conditions, the school is presently unable to reasonably arrange job responsibilities or engage in alternative practices to minimize the clash between the privacy, security and treatment interests of the residents and the fundamental principle barring sex discrimination in employment.

27. Under these circumstances, it is reasonably necessary to the normal operation of the school's cottages to hire only women as cottage life attendants for single coverage shifts.

28. The duties of the cottage life attendants involve matters of "public morals" in dealing with female residents of the school.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this petition pursuant to §§2-4-501, 49-3-105, MCA.

2. The proposed differentiation to hire only women as cottage life attendants for single coverage shifts is presently based upon a bona fide occupational qualification which is reasonably necessary to the normal operation of the school, as permitted by §§49-3-101(6) and 49-3-105, MCA.

3. The essence of the school's statutory mandate would be undermined under the circumstances if it were not permitted to hire only women as cottage life attendants for single coverage shifts. Stone v. Belgrade School Dist. No. 44, 703 P.2d 136, 140 (Mont. 1984).

4. There is both reasonable cause and a factual basis to believe that, under the circumstances, men would be unable to perform the duties of cottage life attendants, as described, with the kinds of efficiency required and in the interests of the physical and emotional safety of the residents. Id.

5. Under the circumstances the school is unable to accommodate by reasonably rearranging job responsibilities or engaging in alternative practices to minimize the clash between the interests outlined in the findings of fact and the fundamental principle against sex distinctions in employment. The inability to accommodate is due to funding restrictions, and the petitioner would prefer such accommodation. Id. 140-141.

6. The duties of the cottage life attendants involve matters of "public morals" in dealing with female residents of the school. 24.9.1402(b)(iii), ARM.

7. While the sex-based distinction here violates the policies of the Montana Governmental Code of Fair Practices, such matters are beyond the control of the petitioner.

8. These conclusions of law apply only to the factual situation presented at hearing and may change with any change of circumstances regarding the funding or operation of the school which will make it possible to provide accommodation as outlined in finding of law 5 above.

9. The law is with the petition.

ORDER

Founded upon the foregoing findings of fact and conclusions of law, and pursuant to the authority of §49-3-105, MCA upon a finding that reasonable grounds exist for an exemption, it is hereby ORDERED that:

1. The Mountain View School of the Montana Department of Institutions is exempted from the requirement of §49-3-201(1), MCA that it recruit, appoint, assign, train, evaluate and promote the cottage life attendants described without regard to sex and it may employ female attendants for single coverage shifts in its cottages, as described, to assure that female school residents are served at all times;

2. The Mountain View School and the Department are granted an exemption from the provisions of §49-2-303(c), MCA with respect to the printing or circulation of statements, advertisements, publications and employment applications for the cottage life attendant positions described so that they may express limitations and specifications as to sex as a bona fide occupational qualification.

3. This exemption shall exist only so long as the reasonable grounds therefor remain in existence and the petitioner is unable to provide accommodation for sex-neutral hiring practices for the position, and this exemption is limited to the situation described. This exemption may not be utilized as an exemption applicable to any other facility or program other than the one described and the exemption as a precedent is limited to its facts.

4. The petitioner shall file a copy of this declaratory ruling with the Secretary of State for publication in the Montana Administrative Register pursuant to §2-4-501, MCA and pay any filing or publication fees required.

DATED this 29th day of June, 1987.

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 September 14, 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 June 30, 1987. This table includes those rules adopted during the period June 30, 1987 through September 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 June 30, 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.

ADMINISTRATION, Department of, Title 2

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