MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

TABLE OF CONTENTS

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 8.86.505 as it relates to quota rules for producers supplying Meadow Gold Dairies, Inc.	)	NOTICE OF PUBLIC HEARING ON A PROPOSED AMENDMENT OF RULE 8.86.505
	)	QUOTA RULES
	)	DOCKET #96-89

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On Tuesday, January 30, 1990, at 9:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the SRS auditorium, 111 N. Sanders Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held on the petition of Lawrence Cornelius, chairman of the quota committee on behalf of the Meadow Gold quota committee. The petition proposes amendment of ARM 8.86.505 to permit outside purchase of milk at plant blend price during periods of critical short supply of milk.

3. The petition proposes amending ARM 8.86.505 as follows. (Full text of the rule is located at pages 8-2555 through 8-2562, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.505 READJUSTMENT AND MISCELLANEOUS QUOTA RULES

(1)-(f) remain the same as before proposed.

(g) During periods when the total production of all Meadow Gold producers' milk is less than 90% of the total quota assigned for two consecutive months, the quota plan provisions will be temporarily suspended until such time as the total combined production of all Meadow Gold producers reaches 95% of the total assigned quota."

4. The petition was submitted pursuant to section 81-23-302 and 2-4-315, MCA. The proceedings are contemplated in section 81-23-302, MCA.

5. The rationale for the proposed action is to permit the purchase of outside milk at the plant blend price during periods of critical short supply. Because current rules do not permit outside milk to be pooled with quota milk, Meadow Gold Dairies, Inc. is required to pay the plant blend price for outside milk purchases, although the milk is classified as class III. This results in unneccessary milk procurement costs to the distributor. If the quota rules are temporarily suspended during periods of short supply, Meadow Gold will be able to purchase milk from outside sources and pool that milk with producer milk at its plant blend price, instead of using it for class III products and paying the plant blend price.

6. Interested persons may participate and present data, views or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 E. 6th Avenue - rm 50, Helena, MT 59620-0512, no later than January 22, 1990.

7. Geoffrey L. Brazier, Esq., 1424 9th Avenue, Helena, Montana, has been appointed as presiding officer and hearing examiner to preside over and conduct this hearing. However, the full board will sit in convened session at the hearing.

8. Authority for the board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, CHAIRMAN

BY: _____
Michael L. Letson, Director
Department of Commerce

Certified to the Secretary of State December 11, 1989.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 8.86.301 as it relates to class I price formula and class I wholesale prices	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 8.86.301 PRICING RULES DOCKET #97-89

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On Tuesday, January 30, 1990, at 10:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the SRS auditorium, 111 N. Sanders Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held at the request of Clover Leaf Dairy, located in Helena, Montana, Equity Supply Co., located in Kalispell, Montana, Vita Rich Dairy, located in Havre, Montana, and the Montana Jobbers Association, and upon the board's own motion.

Petitioners propose to amend table II of ARM 8.86.301 (6)(b) and ARM 8.86.301(g)(C)(II). The reason given for the proposed action is to set prices which are economically and reasonably profitable. Petitioners assert that, without such relief, they will be unable to remain in the milk business at a profit and that each of them will lose money, go bankrupt, or otherwise be obliged to retire.

The board also proposes on its own motion to consider amending paragraphs (6)(b) and (14) of ARM 8.86.301 to change the conversion factors to reflect current data; to change formula calculations from a monthly to a quarterly calculation; and to entertain evidence relative to the merits of those changes. The base period on certain indexes in the formula has been changed in recent orders, necessitating a revision in the conversion factors used. The board will also consider the effect of prices established by its December 20, 1988, order (Docket #89-88) adopting the language that presently is contained in ARM 8.86.301(6)(b), table II. The board's purpose in noticing and considering these subjects is to pass any cost savings realized in the distribution of milk back to the consuming public.

3. The petitioners propose amending ARM 8.86.301 as follows: (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1)-(6)(a) same as before proposed.

(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale, institutional and retail prices of class I milk in the state of Montana utilizes a November, 1969 base equalling 100, an interval of 5.3 and consists of five (5) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

	FACTOR	WEIGHT	CONVERSION FACTOR
(i)	Weekly wages - total private revised	50%	.4035187
(ii)	Wholesale price index (US)	28%	.2607076
(iii)	Pulp, paper and allied products (US)	12%	.1142857
(iv)	Industrial machinery (US)	6%	.0556586
(v)	Motor vehicle and equipment (US)	4%	.0376294
		100%	

NOTE: The reported revised weekly wages - total private is seasonally adjusted by dividing each months revised figures by the factors listed above in paragraph (6)(a).

The following table will be used in computing distributor prices.

TABLE II

Handler incremental deviation from last official reading of present formula. (December, 1973 - 122.10; Formula Base = November, 1969; Interval = 5.3.)

FORMULA INDEX		HANDLER INCREMENTAL DEVIATION
~~143.70-147.94~~	101.30-105.54	-$ 0.02
~~149.00-153.24~~	106.60-110.84	- 0.01
~~154.30-158.54~~	111.90-116.14	0.00
~~159.60-163.84~~	117.20-121.44	0.01
~~164.90-169.14~~	122.50-126.74	0.02
~~170.20-174.44~~	127.80-132.04	0.03
~~175.50-179.74~~	133.10-137.34	0.04
~~180.80-185.04~~	138.40-142.64	0.05
~~186.10-190.34~~	143.70-147.94	0.06
~~191.40-195.64~~	149.00-153.24	0.07
~~196.70-200.94~~	154.30-158.54	0.08

~~202.00-206.24~~	159.60-163.84	0.09
~~207.30-211.34~~	164.90-169.14	0.10
~~212.60-216.84~~	170.20-174.44	0.11
~~217.90-222.14~~	175.50-179.74	0.12
~~223.20-227.44~~	180.80-185.04	0.13
~~228.50-232.74~~	186.10-190.34	0.14
~~233.80-238.04~~	191.40-195.64	0.15
~~239.10-243.34~~	196.70-200.94	0.16
~~244.40-248.64~~	202.00-206.24	0.17
~~249.70-253.94~~	207.30-211.54	0.18
~~255.00-259.24~~	212.60-216.84	0.19
~~260.30-264.54~~	217.90-222.14	0.20
~~265.60-269.84~~	223.20-227.44	0.21
~~270.90-275.14~~	228.50-232.74	0.22
~~276.20-280.44~~	233.80-238.04	0.23
~~281.50-285.74~~	239.10-243.34	0.24
~~286.80-291.04~~	244.40-248.64	0.25

(c)-(g)(i)(C)(I) same as before proposed.

(II) The minimum retail price will be marked down by twenty ~~two--and--three--tenths~~ four percent ~~(22.3%)~~ (24%) to arrive at the minimum wholesale dock pickup or delivery price.

(III) . . ."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

4. The board is considering amending the rule as follows: (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1)-(6)(a) same as before proposed.

(b) The flexible economic formula which shall be used in calculating minimum on-the-farm wholesale and retail, jobber, wholesale, institutional and retail prices of class I milk in the state of Montana utilizes a November 1969 base equalling 100, an interval of 5.3 and consists of five (5) economic factors. It is used to calculate incremental deviations from the price which was calculated for the first quarter of 1974. The factors and their assigned weights are as follows:

	FACTOR	WEIGHT	CONVERSION FACTOR	
(i)	Weekly wages - total private revised	50%	.4035187	
(ii)	Wholesale price index (US)	28%	~~.2607076~~	.7806202
(iii)	Pulp, paper and allied products (US)	12%	~~.1142857~~	.3299850
(iv)	Industrial machinery (US)	6%	~~.0556586~~	.1550846
(v)	Motor vehicle and equipment (US)	4%	~~.0376294~~	.0945103
		100%		

NOTE: The reported revised weekly wages - total private is seasonally adjusted by dividing each months revised figures by the factors listed above in paragraph (6)(a).

The following table will be used in computing distributor prices.

TABLE II

Handler incremental deviation from last official reading of present formula. (December 1973 - 122.10; Formula Base = November 1969; Interval = 5.3.)

FORMULA INDEX	HANDLER INCREMENTAL DEVIATION
143.70 - 147.94	-$ 0.02
149.00 - 153.24	- 0.01
154.30 - 158.54	0.00
159.60 - 163.84	0.01
164.90 - 169.14	0.02
170.20 - 174.44	0.03
175.50 - 179.74	0.04
180.80 - 185.04	0.05
186.10 - 190.34	0.06
191.40 - 195.64	0.07
196.70 - 200.94	0.08
202.00 - 206.24	0.09
207.30 - 211.34	0.10
212.60 - 216.84	0.11
217.90 - 222.14	0.12
223.20 - 227.44	0.13
228.50 - 232.74	0.14
233.80 - 238.04	0.15
239.10 - 243.34	0.16
244.40 - 248.64	0.17
249.70 - 253.94	0.18
255.00 - 259.24	0.19
260.30 - 264.54	0.20
265.60 - 269.84	0.21
270.90 - 275.14	0.22
276.20 - 280.44	0.23
281.50 - 285.74	0.24
286.80 - 291.04	0.25

(c)-(13) same as before proposed.

(14) ~~Monthly~~ Quarterly price announcements.

(a) ~~Monthly~~ Quarterly price announcements will be issued pursuant to paragraph 6 of this rule. Producer, jobber, institutional, wholesale, retail and on-the-farm wholesale and retail prices will be uniform and identical throughout the state of Montana.

(b) . . ."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

5. Specific factors which the board will take into consideration in these proceedings will include, but may not be limited to, the following:

(a) supplies of milk in adjacent and surrounding areas;

(b) actual prices being charged for unregulated milk in the marketplace in Montana;

(c) prices of milk in adjacent and surrounding areas;

(d) current and prospective supplies of milk in relation to current and prospective demand for such milk for all purposes;

(e) cost factors in distributing milk, which shall include, among other things, prices paid by distributors for equipment of all types required to process and market milk, and prevailing wage rates in this state;

(f) cost factors in jobbing milk, which shall include, among other things, raw product and ingredient costs, carton or other packaging costs, processing costs, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state.

6. In its consideration on the merits of the proposals in this matter, the board takes official notice as facts within its own knowledge of the following:

TABLE A

The most current cost survey conducted by staff of the Milk Control Bureau shows a simple average dock cost for the period November 1, 1987, through April 30, 1988, as follows (raw product costs published, reflect a current cost of $15.85 per CWT):

ITEM	RAW PROD COSTS	CRTN/INGR COSTS	PROCESS COSTS	GEN/ADMN COSTS	DOCK COSTS
WHOLE MILK					
1/2 Gal	.67440	.08073	.14443	.05470	.95426
Gallon	1.34879	.16178	.25537	.10940	1.87534
LOWFAT 2%					
1/2 Gal	.60596	.08071	.14443	.05470	.88580
Gallon	1.21192	.16245	.25537	.10940	1.73914
SKIM MILK					
1/2 Gal	.50013	.08874	.15391	.06046	.80324
Gallon	1.00027	.17970	.24246	.09914	1.52157

TABLE B

The most current cost survey conducted by staff of the Milk Control Bureau shows delivery costs for period November 1, 1987, through April 30, 1988, as follows:

ITEM	DOCK COST TABLE B	DROP DEL COSTS	TL DROP DEL COST	WHOLESALE* DEL COSTS	TL WHLS DEL COSTS
WHOLE MILK					
1/2 Gal	.95426	.07854	1.03280	.17569	1.12995
Gallon	1.87534	.15709	2.03243	.35139	2.22673
LOWFAT 2%					
1/2 Gal	.88580	.07854	.96434	.17569	1.06149
Gallon	1.73914	.15709	1.89623	.35139	2.09053
SKIM MILK					
1/2 Gal	.80324	.08902	.89226	.19912	1.00236

*"Wholesale Del Costs" were applied to the units sold at dock, drop shipment, and full service prices.

Note: The survey in table A and B involved costs of two major processing plants in Montana.

TABLE C

Costs of processing and distributing milk as presented by Equity Supply Co. in Docket #93-89:

ITEM	RAW PROD COSTS	CRTN/INGR COSTS	PROCESS COSTS	DIST COSTS	TOTAL COSTS
Whole Milk					
Gallon	1.20110	.16513	.44930	.27200	2.08753
Lowfat 2%					
Gallon	1.03861	.16513	.44030	.26400	1.90804

TABLE D

Bid prices for sales to Malmstrom Air Force Base for period January 1, 1990, through March 1990:

	WHOLE MILK		LOWFAT MILK	
	1/2 Gal	Gal.	1/2 Gal	Gal.
UNIT PRICE	.98	1.96	.90	1.80

TABLE E

Country Classic milk prices on Wyoming program for Montana stores beginning December 1, 1989:

	WHOLE MILK-GALLON		LOWFAT MILK-GALLON	
	DARIGOLD	PRIVATE LABEL	DARIGOLD	PRIVATE LABEL
UNIT PRICE	$2.36	$2.215	$2.23	$2.11

Note: Freight of $.165 per gallon is included.

TABLE F

Margins between retail prices and raw product costs for selected cities for the last week of July and first week of August 1989: (Comparison is made on a gallon of whole milk.)

	RETAIL PRICE	RAW PROD. COST	NET MARGIN
Kellogg, ID	$2.51	$1.09530	$1.41470
Spokane, WA	2.52	1.09530	1.42470
Moscow, ID	2.57	1.06083	1.50917
Twin Falls, ID	2.33	1.06083	1.26917
Boise, ID	2.29	1.06083	1.22917
Jackson, WY	2.42	1.09424	1.32576
*Sheridan, WY	2.63	1.20731	1.42269
*Gillette, Wy	2.84	1.16473	1.67527
*Rapid City, SD	2.65	1.17180	1.47820
*Cheyenne, WY	2.35	1.18493	1.16507
*Laramie, WY	2.49	1.18493	1.30507
*Casper, WY	2.39	1.18493	1.20507
*Powell, WY	2.58	1.20731	1.37269
*Montana	2.65	1.20731	1.44269
Montana	2.63	1.18921	1.44079

*August price

TABLE G

Retail price comparisons on a gallon of whole milk for selected cities for the last week of July and first week of August 1989:

	HIGH VOLUME AVERAGE PRICE	LOW VOLUME AVERAGE PRICE	PRICE RANGE
Kellogg, ID	$2.51	$2.60	$2.49-2.60
Spokane, WA	2.52	2.61	2.47-2.89
Moscow, ID	2.57	2.43	2.35-2.61
Twin Falls, ID	2.33	2.21	2.15-2.69
Boise, ID	2.29	2.14	2.09-2.48
Jackson, WY	2.42	2.36	2.29-2.45
*Sheridan, WY	2.63	2.44	2.39-2.89
*Gillette, Wy	2.84	2.57	2.49-3.09
*Rapid City, SD	2.65	2.52	2.35-2.83
*Cheyenne, WY	2.35	2.35	2.17-2.49
*Laramie, WY	2.49	2.38	2.37-2.59
*Casper, WY	2.39	2.46	2.22-2.69
*Powell, WY	2.58	2.69	2.45-2.74
*Montana	2.65	----	----
Montana	2.63	----	----

*August price

7. The board takes official notice that Meadow Gold Dairies and Country Classic Dairies represent 82.14% of the total fluid milk volume for 1988.

8. The board takes official notice of changes in the marketplace and of the fact that Country Classic in November sold 49.51% of its total wholesale dollar volume through the grocery warehouse system.

9. The board takes official notice that the cost of transporting packaged milk 198 miles from Bozeman, Montana to Powell, Wyoming is approximately $0.043 per gallon, based on current freight charges submitted by Associated Food Stores to Country Classic Dairies, Inc.

10. The burden is on the Petitioners to prove that their requested amendment would be beneficial to the public and in the public interest.

11. Interested persons may participate and present data, views, or arguments pursuant to Section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than January 22, 1990.

12. Mr. Geoffrey Brazier, 1424 Ninth Avenue, Helena, Montana, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

MONTANA DEPARTMENT OF COMMERCE

BY: _____
Michael L. Letson, Director

Certified to the Secretary of State December 11, 1989.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of a proposed amendment of Rules 8.86.501 through 8.86.506 and a proposal for a statewide pooling arrangement as it pertains to producer payments	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF RULES 8.86.501 THROUGH 8.86.506 - QUOTA RULES, AND ON A PROPOSED STATEWIDE POOLING ARRANGEMENT - POOLING RULES DOCKET #98-89

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On Tuesday, January 30, 1990, at 11:00 a.m., or as soon thereafter as interested persons can be heard, a public hearing will be held at the SRS auditorium, 111 N. Sanders Avenue, Helena, Montana. The hearing will continue at said place from day to day thereafter until all interested persons have had a fair opportunity to be heard and to submit data, views or arguments.

2. The hearing will be held at the request of Clover Leaf Dairy, Helena, Montana. Petitioner proposes to amend ARM 8.86.501 through ARM 8.86.506 and to adopt new rules to establish a statewide pooling arrangement as a method to pay producers.

3. The petitioner proposes amending ARM 8.86.501 through 8.86.506 as follows. (Full text of the rule is located at pages 8-2555 through 8-2562, Administrative Rules of Montana.)(new matter underlined, deleted matter interlined)

"8.86.501 QUOTA DEFINITIONS (1) The following definitions apply to ARM 8.86.502, 8.86.503, 8.86.504, 8.86.505 and 8.86.506 unless the context otherwise requires:

(a) "Eligible producer" is a producer who:

(i) is actively producing and selling milk to a Montana ~~Meadow-Gold~~ plant at the time ~~the~~ this plan becomes effective; or

(ii) is approved by ~~a--Meadow--Gold~~ the plant and acquires quota pursuant to ARM 8.86.505(1)(d) ~~additional assignments-to-quota-milk~~; or

(iii) acquires quota through transfer.

(b)-(c) same as before proposed.

(d) "Quota milk" means that share of producer milk received during the month from a pool dairyman which falls within the limits of a figure computed by multiplying such pool dairyman's quota by the number of days in the month.

(e) "Excess milk" means all of the milk received from a pool dairyman during the month which is in excess of his quota milk.

(f)-(h) same as before proposed."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

8.86.502 INITIAL DETERMINATION AND/OR LOSS OF QUOTA

(1) Each eligible producer's initial quota will be based upon his highest total production from ~~one--of--the-following periods:~~

~~(a)--September-1,-1986-through-August-31,-1987;~~

~~(b)--March-1,-1987-through-February-29,-1988;-or~~

~~(c)----calendar--year--1985--through--calendar--year-1987. Divide-the-total-pounds-of-milk--by-the--number-of--days-in-the selected-period--above.---(As-an-example,-divide-the-three-year period-by-1095.)~~ the one-year period immediately preceding the effective date of this plan, divided by 365. The quota for eligible producers who are participating in the quota plan for Meadow Gold and Black Hills producers contained in ARM 8.86.501 through 8.86.506 on the effective date of this plan shall be the quota in effect for those producers as of that date.

(2) same as before proposed.

(3) The administrator will promptly notify each eligible producer in writing of his computed quota, enter such information on the official records of the milk control bureau and thereafter continue to maintain a current and up-to-date record of each eligible producer's quota pounds whether the quota was received pursuant to paragraph 1 and 2 hereof or another paragraph hereof or through transfer. The ~~Meadow-Gold~~ Montana plant will be notified of the production history and quota assignment for each eligible producer. Upon request of such notice, each ~~Meadow--Gold~~ Montana plant shall promptly post in a conspicuous place in its facility a list showing each eligible producer's quota.

(4)-(6) same as before proposed."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

8.86.503 ADDITIONAL ASSIGNMENT TO QUOTA MILK

(1) A producer who does not hold quota and has not transferred quota to another person during the preceding year but now has been accepted by a ~~Meadow-Gold~~ Montana plant as a producer shall have a portion of his marketing of milk assigned to quota milk each month in accordance with the following schedule of percentages for the respective months of the year is an eligible producer.

MONTHS	PERCENTAGE TO BE ASSIGNED TO QUOTA MILK
April through August	20%
All other months	35%"

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

8.86.504 TRANSFER OF QUOTA

(1)-(a) same as before proposed.

(b) The producer committee, the ~~Meadow-Gold~~ Montana plant, and the administrator must be notified in writing by the proposed quota transferer at least ten (10) days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred.

(c)-(d) same as before proposed.

(e) A quota transfer may be made only to an eligible producer or one who has been accepted by a ~~Meadow--Gold~~ Montana plant as a producer not later than the last day of the month during which the transfer is contemplated.

(f)-(i) same as before proposed."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.505 READJUSTMENT AND MISCELLANEOUS QUOTA RULES

(1)(a)-(iv) same as before proposed.

(b) No quota will be readjusted before January 1990. Provided that ~~Meadow-Gold~~ Montana plants have sufficient milk during September, October, November and December of 1989 and 1990, no quota will be readjusted before January 1991.

(c) same as before proposed.

(d) On or before the first day of April each year where applicable, the administrator shall calculate each eligible producer's additional quota to be assigned in accordance with the following computations:

(i) compute the total pounds of class I and class II milk of all ~~Meadow--Gold~~ Montana plants during the twelve (12) month period ending February 28 immediately preceding;

(ii) . . ."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

"8.86.506 PRODUCER COMMITTEE

(1) same as before proposed.

(2) The producer committee shall consist of ~~nine (9)~~ eight eligible producers. ~~Two (2)~~ One producers will be selected by the eligible producers supplying each of the seven (7) ~~Meadow Gold~~ plants located ~~at Billings, Great Falls, Kalispell and Missoula,~~ in Montana and approved by the board of milk control. ~~One (1) producer~~ The remaining producer member will be selected by ~~all eligible producers~~ the seven above designated quota committee members.

(3) same as before proposed.

(4) The producer committee will invite each ~~Meadow Gold~~ plant manager or his designated representative to attend its meetings. Each ~~Meadow Gold~~ manager or his designated representative will not have a vote in any decision of the producer committee.

(5) . . ."

AUTH: 81-23-302, MCA IMP: 81-23-302, MCA

4. The petition submitted by Clover Leaf Dairy asks the board to adopt new rules calling for the pooling of returns from all grade 'A' milk marketed by milk producers in Montana to, or through, distributors regulated under the authority of the state of Montana, under terms described in material submitted with, and attached to said petition.

The said petition also proposes that the distribution of pool monies to milk producers be controlled by rules resulting from incorporating the current Meadow Gold quota plan into a statewide pool, which procedures are described in material submitted with and attached to the petition and addressed in item 3 hereof.

5. The said petitions and attachments are too voluminous to reproduce or describe in detail in this notice. Copies of the documents mentioned in paragraph (4) are available for inspection during regular business hours, at the offices of the Department of Commerce, Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620-0512. Copies will be provided upon request and payment of copying charges. Requests for copies should be made to the bureau by visiting or writing the address given in this paragraph or telephoning (406)444-2875.

6. The purpose for the petition is to establish a statewide pooling arrangement with a statewide quota plan.

The rationale for the petition is to stabilize the milk industry in Montana so consumers will be better assured of an adequate and wholesome supply of milk.

It is asserted that the statewide pool and quota plan would stabilize the marketing of milk in Montana by spreading the cost of surplus among all producers, rather than a few, thus ensuring the survival of more producers.

7. Persons known to have a possible interest in this proposal are milk producers, producer-distributors, distributors and the consuming public.

8. The petition was submitted pursuant to section 81-23-302 and 2-4-315, MCA. The proceedings are contemplated in subsections 81-23-302(14), MCA, in particular.

9. Specific factors which the board will take into consideration in these preceedings will include, but not be limited to the following:

A. Production and marketing practices which have historically prevailed statewide. (This is an express requirement of subsection 81-23-302(14), MCA.)

B. Possible impact of the proposal upon individual producers supplying individual distributor plants.

C. Possible impact of the proposal upon the adequacy of the supply of milk within the state.

D. Possible impact upon the quality of milk available to the consumers.

E. Possible impact upon wholesale and retail prices of milk.

F. Possible impact upon the ability of Montana producers to supply Montana's market requirements.

G. The possibility that the proposal will invite supplies of milk from neighboring states.

H. Possible impacts upon the supplies of milk in individual plant pools.

10. In its consideration on the merits of the petition, the board takes official notice as facts within its own knowledge of the following:

TABLE I

Producer prices in adjacent and surrounding areas - Oct. 1989

	CLASS I PRICE	CLASS II PRICE	CLASS III PRICE	BLEND PRICE
Pacific N.W.	14.27	13.87	13.87	14.05
S.W. Idaho-E. Oregon	13.87	13.87	13.87	13.94
Western Colorado	14.37	13.87	13.87	14.33
Great Basin	14.27	13.87	13.87	14.15
Eastern Colorado	15.10	13.87	13.87	14.64
Rapid City	14.42	13.87	--	14.05
North Dakota	13.70	13.87	13.32	*12.82
Montana	15.37	13.49	11.51	14.31

* Sept. blend price

TABLE II

Supplies of milk which are available in Montana and surrounding areas - October 1989

	CLASS I UTILIZATION	CLASS II UTILIZATION	CLASS III UTILIZATION
Pacific N.W.	177,571,815	37,739,967	231,554,242
S.W. Idaho-E. Oregon	12,543,707	7,450,732	11,865,739
West & East Colorado	64,537,694	17,508,162	28,280,646
Great Basin	67,321,070	8,743,042	77,181,583
Western North Dakota	8,564,008	391,604	279,197
Montana	17,846,884	2,639,010	3,224,202

TABLE III

Comparison of actual blend prices paid to prices received if receiving a uniform blend price for October 1989.

	AT 3.50% ACTUAL BLEND PRICE RC'D	AT 3.50% ACTUAL BLEND POOLING PRICE RC'D	NET INCREASE OR DECREASE
BH Milk Producers	$14.25	$14.31	$ - .06
Clover Leaf Dairy	$14.70	$14.31	- .39
Country Classic	$13.94	$14.31	+ .37
Equity Supply Co.	$14.78	$14.31	- .47
Meadow Gold	$14.50	$14.31	- .19
Safeway Stores	$13.95	$14.31	+ .36
Vita Rich Dairy	$14.64	$14.31	- .33
Average of Plants	$14.31	$14.31	$ .00

TABLE IV

Disparity of blend prices paid individual producers and differences in transportation rates for Oct. 1989 are as follows:

	BLEND PRICE PAID PER CWT BEFORE FREIGHT	FARM-TO-PLANT HAUL CHARGED PER CWT	NET BLEND PRICE PAID PER CWT AFTER FREIGHT
BH Milk Producers	$14.25	$ .83	$13.42
Clover Leaf Dairy	$14.70	$ .80	$13.90
Country Classic	$13.94	$ .74	$13.20
Equity Supply Co.	$14.78	$ .38	$14.40
Meadow Gold	$14.50	$ .93	$13.57
Safeway Stores	$13.95	$ .45	$13.50
Vita Rich Dairy	$14.64	$1.30	$13.34

TABLE V

Costs of transporting milk in ARM 8.86.301(9):

DISTANCE IN MILES	MAXIMUM FREIGHT ALLOWANCE
5 to 50	$ .25
51 to 75	.40
76 to 100	.50
101 to 150	.64
151 to 200	.85
201 to 250	1.06
251 to 300	1.28
301 to 350	1.49

11. The board takes notice that more than 78% of the milk produced in the United States is paid for under one form of pooling arrangement or another.

12. Interested persons may participate and present data, views, or arguments pursuant to section 2-4-302, MCA, either orally or in writing at the hearing or by mailing the same to the Milk Control Bureau, 1520 East Sixth Avenue, Room 50, Helena, MT 59620-0512, no later than January 22, 1990.

13. Mr. Geoffrey Brazier, 1424 Ninth Avenue, Helena, Montana, has been appointed as presiding officer and hearing examiner to preside over and conduct the hearing.

14. Authority for the board to take the action and adopt the rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302(1)(14), MCA.

MONTANA DEPARTMENT OF COMMERCE

BY: _____
Michael L. Letson, Director

Certified to the Secretary of State December 11, 1989.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Endorsement Information and Endorsement of Computer Science Teachers	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.57.301, ENDORSEMENT INFORMATION AND NEW RULE I, ENDORSEMENT OF COMPUTER SCIENCE TEACHERS

TO: All Interested Persons

1. On February 2, 1990, at 1:30 P.M., or as soon thereafter as it may be heard, a public hearing will be held in the Conference Room, Education Building, 33 So. Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.57.301, Endorsement Information and New Rule I, Endorsement of Computer Science Teachers.

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

10.57.301 ENDORSEMENT INFORMATION (1) and (2) remain the same.

(3) Appropriate teaching areas acceptable for certificate endorsement include: social science, history, economics, sociology, geography, political science, economics-sociology, dramatics, journalism, elementary education, library (K-12), speech-drama, foreign language, mathematics, science, physical science, reading (K-12), physics, chemistry, biology, earth science, agriculture, industrial arts, home economics, distributive education, trade and industry, business education, business education with shorthand, music (k-12), art (K-12), physical education and health (K-12), guidance and counseling (K-12), special education (K-12), psychology, computer science. (Effective January 1, 1991, foreign language will be a K-12 endorsement.)

(4) through (8) remain the same.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-103, 20-4-106 MCA

3. The new rule as proposed provides as follows:

RULE I ENDORSEMENT OF COMPUTER SCIENCE TEACHERS (1) For the prospective teacher in core computer science the program shall:

(a) include computer science prerequisite to, consistent with, and substantially beyond that which the teacher may be expected to teach;

(b) develop a competence in programming that will prepare the teacher to be able to program and to teach advanced placement computer science courses; topics covered shall include:

(i) problem solving techniques and strategies,

(ii) modern algorithm design methodology,

(iii) algorithm analysis in terms of time and space complexity,

(iv) algorithm verification techniques,

(v) competence in at least two programming languages widely used in secondary education settings, and

(vi) program testing;

(c) provide a basic introduction to the major subject areas of computer science: algorithms and data structures, programming languages, architecture and machine-dependent programming, numerical and symbolic computing, operating systems, software methodology and engineering, database and information retrieval, artificial intelligence and robotics, and human-computer communication;

(d) provide a basic introduction to computer science theory including computability and intractable problems;

(e) include the history, current trends, career opportunities, and future directions of computing and computer science; and

(f) include the impact of computers on society and the ethical and moral obligations inherent in the use of computer hardware and software.

(2) For the prospective teacher in applications and instructional uses of computers the program shall:

(a) develop the competence to use and teach common software packages, including:

(i) database,

(ii) graphics,

(iii) networking/telecommunications,

(iv) spreadsheet,

(v) word processing, and

(vi) operating systems and utilities;

(b) include content studies and experiences relevant to the computer sciences curricula grades 5-12;

(c) provide competence in the use of computers for classroom management;

(d) include a study of effective pedagogical uses of computers and software in the instructional process;

(e) develop an awareness of resource materials such as journals, sources of computers and software, computer conferences, and professional organizations;

(f) provide competence in proper keyboarding technique;

(g) develop competence in basic trouble-shooting and maintenance of the kinds of computer equipment commonly found in an educational setting; and

(h) provide a basis for evaluating, selecting and purchasing classroom hardware and software.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

4. The board is proposing this amendment and new rule to add a computer science endorsement area in response to recommendations by the Office of Public Instruction, the colleges/ universities, teachers, and a task force appointed to investigate the addition of the endorsement.

5. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson,

Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than February 2, 1990.

6. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.

In the matter of the amendment of Policy Governing Pupil Instruction-Related Days Approved For Foundation Program Calculations and Program of Approved Instruction-Related Days)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.65.101, POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS, AND ARM 10.65.103, PROGRAM OF APPROVED PUPIL INSTRUCTION-RELATED DAYS

TO: All Interested Persons

1. On February 2, 1990, at 2:00 P.M., or as soon thereafter as it may be heard, a public hearing will be held in the Conference Room, Education Building, 33 So. Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.65.101, Policy Governing Pupil Instruction-Related Days Approved For Foundation Program Calculations, and ARM 10.65.103, Program of Approved Pupil Instruction-Related Days.

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

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) A school which in any year was in session for at least 180 pupil instruction days may count for the ~~following~~ year's foundation program a maximum of seven PIR days with a minimum of three of the days for instructional and professional development meetings or other appropriate in-service training. ~~total of not more than seven days~~ These seven PIR days in addition to the required 180 pupil instruction days may be counted provided that such additional days were used for one or more of the following purposes in accordance with the regulations hereby established:

(a) ~~Pre-school~~ Sstaff orientation held prior to the beginning of pupil instruction for the purpose of organization of the school year.

(b) Staff professional development programs scheduled during the year for the purpose of improving instruction which may include ~~professional organizations' instructional and professional development programs. If the district includes statewide professional organizations' programs as part of its staff development, it must provide alternative staff development for those not attending.~~ annual instructional and professional development meetings. If the district includes annual instructional and professional development (IPD)

(iv) algorithm verification techniques,

(v) competence in at least two programming languages widely used in secondary education settings, and

(vi) program testing;

(c) provide a basic introduction to the major subject areas of computer science: algorithms and data structures, programming languages, architecture and machine-dependent programming, numerical and symbolic computing, operating systems, software methodology and engineering, database and information retrieval, artificial intelligence and robotics, and human-computer communication;

(d) provide a basic introduction to computer science theory including computability and intractable problems;

(e) include the history, current trends, career opportunities, and future directions of computing and computer science; and

(f) include the impact of computers on society and the ethical and moral obligations inherent in the use of computer hardware and software.

(2) For the prospective teacher in applications and instructional uses of computers the program shall:

(a) develop the competence to use and teach common software packages, including:

(i) database,

(ii) graphics,

(iii) networking/telecommunications,

(iv) spreadsheet,

(v) word processing, and

(vi) operating systems and utilities;

(b) include content studies and experiences relevant to the computer sciences curricula grades 5-12;

(c) provide competence in the use of computers for classroom management;

(d) include a study of effective pedagogical uses of computers and software in the instructional process;

(e) develop an awareness of resource materials such as journals, sources of computers and software, computer conferences, and professional organizations;

(f) provide competence in proper keyboarding technique;

(g) develop competence in basic trouble-shooting and maintenance of the kinds of computer equipment commonly found in an educational setting; and

(h) provide a basis for evaluating, selecting and purchasing classroom hardware and software.

AUTH: Sec. 20-2-114 MCA

IMP: Sec. 20-2-121 MCA

4. The board is proposing this amendment and new rule to add a computer science endorsement area in response to recommendations by the Office of Public Instruction, the colleges/ universities, teachers, and a task force appointed to investigate the addition of the endorsement.

5. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson,

Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than February 2, 1990.

6. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.

In the matter of the amendment of Policy Governing Pupil Instruction-Related Days Approved For Foundation Program Calculations and Program of Approved Instruction-Related Days)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 10.65.101, POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS, AND ARM 10.65.103, PROGRAM OF APPROVED PUPIL INSTRUCTION-RELATED DAYS

TO: All Interested Persons

1. On February 2, 1990, at 2:00 P.M., or as soon thereafter as it may be heard, a public hearing will be held in the Conference Room, Education Building, 33 So. Last Chance Gulch, Helena, Montana, in the matter of the amendment of ARM 10.65.101, Policy Governing Pupil Instruction-Related Days Approved For Foundation Program Calculations, and ARM 10.65.103, Program of Approved Pupil Instruction-Related Days.

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

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) A school which in any year was in session for at least 180 pupil instruction days may count for the ~~following~~ year's foundation program a maximum of seven PIR days with a minimum of three of the days for instructional and professional development meetings or other appropriate in-service training. ~~total of not more than seven days~~ These seven PIR days in addition to the required 180 pupil instruction days may be counted provided that such additional days were used for one or more of the following purposes in accordance with the regulations hereby established:

(a) ~~Pre-school~~ Sstaff orientation held prior to the beginning of pupil instruction for the purpose of organization of the school year.

(b) Staff professional development programs scheduled during the year for the purpose of improving instruction which may include ~~professional organizations' instructional and professional development programs. If the district includes statewide professional organizations' programs as part of its staff development, it must provide alternative staff development for those not attending.~~ annual instructional and professional development meetings. If the district includes annual instructional and professional development (IPD)

meetings as part of its professional development requirement referred to in ARM 10.55.714, the participation of the entire professional staff is required. Staff may attend either the instructional and professional development meetings or other appropriate inservice training as prescribed by the board of trustees.

(c) Parent-teacher conferences for the purpose of acquainting parents with the school and the progress of their children. This day may be divided into hourly increments so as to provide six (6) hours over two (2) days and may occur in addition to, but may not duplicate, a pupil instruction (PI) day.

(d) remains the same.

(e) A school district may count for the ~~following~~ year's foundation program a total of not more than three and one-half days in addition to the required 90 pupil instruction days for kindergarten purposes, provided that such additional days were used for one or more of the above-named purposes and upon proper submission of the application to the state superintendent.

AUTH: Sec. 20-2-121, 20-2-121(6) MCA
IMP: Sec. 20-1-304 MCA

10.65.103 PROGRAM OF APPROVED PUPIL INSTRUCTION-RELATED DAYS (1) A copy of the program planned and executed for each approved day (except the ~~state teachers' association~~ annual instructional and professional development meetings) must be kept on file in the office of the appropriate school official. Such program may be subject to review by the state superintendent of public instruction.

(2) The program for each approved day referred to in ARM 10.65.101 (1)(a)-(d) shall be planned and executed so as to require the participation of the entire professional staff for at least six hours, unless noted otherwise.

(3) Remains the same.

AUTH: Sec. 20-2-121 MCA
IMP: Sec. 20-1-304 MCA

3. The board is proposing the amendments to these two rules to clarify foundation program requirements for pupil instruction-related days, professional development and pupil instruction days.

4. Interested persons may present their data, views or arguments either orally or in writing to Alan Nicholson, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than February 2, 1990.

5. Alan Nicholson, Chairperson, and Claudette Morton, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.

Alan Nicholson

ALAN NICHOLSON, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Claudette Morton

Certified to the Secretary of State December 11, 1989.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed amendments of Rules 20.3.202, 20.3.207, 20.3.216, 20.3.402, 20.3.405, 20.3.409, 20.3.503, pertaining to definitions, clients rights, outpatient component requirements, and certification system for chemical dependency personnel, chemical dependency education course requirements - ACT.	) NOTICE OF PROPOSED AMENDMENTS OF RULES 20.3.202, 20.3.207, 20.3.216, 20.3.402, 20.3.405, 20.3.409, 20.3.503, PERTAINING TO DEFINITIONS, CLIENTS RIGHTS, OUTPATIENT COMPONENT REQUIREMENTS, CERTIFICATION SYSTEM FOR CHEMICAL DEPENDENCY PERSONNEL, CHEMICAL DEPENDENCY EDUCATION COURSE REQUIREMENTS - ACT.

NO PUBLIC HEARING
CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On February 23, 1990, the Department of Institutions proposes to amend Rules 20.3.202, 20.3.207, 20.3.216, 20.3.402, 20.3.405, 20.3.409, 20.3.503 ARM to implement the statutory changes mandated by Chapter Law 476 (HB 425) 1989 Legislative Session.

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

20.3.202 DEFINITIONS In addition to the terms defined in section 53-24-103 MCA,

(1) and (2) remain the same.

(3) "Aftercare" means counseling services provided to a client, who has completed inpatient or intensive outpatient care, to enhance the chances of recovery. This service is provided at least once weekly (generally group) for a period of at least 12 weeks.

(3) through (11) remain the same but will be renumbered.

(13) "Intensive out-patient" means a structured outpatient program providing at least 8 hours of counseling and chemical dependency education services per week for a duration of 4-6 weeks.

(12) through (43) remain the same but will be renumbered.

AUTH: 53-24-105 MCA IMP: 53-24-305 MCA

20.3.207 ALL PROGRAMS - CLIENTS RIGHTS (1) All approved chemical dependency treatment programs shall make reasonable efforts to assure the right of each client to:

(a) Be treated with respect and dignity.

~~(a)~~ through ~~(d)~~ remain the same but will be relettered.

~~(e)~~ Not be subjected by program staff to physical, psychological, or sexual abuse, corporal punishment, or other forms of abuse administered against their will including being denied food, clothing or other basic necessities.

~~(f)~~ remains the same but will be relettered.

(h) Have access to an established client grievance procedure.

AUTH: 53-24-105 MCA IMP: 53-24-305 MCA

20.3.216 OUTPATIENT COMPONENT REQUIREMENTS

(1) remains the same.

(2) Outpatient services shall include:

(2)(a) through (d) remains the same.

(e) Assessments and evaluations shall be conducted by a certified ~~or eligible~~ chemical dependency counselor based on at least 3 cross-referenced diagnostic instruments.

(3) through (6) remains the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.402 POINT SYSTEM (1) To become certified, CDP (chemical dependency personnel) must accumulate two hundred (200) points in accord with system rules for accumulation of points. Thirty hours of training in the assessment and evaluation process is a prerequisite to certification. The following sections outline the areas covered, rules for gaining points, and maximum and minimum point requirements for areas. Subsequent sections address the implementation process and forms needed.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.405 STRUCTURED WORKSHOP TRAINING

(1) and (2) remain the same.

(3) Structured workshop training qualifies for points (or hours) only when it is:

(a) through (f) remain the same.

(g) experiential group training must ensure confidentiality to the participants.

(4), (5), and (6) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.409 BASIC CERTIFICATION (1) Basic certification thus requires earning a minimum of 200 points from a rather unlimited pool of resources. Of these 200 points, 35 must come from the written examination, 35 from an oral examination, 35 from performance ratings, and 6 points (30 hours) from training in the assessment and evaluation of chemical dependency.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.503 EDUCATIONAL COURSE REQUIREMENTS FOR DUI OFFENDERS (ACT PROGRAM)

(1) remains the same.

(2) The ACT program is a three level process which includes:

(a) Level I - assessment is the process used to screen, assess and evaluate the offender to determine the extent of chemical use or dependency for ~~referral~~recommendation to levels II and/or III.

(b) remains the same.

(c) Level III - treatment is defined in 53-24-103 MCA and standards for treatment are required by 53-24-208 MCA and ARM 20.3.201-216. The need for treatment services must be documented and verified by level I. ~~and may be provided by the treatment program conducting the ACT program or through a referral to another treatment program.~~ Second and subsequent offenders must participate in all three (3) levels, which includes treatment. The treatment provided must be at a level appropriate to the offender's alcohol/drug problem.

(3) The ACT program will notify the sentencing court ~~and driver improvement~~ if the offender does not enroll ~~(make contact)~~ with the program within ten days or start the course process within thirty days of the program's receipt of the court referral notice. Level I and II of the ACT program will take not less than thirty days and not longer than ninety days to complete. An exception to the 10-day minimum may be granted by the department based only on justified geographical considerations. The ACT program will notify the sentencing courts in all cases of failure to comply and the sentencing court will notify drivers improvement. Length of stay for level III (treatment) will be based on ~~the individual offender's treatment needs.~~ the recommendation of the certified chemical dependency counselor as approved or modified by the order of the sentencing court. ~~The sentencing court and driver improvement must be notified of~~ The approved chemical dependency program accepting the treatment referral must notify the sentencing court upon completion of Level III for second and subsequent offenders.

(4) Required services for the ACT program shall include:

(a) and (i) remain the same.

(ii) a minimum of two individual counseling sessions with a certified ~~or eligible~~ chemical dependency counselor must be documented in the assessment and evaluation process.

(iii) remains the same.

(iv) evaluations and recommendations must be submitted by a certified chemical dependency counselor to the sentencing court in the ~~cases of offender non-compliance and~~ following instances: an initial offender is recommended for treatment (level III) or the offender has a second or

subsequent offense. The report must include the following: ~~offender participation and involvement in the ACT program,~~ assessment/evaluation instruments utilized, results of testing, problem indicators, ~~observations which include the potential for further drinking and driving behavior~~, assignment to one of the four assessment categories (i.e., misuser/no patterns, abuser, chemically dependent or unidentified), ~~corresponding~~ recommendation, ~~and reasons for non-compliance;~~ for treatment and corresponding rationale, which demonstrates appropriateness.

(v) remains the same.

(b) remains the same.

(c) The process for ~~referral, evaluation and~~ recommendation for both initial and repeat offenders shall be as follows:

(i) First time offenders will participate in levels I and II. If the offender is assessed as chemically dependent, recommendations for ~~referral to~~ treatment (level III) ~~should~~must be ~~made~~ submitted to the sentencing court. Treatment for initial offenders is at the sentencing court's discretion. Copies of the ~~e~~Evaluations and recommendations report must be documented in the offender's file and ~~a copy~~ given to the offender.

(ii) Repeat offenders ~~will~~ must participate in ~~level I and then transfer to the recommended level (i.e., this may be directly to level III depending on the assessment and evaluation);~~ all three (3) levels. The treatment provided must be at a level appropriate to the offender's alcohol problem. Following level I (assessment) the certified chemical dependency counselor will submit an evaluation/recommendation report to the sentencing court which contains a rationale for the treatment recommendation. Treatment recommendations may include: in-patient with aftercare, intensive out-patient with aftercare or out-patient scheduled at least once per week. (The sentencing court will determine the most appropriate level). The offender may also attend the approved chemical dependency treatment program of his/her choice. The approved program providing treatment must notify the sentencing court of the offender's failure to complete. Copies of ~~T~~the evaluation and recommendations report must be documented in the offender's file and ~~a copy~~ given to the offender.

~~(iii) Evaluations and recommendations must be sent to the sentencing court in cases of offender non-compliance with the ACT program. Driver improvement should also be notified of non-compliance with recommendations.~~

(5) Staff requirements shall include:

(a) Individual counseling sessions included in the course assessment and evaluation process must be provided by a certified ~~or eligible~~ counselor.

(b) remains the same.

(c) Staff ~~responsible for~~ conducting the educational course component (level II), must receive a DUI specific training course within six months from the date of hire and

also be certified or eligible as a chemical dependency counselor as defined in ARM 20.3.401 - 416.

(6) Programs shall develop policies and procedures which address the ACT program required by these rules and shall include:

(a) and (b) remain the same.

(c) Goals and objectives which address required effectiveness indicators shall include, but not be limited to: ACT caseload, completion ratios, numbers of offenders recommended for treatment, ~~numbers of offenders who enter treatment~~ and number of repeat offenders.

(7) Record keeping and reporting requirements specific to the ACT program shall include:

(a) and (b) remain the same.

(c) A progress note documenting the initial and exit interview, which validates the classification.

~~(c)~~ through ~~(h)~~ remain the same but will be relettered.

~~(i)~~(j) Documentation of ~~non-compliance~~ failure to comply (where applicable).

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

3. The purpose of the rule revisions is to implement the statutory changes mandated by Chapter Law 476 (HB 425) 1989 Legislative Session amending Section 61-5-208 MCA, and 61-8-714 MCA, and strengthen related areas contained within the context of chapter 3 of the department's existing rules, to achieve consistency. The purpose of the rule revisions includes the following: To implement the statutory changes mandated by HB 425; define accepted treatment modalities to correspond to amendments in 20.3.503(4)(c), ARM; expand client rights to address deficiencies and past violations; allow only certified counselors to conduct assessments and evaluations to be consistent with all other components in the outpatient component; require training in assessment and evaluation, to earn basic chemical dependency counselor certification, and to ensure accurate assessments; strengthen confidentiality requirements for experiential workshop training based on complaints.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than January 24, 1990.

5. No public hearing is contemplated, but if the agency receives requests for a public hearing on the proposed amendment from either ten percent, or twenty-five persons, whichever is less of those persons who are directly affected by the proposed amendment, or from the administrative code committee; from a governmental agency or subdivision or from an association having no less than twenty-five members who will be directly affected, a public hearing will be held at a later date. Notice of such hearing will be published in the Montana administrative

register. The percentage of those persons directly affected has been determined to be 24 based on the number of counselors, 240, currently employed in approved chemical dependency treatment programs.

CURT CHISHOLM, Director
Department of Institutions

Certified to the Secretary of State December 11, 1989.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

IN THE MATTER OF THE TRANSFER AND AMENDMENTS TO 8.124.101 (23.16.1701) through 8.124.229 (23.16.1829), ARM, and ADOPTION OF RULES I through XV relating to Title 23, chapter 5, parts 1 through 6.	NOTICE OF PUBLIC HEARING on PROPOSED TRANSFER AND AMENDMENTS to 8.124.101 (23.16.1701) through 8.124.229 (23.16.1829) ARM, and ADOPTION of RULES I through XV and REPEAL of 8.124.101, 8.124.124, 8.124.125 8.124.209, 8.124.222, 8.124.227 and 8.124.229 relating to Gambling.

TO: All Interested Persons:

1. On January 22, 1990, at 8:30 a.m., a public hearing will be held in room 325 (Old Supreme Court Chambers) of the state capitol in Helena, Montana, to consider the transfer, amendment, and repeal of existing rules.

2. The amendments to rules 8.124.101 (23.16.1701) through 8.124.229 (23.16.1829) and new rules I through XV as proposed to be adopted provide as follows:

RULE 8.124.101 (23.16.1701) IS PROPOSED TO BE REPEALED and can be found on page 8-4795.

8.124.102 (23.16.1702) DEFINITIONS As used throughout this sub-chapter, the following definitions apply:

(1) "Act" means Title 23, chapter 5, part 6, MCA.

(2) "Applicant" means any person who has applied for ~~or is about to apply for a license~~ permit for a video ~~gaming~~ gambling machine.

(3) "Draw poker" means a game of poker in which ~~each~~ the player makes a wager, then is dealt 5 cards. After the initial deal, the player may raise his wager (if that option is available), discard and replace any ~~one or all~~ unwanted cards ~~and then receive in return that same number of cards~~ prior to playing out the hand.

(4) "Video bingo" ~~is a machine that offers for play a game of chance commonly known as bingo. The game is played with video images of cards bearing numbers of other designations, five on any one line, the machine drawing similarly numbered objects using a random number generator, and the game being won by person who first covers a previously designated arrangement of numbers on such a card~~ means the game of bingo as defined in Montana law when offered by a video gambling machine which uses video images and a random number generator rather than authorized equipment.

(5) "Video keno" ~~is a form of bingo using a fixed playing field of 1 80 numbers, the player chooses any allowed number of combinations. The machine draws a prescribed number of balls, numbered 1 80, using a random number generator. The game is~~

~~won-by-the-machine-picking-the-same-numbers-as-the-player--~~means the game of keno as defined in Montana law when offered by a video gambling machine which uses video images and a random number generator rather than authorized equipment.

(6) "Video ~~gaming~~ gambling machine" is a ~~machine--that--is eligible--for--licensure--within--the--state--of-Montana.--These include~~ video draw poker ~~machines~~, video keno ~~machines~~, and--or video bingo machines for which a permit may be issued under Montana law.

~~(7) "License"-means-machine-license.~~

~~(8)~~(7) "Machine" means an electronic video ~~draw--poker device--(as--defined--in--the--act)--or--any-other-electronic-or mechanical-device-which-simulates-the--game--of--poker~~ gambling machine.

~~(9)~~(8) "Machine ~~license-permit~~" means a ~~license~~ permit issued by the state of Montana which authorizes a specific machine to be operated as an electronic video ~~gaming~~ gambling machine.

~~(10)~~(9) "Simulates the game of draw poker" means plays by or mimics the generally accepted rules or methods of any of the various card games known as "draw poker", whether played against another player or the house. Methods include, but are not limited to, symbols used for or in place of images of playing cards, description, and wagering techniques. For purposes of this definition, a determination that a machine plays the game of draw poker is not solely based on the name of the game.

~~(11)~~(10) "Valid ticket voucher" is a ticket produced by a machine that is the result of bonafide play of a ~~gaming~~ gambling machine and not the result of player tampering or manipulation.

~~(12) "Duly-authorized-representative"-means--a--person--or other-entity-that-has-been-designated-in-a-formal-signed-written agreement-to-be-a-duly-authorized-representative--of--the--video gaming-control-bureau.--Such-designation-shall-be-in-effect-only during-the-term-of-the-agreement.~~

~~(13)~~(11) "Designated representative" means a person designated on forms provided by the department to be a representative of the licensee of a machine. This designation is made for the purposes of filing quarterly reporting documents, receiving of forms, etc. It does not include applications for ~~licensing~~ a permit or necessarily relieve the ~~licensee~~ permit holder of responsibility for incorrect information being provided to the department.

~~(14)~~(12) "Destruction of a machine" may be the result of deliberate or accidental causes. However, in all cases a machine shall be considered destroyed only if it results in the machine never being able to function again. Such a claim must be verified to the satisfaction of the department.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-603, MCA

8.124.103 (23.16.1703) APPLICATION FOR ~~LICENSE~~, ~~LICENSE~~ PERMIT, FEE AND ~~LICENSING~~ PERMIT REQUIREMENTS (1) An application to ~~license~~ permit an electronic video ~~gaming~~ gambling machine must be submitted to the ~~video-gaming-control bureau~~ gambling control division of the department of ~~commerce~~

justice upon forms prescribed by the department. The application is not complete unless it is dated and signed by the applicant, and contains all information and statements required by the department.

(2) A separate application must be completed for each machine.

(3) The ~~license~~ permit fee required by 23-5-612, MCA, must accompany each ~~license~~ permit application.

~~(4) A machine licensed under 23-5-612(2)(3), MCA, must comply with all required specifications in these rules and the act except section 8, chapter 603, sessions laws of 1987.~~

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-611, MCA

8.124.104 (23.16.1704) PRORATION OF LICENSE FEE is hereby repealed.

8.124.105 (23.16.1705) REFUND OF ~~LICENSE~~ PERMIT FEE (1) Refund of a ~~license~~ permit fee will be allowed only if the application for ~~license~~ a permit is denied or withdrawn before issuance of the ~~license~~ permit. No ~~license~~ permit fee, in part or whole, will be refunded after a ~~license~~ permit is issued, regardless of whether the ~~license~~ permit is used after issuance.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-612, MCA

8.124.106 (23.16.1706) DISTRIBUTION OF NET MACHINE INCOME TAX TO LOCAL GOVERNING BODY (1) The department shall pay quarterly to each treasurer of the local governing body the proportion of the net machine income tax as provided by 23-5-610, MCA.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-610, MCA

8.124.107 (23.16.1707) ISSUANCE OF ~~LICENSE~~ PERMIT DECAL (1) Upon approval of an application and payment of a ~~license~~ permit fee, the department will issue a ~~license~~ permit decal.

(2) The licensee must affix the ~~license~~ permit decal to the machine cabinet as instructed by the department so that the decal is visible and easily read. The machine may not abut another machine, wall, or other obstruction which would obscure a person's ability to see and read the ~~license~~ permit decal.

(3) The ~~license~~ permit decal must be affixed to a machine before a machine is placed in service.

(4) A ~~license~~ permit decal may only be affixed to the machine ~~licensed~~ issued the permit and is not transferable to any other machine.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-603, MCA

8.124.108 (23.16.1708) LICENSES ISSUED UNDER TEMPORARY AUTHORITY (1) When temporary authority to operate an establishment licensed for on-premises consumption of alcoholic beverages is granted by the department of revenue, liquor division, pursuant to 16-4-404(6), MCA, the bureau

gambling control division may issue an operator license ~~a video gaming machine~~ to the recorded holder of "temporary authority" if that holder:

(a) supplies written proof of temporary authority at time of application;

(b) provides written proof of all extensions of temporary authority (prior to expiration of authority).

(2) When the liquor division issues a "final agency decision" in the transfer of the alcohol beverage license all machines permits issued under these provisions will be final.

(3) In the event of an adverse decision by the liquor division or temporary authority lapses with no proof supplied ~~the bureau~~ gambling control division, ~~the bureau shall--revoke all-machine-licenses~~ the gambling control division permits shall be revoked. ~~issued-under-these-provisions-without-notice.~~

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-611, MCA

Rules 8.124.109 (23.16.1709) through 8.124.120 (23.16.1720) reserved.

8.124.121 (23.16.1721) AUTHORITY TO OPERATE is hereby repealed.

8.124.122 (23.16.1722) ~~LICENSE~~ PERMIT NOT TRANSFERABLE (1) A ~~license~~ permit to operate an electronic video ~~gaming~~ gambling machine is only valid for the ~~licensee~~ permit holder and the premises identified on the ~~license~~ permit application.

(2) A ~~license~~ permit is further restricted to the particular machine approved by the department and identified on the ~~license~~ permit application. No additional ~~license~~ permit fee will be charged when:

~~(a)--a licensed machine--remains--in--the--same licensed establishment---after--a--transfer--of--the--alcoholic beverage license;--or;~~

~~(b)~~ a licensed establishment changes its location and its ~~licensed gaming~~ permitted video gambling machines also move to the new location.

~~(3) A-license-issued-pursuant-to-the-act-and--these--rules is-a-privilege-and-not-personal-property.~~

~~(4)~~(3) A machine may not be moved from a licensee's establishment and placed in service at another establishment unless application is made for an electronic video ~~gaming~~ gambling machine ~~license~~ permit, the ~~license~~ permit fee is paid, and a new ~~license~~ permit is issued. A new ~~license~~ permit is required even if a machine has a current, unexpired ~~license~~ permit for the former location.

~~(5)~~(4) If a machine is destroyed and then replaced by a newly ~~licensed~~ permitted machine, the unused portion of the fee paid on the destroyed machine will be applied as a credit to the fee due on the replacement machine. The department may require proof of destruction before credit is applied.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-603, MCA

8.124.123 (23.16.1723) EXPIRATION -- RENEWAL OF ~~LICENSE~~ PERMIT (1) All ~~licenses~~ permits commence on July 1, and expire at midnight on June 30.

(2) An application for a new ~~license~~ permit must be submitted to the ~~video-gaming-control-bureau~~ gambling control division of the department upon forms prescribed by the department, the ~~license~~ permit fee paid, new ~~license~~ permit issued, and a new ~~license~~ permit decal affixed to the machine before a previously ~~licensed~~ permitted machine may be operated after midnight on June 30.

(3) The department ~~will~~ may consider the same criteria for renewal of ~~license~~ permit as for the original issuance of ~~license~~ permit. Failure to satisfy ~~licensing~~ the permit criteria contained in the act and these rules may result in denial of renewal of ~~license~~ permit.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-612, MCA

RULE 8.124.124 (23.16.1724) IS PROPOSED TO BE REPEALED and can be found on page 8-4804 of the ARM.

RULE 8.124.125 (23.16.1725) IS PROPOSED TO BE REPEALED and can be found on page 8-4804 of the ARM.

8.124.126 (23.16.1726) QUARTERLY REPORTING REQUIREMENTS Licensee quarterly reporting requirements are as follows:

(1) For each machine the licensee or his designated representative must file with the department a quarterly tax report signed by the licensee or his designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes and the winning percentage of the machine as required by the act. ~~The report will be used by the department to verify the payment of all taxes and the winning percentage of the machine as required by the act.~~ The following requirements apply:

(a) the report must be delivered to the department of ~~commerce~~ justice ~~video-gaming-control-bureau~~ gambling control division, ~~1219 8th Avenue~~, Helena, Montana 59620, or bear a United States postal service postmark not later than midnight of the 15th of ~~each~~ the month following the quarters ending March 31, June 30, September 30, and December 31; ~~of each fiscal year;~~

(b) the meter readings must be taken and recorded for the report within 7 days of the close of the licensee's last day of business in the reporting quarter;

(c) the report is due on each machine after it has been ~~licensed~~ permitted.

(2) If a licensee leases, rents, or shares machine ownership, or a machine's revenues with another person or business entity, the licensee or his designated representative must provide upon the same quarterly tax form prescribed by the department in subsection (1) above, information for each machine as follows:

(a) full identification including name, address, and

social security number (or federal identification number) of all persons or business entities involved in the above-mentioned business relationship;

(b) percentages of participation in machine income by each person or business entity involved in the above-mentioned business relationship; and

(c) specific machine income (total collections less amounts paid to players without adjustment for expenses) paid to and/or received by each person or business entity involved in the above-mentioned business relationship.

(3) Machine income losses resulting from theft, tampering, etc. must be reported on the quarterly report and accompanied by a copy of the police report or other official documentation regarding the incident. ~~must be attached in order for credit to~~ Credit will be given only for the amount of the loss less any insurance recovery.

(4) Failure for late filing and payment of the required machine income tax will result in the following penalty schedule being applied:

(a) 0 - 30 days late = 10% of tax due;

(b) 31 - 60 days late = 25% of tax due;

(c) 61 - 90 days late = 50% of tax due;

(d) 91 days or more = 100% of tax due;

(5) The imposition of these penalties does not preclude the department from taking further action against the licensee.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-610, MCA

8.124.127 (23.16.1727) RECORD RETENTION REQUIREMENTS (1) Record requirements are as follows:

(a) Machine operation records must be maintained and made available for inspection by the department upon request. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law.

(2) The records must, but are not limited to, include:

(a) the accounting ticket provided by ~~23-5-606(4)(e),--MCA~~ department rules and corresponding licensee records containing the performance synopsis of the machine;

(b) the exact copy of the printed ticket voucher as provided by ~~23-5-606(4)(k),-MCA,-~~department rules; and

(c) in the event a ~~licensed~~ permitted machine qualifies as a used video gambling machine which does not produce the ticket copies, records and books necessary to provide the performance synopsis of the machine. The information shall be obtained from the electronic and mechanical meters required by ~~23-5-606,--MCA~~ department rules, and must be recorded each time the cash area is accessed.

(d) the licensee's records required by this rule must be maintained in the state of Montana by the licensee or his representative for a minimum of 3 years.

(e) if the operator does not keep records as required in this rule the department may estimate tax by utilizing the best available method.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-610, MCA

8.124.201 (23.16.1801) GENERAL SPECIFICATIONS OF VIDEO ~~GAMING~~ GAMBLING MACHINES (1) ~~Detailed specifications for video gaming gambling machines are required by the department in 23-5-615 Title 23, chapter 5, MCA. Such specifications are required to ensure the legal operation and integrity of each machine and provide the department with methods to monitor the machines.~~ Each video gambling machine model or modification must:

(a) be inspected in the state for approval and licensure by the department. The department may inspect any machine sold or operated in the state. Any approval granted by the department to a person is not transferable. The department must be allowed immediate access to each machine. Keys to allow access to a machine for purposes of inspection may be provided to the department or must be immediately available at the premise. Machines for which a substantial modification or a series of minor modifications whose total result is substantial is submitted must meet all of the specific law or rule requirements in effect at the time of submission. Only those machines which are owned or operated in Montana, and to which the submitted modification will be applied are required to meet those specifications in effect at time of submission. The department's determination that a modification is substantial may be contested pursuant to the Montana Administrative Procedure Act;

(b) be operated by the players in the manner specified by this part;

(c) not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game. The machine may not have any functions or parameters adjustable by and through any separate video display or input codes except for the adjustment of features that are wholly cosmetic. This is to include devices known as "knockoff switches;"

(d) offer only those games defined as video gambling in Title 23, chapter 5, MCA, and operate in the following manner:

(i) the number of cards must be generated by use of a random number generator and frozen prior to the start of each game;

(ii) in the case of poker, after the first five cards have been dealt, the player may be allowed to raise his wager but the player may not exceed the overall statutory bet limit;

(iii) the game must display the combinations for which credits will be awarded and the number of credits awarded for each combination;

(iv) one credit may not exceed twenty-five cents in value;

(v) the machine must have locked doors to two separate areas, one containing the logic board and software for the game and the other housing the cash. Game EPROMS contained on the logic board must be readily accessible from the front of the machine. Access from one area to another must not be allowed;

(vi)(A) the machines may have two mechanisms that accept coins, hereinafter referred to as "mechanism 1" and "mechanism

2." These mechanisms must have devices referred to as "lockouts" which prohibit the machine from accepting coins during periods when the machine is inoperable;

(B) the machine may have a machine manufacturer mechanism that accepts cash in the form of bills that do not exceed $5;

(vii) in the case of poker each machine must use a color display with images of cards that closely resemble the standard poker playing cards;

(viii) the machine must be capable of printing a ticket voucher for all credits owed the player at the completion of each game. A valid ticket must contain the following in a format prescribed by the department:

(A) the name of the licensed establishment;

(B) the name of the city, town, or county in which the licensed establishment is located;

(C) the machine serial number;

(D) the time of day in hours and minutes in a 24-hour format;

(E) the current date;

(F) the program name and revision;

(G) the value of the prize in numbers;

(H) the value of the prize in words;

(I) the sequential number of the ticket voucher;

(ix) the printing mechanism must be located in a locked area of the machine to insure the safekeeping of the audit copy. The logic board shall be mounted within the logic area so it is not visible upon opening the logic area door. The printing mechanism must have a paper sensing device that upon sensing a "low paper" condition will allow the machine to finish printing the ticket and prevent further play. The machine must recognize a printer power loss occurrence and cease play until power has been restored to the printer and the machine is capable of producing a valid ticket;

(x) the machine must have nonresettable mechanical meters housed in a readily accessible locked machine area. These meters must be in a configuration prescribed by the department. The mechanical meters must be manufactured in such a way as to prevent access to the internal parts without destroying the meter. Meters must be hardwired (no quick connects will be allowed in the meter wiring system). The department may require and provide a validating identification sticker to attach to the mechanical meters to verify the meters are assigned to a specific licensed machine. The meters must keep a permanent record of:

(A) total credits accepted by the coin acceptor mechanism(s), and bill acceptor (if applicable);

(B) total credits played;

(C) total credits won;

(D) total credits paid;

(xi) the machine must contain electronic metering, using meters that record and display the following on the video screen in a format prescribed by the department;

(A) total credits in mechanism(s) 1 and 2 (if applicable);

(B) total credits through the bill acceptor (if applicable);

(C) total credits, total credits played, total credits won, and total credits paid;

(D) total games played and total games won; and

(E) any other metering required by these rules.

(xii) the machine must issue by activation of an external key switch, an accounting ticket containing a performance synopsis of the machine. The printing of all totals from the electronic meters shall occur automatically by means of a switch attached to the door or the lock for that door each time access occurs to either the logic compartment or any compartment where cash is collected. Each machine must produce a full accounting ticket whenever electronic meters are reset. The ticket must be in the format prescribed by the department and contain:

(A) the name of the licensed establishment;

(B) the name of city, town, or county in which the licensed establishment is located;

(C) the serial number of the machine;

(D) the time of day, in hours and minutes in a 24-hour format;

(E) the current date;

(F) the program name and revision number; and

(G) the electronic meter readings required by the department;

(xiii) the machine must have an identification tag permanently affixed to the machine by the manufacturer. The tag must be on the right-hand side, upper left corner of the machine and must include the following information:

(A) manufacturer;

(B) serial number;

(C) model;

(D) date of manufacture; and

(E) any other information required by the department;

(F) the face of the machine must be clearly labeled so as to inform the public that no person under the age of 18 years is allowed to play;

(G) no machine may offer for play more than one pay table per program;

(H) each machine must pass a static test that is determined by the department;

(I) the owner of a gambling machine that is capable of producing an audit ticket, must produce, in each machine owned an audit ticket at least every seven days; and

(J) a machine shall be equipped with a surge protector that will feed all A.C. electrical current to the machine and a battery backup power supply capable of maintaining for a 30-day period the accuracy of all electronic meters, date, and time during power fluctuations and loss. The battery must be in a state of charge during normal operation of the machine. Manufacturers incorporating either the use of E2 proms or a lithium battery for memory retention will be considered to meet this requirement.

(2) ~~All hardware and software~~ Any and all modifications made to ~~a licensed~~ an approved video ~~gaming~~ gambling machine must be submitted to the department for approval prior to installation.

(3) The department may suspend, or revoke a license or revoke approval of a machine at any time when it finds that any machine or machine component does not comply with statutes and rules governing electronic video ~~gaming~~ gambling machines in effect at the time of approval. The department may also suspend, or revoke the licenses or revoke approval of other similar model machines or machine components in use in the state.

AUTH: Sec. 23-5-621, MCA. IMP. Sec. 23-5-621, MCA.

8.124.202 (23.16.1802) HARDWARE SAFETY SPECIFICATIONS (1) A video ~~gaming~~ gambling machine must include the following hardware specifications:

(a) All electrical and mechanical parts and design principles shall follow acceptable industrial codes and standards in both design and manufacture.

~~(2)~~(b) A video ~~gaming~~ gambling machine shall be designed to ensure that the player will not be subjected to any physical, electrical, or mechanical hazards.

~~(3)--A-machine-shall-be-equipped--with--a--surge--protector that--will-feed-all-A.C.-electrical-current-to-the-machine-and-a battery-backup-power-supply-capable-of-maintaining-for-a-30--day period--the--accuracy--of--all-electronic-meters,-date,-and-time during-power-fluctuations-and-loss.--The-battery-must--be--in--a state-of-charge-during-normal-operation-of-the-machine;~~

~~(4)--The-design-of-a-machine--shall--ensure--there--are--no readily--accessible--game--function--related--points-which-would allow-any-input-and-that-there-is-no-access-to-input--or--output circuits--unless-it-is-necessary-for-the-proper-operation-of-the machine.--No-switches-or-other-controlling-devices-may-be--added to--the--machine--that--would-prohibit-a-player-from-operating-a machine-in-the-manner-in-which--it--was--designed--to--play--(to include-devices-known-as-knockoff-switches);~~

~~(5)--The-nonresetable-mechanical-meters-required-by-the-act must:~~

~~(a)--be-placed-in-any-readily--accessible,--locked--machine area;---immediate-access-to-the-locked-area-where-the-meters-are located-must-be-provided.--Keys-to-this-area-may-be-provided--to the-department-or-must-be-immediately-available-at-the-premise;~~

~~(b)--be-situated-in-a--left--to--right--or--top--to--bottom configuration--according--to--function--and--visibly--labeled-as follows:~~

~~(i)----credits-in-bill-acceptor,--if-applicable;~~

~~(ii)-- coins-in;~~

~~(iii)--credits-played;~~

~~(iv)---credits-won;~~

~~(v)----credits-paid;-and~~

~~(c)--the-mechanical-meters-shall-be-manufactured-in-such--a way---as--to--prevent--access--to--the--internal--parts--without destroying-the-meter.--These-meters-must-be-hard-wired-(no-quick connects-will-be-allowed-in-the-meter-wiring-system);~~

~~(6)--The-department-may-required-and-provide--a--validating identification--sticker--to-be-attached-to-the-mechanical-meters to-verify--the--meters--are--assigned--to--a--specific--licensed~~

machine;

(7) A machine must have a separate and locked area for the logic board and software as provided by 23-5-606(4)(g), MCA. The department must be allowed immediate access to this locked area. Access may be provided by retaining a key for the locked area immediately available at the licensed premises;

(8) The ticket printing mechanism provided in 23-5-606(4)(j), MCA, must be located in the locked logic area to ensure the safekeeping of the audit copy provided by 23-5-606(4)(k), MCA. The printing mechanism must produce a printed original and duplicate that will remain legible throughout the retention period required by these rules. Upon cash out by a player, the ticket printing mechanism must record the full value of the credits due the player in dollars and cents, as well as all information required by 23-5-606(4)(j), MCA;

(9) The logic and printer interface boards shall be mounted within the logic area so they are not visible upon opening the logic area door;

(10) A machine must have a nonremovable identification device externally attached to the machine which shall include the following information about the machine:

(a) manufacturer;

(b) serial number;

(c) model or make; and

(d) any other information required by the department;

(11) The logic board must have a unique serial number that may be used to identify the board for approval and inspection purposes;

(12) Each machine must have the electronic meters that meet the requirements specified in the applicable software section of the rules;

(13) Printing of all totals from the electronic meters shall occur automatically, by means of a switch attached to either the door or the lock for that door each time access to either the logic compartment or the cash area occurs. If the machine has a bill acceptor device and it collects the bills in an area separate from the cash compartment this area must be located and it must have a switch that records cash compartment accesses made to this area and prints an audit ticket each time an access occurs;

(14) Each machine must produce a full accounting ticket wherever electronic meters are reset. This ticket must be printed before and after the meters are reset. This audit ticket must print the identity of the program contained in the game to include program and revision number;

(15) The face of each machine shall be clearly labelled so as to inform the public that no one under the age of 18 years is allowed to play;

(16) The printer mechanism shall have a paper sensing device that upon sensing a "paper low" condition will allow the machine to finish printing the ticket and then prevent further play;

(17) No machine may offer for play more than one pay table per program;

~~(18)--Each-machine-must--recognize--a--printer--power--loss occurrence--and--cease-play-until-power-has-been-restored-to-the printer-and-the-machine-is-capable-of-producing-a-valid-ticket;~~

~~(19)--Each-machine-must-pass-a-static-discharge--test--that is-determined-by-the-department;~~

~~(20)--The-owner-of-a-gaming--machine--that--is--capable--of printing--an-audit-ticket;-must-produce-in-each-machine-owned-an audit-ticket-at-least-every-seven-days;~~

AUTH: Sec. 23-5-621, MCA IMP: Sec. 23-5-621, MCA

8.124.208 (23.16.1803) GENERAL VIDEO GAMING MACHINE SOFTWARE SPECIFICATIONS (1) Each video gambling machine must meet the following specifications:

(a) the random number selection process shall conform to an acceptable random order of occurrence and uniformity of distribution;

(b) the field of numbers must be mixed after each game by using a random number generator;

(c) after the field of numbers has been mixed and before the start of the game the field of numbers is to be frozen with all numbers used for play taken in order from the top of the frozen field;

(d) any variable data, e.g., location name, shall not reside on EPROMs that contain game programs;

(e) must payback or award credits at a minimum rate of 80%;

(f) the game program must not interfere in any way with expected random play;

(g) all electronic meters must be 8 digits in length; and

(h) for any game played, the paytable for that game must be prominently displayed and understandable to the player.

~~(2) A-program-for-a-video-gaming-machine-may be-configured in-the-following-manner:~~ A machine may have:

~~(a)----random-number-generator;~~

~~(b)----shuffle;~~

~~(c)----deck;~~

~~(d)----metering;~~

~~(e)----main-program-number;~~

~~(f)----audit-controls;~~

~~(g)----printer-controls;~~

~~(2)~~ a personality program that includes but is not limited to the following:

(a) paytable (limited to one per program);

(b) graphics;

(c) deal;

(d) optional features to include but not be limited to:

(i) raise;

(ii) auto-bet;

(iii) hold and discard;

(e) personality program number.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-621, MCA

8.124.209 (23.16.1804) VIDEO DRAW POKER SOFTWARE

SPECIFICATIONS (1) ~~A~~ Each video draw poker machine ~~is required to possess software~~ must meet the following specifications ~~that enable it to play the game of draw poker with the operation set forth by 23-5-606(4). Title 23, chapter 5, MCA. The software logic must have the following characteristics~~ for approval for use within the state of Montana. In order to be approved the machine must:

~~(2) The logic of the program must not intervene in any way with expected random play.~~

~~(3) The random number selection process shall conform to an acceptable random order of occurrence and uniformity of distribution.~~

~~(4)~~(a) ~~The~~ use a deck of cards ~~used must~~ consisting of 52 standard playing cards, up to two djokers may also be used; ~~as long as the payback odds are set to meet the 80% minimum payback.~~

~~(5) After the shuffle and before the deal, the deck is to be frozen, with all cards used for play taken in order from the top of the deck. For the initial 5 card deal, all possible 5 card combinations from the original playing deck must have equal probability of being dealt. All unused cards must have equal probability of replacing discarded cards.~~

~~(6) The logic must be programmed to have an identifiable routine that:~~

~~(a) shuffles one deck of cards after each hand by using a random number generator;~~

(b) deals the first 5 cards from the top of the frozen field ~~that deck~~; and

(c) replaces discarded cards with remaining cards in ~~that deck~~ the frozen field starting with the sixth card and drawing any additional cards in the order of that deck frozen field.;

~~(7) If there is a distinction made for payoff purposes between a straight flush and a royal flush, provisions must be made in the electronic meters to track those totals separately.~~

~~(8) Any variable data, e.g., location name, shall not reside on the PROM modules that contain the poker program.~~

~~(9)~~(d) ~~The~~ electronic meters provided for in the act shall ~~be able to maintain accolytes no less than 8 digits in length with the exception of the following which shall be at least 6 digits in length:~~ each breakdown in the paytable; and

~~(a) one pair;~~

~~(b) two pair;~~

~~(c) three of a kind;~~

~~(d) straight;~~

~~(e) flush;~~

~~(f) full house;~~

~~(g) straight flush;~~

~~(h) royal flush (if applicable);~~

~~(i) five of a kind and~~

~~(j) errors from the logic board random access memory.~~

(e) display the winning hands and the number of credits awarded for that hand.

~~(10) These errors are defined to be:~~

~~(a) in these cases where the machine has redundant memories for the purposes of comparison a ram error is recorded~~

~~when the comparison fails;~~

~~(b) if subsection (a) does not apply then ram errors will record "CMOS CLEARS" or where the electronic meters are cleared;~~

~~(iii) in addition all machines must keep two additional 6 digit totals;~~

~~(a) number of times logic area was accessed; and~~

~~(b) number of times the cash area was accessed;~~

~~(c) total credits meter is defined as being the total of coins in 1, coins in 2, and credits from the bill acceptor (if applicable).~~

AUTH: Sec. 23-5-621, MCA IMP: Sec. 23-5-621, MCA

8.124.207 (23.16.1805) SOFTWARE SPECIFICATIONS FOR VIDEO KENO MACHINES (1) Each video keno machine must meet the following specifications for approval for use within the state of Montana. In order to be approved the machine must:

(a) Each machine will display a fixed playing field of numbers from 1 - 80;

~~(b) Each machine will have one memory location for each number in the field;~~

~~(c) The machine will mix the field of numbers after each game by utilizing a random number generator;~~

~~(d) The machine must freeze the field of numbers after it is mixed and before the start of the game. The numbers will be drawn in order from the frozen field;~~

~~(e)~~ (b) The machine will only accept a bet on a minimum of 2 spots and a maximum of 10 spots per game;

~~(f)~~(c) The machine must display the balls picked;

~~(g) The machine must payback or award credits at a minimum rate of 80%;~~

~~(h) The machine may offer only the game of keno for play;~~

~~(i) The machine must contain one 6 digit electronic meter for each breakdown in the paytable; and include;~~

~~(i) errors from the logic board random access memory; defined to be;~~

~~(A) in those cases where the machine has redundant memories for the purposes of comparison a ram error is recorded when the comparison fails;~~

~~(B) if subsection (A) does not apply then ram errors will record "CMOS CLEARS" or where the electronic meters are cleared;~~

~~(ii) Total credits meter is defined as being the total of coins in 1, coins in 2 and credits from the bill acceptor (if applicable);~~

~~(iii) in addition all machines must keep two additional 6 digit totals;~~

~~(A) Number of times the logic area was accessed; and~~

~~(B) Number of times the cash area was accessed;~~

~~(j) Any variable data, e.g. location name, shall not reside on the PROM modules that contain the keno program;~~

~~(k)~~(d) The game of keno must conform to standard rules of keno and must not offer any optional or bonus features; and

~~(l)~~(e) The machine must display the total number of

player spots picked at the end of each game, ~~the machine must~~ display the number of balls drawn that matched the players' picks (this may be shown as 3 out of 8, 8 out of 10, etc.) and display any credits awarded for these combinations.

~~(m) The maximum bet allowed is $2 and the payout per card is not to exceed $100. No more than 8 cards may be played in any one game.~~

~~(2) Specifications set forth in subsection (1)(b) and (c) are statutory specifications set forth in section 23-5-609(4)(b) and (c), MCA.~~

AUTH: Sec. 23-5-621, MCA IMP: Sec. 23-5-621, MCA

8.124.206 (23.16.1806) SOFTWARE SPECIFICATIONS FOR VIDEO BINGO MACHINES (1) Each video bingo machine must meet the following specifications for approval within the state of Montana. In order to be approved the machine must:

(a) Each machine must utilize a field of numbers from 1 to 75;

(b) ~~The machine must have on memory a location for each number in the field.~~

~~(c) The machine must mix the field of numbers after each game by utilizing a random number generator.~~

~~(d) The machine must freeze the field of numbers after they have been mixed and before the start of each game. The numbers will be drawn in order from the frozen field.~~

~~(e) The machine may offer to the player no more than four cards for play.~~ Each card must provide a card or cards that contain 24 numbered spaces per card and one free spot. No cards may be identical;

~~(f)~~(c) Each ~~playing~~ card must be generated cards by utilizing a random number generator;

~~(g)~~(d) ~~The machine must contain one 6 digit electronic~~ meter for each breakdown in the paytable; ~~and include;~~

~~(h) errors from the logic board random access memory, defined to be:~~

~~(A) in cases where the machine has redundant memories for the purposes of comparison a ram error is recorded when the comparison fails.~~

~~(B) if subsection (A) does not apply then ram errors will record "GAMES" "EARS" or where the electronic meters are cleared.~~

~~(i) Total credits meter is defined as being the total of coins in 1, coins in 2 and credits from the bill acceptor (if applicable);~~

~~(ii) In addition all machines must keep two additional 6 digit totals:~~

~~(A) number of times the logic area was accessed; and~~

~~(B) number of times the cash area was accessed.~~

~~(h)~~(e) ~~The game must play a~~ conform to standard rules of bingo; ~~game of bingo. No optional or bonus features are allowed.~~

~~(i)~~(f) A produce a bingo must be attained during each game;

~~(j)~~(g) ~~The machine must~~ display the number of balls picked and the credits awarded for the number of balls drawn in

order to obtain a bingo~;

~~(k)----The-machine-must-pay-back--or--award--credits--at--a minimum-rate-of-80%~~

~~(l)----The-machine-must-offer-only-the-game--of--bingo--for play~~

~~(m)~~(h) ~~The-machine~~ allows the player the choice of cards on which to play ~~not-to-exceed-4~~. All winning cards must be available for display on the screen, including any that may be played by the machine in any game~~;~~ and

(i) designate the winning arrangement of numbers prior to commencing play.

~~(n)----The-machine-may-play-coverall-bingo~~

~~(o)----In-any-game-the-machine-must--not--allow--a--bet--to exceed--$2--or-award-credits-at-a-rate-to-exceed-$100-regardless of-the-number-of-cards-played~~

~~(p)---Any-variable-data;--e.g.--location--name;--shall--not reside-on-the-PROM-modules-that-contain-the-bingo-program~~

AUTH: Sec. 23-5-621, MCA IMP: Sec. 23-5-621, MCA

8.124.205 (23.16.1807) RESTRICTIONS ON OPTIONAL GAME FORMAT OR FEATURES ~~(1)--A-licensee-shall-only-offer-the-game-of draw poker,-keno-or bingo-as-provided-by-the-act-and-these-rules and--shall--not-offer-any-other-game-or-variant-which-will-award free-games,-credits-or--any--other--inducement--for--a--player's performance~~.--~~This-restriction-applies-to-bonus,-progressive, or any-other-means-of-awarding-games,-credits,-or-inducements which deviate-from-the-award-of-games-or-credits-for-a-winning game-of draw-poker,-keno-or-bingo~~.

(1) ~~(2)~~ The department shall determine what optional features may be allowed and such features must be approved by the department prior to inclusion in a machine's game format. For draw poker machines the department will evaluate only those draw poker games described in the authority references identified in the department's card game rules.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-621, MCA

8.124.204 (23.16.1808) SOFTWARE INFORMATION TO BE PROVIDED TO THE DEPARTMENT (1) A licensee may be required to provide information to the department necessary to ensure the machine's software ~~and--logic-are~~ is in compliance with the act and these rules. The information may be provided directly by the licensee, the distributor or the manufacturer of the machine. The information shall include, but not be limited to:

(a) all technical manuals~~,~~ ~~instructions,~~ ~~wiring,~~ ~~and-logic diagrams-for-the-machine~~;

(b) all schematics, printed wire assembly and hardware block diagrams;

~~(b)~~(c) all microprocessor manuals;

~~(c)~~(d) all source listings, including programmer's comments, and flow charts for the ~~poker~~ game program(s) and printer routine(s);

~~(d)~~(e) a hexadecimal dump(s) ~~of--all~~ for each compiled programs;

~~(e)~~(f) ~~model~~ master EePROM's containing compiled ~~poker~~

game programs and character sets, including those that may reside on the printer interface board;

~~(f)~~(g) access to a compiler for the programming language used if the department is unable to compile the program with the equipment it has available;

~~(g)~~(h) a written description of the ~~algorithm for the~~ random number generator algorithm ~~along with a written description~~;

~~(h) a photo or drawing of the display which shows all setup and test modes with detailed written descriptions and instructions;~~

~~(i) a listing of the payback values and the probabilities of the outcome of winning hands for the program logic used;~~

(i) the schedule of proposed payout(s), ~~odds and overall payback~~ percentage(s) and odds determinations;

(j) ~~using a no draw algorithm provide~~ tabulated results of 5 separate simulations, of exactly ~~of not less than~~ 200,000 games each, using the game program, in the following format;

(i) keno/bingo = the number of times each number is picked,

(ii) poker = the number of winning hands with the first five cards dealt,

(k) ~~instructions on the means, including assumptions made, by which the written description of the algorithm used for the~~ simulations in subsection ~~(i)~~(l)(j) ~~were created so the department can verify the simulation results; and~~

(l) a complete copy of the programmers memory map;

(m) a description of the methods of all testing criteria if performed and the results of the tests for the following:

(i) random number generator;

(ii) electromechanical interference;

(iii) radio frequency interference;

(iv) FCC standards;

(v) A.C. line noise;

(vi) static electricity; and

(vii) extreme temperature conditions;

(n) truth tables for all PALs used; and

(o) an operators manual for each peripheral device utilized.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-621, MCA

RULE 8.124.209 (23.16.1809) IS PROPOSED TO BE REPEALED and can be found on page 8-4817 of the ARM.

RULE I USE OF TEMPORARY REPLACEMENT OR LOANER MACHINES - PERMIT REQUIRED - REPORTING (1) The use of a temporary replacement or loaner machine is authorized only ~~in cases~~ where it is being used to replace a permitted machine that has been removed from service for repair.

(2) Any operator placing a temporary replacement machine in service must notify the department on a form prescribed by the department.

(3) The temporary replacement machine must have an identification number issued by the department. The

identification number must be issued in advance of the machine being placed into service, and must be issued to a holder of a manufacturer/distributor or an operator license. The identification number must be affixed to the machine.

(4) The operator is responsible for filing all quarterly tax reports for the temporary replacement machine.

(5) In no case may the number of machines authorized by the number of permits issued the operator be exceeded by the use of temporary replacement machines. A temporary replacement machine may not be used for more than ninety (90) days.

AUTH: Sec. 23-5-603, MCA. IMP: Sec. 23-5-603, MCA.

Rules 23.16.1811 through 23.16.1812 reserved.

8.124.213 (23.16.1813) MANUFACTURERS/DISTRIBUTORS AND PRODUCERS OF ASSOCIATED EQUIPMENT OF VIDEO ~~DRAW-POKER-GAMING~~ GAMBLING MACHINES (1) The department may issue to an applicant for a manufacturers/ distributors license or an applicant for a producer of associated equipment license for video ~~draw--poker gaming--~~gambling machines a provisional license pending the results of the investigation into their suitability for licensure. A provisional license will be revoked upon a determination that the applicant does not qualify for licensure. Upon a final determination that the applicant does qualify for licensure the bureau will issue final approval and remove the license from provisional status. This license fee is nonrefundable once the bureau has begun processing the license.

(2) The ~~bureau~~ division will assess a one-time administrative fee of ~~$45.00~~ $1,000.00 to cover the actual costs of processing the license. Any amount not needed to cover processing costs will be refunded.

(3) A person licensed under this section must comply with all laws and rules of the state of Montana and the department of ~~commerce~~ justice.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-625, MCA

8.124.214 (23.16.1814) GENERAL REQUIREMENTS OF MANUFACTURERS, SUPPLIERS, AND DISTRIBUTORS OF VIDEO ~~GAMING~~ GAMBLING MACHINES OR PRODUCERS OR ASSOCIATED EQUIPMENT (1) A ~~registered~~ manufacturer/distributor or producer of associated equipment must retain for a period of three years all records relating to the operation of or sales of video ~~gaming~~ gambling machines in Montana.

(2) A ~~registered~~ manufacturer/distributor or producer of associated equipment must provide the bureau with a current list of all video ~~gaming~~ gambling machines kept in their storage in Montana at the time of application and provide monthly updates thereafter. These reports must include the following information:

(a) manufacturer;

(b) model;

(c) serial number;

(d) location machine is stored.

(3) Any person desiring to sell, distribute, lease, or rent video ~~gaming~~ gambling machines in this state must:

(a) be issued and maintain all required federal, state, county, and municipal licenses;

(b) furnish to the department monthly reports identifying the quantities and models of machines the manufacturer, supplier, distributor, or coin operator ships into Montana or receives from outside Montana, and such other information the department may determine is necessary to regulate and control video ~~gaming~~--gambling machines in accordance with the act and these rules.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-625, MCA

8.124.215 (23.16.1815) VIDEO ~~POKER---GAMING~~ GAMBLING MACHINES TESTING FEES (1) Each entity submitting a video ~~draw poker~~ gambling machine or a modification that changes the play or operation of a video draw poker machine for testing and department approval must:

(a) be licensed as a manufacturer distributor or as a producer of associated equipment within the state of Montana;

(b) at the time of submission deposit with the department a sum of money to cover the costs of the testing service. This sum is to be as follows:

(i) video ~~draw-poker~~ gambling machines, $2,000.00;

(ii) modification to a machine that alters the play or operation of the machine and requires approval, $200.00.

(c) this account will be charged at the rate of ~~$25.00~~ $40.00 per hour.

(d) the ~~bureau~~ division will provide an accounting to the submitting person for charges assessed to them and will refund any overpayment at the time department final approval is given. The department will notify the submitting person of any underpayment and collect that money prior to giving any department approval.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-631, MCA

8.124.216 (23.16.1816) PROHIBITED MACHINES (1) Any machine ~~including--an--amusement--machine~~ which, in substance, simulates the game of poker, keno or bingo without conforming to the requirements of the act or these rules and is placed in service for play by the public is prohibited. ~~The--machine--is--subject--to--immediate--seizure--and--destruction--in--accordance--with--the--provisions--of--23-5-121--and--23-5-122,--MCA.~~

(2) Any person who owns or operates a machine described in subsection (1) is in violation of the act, these rules and Title 23, ~~part-3-chapter~~ 5, MCA. The civil and criminal penalties provided in those titles shall apply.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-613, MCA

8.124.217 (23.16.1817) POSSESSION OF UNLICENSED MACHINES BY MANUFACTURER, SUPPLIER, DISTRIBUTOR, OWNER, OR REPAIR SERVICE

(1) A manufacturer, supplier, distributor, owner, or repair

service may possess or own unlicensed machines, logic boards, meters, and machine components which conform to the statutory requirements and rules relating to electronic video ~~gaming~~ gambling machines. Such machines possessed or owned may not be operated except when inspected, licensed, and placed on a licensee's premises.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-613, MCA

8.124.218 (23.16.1818) LOCATION OF MACHINES ON PREMISES (1) An electronic video ~~gaming~~ gambling machine must be placed in such a manner that:

(a) each machine remains within the sight and control of the licensee or employees of the licensee;

(b) each machine is segregated from amusement machines in such a manner that a minor who tries to play a machine is immediately observed by the licensee or the licensee's employees; and

(c) public access is, to the greatest extent possible, limited to persons over the age of 18.

~~(2) If a machine is located in an establishment where alcoholic beverages are sold, the machine must be located in that area of business that is used primarily for the consumption of those beverages.~~

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-603, MCA

8.124.219 (23.16.1819) ~~CONDITIONAL~~ APPROVAL OF VIDEO ~~GAMING~~ GAMBLING MACHINES BY DEPARTMENT (1) The department may conditionally approve specific models of machines based on its finding that the machines conform to the act and these rules.

(a) Final approval of each machine is required even if a machine has been conditionally approved.

(b) Conditional or final approval may be withdrawn by the department subsequent to finding that a machine does not conform to specifications, ~~including new~~ or revised requirements that ~~were differ from those~~ in effect at the time conditional or final approval was granted.

(2) Approval includes inspection of the hardware and software and all information provided to the department under the administrative rules of Montana to determine whether a machine meets all requirements of the act and these rules.

(3) The department may accept shipment of a machine for the purpose of providing conditional approval of that particular make or model provided the following conditions are met:

(a) the department will not be responsible for any purchase, shipping, or handling charges;

(b) all the information required in ARM ~~8.124.204~~ 23.16.1808 must accompany the machine; and

(c) prior to shipment, the department approved such shipment of a machine for scheduled testing and approval.

(4) New rules may be adopted which redefine or set forth new specifications that previously approved machines do not comply with. In such cases, and only in such cases, the department shall allow up to 90 days for a licensee to bring a

machine into compliance with a new or modified specification.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-631, MCA

8.124.220 (23.16.1820) DISSEMINATION OF INFORMATION (1) Certain information collected by the department is known to contain confidential information. ~~The information in subsection (2) is confidential and may not be revealed by the department except under order of a court of competent jurisdiction.~~

~~(2)~~ Information designated as confidential includes but is not limited to the following:

(a) technical manuals, instructions, wiring, or logic diagrams for the machine;

(b) listings of source codes and flow charts;

(c) results of simulations and related information explaining simulation methodology;

(d) model PROMS or logic boards containing compiled programs. ~~or~~

~~(e) background information on applicants, licensees, and business relationships~~

~~(3)~~(2) Information relating to the results of actual operations as shown on a machine's meters is not confidential and may be used to compile studies or reports.

~~(4)~~(3) Persons with access to confidential information as described in subsection ~~(2)~~(1) may not use or reveal anything of a confidential nature outside the scope of its intended purpose.

~~(5)~~(4) The department shall secure confidential information and restrict all persons from access, except designated employees whose duties include testing and interpretation of the information. Such information is not public record and may not be released to any member of the public.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-115, MCA

8.124.221 (23.16.1821) REPAIRING MACHINES - APPROVAL (1) When the department approves the software and logic board of a machine, it may use a prescribed security seal process to guard against any unauthorized tampering or changes to the method by which the game is played on the machine.

(2) Any repair or replacement of a machine's logic board which may cause a loss of memory or change in the meter reading must be reported to the ~~video gaming control bureau~~ gambling control division of the department of ~~commerce~~ justice on forms prescribed by the department at the time of the repair. The report requires the disclosure of the following information:

(a) final electronic and mechanical meter readings before repair;

(b) initial electronic and mechanical meter readings after repair; and

(c) the nature of the problem encountered which necessitated the repair.

(3) Any repair made to a machine's logic board which requires the breaking of a department seal must be reported to the department before the seal is removed or broken. After

repair, the logic board must be reapproved by the ~~video--gaming control--bureau~~ gambling control division before being reused in a machine.

(4) Any repair or replacement made to a machine's meters must be reported to the ~~video--gaming--control--bureau~~ gambling control division before a seal is removed or broken and the readings of the machine's electronic and mechanical meters must be provided to the ~~video-gaming-control-bureau~~ gambling control division. After repair, the initial readings of the electronic and mechanical meters must be provided before the machine is again placed in operation. The department must subsequently be given access to the machine to reseal the meters and verify their proper operation.

(5) To assure the integrity, security, and monitoring of machines in service, a ~~licensed~~ permitted machine may not be substituted or replaced until the replacement machine has been ~~licensed~~ issued a permit by the department.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-631, MCA

RULE 8.124.222 (23.16.1822) IS PROPOSED TO BE REPEALED and can be found on page 8-4825 of the ARM.

8.124.223 (23.16.1823) INSPECTION AND SEIZURE OF MACHINES (1) The department ~~or-its-duly-authorized-representative~~ has the right at all times to make an examination of any machine being used to play or simulate video draw poker, video keno or video bingo. Such right of inspection includes immediate access to all machines and unlimited inspection of all machine parts. The department ~~or-its-authorized-representatives~~ may immediately seize and remove any machine or device which violates state law or these rules.

(2) Given reasonable cause, the department may remove a machine or parts from a machine for laboratory testing and analysis.

(3) The department may seal any machine left on the licensee's premises pending the department's investigation. The breaking or removal of the department's seal will subject the licensee to seizure of the entire machine and suspension or revocation of the any permit or license issued by the department.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-115, MCA

8.124.224 (23.16.1824) INVESTIGATION OF LICENSEE (1) The department may, upon its own motion, and shall upon receipt of a written, verified complaint of any person, investigate the actions of any licensee and the operations of any machine. The investigation shall be undertaken for the purpose of gathering evidence and determining whether a violation of the act or these rules has occurred.

AUTH: Sec. 23-5-115, MCA IMP: 23-5-613, MCA

8.124.225 (23.16.1825) CIVIL VIOLATIONS -- CRIMINAL

CITATIONS is hereby repealed.

8.124.226 (23.16.1826) PENALTIES FOR CIVIL VIOLATION ISSUED BY DEPARTMENT is hereby repealed.

RULE 8.124.227 (23.16.1827) IS PROPOSED TO BE REPEALED and can be found on page 8-4826 of the ARM.

8.124.228 (23.16.1828) TRANSPORTATION OF MACHINES INTO STATE (1) All shipments of video gaming machines into this state must comply with the act of the congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being Ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. 1171-1177.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-621, MCA

RULE 8.124.229 (23.16.1829) IS PROPOSED TO BE REPEALED and can be found on page 8-4827.

RULE II VIDEO GAMBLING MACHINES - TRADE SHOWS (1) Video gambling machines, which have not been approved for operation or sale, may be brought into Montana for the purposes of trade shows, exhibitions, and similar activities, under the following requirements:

(a) the machines must simulate only games authorized in Title 23, chapter 5, MCA.

~~(2)~~(b) the department must receive written notification of the activity and intent to display these devices at least 3 working days prior to the event. Such notification shall include the following information:

(i) a list describing the machines including model and serial number;

(ii) the event, it's location, and number of days the device(s) will be displayed;

(iii) the method of transportation and location of storage of the machines;

(iv) the name of the company represented, telephone number and address, and the individual who will be responsible for the machine while in the state;

(2) the department may inspect these devices to insure conformity with the requirements of this section.

(3) no machines brought into Montana under this rule may remain in the state for more than 20 working days.

AUTH: Sec. 23-5-621, MCA IMP: Sec. 23-5-621, MCA

RULE III MANUFACTURER OF DEVICES NOT LEGAL IN STATE - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS A manufacturer of gambling devices in Montana which are not authorized for use in Montana and intended for use outside of Montana must be licensed by the department. The administrative fee for this license is $1000 annually. A license issued under this section shall for all purposes expire

at midnight on June 30 each year. A person licensed under this section must provide a monthly report listing kinds and amounts of devices manufactured, number of shipments of these devices, destinations of all shipments and method of shipment including carrier used.

AUTH: Sec. 23-5-152, MCA IMP: Sec. 23-5-152, MCA

RULE IV DEFINITIONS As throughout this subchapter the following definitions apply:

(1) "Bank" means the common fund into which player consideration to play keno or bingo is placed and out of which prizes are awarded.

(2) "Bingo" means a game of chance played for prizes with cards bearing numbers as described in law, in which the holder covers such numbers when objects similarly numbered are drawn or electronically determined, and in which the game is won by the first person covering a previously designated arrangement of numbers on such cards. A game of bingo begins with the first number called and ends when an individual covers the previously designated arrangement, declares bingo, and the game is verified. Individual prizes not to exceed $100 in value are then awarded.

(3) "Filing date" means July 31st of each year.

(4) "Game" means a session of play in which a winner or winners are chosen or the game as defined in law or administrative rule ends.

(5) "Gross keno or bingo game income" means the total consideration paid by all the players to play.

(6) "Gross proceeds" means gross income received to play live keno or bingo minus the prize payouts.

(7) "Inside keno cards" mean the cards on which players record their selections which are submitted to and retained by the keno caller as a receipt and to verify player selections.

(8) "Keno or bingo caller" means any individual responsible for the collection of player consideration, verification of bets and winners and distribution of awards.

(9) "Outside keno cards" mean the cards on which players' selections are recorded by a keno caller and issued to the player as a receipt. These cards must contain the premise name, card manufacturer name, game number, and a series number.

(10) "Payout(s)" means a prize or prizes awarded to winners. The term does not include prizes awarded to winners of free, promotional games.

(11) "Payout slips" means a report detailing the payouts made in each live keno or bingo game, including promotional prizes. The slips must also contain the name of the individual making the payouts, game date and the payouts or prizes, for each game.

(12) "Player" means a natural person paying valuable consideration to play live keno or bingo.

(13) "Promotional game" means a game during which a prize is awarded but for which no consideration is required by the players.

(14) "Tax year end" means June 30th of each year.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-409, MCA

RULE V LIVE KENO AND BINGO RECORD KEEPING (1) A record of live keno and bingo gross proceeds, must be maintained separate and distinct from other sources of operator revenue. Unless designated otherwise the operator of a live keno or bingo game must retain daily accounting records for a period of three years from the due date of the associated net live game income tax return. The records must remain legible and be kept in the state of Montana and accessible by the department from the licensee.

(a) The following records must be maintained on a form prescribed by the department:

(i) the gross income collected, supported by proper records as required in these rules.

(ii) the amounts paid out for prizes supported by proper records as required in these rules.

(iii) records documenting the starting and ending cash bank which must be verified by at least two persons by a signature.

(iv) records providing a reconciliation of gross income, actual profit, cash long or short, and bank deposit.

(v) a copy of the schedule of games and their prizes.

(2) Live keno records. In addition to the records required to be kept under part 1 of this rule the keno operator must maintain the following records:

(a) a record of outside keno card purchases, detailing the number of cards purchased by series number must be kept for a period not less than three years from the due date of the associated live keno income tax return. The outside keno card purchase invoices must segregate the order by single cards and card sheets;

(b) if the premise uses a cash register or other method of calculating cash on hand with which a tape record is maintained, the tape record must be kept with other daily records;

(c) once a week, gross income from one day's play must be verified by the game manager/owner by counting the inside cards retained for receipting purposes for one day's play, segregated by card prices, and totalling payout slips. Any variations, in excess of $5.00 between the gross income figures calculated using the card count and actual bank record must be investigated. A log must be maintained detailing the findings of the card count and comparison with the actual bank. The log must indicate the number of cards sold and pay outs by card price. The log must also detail the conclusions reached in the investigation of variations between the card count and actual bank;

(d) a record of the total number of keno cards sold must also be maintained on a daily basis;

(e) payout slips must be maintained by each keno caller for each work shift. It must also be initialed by the keno caller at the end of the shift. Prizes awarded for promotional games must be recorded on the payout slips. The slips must also be maintained as part of the operator's records for a period of three months;

(f) for the purposes of calculating gross proceeds promotional game prizes must be subtracted from total payouts;

(g) the ending bank balance less the days gross proceeds and any other adjustments must be used as the beginning balance for the next day;

(h) if a licensed premise has not kept records in the manner prescribed in these rules and no other records exist with which the department may calculate the gross keno proceeds, the department may estimate a tax using the best available method.

(3) Live Bingo Records. In addition to the records required to be kept under part 1 of this rule the bingo operator must maintain the following records:

(a) a record of all bingo card purchases, detailing the number of cards purchased by type;

(b) if the premise uses a cash register or other method of calculating cash on hand with which a tape record is maintained the tape record must be kept with the daily records;

(c) a record of the total number of bingo cards sold;

(d) payout slips must be maintained by bingo callers for each work shift. Prizes awarded for promotional games must be recorded on the payout slips but so designated for the purpose of calculating gross proceeds. The payout slips must be initialed by the caller at the end of his/her shift. The slips must also be maintained as part of the operator's records for a period of three months.

(e) the day's gross proceeds must be reconciled with the ending bank balance. Any variation in excess of $5.00 must be investigated. A log must be kept detailing the findings of these investigations. For the purposes of calculating gross proceeds, promotional game prizes must be subtracted from the total payouts.

(f) the ending bank balance less the days gross proceeds and any other adjustments must be used as the beginning balance for the next day; and

(g) if records are not kept in the manner prescribed in these rules the department may estimate gross proceeds using the best available method.

AUTH: SEC. 23-5-115, MCA IMP: SEC. 23-5-409, MCA

RULE VI EXPENSES ALLOWED IN CALCULATING NET LIVE KENO OR BINGO TAXABLE INCOME (1) A record of expenses incurred for the production of live keno or bingo game income must be maintained separately in the operators' records. The operator may deduct personnel, supplies, advertising and equipment expenses allocated to the live keno and bingo games from gross proceeds. To be fully deductible the expense must be incurred for the production of live game income only. Expenses incurred entirely for purposes other than the live game or having only a nominal connection with the game may not be deducted.

(2) A percentage of shared expenses, those substantively incurred for the production of more than one source of operator revenue including the live keno or bingo game, may also be deducted. The amount of deductible shared expenses is determined by multiplying total shared expenses by the

percentage live game gross income bears to total operator gross income, during the live game tax year. The formula to be used in this calculation is as follows:

gross live game income/total gross income X total shared expenses, = deductible shared expenses

For the purposes of this rule, total gross income means gross income from all sources in the licensed premise.

(3) Deductions for equipment expenses must be the same as those claimed for federal and state income tax purposes for the same period of time. Therefore, equipment that is depreciated for state and federal income tax purposes must be depreciated for net live game income tax purposes. Equipment that is expensed for state and federal income tax purposes must be expensed for net live game income tax purposes.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-409, MCA

RULE VII PRIZE AWARDS FOR LIVE KENO AND BINGO GAMES All live game operators must provide a pay table listing the prizes awarded to winning cards. All valid winning cards must be paid in full as per the pay table. In no case may the total prize exceed $100 per individual bingo award or $100 per card in a keno game. Bingo games may not be extended in any manner so as to exceed the prize limitations nor may identical cards be played so as to exceed prize limitations.

In keno, players may not make multiple bets on a single card.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-412, MCA

RULE VIII ACTUAL CASH PROFIT BANK DEPOSIT REQUIRED BY LICENSED OPERATOR The actual cash profit of live keno and bingo games, less the increase or plus the decrease in the normal cash bank for the next keno or bingo day's play, must be deposited intact in the operator's bank account at least twice a month. Receipts must be retained for any cash expenses paid out of the gross proceeds. A copy of the receipt must be retained with the live keno or bingo game records at all times. If the operator prepares a deposit slip for the deposit of actual cash profit from only one day's activity, the validated deposit slip or receipt must contain a reference to the date of the occasion, deposit amount, and be included as part of the daily accounting records. If the operator prepares one deposit slip for the deposit of actual gross proceeds from more than one keno or bingo day or other gambling activity, or both, the deposit slip must contain a reference to, the dates played, deposit subtotals by activity, and be included as part of the daily accounting records.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-409

RULE IX PENALTIES (1) Failure to file live keno or bingo income tax returns or pay the tax in a timely manner will result in the assessment of penalties, stated in terms of a percentage of the tax due. The penalties to be assessed are as follows:

(a) 0-30 days late 10% of tax due;

(b) 31-60 days late = 25% of tax due;
(c) 61-90 days late = 50% of tax due;
(d) 91 days or more = 100% of tax due.

(2) The imposition of these penalties does not preclude the department from taking any other action against the operator as allowed by law.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-409, MCA

RULE X DEFINITIONS (1) "Calcutta pool" means a form of auction pool wherein participants in the pool bid on the competitors in an underlying event with each successful bidder wagering the amount he has bid on the competitor he has "purchased;" at the conclusion of the underlying event the pool of wagers placed on all competitors is divided amongst the pool participants who have "purchased" the winners of the underlying event according to the rules of the particular calcutta pool.

(2) "Competitor" means an entrant in the underlying event upon which a calcutta pool is based and who is "purchased" or wagered upon by a participant in the calcutta pool.

(3) "Participant" means a person who bids/wagers in a calcutta pool, who "purchases" a competitor in the event underlying the pool, and who stands to win according to the rules of the pool.

(4) "Prize" means anything of value awarded a winner of a calcutta pool or anything of value awarded a winner of an underlying event from the calcutta pool based on that event.

(5) "Proceeds" means the amount left in a calcutta pool after administrative costs and prizes have been paid.

(6) "Purchase" means to earn the right to wager in a calcutta pool by submitting the highest bid on a particular competitor in the underlying event.

(7) "Underlying event" means an actual game, tournament, or contest with more than two entrants which is wagered upon by the participants in a calcutta pool. Fictitious or contrived events shall not be considered underlying events for purposes of calcutta pool wagering.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-221, MCA

RULE XI RESTRICTIONS ON CALCUTTA POOLS (1) Calcutta pools must meet all of the following restrictions:

(a) The organization conducting the pool must be authorized by the department;

(b) The rules of the pool must be publicly posted in advance of the auction;

(c) At least 50 percent of the total pool of wagers must be paid out in prizes; and

(d) The proceeds from the pool must be contributed to a charitable or nonprofit corporation, association, or cause.

(2) No calcutta pool may be based upon an underlying elementary or high school sports event.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-221, MCA

RULE XII APPLICATION FOR AUTHORIZATION TO CONDUCT A CALCUTTA POOL (1) Any organization seeking authorization from the department to conduct a Calcutta pool must supply the department the following information:

(a) the event underlying the Calcutta pool;

(b) the number of competitors in the underlying event;

(c) the value of prizes to be awarded (a prize may be a percentage of the total wagers);

(d) any projected costs of administering the pool;

(e) the intended use of the proceeds of the pool;

(f) a copy of the rules of the Calcutta pool which will be publicly posted.

(2) All applications for authorization to conduct Calcutta pools must be received by the department prior to the start of the auction, with adequate time for processing.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-221, MCA

RULE XIII MISREPRESENTATION - PENALTIES (1) If, upon investigation, the department determines that an organization authorized to conduct a Calcutta pool has failed to comply with the laws of the state of Montana or the rules of the department or has misrepresented any material fact in its application for an authorization to conduct a Calcutta pool, the department may:

(a) deny any future application by said organization for authorization to conduct a Calcutta pool; or

(b) take any other action authorized by law.

(2) Upon completion by the department of its investigation, the department shall notify the organization authorized to conduct the Calcutta pool of any penalties it intends to impose. If the organization then desires a hearing, it must submit a written request to the department within 20 days of the receipt of notice of intended department action.

(3) Upon receipt by the department of a written request for hearing, all subsequent proceedings shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-221, MCA

RULE XIV ILLEGAL GAMBLING--PRESUMPTION In any case where the department is able to establish probable cause that a gambling activity not authorized by statute is taking place or that a gambling device or gambling enterprise not authorized by statute is being made available to the public, the department shall presume that such activity, device, or enterprise is illegal. The presumption shall be a disputable presumption as that term is defined in Rule 301, Mont. R. Evid.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-111, MCA
Sec. 23-5-151, MCA

RULE XV PROCEDURE UPON PRESUMPTION In cases where the department has presumed the existence of an illegal gambling activity, device, or enterprise, the department may issue a

notice and opportunity for hearing on a permanent cease and desist order regarding that activity. The department may, in its discretion, seize the gambling device presumed to be illegal or issue a temporary order to cease and desist from the gambling activity or enterprise presumed to be illegal.

(2) If the person presumed to be conducting illegal gambling then desires a hearing, he must submit a written request to the department within 20 days of the department's action.

(3) All proceedings in cases of presumed illegal gambling must be conducted pursuant to sections 23-5-136 and 137, MCA, the Montana Administrative Procedure Act, and the attorney general's Model Rules of Procedure.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-111, MCA
Sec. 23-5-151, MCA

RULE XVI DEFINITION "Raffle" means a form of lottery in which each participant buys a ticket for valuable consideration in order to be eligible for a random drawing to win a prize or prizes.

AUTH: Sec. 23-5-115, MCA IMP: Sec. 23-5-405, MCA

3. The department is proposing these rules in order to implement Title 23, chapter 5, parts 1 through 6, MCA, and SB 431 of 1989. SB 431 centralized the regulation of gambling in the Montana Department of Justice. The new rules are necessary because of the legislative changes.

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 Robert J. Robinson, Administrator, Gambling Control Division, 2687 Airport Road, Helena, Montana, 59620, no later than January 31, 1990.

5. Robert J. Robinson, Administrator, Gambling Control Division, has been designated to preside over and conduct the hearing.

6. The authority of the department to make the proposed rules is based on section 23-5-115, MCA, and the rules implement sections 23-5-110 through 23-5-631, MCA.

By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State December 11, 1989.

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Sec. 23-5-151, MCA

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By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State December 11, 1989.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of rules 24.9.212 Confidentiality, 24.9.225 Procedure on Finding of Lack of Reasonable Cause, 24.9.309 Contested Case Record, and 24.9.329 Exceptions to Proposed Orders	))))))	NOTICE OF THE PROPOSED AMENDMENT OF RULES 24.9.212 CONFIDENTIALITY, 24.9.225 PROCEDURE ON FINDING OF LACK OF REASONABLE CAUSE, 24.9.309 CONTESTED CASE RECORD, AND 24.9.329 EXCEPTIONS TO PROPOSED ORDERS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 26, 1990, the human rights commission proposes to amend ARM 24.9.212, 24.9.225, 24.9.309 and 24.9.329. ARM 24.9.212 relates to confidentiality of complaints under investigation by the commission staff. ARM 24.9.225 relates to the procedure to be followed in the investigative process when the commission staff has issued a finding of lack of reasonable cause to believe discrimination has occurred. ARM 24.9.309 relates to the materials which comprise the record in a contested case. ARM 24.9.329 relates to the procedure to be followed after the entry of a proposed order by the hearing examiner.

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

24.9.212 CONFIDENTIALITY (1) The commission shall maintain the confidentiality of privacy interests entitled to protection by law. Any information which is made public may be altered to provide for the anonymity of persons whose privacy interests are entitled to protection by law.

~~(3)~~ (2) The commission may disclose any record or information contained therein to any party, individual or agency pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains.

~~(1)~~ (3) No complaint, information obtained in the investigation of a complaint, or ~~records required to be filed with~~ other information in the commission file shall be made a matters of public information~~, or disclosed to persons without an interest in them~~, by the commission prior to a ~~determination regarding cause or a~~ finding ~~of no cause~~ under ARM 24.9.224 ~~or 24.9.225~~, regarding cause to believe discrimination occurred or other agency action terminating investigation and entering an order with respect to a complaint. This rule ~~does not apply to such earlier~~ shall not limit the commission's disclosures of such information to a party, individual or agency ~~outside of the commission~~ as may be necessary to ~~the carrying~~ out ~~of~~ the commission's ~~functions~~ obligations under ~~the act or code provided that the reasonable expectations of individual privacy~~

~~of-persons-named-in-the-commission's-records-are-protected~~ Montana statutes or these rules.

~~(2)~~ (4) Upon a ~~determination~~ finding regarding cause to believe discrimination occurred, ~~a-finding-of-no-cause~~ or other agency action terminating the investigation ~~and-entering-an order-with-respect-to-complaint,-the-commission-shall-continue to-protect-the-identity-of-persons-having-a-reasonable expectation-of-privacy-throughout-the-hearing-process.--Any information-made-public-shall-be-altered-only-to-provide-for the-anonymity-of-those-persons-whose-privacy-rights-are-to-be protected,-and-are-entitled-to-protection-by-law~~ in a case, the complaint, information obtained in the investigation of a complaint and other information in the commission file shall become public information.

~~(4)~~ (5) Disclosure of information regarding complaints alleging violations of federal law which are within the jurisdiction of the human rights commission because of worksharing arrangements with federal agencies may be further restricted by provisions of federal law.

(6) All settlement and conciliation agreements are public information except to the extent that they relate to privacy interests entitled to protection by law. A governmental entity does not have a privacy interest in any settlement or conciliation agreement.

AUTH: 49-2-204, 49-3-106 MCA; IMP: 49-2-504, 49-2-505, 49-3-307, 49-3-308 MCA.

24.9.225 PROCEDURE ON FINDING OF LACK OF REASONABLE CAUSE

(1) If the staff a ~~finding~~ finds ~~of~~ lack of reasonable cause to believe discrimination occurred ~~is-made-by-the division~~ in regard to any complaint, the staff shall serve notice of the finding ~~shall-be-served~~ on all parties. The notice shall include a statement of the reasons for the finding. The notice shall be accompanied either by a dismissal order and right to sue letter in accordance with ~~the-provisions of~~ ARM 24.9.263, or by a statement ~~explaining-the-right-of~~ allowing the charging party or aggrieved person to request a hearing before the commission.

(2) The determination to dismiss the complaint and issue a right to sue letter or to allow the charging party or aggrieved person an opportunity for hearing before the commission shall be within the sound discretion of the administrator. If the administrator elects to allow the charging party or aggrieved person an opportunity for hearing before the commission, the notice shall specify the time within which the charging party or aggrieved person must file a written request for hearing which in no case shall be less than 14 days from the date the notice of the finding ~~was~~ is mailed to the parties.

(3) Upon a finding of lack of reasonable cause to believe discrimination occurred and the administrator's grant of an opportunity for a hearing, ~~if~~ if a the charging party or aggrieved person ~~in-a-case-in-which-the-division-has-found-lack of-reasonable-cause~~ makes a timely written request for hearing

~~in-response-to-the-statement-accompanying-the-lack-of reasonable-cause-finding~~ the administrator shall certify the case for hearing in accordance with ARM 24.9.230. ~~(4)~~ If no timely written request for hearing is made ~~in-response-to-the statement-accompanying-the-lack-of-reasonable-cause-finding~~ the staff shall issue a dismissal order and right to sue letter in accordance with ~~the-provisions-of~~ ARM 24.9.263.

~~(5)~~ (4) Upon request of a party made within a reasonable time, the commission may vacate an order of dismissal issued pursuant to subsection ~~(4)~~ (3), if vacating the order is justified for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) fraud (whether intrinsic or extrinsic), misrepresentation, other misconduct of an adverse party, or gross error by the ~~division~~ staff; or

(c) any other reason justifying relief from the operation of the ~~final~~ dismissal order.

~~The-request-must-be-made-within-a-reasonable-time.~~

(5) A motion under ~~this~~ subsection (4) does not affect the finality of a ~~final~~ dismissal order or suspend its operation. ~~Notwithstanding-the-provisions-of-this-subsection, the~~

(6) The commission may correct errors on its own motion.

(7) The commission may vacate an order on its own motion where there is a lack of jurisdiction ~~and-may-set-aside-an order-for~~ or where there has been fraud upon the commission.

(8) Any request permitted by ~~this-subsection~~ this rule may be denied where a party has failed to comply with the provisions of these rules for appeal of findings and the failure is not attributable to one of the factors set forth in subsections ~~(5)~~ (4) (a), (b), or (c) of this rule.

AUTH: 49-2-204, 49-3-106 MCA; IMP: 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, 49-3-312 MCA.

24.9.309 CONTESTED CASE RECORD (1) The record ~~of~~ in a contested case shall include ~~the-following~~:

(a) ~~The-complaint-and-all~~ All pleadings, motions, ~~and procedural~~ intermediate rulings ~~or-orders~~;

(b) All evidence received or considered, including ~~any electronic-or-other~~ a stenographic recording of ~~the~~ oral proceedings when ~~of hearing, but-not-including-any-notes-of hearing-made-by-a-hearing-examiner.~~ demanded by a party;

(c) A statement of matters officially noticed;

~~(d)--Exhibits-admitted-into-evidence;~~

~~(e)~~ (d) ~~objections,~~ Questions and offers of proof, ~~or questions,-including~~ objections and rulings thereon;

~~(f)~~ (e) Proposed findings and ~~orders-and~~ exceptions; ~~to them;~~

(f) Any decision, opinion, or report by the hearing examiner or commission member presiding at the hearing;

(g) ~~Where-permitted,~~ All staff memoranda or data submitted to the hearing examiner or members of the commission in connection with their consideration of the case.

~~(h)--The-finding-of-the-division-upon-the-conclusion-of investigation.~~

(2) Any stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. The cost of the transcription shall be paid by the requesting party.

(3) If a party desires a stenographic record of any hearing or proceeding, it must be requested not less than 15 days prior to the hearing or proceeding. The party requesting a stenographic record must arrange and pay for it.

(4) ~~In-the-event~~ If an electronic recording ~~or~~ of any hearing or proceedings is defective or ~~not-capable-of transcription~~ cannot be transcribed, ~~the-record-may-be~~ the hearing examiner may reconstruct ~~reconstructed-by-the-hearing examiner,~~ the record or the parties may reconstruct the record by stipulation ~~of-the-parties,-or-by-a-bystanders-bill.~~

~~(2)--Parties-who-request-the-transcription-of-any electronic-or-stenographic-recording-of-proceedings-must-do-so at-the-time-of-the-filing-of-exceptions-to-any-proposed-order or-ruling.--The-party-making-the-request-for-a-transcript-must make-arrangements-for-the-preparation-of-the-transcript-through the-staff-of-the-division-and-pay-for-the-cost-of-the transcript-and-copies-for-each-commissioner,-the-case-record and-opposing-parties.--The-original-transcript-shall-be-made-a part-of-the-commission-record.~~

~~(3)--The-administrator-may-make-any-necessary-arrangements for-the-preparation-of-the-record,-including-the-preparation-of any-transcript-or-reproduction-of-the-record,-and-require-the party-requesting-the-preparation-of-the-record-to-bear-the-cost of-such-preparation-and-copying.~~

AUTH: 49-2-204, 49-3-106 MCA; IMP: 2-4-614, 49-2-505, 49-3-308 MCA.

24.9.329 EXCEPTIONS TO PROPOSED ORDERS (1) Following ~~the~~ entry of a proposed order in a contested case and prior to consideration of that order by the commission, parties ~~who-are~~ adversely affected by the proposed order shall have the opportunity to file exceptions, present briefs and present oral argument ~~upon-it~~ as provided in this rule. ~~Parties-claiming-to be-aggrieved-by-the-entry-of-a-proposed-order-or-any-part-of-it must-file-exceptions-under-this-rule-prior-to-final-commission action-in-the-contested-case.~~

(2) ~~Where~~ When ~~a~~ any party ~~seeks~~ intends to make exception to any conclusion of law, and commission review will not require a review of a transcript of hearing, the party must file and serve the exceptions ~~by-an-aggrieved-party-must-be filed~~ and a supporting brief within 20 days of the date of ~~the~~ entry of the proposed order~~,-and-a-brief-in-support-of-the exceptions-must-be-filed-with-the-exceptions.~~ ~~Thereafter-a~~ Any opposing party ~~opposing-any-such-exception-shall-have-has~~ must file and serve an answer brief within ~~ten~~ 10 days of service of the exceptions and supporting brief ~~in-which-to-file-an answering-brief.~~ A The party making exceptions ~~to-a-proposed order-shall-then-have-ten~~ must file and serve any reply brief

within 10 days ~~from the~~ of service of ~~an~~ the answering brief ~~to file his or her final brief. All parties filing exceptions under this subsection must do so within 20 days of the date of the entry of the proposed order, and no enlargement of time will be allowed for such purpose.~~

~~(3) When a transcript of proceedings at hearing has been prepared prior to the issuance of the proposed order and any party seeks to file exceptions to any finding of fact or conclusion of law requiring a factual record,~~ When a party intends to file exceptions to a finding of fact or to a conclusion of law and commission review will require a transcript of hearing and:

(a) a transcript of hearing has been prepared prior to issuance of the proposed order, the party must file ~~his~~ and serve the exceptions and a supporting brief within 20 days of the date of ~~the~~ entry of the proposed order. ~~A brief in support of the exceptions must be filed with the exceptions. Thereafter, a party opposing any such exception~~ Any opposing party must file and serve an answer brief within ~~has ten~~ 10 days ~~in which~~ of service of the exceptions and supporting brief ~~to file an answering brief.~~ The party making exceptions ~~to the proposed order then has ten~~ must file and serve any reply brief within 10 days of service of the answer brief ~~to file a final brief. The commission will not allow an enlargement of time for the filing of exceptions.~~

~~(4) Where a transcript of proceedings at hearing has not been prepared prior to the issuance of a proposed order and an aggrieved party seeks to file exceptions to any finding of fact or conclusion of law requiring a factual record,~~

(b) a transcript of hearing has not been prepared prior to issuance of the proposed order, the party must file a notice ~~that the party will~~ of intent to file exceptions ~~must be filed with the commission~~ within 20 days of the date of entry of the proposed order. ~~When such a~~ After the notice of intent to file exceptions is filed, the party ~~seeking to make~~ making exceptions must ~~request and make provision~~ arrange for the preparation of a transcript of ~~proceedings~~ hearing at his own expense. ~~All parties who seek to make exception to any finding of fact or conclusion of law must file the notice required by this rule within the stated period of time, and no enlargement of time to file the notice required by this subsection will be allowed. The party giving notice of intent to file exceptions must make arrangements for the preparation of a transcript and make payment for it, and~~ The party making exceptions must file an original and six copies of the transcript ~~must be filed~~ with the commission within 40 days of the date of filing ~~of~~ the notice of intent to ~~make~~ file exceptions. If both parties give notice of intent to file exceptions, they must share equally in the cost of the transcript and copies. ~~The exceptions and supporting brief of the~~ The party making exceptions must ~~be filed~~ file the exceptions and a supporting brief within 20 days of the date of ~~the~~ filing ~~of~~ the transcript, ~~whichever date shall occur first. Thereafter a~~ Any opposing party ~~shall have~~

~~ten~~ must file and serve an answer brief within 10 days ~~from the date~~ of service of the exceptions and ~~brief in support of them~~ supporting brief ~~to file an answering brief~~. The party making exceptions ~~may have ten~~ must file and serve any reply brief within 10 days ~~following the~~ of service of the answering brief ~~to file its concluding brief~~.

(4) No enlargement of time will be allowed for compliance with any of the requirements of this rule except on a showing of good cause.

(5) Except upon stipulation of all parties, a transcript shall be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the case. A transcript shall be a verbatim and complete account of all proceedings on the record of the hearing and shall be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the case.

(6) The commission deems the failure of a party to timely file a brief in support of exceptions to be a waiver of the right to oral argument and will not hear argument in such cases. However, if a party who has filed exceptions fails to timely file a supporting brief, any opposing party may request permission from the Commission to submit a brief in opposition to the exceptions.

(7) Where no party files exceptions to a proposed order within the time permitted by this rule, commission review shall be upon the proposed order under the provisions of section 2-4-621(3), MCA.

(8) When a party has timely filed exceptions to a proposed order and has timely filed a supporting brief, the commission will fix a date to provide the parties an opportunity to present oral argument to the commission. Each party is allowed one-half hour of argument before the commission. Oral argument may be waived by the parties.

(9) The chair of the commission, his or her designee, or a hearing examiner appointed by the commission may consider procedural motions and enter procedural orders as necessary for commission review.

(10) The commission may appoint a commissioner or hearing examiner for the purpose of conducting a prehearing conference prior to commission consideration of exceptions.
AUTH: 49-2-204, 49-3-106 MCA; IMP: 2-4-621, 2-4-623, 49-2-505, 49-3-308 MCA.

3. The commission proposes to add new subsection (6) to ARM 24.9.212 to make clear that the commission believes that the public right to know exceeds any claim of individual privacy when one of the parties is a governmental entity. This proposed amendment makes the commission's position comparable to the statutes governing settlement of tort claims involving governmental entities. §§2-9-303(2) and 2-9-304(2), MCA. The

commission proposes to delete language in subsection (2) referring to protection of individual privacy and place this language in subsection (1) to clarify that the commission intends the individual privacy exception to apply to all subsections of the rule involving the right to know. The commission proposes to revise ARM 24.9.309 to be consistent with 2-4-614, MCA and proposes to delete subsection (1)(h) of ARM 24.9.309 to make the rule consistent with a Montana Supreme Court decision which held that the commission staff's investigative findings were not admissible in evidence. The commission proposes to amend ARM 24.9.329 to clarify that a brief must be filed in support of exceptions to proposed orders in all cases, that a charging party waives oral argument on exceptions by failing to timely file a brief in support of exceptions and to clarify that transcripts filed with the commission must be prepared by a neutral person and must be in the form commonly accepted by courts of record. The commission proposes the other amendments as part of a review of its procedural rules in order to clarify the rules, streamline its procedures, and eliminate redundant and unnecessary material.

4. The authority of the commission to make the proposed amendments is based on sections 49-2-204 and 49-3-106, MCA.

5. Interested parties may submit their data, views, or arguments on the proposed amendments in writing to John B. Kuhr, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728 no later than January 19, 1990.

6. If a person who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to John B. Kuhr, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than January 19, 1990.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment 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 upon the number of potential parties to cases in Montana.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIR

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

Certified to the Secretary of State December 11, 1989.

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

In the matter of the adoption by reference of a new rule pertaining to the Montana Environmental Policy Act.	)))))	NOTICE OF PROPOSED ADOPTION OF A NEW RULE INCORPORATING BY REFERENCE RULES PERTAINING TO THE MONTANA ENVIRONMENTAL POLICY ACT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On February 1, 1990, the Board of Oil and Gas Conservation proposes to adopt a rule incorporating by reference ARM 36.2.521 through 36.2.543 and ARM 36.2.605 through ARM 36.2.611 relating to environmental impact statement rules.

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

"RULE I BOARD ENVIRONMENTAL POLICY ACT PROCEDURAL RULES (1) The board of oil and gas conservation adopts the procedural rules as stated in ARM 36.2.521 through ARM 36.2.543 and ARM 36.2.605 through 36.2.611, except the terms "the agency", "the department", and "the board" mean the board of oil and gas conservation."

AUTH: 2-3-103, 2-4-201, MCA; IMP: 2-3-104, 75-1-201, MCA

3. The proposed rule is necessary to codify in the board of oil and gas conservation Montana Environmental Policy Act rules to govern the necessary practices, such as public hearings, meetings, other public notices, scoping, and records of decision, that give the public a greater opportunity to participate in the agency's decision-making process. The rule is necessary to give the board procedural rules that closely conform with federal and state environmental policy act rules and practice.

4. Interested persons may submit their data, views or arguments concerning the proposed rule in writing to Dee Rickman, 1520 East Sixth Avenue, Helena, Montana 59620-2301 no later than January 21, 1990.

5. If a person who is directly affected by the proposed rule wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to Dee Rickman, 1520 East Sixth Avenue, Helena, Montana, 59620-2301, no later than January 21, 1990.

6. If the board receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rule, 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 hearing will be held at a later date. Notice of the hearing

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

Dee Rickman, Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State, December 11, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.23.413 relating to Carryover of Net Operating Losses - Corporation License Tax.	NOTICE OF PROPOSED AMENDMENT of ARM 42.23.413 relating to Carryover of Net Operating Losses - Corporation License Tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 8, 1990, the Department of Revenue proposes to amend ARM 42.23.413 relating to carryover of net operating losses - corporation license tax.

2. The proposed amendment to ARM 42.23.413 is as follows:

42.23.413 CARRYOVERS OF NET OPERATING LOSSES (1) A net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding period, then to the first preceding period, and then forward to the next five succeeding taxable periods in the order of their occurrence (or the next seven succeeding periods if the loss is sustained in a tax period ending after December 31, 1975). ~~However, since the net operating loss deduction is allowed only for taxable periods beginning on and after January 1, 1971, a net operating loss sustained for the year 1971 cannot be carried back but must be carried forward to 1972 and subsequent taxable years. By the same token, a 1972 net operating loss must be carried back to 1971 and then forward to 1973 and subsequent years.~~

(2)(a) When a net operating loss exceeds the net income of the year to which it is carried, the net income for such year must be adjusted by making the following modifications to determine the unused portion of the net operating loss to be carried forward:

(i) No deduction is allowed for any net operating loss carryover or carryback from another year.

(ii) Any excess of percentage depletion over cost depletion must be eliminated.

(b) The taxable income as modified by these adjustments shall not be considered to be less than zero. The amount of the net operating loss which may be carried forward is the excess of the loss over the modified net income.

(3) For taxable periods beginning after December 31, 1988 a taxpayer may elect to forego the entire carryback period. If the election is made, the loss may be carried forward seven taxable periods. The election must be made on or before the due date of the return, including any extension of time, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made. (AUTH: Sec. 15-31-501 MCA; IMP, Sec. 15-31-114 MCA.)

3. The proposed amendment to ARM 42.23.413 is necessary because of an amendment made by the 1989 Legislature regarding net operating loss carryover and carryback provisions to allow taxpayers the option of carrying forward a net operating loss without the requirement that the loss be carried back first. The prior law required that the loss be carried back three years before it could be carried forward. The new law appears to be quite clear. The amendment will clarify the tax years subject to the new statutory provisions.

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

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

no later than January 26, 1990.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than January 26, 1990.

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

STEVE BENDER for
DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State December 11, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules pertaining to Mail Ballot Elections.	))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 44.9.103, 44.9.202, 44.9.203, 44.9.301, 44.9.303 through 44.9.306, 44.9.309, 44.9.310, 44.9.312, 44.9.402, 44.9.403, 44.9.405 AND REPEAL OF 44.9.308

1. On January 11, 1990, at 10:30 a.m. a public hearing will be held in the Conference Room of the Office of the Secretary of State, Room 225 Capitol Building, Helena, MT to consider the proposed amendment and repeal of the above stated rules.

2. The rules as proposed to be amended and repealed are as follows:

44.9.103 DEFINITIONS (1) (a) and (b) remain the same.
(c) "~~Early~~ Absentee voting" is voting that takes place after ballots are available and before they are mailed to electors.
(d) remains the same.
(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-102, MCA.)

44.9.202 WRITTEN PLAN SPECIFICATIONS (1) The written plan for the conduct of ~~the~~ an election or elections held on the same election day shall at least include:
(a) and (b) remain the same;
(c) the estimated number of eligible electors in the jurisdiction at the time the plan is written;
~~(d) if use of the procedure is being initiated by the jurisdiction, then a copy of the resolution by the political jurisdiction requesting the election;~~
(e) and (f) remain the same, but will be renumbered;
~~(g) a description of the "special circumstances" which make using the mail ballot option potentially the most desirable of the available options;~~
(h), (i,), (j) and (k) remain the same, but will be renumbered;
~~(l) a description of the addressing method to be used and an estimate of the amount of time it will take to address all of the envelopes. If labels are to be used, this item would include the way labels are prepared, the amount of time estimated for preparing labels, and the amount of time required to apply all of the labels;~~

~~(m) best estimates of the time it will take to complete each step in the pre-mailing production process and the projected date on which ballots will be mailed to electors;~~

(j)~~(n)~~ an indication of how postage will be handled for:

~~(i) distribution (e.g. first class or bulk, etc. and permit, stamps or meter, etc.);~~

(ii) and (iii) remain the same, but will be renumbered;

~~(o) a brief narrative of arrangements reached with local postal officials. Include any special problems identified by postal officials and the proposed solution;~~

(k)~~(p)~~ if the election is for school district purposes, a brief narrative of the procedures to be followed from the time the ballots are received from the electors until they are tabulated~~;~~, including ~~if the election is for school district purposes the narrative must include~~ arrangements made for transfer of ballots from/to the school district clerk ~~(election administrator)~~ and the county election administrator for verification of signatures;

(q) remains the same, but will be renumbered;

~~(r) sketches for each major phase of the processshowing simple floor plans of the working area where ballots will be processed, including approximate dimensions, and indicating the functions to be performed at each work space in the room; and~~

~~(s) the names of persons responsible for the individual steps in the mail ballot election procedure.~~

(AUTH. 13-19-105, MCA; IMP, Sec. 13-19-205, MCA.)

44.9.203 WRITTEN TIMETABLE SPECIFICATIONS (1) The election administrator shall prepare a written timetable for the conduct of the mail ballot election. The timetable shall be in check-off form. It may contain additional activities and may be arranged in a different chronological order but otherwise shall be in substantially the following form:

~~# DAYS PRECEDING ELECTION~~	CALENDAR DATE	ACTIVITY
		~~Initial conversations with parties involved including postal officials, your staff, and officials of the jurisdiction.~~
		~~Written plan prepared.~~
		Copy of written plan to governing body.
		Last day for governing body to opt out.
		Submission of written plan to secretary of state's office.
		Approval by secretary of state.
		~~Ordering of ballot envelopes.~~
		~~Layout ballot.~~
		~~Materials to printer (including instructions to voters).~~
		Publish notice specifying close of registration as provided by 13-2-301, MCA.

		Close of registration as provided by 13-2-301, MCA.
		~~Notification of news media.~~
		~~Complete arrangements for addressing envelopes.~~
		~~Labels of eligible electors' names and addresses prepared and proofed.~~
		~~Work space organized with individual process areas labeled and all supplies such as mail trays in place.~~
		~~Poll books prepared.~~
		~~All logs and necessary forms prepared.~~
		~~Receipt of ballot and other printed material from printer.~~
		~~Notify post office of projected mailing date.~~
		~~Preparation of mail ballot packets for mailing.~~
		Ballots mailed.
		~~Extra personnel hired, if any.~~
		~~Extra personnel trained, if any.~~
		~~Begin initial verification of signatures.~~
		~~Last day for a notification of electors by mail.~~
		Election day.

(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-205, MCA.)

44.9.301 PROCEDURES FOR VOTING IN PERSON (1) In certain instances where the mail ballot election option is being used, some electors ~~will none the less~~ may vote in person at a designated location. These instances may include:

(a) ~~early~~ voting by an elector who will be absent from his place of residence during the conduct of the election;

(b) and (c) remain the same.

(2) remains the same.

(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-303 and 13-19-304, MCA.)

44.9.303 VOTING BY NONREGISTERED ELIGIBLE ELECTORS (1) through (3)(a) remain the same.

(b) enter the elector's name in the ~~poll book~~ register, on an addendum page provided for that purpose, and include all names so entered in their ~~poll book~~ register reconciliation. (AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-304, MCA.)

44.9.304 DESIGNATION OF MAILING ADDRESS OR ALTERNATIVE ADDRESS (1) remains the same.

(2) In these cases, and after complying with the requirements of law, the elector may designate the address to which his ballot is to be mailed by completing an ~~Address Designation Card, in a form prescribed by the secretary of~~

~~state and provided for that purpose,~~ absentee request until noon the day before ballots are scheduled to be mailed.
(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-303 and 13-19-304, MCA.)

44.9.305 REPLACEMENT BALLOTS (1) and (2) remain the same.
(3) In each case where an appropriate request for a replacement ballot has been received, the election administrator shall:
(a) prior to mailing the replacement ballot, check the ~~poll book~~ register to verify that the elector is entitled to vote and has not at that point done so;
(b) note in the ~~pollbook~~ register that a replacement ballot has been mailed and the date;
(c) ~~stamp~~ indicate on the return/verification envelope ~~the words~~ that it is a "REPLACEMENT BALLOT"; and
(d) remains the same.
(4) remains the same.
(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-305, MCA.)

44.9.306 DISPOSITION OF BALLOTS RETURNED AS UNDELIVERABLE (1) Ballots returned by the post office as undeliverable should be filed ~~in alphabetical order~~ and shall be securely retained.
(2) through (4) remain the same.
(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-206(2)(a), MCA.)

44.9.308 PROCEDURES WHEN BALLOTS RETURNED TO PLACES OF DEPOSIT is proposed for repeal and can be found on 44-292 of the Administrative Rules of Montana.
(AUTH, Sec. 13-19-105, MCA; IMP, 13-19-306 and 13-19-307, MCA.)

44.9.309 PROCEDURES FOR TRANSPORTING BALLOTS (1) Whenever the mail ballot option is used, ballots may need to be transported from places of deposit, ~~to and from the post office,~~ or in the instance of school district elections, conducted by the school district clerk (election administrator), to and from the county election administrator.
(2) The procedures for transporting ballots shall be substantially similar to procedures used to transport ballots in a regular election~~, including the requirement that at least two officials shall be present at all stages whenever ballots are transported~~.
~~(3) In addition, the election administrator shall keep a record of each instance when ballots are transported and shall include in that record the number of ballots, the locations, the date and time of day, and the officials transporting.~~
(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-105(3)(b), MCA.)

44.9.310 PROCEDURES TO SECURE BALLOTS (1) remains the same.
(2) The procedures to secure ballots and materials shall be substantially similar to procedures used to secure ballots in a regular election~~, including:~~

~~(a) placing seals on all ballot boxes and transport boxes;~~
~~(b) maintaining records of all seal numbers;~~
~~(c) verifying the accuracy of seal numbers at appropri- ate steps in the process;~~
~~(d) maintaining records of each case when a seal is attached or broken and removed;~~
~~(e) maintaining records, which may be subsequently reconciled, of each major processing step; and~~
~~(f) having officials, who are acting under oath, sign or initial when they have taken or witnessed a significant action.~~
(AUTH, Sec. 13-19-105, MCA; Sec. 13-19-105(3)(b), MCA.)

44.9.312 SIGNATURE VERIFICATION PROCEDURES (1) and (2) remain the same.

~~(3) Whenever a particular signature is in doubt, the more instances of similarity in factors like those listed in (2) above, then the greater the presumption of validity should be. Conversely, the more the instances of dissimilarity, then the greater the presumption of invalidity should be.~~

(4) remains the same, but will be renumbered.

~~(5) The election administrator may accept assistance from law enforcement personnel for training in signature verification procedures.~~

(6) remains the same, but will be renumbered.
(AUTH, Sec. 13-19-105, MCA; IMP, 13-19-310, MCA.)

44.9.402 RETURN/VERIFICATION ENVELOPE (1) through (3) remain the same.

(4) The flap side of the envelope should show by corner brackets where the elector's name and address is to be placed with the following words printed immediately below: "~~POSTMAN~~ POSTAL CARRIER: DO NOT DELIVER TO THIS ADDRESS--(SEE OTHER SIDE)."

(5) Beside this space an affidavit shall be printed in substantially the following form:

Voter's Affidavit

I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; and that I have completed this ballot in secret. I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot."

(Signature of Elector) (Today's Date)

~~Printed on the flap shall be the words "I VOTED HERE!"~~

~~(6) The return/verification envelope should have a 1/4" diameter hole center-punched so that the ballot secrecy envelope is visible.~~

(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-105(1), MCA.)

44.9.403 SECRECY ENVELOPE (1) The ballot secrecy envelope shall be of a size to fit within the return/verification envelope and shall be in substantially the same form as prescribed by the secretary of state. ~~It should also feature a 1/4" diameter hole, center punched, for ballot visibility.~~ The words "BALLOT SECRECY ENVELOPE" should be printed on the face.

(2) remains the same.

(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-105(1), MCA.)

44.9.405 ~~POLL BOOK~~ REGISTER (1) The ~~poll book~~ register for a mail ballot election shall be similar to the ~~poll book~~ register for a regular election except that:

(a) and (b) remain the same.

(c) it may, where voting is allowed for qualified electors who are not registered, include addendum pages on which to record the names of any such electors who are not known to officials at the time the ~~poll book~~ register is prepared.

(AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-105(1), MCA.)

3. Statement of Necessity

These amendments are necessary to adjust the mail ballot election rules in order to cure problems identified by the Election Advisory Council. The reasons for the amendments are as follows:

The proposed amendments to rules 44.9.103, 44.9.301, 44.9.303, and 44.9.405 are being proposed to clean up imprecise language.

The proposed amendments to rule 44.9.202 and 44.9.203 are necessary to make the process easier and more workable. The rules contain superfluous requirements which are confusing and redundant. The proposed amendment removes the unnecessary items required for the plan for a mail ballot election.

The amendment to 44.9.304 is being proposed to make procedures for mail ballot election similar to regular elections for the absentee ballot process.

The proposed amendment to rule 44.9.305 is necessary to change the incorrect language. The provision requiring a replacement ballot be stamped on the envelope is being changed to give the election administrator the option how the envelope will identify "replacement ballot". The use of a stamp was deemed unnecessary.

The proposed amendment to 44.9.306 is being proposed to eliminate the unnecessary provision of alphabetizing the undelivered ballots. The election administrators deemed this task to be a waste of time.

The proposed repeal of rule 44.9.308 is necessary because it reiterates the statutory requirements found at 13-19-308, MCA.

The requirements of rules 44.9.309, 44.9.304 are being amended to remove the provisions that duplicate the statutes and are therefore unnecessary.

The amendments to 44.9.310 remove superfluous language and unnecessary suggestions.

The amendments to 44.9.402 and 44.9.403 remove requirement for items that are not cost effective or needed.

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:

Nancy Harte, Elections Bureau Chief
Secretary of State's Office
Room 225, Capitol Building
Helena, MT 59620

no later than January 19, 1990.

5. Garth Jacobson, Chief Legal Counsel for the Secretary of State has been designated to preside over and conduct the hearing.

MIKE COONEY
Secretary of State

Dated this 11th day of December, 1989.

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

In the matter of the amendment of Rule 46.12.303 pertaining to medicaid overpayment recovery	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.303 PERTAINING TO MEDICAID OVERPAYMENT RECOVERY

TO: All Interested Persons

1. On January 11, 1990, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.303 pertaining to medicaid overpayment recovery.

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

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT Subsections (1) through (2)(b) remain the same.

(c) The department shall be entitled to promptly ~~(within 60 days)~~ recover all payments erroneously or improperly made to a provider. At the option of the department, recoveries ~~provider, refunds~~ shall be accomplished ~~either~~ by a direct payment to the department or by automatic deductions ~~mailing a check made out to "State Department of Social and Rehabilitation Services" directly to that department at Box 4210, Helena, MT 59601, or by notifying the department in writing of the receipt and the amount of payment over and above the amount reimbursable by the Montana medicaid program, which amount shall then be automatically deducted~~ from future payments to due the provider. Notice of overpayment shall be made in accordance with ARM 46.12.407. ~~Regardless of the method of repayment chosen, the provider shall identify on the check or notifying document the patient, by name and claim number, who received services for which the over payment was made and specify the dates of services for which over payments were received. If the provider contests the department's decision that the provider has been overpaid, recovery shall depend on the final administrative decision.~~

Subsections (3) through (7)(b) remain the same.

AUTH: 53-2-201 and 53-6-131 MCA
IMP: 53-6-101, 53-6-111 and 53-6-131 MCA

3. This amendment will eliminate the sixty (60) day time limit on the departments collection of Medicaid overpayments to providers.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than January 19, 1990.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 11, 1989.

BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 2.52.101 and 2.52.301 through 2.52.360 relating to organizational and procedural rules of the workers' compensation court	NOTICE OF TRANSFER OF ARM 2.52.101 and 2.52.302 through 2.52.360 relating to organizational and procedural rules of the workers' compensation court

TO: All Interested Persons:

1. On January 1, 1990, the Workers' Compensation Court will be transferred, for administrative purposes, from the Department of Administration to the Department of Labor and Industry.

2. This transfer is required because the 1989 Legislature transferred the Workers' Compensation Court from the Department of Administration to the Department of Labor and Industry in Senate Bill 428, Ch. 613, L. 1989, effective on the earlier signing of an executive order creating the state compensation mutual insurance fund or January 1, 1990.

3. The rules will be assigned the following numbers under the Department of Labor and Industry title:

2.52.101	24.5.101	Organizational Rule
2.52.301	24.5.301	Petition for Trial
2.52.302	24.5.359	Notice of Representation
2.52.303	24.5.303	Service
2.52.304	24.5.304	Alternative Pleading
2.52.308	24.5.308	Joining Third Parties
2.52.309	24.5.309	Intervention
2.52.310	24.5.310	Time and Place of Trial Generally
2.52.311	24.5.311	Emergency Trials
2.52.312	24.5.312	Setting Time and Place of Trial By Stipulation or in Best Interests of Court
2.52.316	24.5.316	Pretrial Motions
2.52.317	24.5.317	Medical Records
2.52.318	24.5.318	Pretrial Conference and Order

2.52.322	24.5.322	Depositions
2.52.323	24.5.323	Interrogatories
2.52.324	24.5.324	Motions to Produce
2.52.325	24.5.325	Limiting Discovery
2.52.326	24.5.326	Failure to Make Discovery Sanctions
2.52.330	24.5.330	Vacating and Resetting Pretrial Conference or Trial
2.52.331	24.5.331	Subpoena
2.52.332	24.5.332	Conduct of Trial
2.52.333	24.5.333	Informal Disposition
2.52.334	24.5.334	Settlement Conference
2.52.335	24.5.335	Bench Rulings
2.52.336	24.5.336	Findings of Fact and Conclusions of Law and Briefs
2.52.340	24.5.340	Masters and Examiners-Procedure -Recommendations for Bench Orders
2.52.343	24.5.343	Attorney Fees
2.52.344	24.5.344	Petition For New Trial or Reconsideration or Attorney Fee Award
2.52.348	24.5.348	Appeals
2.52.349	24.5.349	Rules Compliance
2.52.350	24.5.350	Appeals to Workers' Compensation Court Under Title 39, Chapters 71 and 72; and Title 53, Chapter 9
2.52.351	24.5.351	Declaratory Rulings
2.52.360	24.5.360	Review

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

TIMOTHY W. REARDON, JUDGE

December 7, 1989
CERTIFIED TO THE SECRETARY OF STATE

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendment of rules pertaining to board organization, examinations, allowable functions, minimum qualifying standards, facility standards, and fees; repeal of rules pertaining to oral interview and applications; and adoption of new rules pertaining to mandatory CPR	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO DENTISTRY

TO: All Interested Persons:

1. On July 27, 1989, the Board of Dentistry published a notice of public hearing on the proposed amendment, repeal and adoption of the above-stated rules at page 942, 1989 Montana Administrative Register, issue number 14. The hearing was held on September 13, 1989.

2. The Board amended ARM 8.16.101, 201, 202, 402, 605, and 909, repealed 8.16.406 and 604 exactly as proposed. The Board did not adopt the proposed amendments to 8.16.904 and 8.16.908. The Board amended 8.16.602, 903, 905, new rule I (8.16.409) and new rule II (8.16.608) as proposed but with the following changes:

"8.16.409 DENTIST MANDATORY CPR (1) will remain as proposed.

(2) THIS RULE WILL BE EFFECTIVE JANUARY 1, 1991."

Auth: Sec. 37-1-131, 37-4-205, 37-4-307, MCA; IMP, Sec. 37-4-307, 37-4-511, MCA

"8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS AND DENTAL AUXILIARIES (1) through (4)(l) will remain as proposed.

(m) coronal polishing ~~of~~ AT the ~~teeth only in preparation for application of fluoride treatment or other operative procedures by the dentist~~ DIRECTION OF THE DENTIST, THAT IS NOT IDENTIFIED AS, OR SUBMITTED FOR PAYMENT AS, A PROPHYLAXIS. AS USED HEREIN, "CORONAL POLISHING" MEANS A PROCEDURE LIMITED TO THE REMOVAL OF PLAQUE AND STAIN FROM THE EXPOSED TOOTH SURFACES, UTILIZING AN APPROPRIATE POLISHING MECHANISM AND POLISHING AGENT. NO DENTIST SHALL ALLOW A DENTAL ASSISTANT TO PRACTICE CORONAL POLISHING UNTIL THE DENTAL ASSISTANT HAS SUCCESSFULLY COMPLETED A COURSE OF INSTRUCTION APPROVED BY THE BOARD. THIS RULE WILL BE EFFECTIVE JULY 1, 1990.

(5)(a) through (5)(n) will remain as proposed.

(o) coronal polishing of teeth only in preparation for placement of orthodontic brackets and bands, OR AT THE DIRECTION OF THE DENTIST, BUT NOT IDENTIFIED AS, OR SUBMITTED FOR PAYMENT AS, A PROPHYLAXIS. AS USED HEREIN, "CORONAL POLISHING" MEANS A PROCEDURE LIMITED TO THE REMOVAL OF PLAQUE

AND STAIN FROM THE EXPOSED TOOTH SURFACES, UTILIZING AN APPROPRIATE POLISHING MECHANISM AND POLISHING AGENT.

(6) through (12) will remain as proposed."

Auth: Sec. 37-1-131, 37-4-205, 37-4-408, MCA; IMP, Sec. 37-4-401, 37-4-405, 37-4-408, MCA

"8.16.608 DENTAL HYGIENIST MANDATORY CPR (1) will remain as proposed.

(2) THIS RULE WILL BE EFFECTIVE JANUARY 1, 1991."

Auth: Sec. 37-1-131, 37-4-205, 37-4-406, MCA; IMP, Sec. 37-4-406, MCA

"8.16.903 MINIMUM QUALIFYING STANDARDS (1) will remain as proposed.

(2) Dentists providing general anesthesia or conscious sedation must present competent evidence of ~~successful~~ completion of an advanced course in cardiac life support within the three most recent years. AS USED IN THIS SUBCHAPTER, THE TERMS "GENERAL ANESTHESIA" AND "CONSCIOUS SEDATION" DO NOT INCLUDE "NITROUS OXIDE/OXYGEN SEDATION."

(3) and (4) will remain as proposed.

(5) WITH RESPECT TO NITROUS OXIDE/OXYGEN SEDATION, NO DENTIST SHALL USE NITROUS OXIDE/OXYGEN ON A PATIENT UNLESS HE HAS COMPLETED A COURSE OF INSTRUCTION OF AT LEAST FOURTEEN (14) CLOCK HOURS OF DIDACTIC AND CLINICAL TRAINING. THIS INSTRUCTION MUST INCLUDE DIDACTIC AND CLINICAL INSTRUCTION IN AN ACCREDITED DENTAL SCHOOL, HOSPITAL, OR DENTAL SOCIETY SPONSORED COURSE, AND MUST INCLUDE INSTRUCTION IN THE SAFETY AND MANAGEMENT OF EMERGENCIES.

(a) A DENTIST WHO PRACTICES DENTISTRY IN MONTANA WHO CAN PROVIDE SATISFACTORY EVIDENCE OF COMPETENCE AND SKILL IN ADMINISTERING NITROUS OXIDE/OXYGEN SEDATION BY VIRTUE OF EXPERIENCE AND/OR COMPARABLE ALTERNATIVE TRAINING SHALL BE PRESUMED BY THE MONTANA BOARD OF DENTISTRY TO HAVE APPROPRIATE CREDENTIALS FOR THE USE OF NITROUS OXIDE/OXYGEN SEDATION."

Auth: Sec. 37-1-131, 37-4-205, 37-4-511, MCA; IMP, Sec. 37-4-511, MCA

"8.16.905 FACILITY STANDARDS (1) through (g) will remain as proposed.

(h) suction devices; ~~and~~.

~~(i) pulse oximeter.~~

(2) through (3)(b) will remain as proposed.

(c) When conscious sedation is used, the dentist shall be qualified and permitted to administer the drugs and appropriately monitor the patient, and ~~be qualified in~~ HAVE COMPLETED AN advanced COURSE IN CARDIAC life support. In addition to the dentist, at least one other person in the office must be qualified in basic life support.

(4) A FACILITY IN WHICH NITROUS OXIDE/OXYGEN IS ADMINISTERED MUST CONTAIN A MINIMUM OF EQUIPMENT AND SUPPLIES APPROPRIATE TO MEET EMERGENCIES."

Auth: Sec. 37-1-131, 37-4-205, 37-4-511, MCA; IMP, Sec. 37-4-511, MCA

3. All comments received have been thoroughly considered. Those comments and the board's responses thereto are as follows:

COMMENT REGARDING 8.16.409 AND 8.16.608: No written or oral comments were received by the board during the public comment period.
RESPONSE: The board has elected to provide for an effective date of January 1, 1991 to allow approximately one year's time for licensees to obtain the necessary CPR certificate.

COMMENT REGARDING 8.16.602: Ten proponents of this amendment submitted written comments. Eight proponents testified at the hearing. The points made by the proponents are summarized as follows:

1. There is often a need for coronal polishing prior to commencement by the dentist of other dental procedures. Hygienists are in short supply in many areas of Montana, especially small, rural communities or communities of largely elderly population. If dental assistants are not allowed to do coronal polishing, the dentist must. The dentist's time is thus inappropriately taken up with duties that a less highly trained person could do, and there is less time available for the dentist to provide much needed, more sophisticated dental care to the public. Patients may thus be deprived of timely, quality dental care, and the health and welfare of the public is ill-served. Allowing properly trained dental assistants to do coronal polishing would provide for better access by the public to dental care.

2. The cost of coronal polishing by dental assistants would be less than the cost of polishing by the more highly trained and educated dentist or dental hygienist. The public would benefit from the reduced cost.

3. Coronal polishing by dental assistants is a safe procedure and the public is adequately protected, when the dental assistant is properly trained and educated, and is properly supervised by the dentist. Coronal polishing is performed by dental assistants in 21 to 23 states, without evidence of harm to the public.

4. Orthodontic assistants are presently allowed by rule to do coronal polishing. It is inconsistent to deprive dental assistants, with comparable qualifications, of the same privilege.

5. Dental assistants desire to provide this service to the public, and are ready and willing to undergo whatever education or training deemed appropriate by the Board in order to be qualified to provide it safely.

Eleven opponents of the amendment submitted written comments; nine opponents testified at the hearing. The points made by the opponents are summarized as follows:

1. As noticed, the new rule imposes no minimum educational or training requirements of dental assistants; the public is therefore inadequately protected against unqualified practitioners. There is a possibility under the present

language of the rule that dentists will delegate to untrained, uneducated personnel duties that require greater training and judgment than is presently required of dental assistants in Montana.

2. As noticed, the rule is vague. "Coronal polishing" should be better defined, and clearly distinguished from "prophylaxis" so that both the dental professionals and the consuming public may be aware of the acceptable parameters of practice for both dental assistants and dental hygienists. As presently written, the vagueness of the proposed rule allows for abuse and fraud upon the public, and would foster unnecessary litigation. The rule should be revised to prevent mere coronal polishing from being represented or billed as a complete prophylaxis, and to prevent patient misunderstanding of the extent of treatment actually received.

3. Coronal polishing by dental assistants is not allowed in 27 states; of the 23 states which do allow it, 21 require formal certification of dental assistants in order to provide this service.

4. Coronal polishing, without more, is an unnecessary procedure. With more, it is a prophylaxis, and thus can only appropriately be done by a trained, licensed hygienist.

RESPONSE: The Board considered both the proponents' and opponents' points respecting minimum educational requirements and greater specificity of language to be well-taken. The Board has therefore approved the amendments identified above, which provide a clear definition of the more limited activity, "coronal polishing," in contradistinction to the more sophisticated, thorough and demanding procedure, "prophylaxis" (already defined by rule). Such clarification is intended to prevent misunderstanding or misrepresentation by either the public or dentistry professions.

The Board has further amended the proposed rule to include a minimum educational requirement upon all dental assistants who perform coronal polishing. The Board has authority over the practice of licensed dentists, and has hereby imposed a duty on such dentists to refrain from using "coronal polishing" services of any dental assistant who has not completed the minimum educational requirement. The Board has elected to provide for an effective date of July 1, 1990 for this amendment in order to allow sufficient time for the development of such an educational program and the satisfactory completion of it by interested dental assistants prior to commencement of coronal polishing.

The Board is persuaded that coronal polishing, under the foregoing conditions, can safely be provided to the Montana public by dental assistants, and that it is in the public interest that this service be more readily available than is now the case. The savings in cost and time which would accrue from allowing dental assistants to provide this service will benefit both the public and the dental professions. The Board is persuaded that coronal polishing, without more, is a legitimate and necessary procedure in many circumstances,

and may be appropriately utilized in the absence of a full prophylaxis.

The Board therefore adopts the rule as amended above.

COMMENTS REGARDING 8.16.903(2): Two proponents of this amendment submitted written comments. Two proponents testified at the hearing. The points made by the proponents are summarized as follows:

1. The Advanced Cardiac Life Support course is excellent, and provides information and training in management of patient airways in difficult situations or emergencies. The course provides necessary instruction on use of adjunctive airway devices that are found in dental offices, but the use of which is not taught in the basic life support courses required of dental personnel.

2. The proposed rule should be amended to require only completion of the ACLS course, rather than "successful" completion. Some elements of the ACLS course are not directly applicable to use in dental offices, and the mere completion of the course, even without passing a final examination, will enhance skill and awareness, and provide greater protection of the consuming public.

Six opponents of the amendment submitted written comments. Two opponents testified at the hearing. The points made by the opponents are summarized as follows:

1. The ACLS course material is not practical or necessary for the safe administration of conscious sedation. The vast majority of cases where conscious sedation is administered develop no significant problems. A mandatory requirement for ACLS training imposes too great a burden on dentists without comparable benefits to the public.

2. It is difficult for dentists to keep fully abreast of current developments in the education and skills taught in the ACLS course.

3. Since the need for ACLS skills is rare for dentists, they cannot practice it with the expertise of practitioners who use it on a more regular basis. If practiced wrongly, the patient is more jeopardized than if the dentist applies merely basic life support, and leaves the more advanced techniques to the more highly trained and practiced experts.

One person testified that while he approved of ACLS training and thought it beneficial to the public, he questioned the necessity of a formal rule mandating completion of the ACLS course, and would prefer that the decision whether or not to take the course be left up to the individual dentist.

RESPONSE: The Board has considered all the comments, both written and oral. Giving great weight to its strong obligation to protect the public, the Board concludes that it is in the best interests of the Montana public to require, by rule, that dentists administering general anesthesia or conscious sedation complete an ACLS course. The Board

believes that such training is necessary to maintain the current high standards of the Montana dental profession.

The Board is aware of cases in Montana where, during the administration of such anesthesia or sedation, an emergency situation has developed without warning. In one case, the dentist did not have the necessary ACLS skills to deal with the emergency appropriately; the patient died. In another case, the dentists working with the patient did have the necessary skills, partially as a result of ACLS training, and the patient was saved. Such situations, although rare, do occur. (It is, for example, not uncommon for a patient at Plane III anesthesia to slip unexpectedly into Plane IV, and a potential need for ACLS to develop rapidly.)

The Board takes note of the following informational items provided by the Montana Dental Association:

-- 33 states require basic CPR
-- 8 states require competence in handling office emergencies
-- 5 states require possession of a CPR license
-- 6 states require ACLS for conscious sedation licensure; 1 additional state requires ACLS under an additional rule; 1 other state accepts either ACLS or CPR

The Board believes it is appropriate for Montana to be in the vanguard of those states requiring the high standards of ACLS training, rather than one of the last states to adopt such requirements.

The Board finds that, while the burden placed on dentists by this rule is significant, it is justified by the need to protect the public. The loss of a patient from lack of acquirable ACLS training is tragic beyond measure. The cost or inconvenience to the dental professional pales in comparison. In the Board's judgment, the cost/benefit ratio weighs clearly in favor of the mandatory requirement of ACLS training. The Board therefore adopts the rule as set forth above.

COMMENTS REGARDING 8.16.903(4): There were no written or oral submissions by proponents of the amendment. One opponent submitted written comments; no opponents testified.

The opponent of the amendment which would delete educational and competency requirements for the administration of nitrous oxide/oxygen sedation pointed out that, while use of nitrous oxide has been redefined in some places as analgesia rather than conscious sedation, the use of nitrous oxide is not innocuous. There is still risk to the patient, and it would be both inconsistent and imprudent for the Board to lower educational or skill standards respecting its use.

RESPONSE: The Board agrees that protection of the public mandates the educational and competency requirements be maintained. The Board, however, finds that nitrous oxide does not fall into the category of general anesthesia or conscious sedation as used in amended ARM 8.16.903(2). The Board does find that adverse occurrences resulting from the use of

nitrous oxide should be reported to the Board office within seven days of any incident. Therefore the Board did not adopt the proposed amendments to 8.16.908. The Board therefore does not find it appropriate to require ACLS training prior to the administration of nitrous oxide/oxygen sedation, and amends the rule accordingly.

COMMENTS REGARDING 8.16.904: One proponent submitted written comments; one proponent testified at the hearing. Four opponents submitted written comments; three opponents testified at the hearing.

The points made by the proponents are summarized as follows:

1. Pulse oximetry is a state of the art method of monitoring a patient for hypoxemia during sedation or anesthesia. It is accurate and reliable; it detects potentially serious aberrations in ventilation early, and gives warning to the dentist of developing problems. It is considered to be an excellent preventive measure.
2. The cost of a pulse oximeter is approximately $1800-$2000.
3. Pulse oximetry is used routinely in some 50% of operating theaters in the United States.
4. Hypoxemia may occur even during conscious sedation. New conscious sedation drugs are constantly appearing on the market; recently, numerous problems have materialized with the drugs, resulting in hypoxemia and death.
5. Pulse oximetry reduces the risk to the sedated or anesthetized patient of hypoxemia and death.

The points made by the opponents are summarized as follows:

1. The pulse oximeter is good equipment and does a good job monitoring the patient, but mandatory use is unreasonable and unnecessary. The Board should not be making rules to establish the standard of care; that should be left to the practicing professionals.
2. Pulse oximetry is good, but is not essential. Other good methods of monitoring sedated or anesthetized patients are available; it is not appropriate to mandate this one method.
3. Pulse oximetry may be appropriate for patients in deep sedation, but is not necessary for conscious sedation. Pulse oximetry is not of much value in pediodontics where, for the most part, only low-level conscious sedation is used. It should not, therefore, be required of pediodontists or others using only conscious sedation.
4. Pulse oximetry is good, but is not required by any other state dental boards.

An informational item was submitted by the Montana Dental Association: "At the present time no states require the use of a pulse oximeter. EKG monitoring is the accepted standard. The consensus opinion is that pulse oximetry represents state of the art technology and as such should not be included as a standard requirement."

RESPONSE: The Board has considered both written and oral submissions. The Board believes that it is in the best interest of the public that pulse oximetry be used in monitoring patients undergoing general anesthesia. There is no disagreement, even among opponents, that pulse oximetry is an excellent method of monitoring patients at risk of hypoxemia or death.

The Board would encourage all licensees administering general anesthesia or conscious sedation to monitor their patients with pulse oximetry. The Governor, however, during his review of the proposed rule, opposed rule-mandated use of pulse oximetry. The Board therefore withdraws this proposed rule and declines to adopt it.

With respect to section 8.16.904(3) and (3)(a), the Board elects to retain the original language of the rule respecting minimal standards of care during the use of nitrous oxide/oxygen sedation for the reasons set forth in its Response to section 8.16.903 above.

COMMENTS REGARDING 8.16.905: One proponent submitted written comments in favor of required basic life support training. Her points were as follows: Basic life support training (including CPR) is readily available and is desirable for the protection of the public.

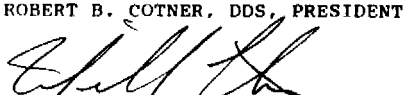
One opponent submitted written comments. His point was that the failure to submit timely proof of current CPR certification could jeopardize the practitioner's license. In his opinion, the penalty was disproportionately severe to the offense.

RESPONSE: The Board agrees that qualification in basic life support by at least one dental auxiliary is necessary for the protection of the public where conscious sedation is administered.

As the remaining issues of this amendment are more fully addressed in the comments and Board responses to ARM 8.16.903 and 8.16.904 herein, the board therefore incorporates said comments and responses herein as though set forth in full.

4. No other comments or testimony were received.

BOARD OF DENTISTRY
ROBERT B. COTNER, DDS, PRESIDENT

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the amendment of rules pertaining to examinations, and permit required for administration or facility	))))	NOTICE OF AMENDMENT OF 8.16.402 EXAMINATIONS and 8.16.902 PERMIT REQUIRED FOR ADMINISTRATION OR FACILITY and 8.16.605 EXAMINATION

TO: All Interested Persons:

1. On August 17, 1989, the Board of Dentistry published a notice of public hearing on the proposed amendment of the above-stated rules at page 1066, 1989 Montana Administrative Register, issue number 15. The hearing was held on September 13, 1989, in Helena, Montana

2. The Board amended 8.16.605 exactly as proposed and amended 8.16.402 and 8.16.902 with the following changes: (new matter underlined, deleted matter interlined)

"8.16.402 EXAMINATION (1) through (6) will remain the same as proposed.

(7) The board accepts, in satisfaction of the practical part, successful completion of an examination administered by the western regional examining board, after June 1979. The examination results of the western regional examining board ~~for a dentist in general practice~~ shall be valid for a period of ~~3~~ 5 years from the date of successful completion of the examination. ~~The results of the western regional examining board shall be valid for a period of 10 years from the date of successful completion of the examination if the dentist is a board certified specialist.~~"

Auth: Sec. 37-1-131, 37-4-205, 37-4-301, MCA; IMP, Sec. 37-4-301, MCA

"8.16.902 PERMIT REQUIRED FOR ADMINISTRATION OR FACILITY (1) and (2) will remain the same.

(3) ~~the dentist operating in~~ the facility in which general anesthesia or conscious sedation is ~~employed~~ administered during dental procedures must hold a valid permit issued by the board upon finding the facility to meet the standards in ARM 8.16.905. The fee for a facility permit is the inspection or reinspection fee provided in ARM 8.16.908.

(4) and (5) will remain the same."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, 37-4-511, MCA; IMP, Sec. 37-4-401, 37-4-511, MCA

3. All comments received have been thoroughly considered. Those comments and the board's responses thereto are as follows:

COMMENTS REGARDING 8.16.402: One proponent testified at the hearing. No written comments were submitted in favor of the amendment. No oral or written comments were submitted in opposition to the amendment. The point made by the proponent was that the Montana Dental Hygienists' Association supports

the proposed amendment extending the validity period of the western regional examination for dentists from three to five years.

RESPONSE: The Board having considered the comment hereby adopts the amendment extending the western regional examination period of validity from three to five years. Upon reconsideration, however, the Board feels that extending the validity period to ten years for board certified dental specialists might be construed as discrimination against non-specialists, and declines to adopt that portion of the noticed amendment.

COMMENT REGARDING 8.16.902: One proponent of the amendment testified at the hearing. There were no written submissions in favor of the amendment. There were no written or oral submissions in opposition to the amendment. One person, identifying himself as neither proponent nor opponent, testified as merely wishing to be heard.

The proponent made the following point: Any dentist administering general anesthesia or conscious sedation should meet the permit standards.

The person wishing to be heard made the following point: A dentist should not administer general anesthesia or conscious sedation by himself, simply because he has a permit to do so. He should seek the assistance of an anesthesiologist.

RESPONSE: The board, having considered the comments, hereby finds that it has authority (under the Montana Code Annotated sections cited hereafter) to require and issue permits to both dentists and dental facilities for the administration of general anesthesia or conscious sedation. It therefore amends the rule as noticed to require that any dental facility where general anesthesia or conscious sedation is administered hold a valid permit issued by the Board. A similar requirement for the administering dentist to hold a valid permit is already found in 8.16.902(1), ARM. In requiring a permit of both the dentist and the facility, the Board's intent is to maintain high standards of skill and knowledge from the dentist, and high standards of equipment, sanitation, etc. from the facility. The Board hereby adopts the rule as amended herein.

4. No other comments or testimony were received.

BOARD OF DENTISTRY
ROBERT B. COTNER, PRESIDENT

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

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

In the matter of the amendment and adoption of rules pertaining to simulcast horse racing and simulcast race meets under the parimutuel system of wagering	))))	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO SIMULCAST HORSE RACES AND RACE MEETS

TO: All Interested Persons:

1. On November 9, 1989, the Board of Horse Racing published a notice of public hearing on the proposed amendment of rules pertaining to simulcast horse racing and race meets at page 1683, 1989 Montana Administrative Register, issue number 21. The public hearing was held on November 30, 1989, in Helena, Montana.

2. The Board has amended ARM 8.22.301, 8.22.501, 8.22.503, 8.22.601, 8.22.608, 8.22.613, 8.22.1501, 8.22.1601, 8.22.1602, and 8.22.1623 and adopted new rules I (8.22.1101), II (8.22.1102) and IV (8.22.1104) exactly as proposed.

3. The Board has amended ARM 8.22.502 and adopted new rule III (8.22.1103) as proposed but with the following changes:

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (3) will remain as proposed.

(4) The application for a license to conduct a live or ~~simulcast~~ meeting with parimutuel wagering during the next succeeding season of racing must be filed with the secretary of the board over the signature of the applicant or the signature of an executive officer of the applicant not later than September 1, unless, for good cause shown, the board shall otherwise permit.

(a) THE APPLICATION FOR A LICENSE TO CONDUCT A SIMULCAST MEETING WITH PARIMUTUEL WAGERING MUST BE FILED WITH THE SECRETARY OF THE BOARD OVER THE SIGNATURE OF THE APPLICANT OR THE SIGNATURE OF AN EXECUTIVE OFFICER OF THE APPLICANT AND MAY BE FILED AT ANY TIME, AND WILL BE REVIEWED BY THE BOARD AS SUBMITTED.

(5) The applicant shall specify the days on which such races or meetings are to be held, the name or names of the applicant or applicants desiring the license together with the location and the enclosure where the same are to be held, and if the applicant desires the use of a parimutuel system in connection with such races the application shall so specify and state the terms upon which parimutuel tickets are to be sold. If the application is for a license to conduct a live race meeting and the applicant desires to use the parimutuel system in connection with simulcast interstate races, intrastate races and/or races of LOCAL OR national prominence, the application shall specify which simulcast races it desires to use the parimutuel system with. The board may require additional data and information in writing or it may require the applicant to appear before it. Each application to

conduct a race meeting will be handled on an individual basis by the board, and the board will approve those race meetings it deems appropriate. Each application to conduct a live race meeting shall include:

(a) through (49) will remain as proposed."

Auth: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, MCA

"8.22.1103 GENERAL PROVISIONS (1) will remain as proposed.

(2) For out-of-state races simulcast in Montana, sub-chapters 16 and 18 hereof will apply with respect to exotic wagering, EXCEPT IN THE CASE OF INTERSTATE TRIFECTA AND EXACTA WAGERING INVOLVING COUPLED ENTRIES AND FIELD ENTRIES. HOWEVER NO TRIFECTA WAGERING IS PERMITTED ON RACES WITH LESS THAN FIVE HORSE ENTRIES.

(3) through (5) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, MCA

4. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

COMMENT: Representatives of United Tote Company, Montana's parimutuel supplier, and State Fair, a major track in the state, recommended revisions to the rules to permit applicants for licenses to conduct simulcast race meetings to apply at any time during the year; to permit simulcasting of races of local prominence; and to permit interstate simulcast exotic parimutuel wagering on field entries, coupled entries and fields of 5 or more horses.

Reasons given for the revisions were that simulcast races will not necessarily be tied to live racing in Montana and applicants could be ready to operate at any time during the year; permitting simulcasting of races of local prominence conforms the board's rules to the applicable statute; and experience in other states has demonstrated the need to permit interstate simulcast exotic parimutuel wagering in an interstate simulcast wagering program, including fields of 5 or more horses. These are very popular wagers. There is no potential or incentive for the people involved in the Montana pool to fix the race. This can happen with live races.

RESPONSE: The Board concurs and adopts the revisions accordingly.

5. No other comments or testimony were received.

BOARD OF HORSE RACING
CHUCK O'REILLY, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

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

In the matter of the adoption of new rules pertaining to superfecta sweepstakes and tri-superfecta wagering	))))	NOTICE OF ADOPTION OF NEW RULES PERTAINING TO HORSE RACING

TO: All Interested Persons:

1. On November 9, 1989, the Board of Horse Racing published a notice of public hearing on the proposed adoption of rules pertaining to superfecta sweepstakes and tri-superfecta wagering at page 1693, 1989 Montana Administrative Register, issue number 21. The public hearing was held on November 30, 1989, in Helena, Montana.

2. The Board adopted new rule II (8.22.1807) exactly as proposed and adopted new rule I (8.22.1806) as proposed but with the following changes:

"8.22.1806 SUPERFECTA SWEEPSTAKES (1) through (7) will remain as proposed.

(8) THE TRACKS SHALL SELECT WHICH ALTERNATIVE THEY PREFER AS BETWEEN THE CARRYOVER FEATURE CONTAINED IN SUBSECTIONS 9, 10 AND 11 AND THE NON-CARRYOVER FEATURE CONTAINED IN SUBSECTIONS 12 AND 13, OBTAIN THE APPROVAL OF THE BOARD OR ITS REPRESENTATIVE, AND DISPLAY, PRINT AND DISTRIBUTE THE RULE WITH THE APPROVED FEATURE THROUGHOUT THE BETTING AREA OF EACH TRACK CONDUCTING THE SUPERFECTA AND DISTRIBUTE PRINTED COPIES OF THIS RULE, WITH SELECTED OPTION, TO PATRONS UPON REQUEST.

(8) and (9) will remain the same as proposed but will be renumbered (9) and (10).

~~(10)~~ (11) In the event the accumulated jackpot has not been distributed prior to the closing day of the meeting in which the jackpot was generated, then the accumulated jackpot and the net pool in the superfecta sweepstakes shall be distributed to closing day holders of superfecta sweepstakes tickets who correctly select the first four official finishers in exact order; or, if no ticket is sold as above described, to those who correctly select the first three finishers in exact order; or, if no ticket is sold as above described, to those who correctly selected the first two finishers in exact order; ~~of~~R, if no ticket is sold as above described, to those who correctly selected the winning horse to finish first. In the event no ticket has been sold correctly selecting the winning horse to finish first, then the ~~gross~~ superfecta sweepstakes pool will be ~~refunded, and the jackpot~~ distributed equally to all closing day superfecta sweepstakes ticket holders.

~~(ALTERNATE-8)~~ (12) will remain as proposed.

~~(ALTERNATE-9)~~ (13) will remain as proposed.

~~(11)~~ (14) Superfecta sweepstakes race shall consist of eight (8) starters and two (2) also-eligibles, and if the race falls below the above level it will be at the ~~board's~~

discretion OF THE BOARD OR ITS REPRESENTATIVE whether to permit superfecta wagering on this race.

~~(12)~~ (15) will remain as proposed.

~~(13)--This rule shall be prominently displayed throughout the betting area of each track conducting the superfecta and printed copies of this rule shall be distributed by the track to patrons upon request.~~"

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

COMMENTS: Representatives of United Tote Company, the parimutuel provider for the state, recommended revisions to the narrative regarding alternative provisions pertaining "carryover" and "non-carryover" features to clarify the intent that the track has the option of selecting which feature it wishes to use (the carryover feature lends itself better to tracks with comparatively long racing season), so long as the option selected is published, posted and noticed.

Representatives of United Tote Company also recommended deletion of 5 words from proposed subsection (10), now (11), to conform with existing parimutuel software, with national guidelines and with rules in sister jurisdictions.

RESPONSE: The Board concurs and adopts the suggested revisions as shown above.

4. No other comments or testimony were received.

BOARD OF HORSE RACING
CHUCK O'REILLY, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the amendment of rules pertaining to examination, fees and itemization	))))	NOTICE OF AMENDMENT OF 8.30.406 EXAMINATION, 8.30.407 FEE SCHEDULE AND 8.30.604 ITEMIZATION

TO: All Interested Persons:

1. On October 26, 1989, the Board of Morticians published a notice of proposed amendment of the above-stated rules at page 1624, 1989 Montana Administrative Register, issue number 20.

2. The Board adopted the rules exactly as proposed.

3. One comment was received from the staff of the Administrative Code Committee stating that implementing sections 37-19-301, 37-19-303, 37-19-304, 37-19-306 and 37-19-401, MCA, should be removed from ARM 8.30.407. The only sections implemented by this rule are 37-1-134, 37-19-402 and 37-19-403, MCA. The Board concurred and those sections shown above will be removed when replacement pages are done.

4. No other comments or testimony were received.

BOARD OF MORTICIANS
JACK SEVERNS, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS

In the matter of the amendment, repeal and adoption of rules pertaining to speech-language pathology and audiology	))))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

TO: All Interested Persons:

1. On November 9, 1989, the Board of Speech-Language Pathologists and Audiologists published a notice of public hearing on page 1699, 1989 Montana Administrative Register, issue number 21. The public hearing was held on November 29, 1989 at 9:00, a.m., in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana. No-one appeared to testify.

2. The Board amended ARM 8.62.404, 8.62.413, 8.62.501, 8.62.502, and 8.62.703, and repealed ARM 8.62.408 through 8.62.412, 8.62.414 through 8.62.417, 8.62.503, 8.62.704 and 8.62.705 exactly as proposed. The Board adopted 8.62.702 and the new rules as proposed but with the following changes:

"8.62.702 DEFINITIONS (1) through (d) will remain the same as proposed.

(i) One continuing education unit received in an ASHA approved sponsor program ~~and registered with the American college testing program, Iowa City, Iowa,~~ shall be considered 10 continuing education units for purposes of this subchapter.

(ii) through (f) will remain the same as proposed."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-309, MCA

3. The wording being deleted above was inadvertently omitted in the original proposal.

"I. (8.62.418) UNPROFESSIONAL CONDUCT (1) through (7) will remain as proposed.

(8) Failure to cooperate with an investigation by:

(a) not furnishing any RELEVANT papers or documents, SO LONG AS THIS PROVISION DOES NOT VIOLATE THE PRIVILEGE AGAINST SELF-INCRIMINATION;

(b) through (19) will remain as proposed."

Auth: Sec. 37-1-131, 37-15-202, MCA; IMP, Sec. 37-15-321, MCA

"II. (8.62.419) ETHICAL STANDARDS (1) For the purpose of implementing sections 37-15-202(1)(e) and 37-15-321(1)(b), MCA, the board hereby adopts by reference the standards of ethical practice of the American speech-language hearing association (REVISED JANUARY 1, 1986). A copy of those standards may be obtained from the Board of Speech-Language Pathologists and Audiologists, 1424 - 9th Avenue, Helena, Montana 59620-0407."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-202, 37-15-321, MCA

4. Two written comments were received in support of the proposed amendments, repeals and adoptions. One comment was received from the staff of the Administrative Code Committee stating that ARM 8.62.703 also implements section 37-15-308, MCA. This section will be added in replacement pages. The staff of the ACC also commented that subsection (8)(a) in new rule I (8.62.418) is very broad and does not recognize that there may be instances in which a licensee may not be compelled to give certain information during an investigation because of a licensee's constitutional right against self-incrimination. Another comment by staff of the ACC suggested that new rule II (8.62.419) should refer to a specific edition of standards for ethical practice. The Board concurred and the changes were made as shown above.

5. No other comments or testimony were received.

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
GENE BUKOWSKI, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL DIVISION

In the matter of the adoption of a new rule pertaining to investment securities) NOTICE OF ADOPTION OF NEW RULE I (8.80.105) INVESTMENT SECURITIES

TO: All Interested Persons:

1. On September 28, 1989, the Financial Division published a notice of public hearing on the proposed adoption of the above-stated rule at page 1377, 1989 Montana Administrative Register, issue number 18. The public hearing was held on October 20, 1989, in Helena, Montana.

2. The Division adopted the rule as proposed but with the following changes:

"8.80.105 INVESTMENT SECURITIES (1) through (b)(ii) will remain as proposed.

(iii) the revenue obligations of a political subdivision authorized to establish utility fees, public transportation usage fees, or public use fees where such tax levies or fees are pledged to and are sufficient to pay the principal and interest of the securities as they become due; or

(c) Up to twenty (20) percent of the bank's unimpaired capital and surplus if the securities are industrial development revenue obligations issued by a political subdivision, when repayment is dependent upon rentals or other fees payable to the political subdivision by a nongovernmental obligor who is responsible for the payment of such rentals or other fees.

~~(c)~~ (d) Up to twenty (20) percent of the bank's unimpaired capital and surplus if the securities issued by political ~~subdivision~~ corporations that are rated in the three highest rating categories by either "fitch," "moody's," or "standard and poors."

~~(d) Securities (i)(a)(ii) and (iii) are securities that are expressly permitted by section 32-1-433, MCA.~~

~~(2) With the exception of revenue obligations listed in paragraph (1)(b)(iii) above, where the repayment or revenue obligations is dependent upon rentals or other fees payable to a political subdivision by a nongovernmental unit, the obligor shall be deemed to be the nongovernmental unit responsible for the payment of such rentals or other fees and guarantor of such payments.~~

(3) through (5) will remain as proposed but will be renumbered (2) through (4)."

Auth: Sec. 32-1-433, MCA; IMP, Sec. 32-1-433, MCA

3. The division has thoroughly considered all comments received. Those comments and the division's responses thereto are as follows:

COMMENT: The Financial Division staff determined that the rule needed clarification.

RESPONSE: Paragraph (2) was deleted and incorporated into new subsection (1)(c), and clearly sets a limit of investment in industrial development bonds. Paragraph (1)(c) is changed to (1)(d) and was amended to allow banks to purchase investment grade corporate obligations. Current law allows such investment, and the rule as originally proposed inadvertently omitted these securities as permissible investments.

COMMENT: Annie Bartos, Hearing Officer, presented the Administrative Code Committee proposal that the statement of reasonable necessity should provide that Chapter 199, Laws of 1989, mandates that the department adopt rules to implement that chapter.
RESPONSE: The Division has concurred and the statement of reasonable necessity is hereby expanded to include that wording.

4. No other comments or testimony were received.

FINANCIAL DIVISION

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE BANKING BOARD

In the matter of the adoption of a new rule pertaining to application procedures for merger of affiliated banks	))))	NOTICE OF ADOPTION OF NEW RULE I. (8.87.601) APPLICATION PROCEDURE FOR APPROVAL TO MERGE AFFILIATED BANKS

TO: All Interested Persons:

1. On September 14, 1989, the State Banking Board published a notice of public hearing on the proposed adoption of the above-stated rule at page 1302, 1989 Montana Administrative Register, issue number 17. The hearing was held on October 20, 1989, in Helena, Montana.

2. The Board adopted the new rule as proposed but with the following changes:

"8.87.601 APPLICATION PROCEDURE FOR APPROVAL TO MERGE AFFILIATED BANKS (1) Under authority granted by 32-1-203, MCA, the state banking board adopts the following rules for the consolidation or merger into one bank of any two or more affiliated banks doing business in this state, IF THE RESULTANT BANK IS TO BE A STATE BANK.

(2) will remain as proposed.

(3) The application, INCLUDING A REQUEST FOR AUTHORIZATION TO OPERATE THE MERGED BANKS AS BRANCHES, shall contain the following information:

(a) The exact corporate name and address of each bank and holding company participating in the merger or consolidation, THE NAME AND ADDRESS OF EVERY BANK ANY OF WHOSE STOCK IS OWNED BY A PARTICIPATING BANK HOLDING COMPANY, THE PERCENTAGE OF TOTAL VOTING STOCK WHICH THAT HOLDING REPRESENTS, and the proposed names of the resultant bank and holding company.

(b) through (f) will remain as proposed.

(g) A specification and explanation of any new services ~~that would be~~ offered as a result of the ~~proposed~~ merger that individual participants presently do not offer, and ~~any~~ existing services that will be discontinued as a result of the merger must be provided.

(h) through (5) will remain as proposed.

~~(6) The board will consider all comments received relevant to the application and may take final action by a duly noticed telephone conference call with a quorum of the board participating.~~ THE STATE BANKING BOARD WILL CONDUCT A HEARING PURSUANT TO 32-1-204, MCA. THE BOARD WILL THEN CONSIDER THE RECORD OF THE HEARING AND THE HEARING EXAMINER'S REPORT, AND MAY TAKE FINAL ACTION BY TELEPHONE CONFERENCE CALL WITH A QUORUM OF THE BOARD PARTICIPATING.

(7) and (8) will remain as proposed."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-371, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses are as follows:

COMMENT: The Montana Independent Bankers Association (MIB) testified that paragraph (3)(g) should be stricken in its entirety pertaining to the specification of existing services that will be discontinued as a result of the merger. MIB suggested the paragraph be amended to state "all services offered at the main banking house, and at the resultant branches must be listed and to include a detailed listing of banking services that will be offered the community to be served by the new bank."
RESPONSE: The Board has amended subsection (3)(g) to require specification and explanation of any new services offered as a result of the merger that individual participants presently do not offer and existing services that will be discontinued as a result of the merger must be provided.

COMMENT: MIB proposed that the applicant list information about stock of other banks owned by the applicant.
RESPONSE: The Board concurs and the revised rule requires the name and address of every bank, any of whose stock is owned by a participating bank holding company and the percentage of total voting stock which that holding represents and the proposed names of the resulting bank and holding company shall be provided in the application.

COMMENT: MIB proposed that the State Banking Board hold a hearing prior to issuing any new bank certificate of authorization or approving any merger, consolidation, or relocation. MIB proposed that the rules should treat a merger or new branch application as being subject to a hearing under section 32-1-204, MCA.
RESPONSE: The State Banking Board concurs and revises the rule to show that it will conduct a hearing for an authorization and approval of a merger pursuant to section 32-1-204, MCA.

COMMENT: Montana Bankers Association (MBA) recommended that paragraph (1) be amended to clarify that the rule applies only to consolidated banks where the resultant bank will operate as a state bank under Title 32, MCA.
RESPONSE: The Board concurs and the suggested revision has been adopted.

COMMENT: MBA proposed that the application procedure for approval to merge include a procedure for corporate name change, thus eliminating a separate process.
RESPONSE: Section 32-1-354, MCA, provides for specific procedure whenever any bank shall decide to call a meeting of the stockholders for the purpose of changing its corporate name. Section 32-1-354, MCA, mandates separate procedures for changing a bank's corporate name. This suggestion is rejected.

COMMENT: MBA proposed that the application include a request for authorization to operate merged banks as branches of the resultant bank.
RESPONSE: The Board concurs and has amended the rule accordingly.

COMMENT: Annie Bartos, Hearing Officer, presented the Administrative Code Committee proposal that the statement of reasonable necessity should state that Chapter 322, Laws of 1989, mandates that the board adopt the rules to implement the chapter.
RESPONSE: Comment was accepted and the statement of reasonable necessity is hereby expanded to include that wording.

4. No other comments or testimony were received.

STATE BANKING BOARD

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE BANKING BOARD

In the matter of the adoption of a new rule pertaining to establishment of new branch banks	)	NOTICE OF ADOPTION OF NEW RULE I (8.87.701) APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION TO ESTABLISH A NEW BRANCH

TO: All Interested Persons:

1. On September 28, 1989, the State Banking Board published a notice of public hearing on the proposed adoption of the above-stated rule at page 1380, 1989 Montana Administrative Register, issue number 18. The public hearing was held on October 20, 1989, in Helena, Montana.

2. The Board adopted the new rule as proposed but with the following changes:

"8.87.701 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION TO ESTABLISH A NEW BRANCH (1) through (3)(f) will remain as proposed.

(g) a detailed list of banking services that will be offered the community to be served by the new branch, A SIMILAR LIST OF BANKING SERVICES OFFERED AT THE MAIN BANKING HOUSE, AND THE BRANCH'S PROPOSED HOURS OF OPERATION;

(h) through (8) will remain as proposed."

Auth: Sec. 32-1-202, 32-1-203, MCA; IMP, Sec. 32-1-203, 32-1-472, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses are as follows:

COMMENT: The Montana Independent Bankers Association (MIB) proposed that paragraph (3)(g) be supplemented to require applicants to provide a comprehensive list of banking services that will be offered at both the branch location and the applicant's main banking house.
RESPONSE: Paragraph (3)(g) has been amended to reflect this recommendation as shown above.

COMMENT: MIB suggested that the State Banking Board define what is meant by "offering a service."
RESPONSE: The term "offered" did not need further defining and is understood within the context of section (3)(g).

COMMENT: MIB recommended that the term "city and city limits" and "unincorporated place" be defined by the rules.
RESPONSE: Section 32-1-109, MCA, defines each of the above terms. Rules will not further define the terms.

COMMENT: MIB proposed that new branch applications be subject to hearing requirements under section 32-1-204, MCA.

RESPONSE: Section 32-1-204, MCA, does not require a hearing for approval of branch applications. After due consideration, it was determined that such a requirement would unnecessarily delay the application process, and put state chartered banks at a competitive disadvantage with national banks which follow an application process similar to that proposed in this rule.

COMMENT: Annie Bartos, Hearing Officer, presented the Administrative Code Committee proposal that the statement of reasonable necessity for the proposed rule be changed to provide that it is mandated by Chapter 322, Laws of 1989.
RESPONSE: The Board concurred and the statement of reasonable necessity is hereby expanded to include that wording.

STATE BANKING BOARD

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF INVESTMENTS

In the matter of the amendment of rules pertaining to board members; forward commitment periods of loans; and loan assumptions	)	NOTICE OF AMENDMENT OF 8.97.1101 ORGANIZATIONAL RULE; 8.97.1303 FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS; AND 8.97.1414 CONVENTIONAL, FHA, VA, COMMERCIAL, AND MULTI-FAMILY LOAN PROGRAMS - ASSUMPTIONS

TO: All Interested Persons:

1. On October 26, 1989, the Board of Investments published a notice of proposed amendment of the above-stated rules at page 1631, 1989 Montana Administrative Register, issue number 20.

2. The Board amended the rules exactly as proposed.

3. No comments or testimony were received.

MONTANA BOARD OF INVESTMENTS
W. E. SCHREIBER, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA BOARD OF INVESTMENTS

In the matter of the adoption of new rules pertaining to the Montana Economic Development Act; specifically the Conservation Reserve Payment Enhancement Program	) NOTICE OF ADOPTION OF NEW) RULES PERTAINING TO THE) MONTANA ECONOMIC DEVELOP-) MENT ACT; SPECIFICALLY THE) CONSERVATION RESERVE) PAYMENT ENHANCEMENT) PROGRAM

TO: All Interested Persons:

1. On October 26, 1989, the Board of Investments published a notice of public hearing on the proposed adoption of the above-stated rules at page 1634, 1989 Montana Administrative Register, issue number 20.

2. The Board has numbered the new rules as follows: I. through IX. will be under Sub-Chapter 20 as 8.97.2001 through 8.97.2009. ARM 8.97.2002, 8.97.2005, 8.97.2006, 8.97.2008, 8.97.2009 were adopted exactly as proposed. ARM 8.97.2001, 8.97.2003, 8.97.2004, 8.97.2007 were adopted exactly as proposed but with the following changes: (new matter underlined, deleted matter interlined)

"8.97.2001 DEFINITIONS (1) through (10) will remain the same as proposed.

(11) "CRP" means U.S. Conservation Reserve Payment Program of the USDA under Title XII of the Food Security Act of 1985, as amended;

(12) through (14) will remain the same as proposed.

(15) "CRP Enhancement Program" or "CRP Program" means the board's conservation reserve payment enhancement program pursuant to which the board makes loans for agricultural enterprise projects;

(16) through (19) will remain the same as proposed.

(20) "Program documents" collectively means the application and its exhibits, commitment agreement, note, CRP contract, successor in interest agreement, ~~commodity certificates~~, mortgages, origination agreement and access easement;

(21) through (25) will remain the same as proposed."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; Imp: Sec. 17-5-1504, 17-5-1521, MCA

"8.97.2003 GENERAL STATE CRP PROGRAM REQUIREMENTS (1) and (2) will remain the same as proposed.

(3) The borrower must also agree as follows:

(a) to provide an annual certification of compliance to the board whereby the borrower certifies that he is in compliance with all federal CRP program requirements and that he agrees to provide the ASCS with all information necessary to determine compliance;

(3)(b) through (3)(d) will remain the same as proposed."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; Imp: Sec. 17-5-1504, 17-5-1505, 17-5-1521, MCA

"8.97.2004 ELIGIBILITY CRITERIA FOR STATE CRP PROGRAM (1)(a) and (1)(b) will remain the same as proposed.

(c) a person has taxes, special assessments or other governmental charges ~~are not~~ now due and unpaid upon the CRP acres;

(1)(d) through (1)(f) will remain the same as proposed."

Auth: Sec. 17-5-1504, 17-5-1521, MCA; Imp: Sec. 17-5-1504, 17-5-1505, 17-5-1521, MCA

"8.97.2007 APPLICATION PROCEDURES FOR STATE CRP PROGRAM - LOAN REQUIREMENTS FOR THE APPLICANT/BORROWER (1) and (2) will remain the same as proposed.

(3) An applicant must also submit a non-refundable application fee in the amount of $500 ~~to cover application and processing costs~~. This fee may be used towards application processing, title reports, title insurance and other applicable costs.

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

Auth: Sec. 17-5-1504, 17-5-1521, MCA; Imp: 17-5-1504, 17-5-1505, 17-5-1521, MCA

4. Six comments were submitted by Dale Nerlin of the Doane-Western Company. These comments have been thoroughly considered and the applicable rules have been amended accordingly.

COMMENT REGARDING 8.97.2001: The proposed change was to delete "Payment" following the word "Reserve".
RESPONSE: The proposed change to the rule was made in order to conform the definition to Title XII of the Food Security Act.

COMMENT REGARDING 8.97.2001: The proposed change was to insert "CRP Enhancement Program" or before "CRP Program".
RESPONSE: The proposed change to the rule was made for clarification purposes only.

COMMENT REGARDING 8.97.2001: The proposed change was to delete the reference to "commodity certificate."
RESPONSE: The proposed change to the rule was made because "commodity certificates" are not part of the program documents.

COMMENT REGARDING 8.97.2003: The proposed change was to insert "ASCS" in the place of "SCS."
RESPONSE: The proposed change to the rule was made in order to correct a typographical error.

COMMENT REGARDING 8.97.2004: The proposed change was to insert the following language into 8.97.2004 in place of the proposed language: "a person has taxes, special assessments or other governmental charges now due and unpaid upon the CRP acres".

RESPONSE: The proposed change was made for clarification and readability purposes.

COMMENT REGARDING 8.97.2007: The proposed change was to do the following: end the sentence at "$500." and insert the following sentence. "This fee may be used towards application processing, title reports, title insurance, and other applicable costs."
RESPONSE: The proposed change was made for clarification purposes.

MONTANA BOARD OF INVESTMENTS
Mr. W.L. SCHREIBER, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 11, 1989.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules I and II and the amendment of Rules 11.16.120, 11.16.123, 11.16.126, 11.16.130, 11.16.133, 11.16.141, 11.16.143, 11.16.147, 11.16.153, 11.16.160 and 11.16.163 pertaining to the licensure of adult foster care homes	NOTICE OF THE ADOPTION OF RULES I AND II AND THE AMENDMENT OF RULES 11.16.120, 11.16.123, 11.16.126, 11.16.130, 11.16.133, 11.16.141, 11.16.143, 11.16.147, 11.16.153, 11.16.160 AND 11.16.163 PERTAINING TO THE LICENSURE OF ADULT FOSTER CARE HOMES

TO: All Interested Persons

1. On November 9, 1989, the Department of Family Services published notice of the proposed adoption of rules I and II and the amendment of Rules 11.16.120, 11.16.123, 11.16.126, 11.16.130, 11.16.133, 11.16.141, 11.16.143, 11.16.147, 11.16.160, and 11.16.163 pertaining to licensure of adult foster care homes, at page 1706 of the 1989 Montana Administrative Register, Issue number 21.

2. The Department has adopted Rule II, 11.16.155 ADULT FOSTER HOME, MEDICATION as proposed.

3. The Department has amended Rules 11.16.120, 11.16.126, 11.16.130, 11.16.141, 11.16.143, 11.16.147, 11.16.153, 11.16.160, and 11.16.163 as proposed.

4. The Department has adopted Rule I, 11.16.154 ADULT FOSTER HOME, THIRD PARTY PROVIDERS as proposed with the following changes: Subsection (1) and (2) remain the same.

(3) THE DAY AND HOUR LIMITS ESTABLISHED IN THIS SECTION ARE NOT LIMITATIONS ON THE AVAILABILITY OF SERVICES FROM ANY STATE OR FEDERALLY FUNDED IN-HOME SERVICE PROGRAMS, BUT ARE ESTABLISHED TO INSURE THAT ADULT FOSTER CARE HOMES PROVIDE LIGHT PERSONAL CARE AND CUSTODIAL SERVICES, NOT SKILLED NURSING SERVICES.

(4) PAYMENT FOR THIRD PARTY SERVICES IS THE RESPONSIBILITY OF THE RESIDENT.

AUTH: Sec. 53-5-304, MCA
IMP: Sec. 53-5-303, 53-5-304 and 53-5-313, MCA

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

11.16.123 ADULT FOSTER HOME, DEFINITIONS

(8) "Mutual or shared living" means that ~~two or more~~

~~persons voluntarily agree to live together and share expenses and responsibilities. This relationship implies a balance of shared responsibilities and expenses.~~ EACH PARTY SHARES IN THE MONETARY AND HOUSEHOLD RESPONSIBILITIES.

AUTH: Sec. 53-5-304, MCA IMP: Sec. 53-5-303, MCA

11.16.133 ADULT FOSTER HOME, LICENSE REVOCATION, DENIAL OR SUSPENSION (1) through (1)(c) same as proposed.

(1) (d) the licensee or other persons in the home ~~may~~ pose a risk or threat to the safety or welfare of any resident of the home.

Subsection (2)(a) remains the same.

(2)(b) any adult foster care resident of the home will need to be carried from the home during any emergency ~~which~~ THAT requires evacuation.

(2)(c) ANY ADULT FOSTER CARE RESIDENT OF THE HOME IS TOTALLY INCONTINENT OR INCONTINENT AND UNABLE TO MANAGE THEIR INCONTINENCE WITH MORE THAN MINIMAL SUPERVISION.

Subsection (2) is renumbered (3), but otherwise remains the same.

(4) If the department finds that a current licensee who is operating an adult foster care home is out of compliance with the standards set forth in these rules, the department will not revoke or deny renewal of the license if ALL the following conditions are met:

Subsections (4)(a) through (d) remain the same as proposed.

AUTH: Sec. 53-5-304, MCA
IMP: Sec. 53-5-303 and 53-5-312, MCA

6. Rational: The Department of Family Services has amended and adopted these rules to implement amendments made to the Adult Foster Care Act by the 51st Legislature, making licensure of adult foster care homes mandatory. Additional changes in the licensing standards were made to clarify services offered by these homes and to provide for the safety and comfort of adult foster care residents.

7. The Department has thoroughly considered all comments received:

Comment: Rule 11.16.152: "ADULT FOSTER HOME" should be called Developmentally Disabled Foster Home.

Response: The definition of adult foster family care home is found at 11.16.123(1). Residents are not always developmentally disabled.

Comment: Rule 11.16.152 (2): The term "licensee" needs clarification.

Response: The term "licensee", as repeated throughout the ARM

rules, means a person who has been issued a license by the Department. There is no other possible interpretation of the term, so inclusion of a definition of "licensee" is unnecessary.

Comment: Rule 11.16.152 (7),(8) and (9): Licensee should be required to keep a list of all medications taken by each resident, documenting changes as they occur.

Response: Adult foster care homes are not intended to provide for skilled nursing. A resident's medications are their own responsibility, unless minimal assistance from the licensee is necessary. If any assistance is provided to a resident, this rule requires that a record of medications taken be kept. Furthermore, 11.16.141(4)(g) requires that "any individual record of prescribed medication taken or not taken" be kept by the licensee.

Comment: Rule 11.16.152(9): There should be clarification of when and how over-the-counter drugs are available to the resident who purchased them.

Response: The type of facility described in these rules do not have skilled nursing staff. If a resident purchases an over the counter drug, all that is required of the licensee is to ensure that other residents do not consume those drugs, but that the drugs are made available to the resident who purchased them. Defining when or how the drugs are made available is unnecessary.

Comment: Rule 11.16.133(4): All of the conditions listed for not revoking or denying a license due to lack of compliance with the rules should be met.

Response: The Department agrees and has included the word "all" in the amendment.

Comment: Rule 11.16.133(2)(c): The proposed amendment to this rule inadvertently left out a rule regarding incontinence.

Response: The section regarding incontinence was added to clarify services that can be offered by the foster care home in keeping with light personal care services and not skilled nursing services.

Comment: 11.152.1(1)(a): The use of personal care attendants in foster homes, under Medicaid, is allowable only with prior authorization. There are other Medicaid requirements limiting the use of personal care attendants that are not addressed by these rules. If the intent of the rules is to use DFS resources, not Medicaid, to provide a personal care attendant, it should be clarified.

Response: The new rule regarding third party providers has been

amended to reflect the intent of the rules to not limit state or federally funded in-home service programs, but to insure that only light personal care, not skilled nursing care, is provided. If the rules did not limit the number of days that skilled nursing care may be provided to a resident, adult foster care providers would be very tempted to take in residents who require more than light personal care. Anyone who needs more than two hours of skilled nursing services per day for longer than a month needs a different type of placement than an adult foster care home.

Comment: 11.16.152.1(1)(b) and (2): Medicaid does not have the same limits on nursing services as are listed in these rules. Neither is Medicaid payment of hospice limited to two hours per day per resident. Medicaid and Medicare eligible persons have a right to reimbursement beyond that which these rules provide.

Response: The restrictions on hours per day per resident for third party skilled nursing services and hospice care have to do with a persons ability to reside in an adult foster home setting, and has nothing to do with restricting Medicaid or Medicare eligibility. This rule has been amended to reflect that it does not pertain to state or federally funded in-home services and that payment for third party services is the responsibility of the resident receiving the services.

Comment: The proposed amendment of 11.16.120 should be omitted. Reference to shared living arrangements being excluded from these rules is already found at 53-5-303, MCA.

Response: Rule 11.16.123(8) defines "mutual and shared living arrangement". No where else in the rules is the term referred to. Consequently, the Department believes that is necessary to include reference to the exclusion of this type of living arrangement in the rules, and not rely solely on the MCA citation to give licensing workers or providers notice of the exclusion.

Comment: Rule 11.16.123(8): The proposed definition of "mutual or shared living" is too restrictive and goes beyond the intention of the newly amended law, section 53-5-303, MCA.

Response: The Department has amended the proposed definition of "mutual and shared living" to make it less restrictive and more in compliance with the language of the code.

Director, Department of Family Services

Certified to the Secretary of State December 11, 1989.

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

In the matter of the repeal of rule 16.10.606 concerning the temporary licensing of tourist homes during the Montana Centennial Cattle Drive	))))	NOTICE OF REPEAL OF RULE 16.10.606 (Food and Consumer Safety)

To: All Interested Persons

1. On September 28, 1989, at page 1390 of the 1989 Montana Administrative Register, Issue Number 18, the Department published notice of the proposed repeal of a temporary rule concerning the licensing of tourist homes for the Montana Centennial Cattle Drive.

2. The Department repealed the rule as proposed.

3. No comments or testimony were received.

DONALD E. PIZZINI, Director

Certified to the Secretary of State December 11, 1989.

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

In the matter of the adoption of rules I through XXXVIII relating to licensing of emergency medical services, and the repeal of ARM 16.30.101, 16.30.201 through 16.30.210, 16.30.1001 through 16.30.1002	NOTICE OF THE ADOPTION OF NEW RULES FOR LICENSING OF EMERGENCY MEDICAL SERVICES AND THE REPEAL OF ARM 16.30.101, 16.30.201 THROUGH 16.30.210, 16.30.1001 THROUGH 16.30.1002 (Emergency Medical Services)

To: All Interested Persons

1. On November 9, 1989, the department published notice of the proposed adoption of the above rules and the repeal of ARM 16.30.101, 16.30.201 through 16.30.210, 16.30.1001 through 16.30.1002 at page 1712 of the 1989 Montana Administrative Register, issue no. 21.

2. The department has adopted the rules as proposed, with the following amendments (deleted material interlined, new material underlined):

RULE I (16.30.102) DEFINITIONS The following definitions apply in ~~this~~ sub-chapters 1 through 4:

(1)-(7) Same as proposed.

(8) "Defibrillation protocol" means a uniform protocol for an EMT-defibrillation equivalent or EMT-intermediate equivalent functioning within an emergency medical service, adopted by the Montana board of medical examiners for statewide use, specific to the type of defibrillator being used, and signed by the off-line medical director~~, and approved by the local hospital(s) medical staff or executive committee of the medical staff(s) in the community or nearest community in which the EMT-defibrillation or EMT-intermediate service is based~~.

(9)-(23) Same as proposed.

(24) "Grandfathered advanced first aid " means:

(a) Same as proposed.

(b) on or after January 1, 1990~~3~~, a person:

(i)-(iii) Same as proposed.

(25)-(27) Same as proposed.

(28) "Non-transporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical services and to treat a patient until the arrival of an ambulance. A non-transporting medical unit:

(a)-(b) Same as proposed.

(c) is organized, as a group, to provide a medical response to emergencies as one of its primary objectives;

(d)-(e) Same as proposed.

(29) "Off-line medical director" means a physician who:

(a) is responsible and accountable for the overall medical direction and medical supervision of an emergency medical

service at the EMT-defibrillation, EMT-intermediate, or advanced life support level;

(b) Same as proposed.

(c) has been approved in writing by a local hospital medical staff ~~of each local hospital, or executive committee of each medical staff, to function as medical director~~ and/or department of emergency medicine, if one exists, or, if there is no hospital in the community, by the medical staff and/or department of emergency medicine of a hospital in a nearby community to which patients are most commonly transported; and

(d) Same as proposed.

(30) Same as proposed.

(31) "Protocol" means a set of written, standardized guidelines for administering patient care, at an EMT-intermediate or advanced life support level, and approved by the department, and by the off-line medical director~~, and the medical staff or executive committee of the medical staff of each local hospital in the community in which the service is based or the community closest to the service's home base~~.

(32) "Provisional license" means an emergency medical service license ~~of limited duration~~ which is granted by the department and is valid for a maximum of 90 days.

(33) "Safety and extrication equipment kit" means the following equipment and supplies:

(a) a total of five pounds of ABC fire extinguisher, except for an extinguisher in an air ambulance, which must meet FAA standards;

(b)-(i) Same as proposed.

(34) Same as proposed.

(35) "Supplemental training" means a training program for registered nurses utilized by an emergency medical service which:

(a) Same as proposed.

(b) is certified by the emergency medical service's medical director as having knowledge and skill objectives ~~based on standard national curricula~~ comparable to the level of EMT training corresponding to the level at which the service is licensed.

(36)-(40) Same as proposed.

RULE II (16.30.103) LICENSE TYPES AND LEVELS Same as proposed.

RULE III (16.30.104) LICENSE APPLICATION REQUIREMENTS (1)-(8) Same as proposed.

(9) An emergency medical service responding into Montana to transfer patients from a Montana medical facility to a non-Montana medical facility is not required to obtain a Montana license if it is licensed in its state of origin.

(10)-(11) Same as proposed.

RULE IV (16.30.301) AMBULANCE PERMITS (1)-(3) Same as proposed.

(4) The decision to deny or revoke a permit may be ap-

pealed to the department if the emergency medical service submits a written request for a hearing to the department within 30 days after the service receives written notice of the decision to revoke or deny the permit.

(5) The decision of the department director after a hearing held pursuant to (4) above is final.

RULE V (16.30.105) WAIVERS Same as proposed.

RULE VI (16.30.107) ADVISORY COMMITTEE Same as proposed.

RULE VII (16.30.211) SANITATION (1) Each emergency medical service must develop and adhere to a written service sanitation policy that includes at least a method to dispose of contaminated materials meeting the minimum requirements set out in (2) below, as well as the following standards:

(a)-(f) Same as proposed.

(2) Each emergency medical service must do at least the following in disposing of infective waste:

(a) Either incinerate the waste or decontaminate it before disposing of it in a sanitary landfill licensed for that class of waste by the department;

(b) Place sharp items in puncture-proof containers and other blood-contaminated items in leak-proof plastic bags for transport to a landfill licensed by the department for that class of waste.

~~(2)~~(3) The interior of an ambulance, including all storage areas, must be kept clean and free from dirt, grease and other offensive matter.

RULE VIII (16.30.212) COMMUNICATIONS (1) Same as proposed.

(2) Effective January 1, 1996:

(a) a ground ambulance must have a VHF mobile radio, and an air ambulance must have a VHF portable radio, each with a minimum of the following:

(i)-(iii) Same as proposed.

~~(iv) frequency 155.475 mHz; and~~

(~~v~~iv) frequency 155.325 mHz;

(v~~i~~) frequency 155.385 mHz; and

(vi) frequency 155.905 mHz.

(b) Same as proposed.

(3) Same as proposed.

RULE IX (16.30.302) AMBULANCE SPECIFICATIONS--GENERAL Same as proposed.

RULE X (16.30.303) AMBULANCE SPECIFICATIONS--GROUND AMBULANCES Same as proposed.

RULE XI (16.30.304) AMBULANCE SPECIFICATIONS--AIR AMBULANCE Same as proposed.

RULE XII (16.30.213) SAFETY--GENERAL Same as proposed.

RULE XIII (16.30.305) SAFETY--GROUND AMBULANCE SERVICES (1) Same as proposed.

(a) continuously maintaining~~,~~ in the patient compartment ~~near the patient's head,~~ a disposable carbon monoxide detector, approved by the department, which is capable of immediately detecting a dangerous rise in the carbon monoxide level;

(b)-(c) Same as proposed.

(2)-(4) Same as proposed.

RULE XIV (16.30.306) SAFETY--AIR AMBULANCE (1)-(5) Same as proposed.

(6) Same as proposed.

(a) continuously maintaining, in the patient compartment ~~near the patient's head~~ and in the pilot's compartment ~~near the pilot's head~~, disposable carbon monoxide detectors, approved by the department, which are capable of immediately detecting a dangerous rise in the carbon monoxide level;

(b)-(c) Same as proposed.

RULE XV (16.30.405) OTHER REQUIREMENTS--NON-TRANSPORTING SERVICES Same as proposed.

RULE XVI (16.30.316) OTHER REQUIREMENTS--AMBULANCE SERVICES Same as proposed.

RULE XVII (16.30.317) OTHER REQUIREMENTS--AIR AMBULANCE SERVICE Same as proposed.

RULE XVIII (16.30.214) EQUIPMENT Same as proposed.

RULE XIX (16.30.215) RECORDS AND REPORTS Same as proposed.

RULE XX (16.30.216) PERSONNEL REQUIREMENTS--GENERAL Same as proposed.

RULE XXI (16.30.401) PERSONNEL: BASIC LIFE SUPPORT NON-TRANSPORTING UNIT (1) From January 1, 1990, ~~through December 31, 1995,~~ on, at least one of the following individuals must be on each call:

(a)-(d) Same as proposed.

~~(2) After January 1, 1996, at least one of the following individuals must be on each call:~~

~~(a) grandfathered advanced first aid;~~

~~(b) first responder;~~

~~(c) EMT basic equivalent; or~~

~~(d) physician.~~

RULE XXII (16.30.402) PERSONNEL: EMT-DEFIBRILLATION LIFE SUPPORT NON-TRANSPORTING UNIT Same as proposed.

RULE XXIII (16.30.403) PERSONNEL: EMT-INTERMEDIATE LIFE

SUPPORT NON-TRANSPORTING UNIT Same as proposed.

RULE XXIV (16.30.404) PERSONNEL: ADVANCED LIFE SUPPORT NON-TRANSPORTING UNIT Same as proposed.

RULE XXV (16.30.307) PERSONNEL: BASIC LIFE SUPPORT GROUND AMBULANCE SERVICE Same as proposed.

RULE XXVI (16.30.308) PERSONNEL: EMT-DEFIBRILLATION GROUND AMBULANCE SERVICE Same as proposed.

RULE XXVII (16.30.309) PERSONNEL: EMT-INTERMEDIATE GROUND AMBULANCE SERVICE Same as proposed.

RULE XXVIII (16.30.310) PERSONNEL: ADVANCED LIFE SUPPORT GROUND AMBULANCE SERVICE Same as proposed.

RULE XXIX (16.30.311) PERSONNEL: AIR AMBULANCE--GENERAL Same as proposed.

RULE XXX (16.30.312) PERSONNEL: BASIC LIFE SUPPORT AIR AMBULANCE SERVICE Same as proposed.

RULE XXXI (16.30.313) PERSONNEL: EMT-DEFIBRILLATION LIFE SUPPORT AIR AMBULANCE SERVICE Same as proposed.

RULE XXXII (16.30.314) PERSONNEL: EMT-INTERMEDIATE LIFE SUPPORT AIR AMBULANCE SERVICE Same as proposed.

RULE XXXIII (16.30.315) PERSONNEL: ADVANCED LIFE SUPPORT AIR AMBULANCE SERVICE Same as proposed.

RULE XXXIV (16.30.217) MEDICAL CONTROL--GENERAL

(1) Same as proposed.

(2) Each emergency medical service must supply each hospital to which it commonly transports patients with copies of all protocols that it adopts.

RULE XXXV (16.30.218) MEDICAL CONTROL: EMT-DEFIBRILLATION Same as proposed.

RULE XXXVI (16.30.219) MEDICAL CONTROL: EMT-INTERMEDIATE Same as proposed.

RULE XXXVII (16.30.220) MEDICAL CONTROL--ADVANCED LIFE SUPPORT Same as proposed.

RULE XXXVIII (16.30.106) APPEAL FROM ORDER Same as proposed.

3. The department has repealed rules 16.30.101, 16.30.201 through 16.30.210, and 16.30.1001 and 16.30.1002, as proposed.

4. The following comments on the rules were received by the department; the department's response to each is noted.

a. Rule I (16.30.102)

(1) In order to correct a typographical error, the definition of "grandfathered advanced first aid" in (24) should read, in subparagraph (b), "on or after January 1, 1993" instead of 1990, since subparagraph (a) contains the definition applying up to the former date. The mistake was discovered by the department, and the intention of the department to correct the date to 1993 was pointed out at the scheduled hearings, generated no adverse comment, and was adopted.

(2) The department also amended the introductory phrase to reflect the fact that, when ARM rule numbers were finally assigned to these new rules, the definitions would in fact apply to four sub-chapters in ARM, rather than one.

(3) Comment: The Board of Nursing requested that (35)(a) be made less stringent to allow supplementary training to include only some EMT training rather than training equivalent to the EMT training required for the level at which the service in question is licensed.

Response: The department did not adopt the suggested change because it did not reflect the various levels of EMT training and certification, reference any specific knowledge and skill objectives of those levels, or set any standard by which compliance could be determined.

(4) Comment: Billings Deaconess Hospital believes that the definition of "grandfathered nurse" in (25) is ambiguous and should be deleted, and that nurses should be encouraged to obtain appropriate supplemental education.

Response: The department believes that nurses who are currently serving as personnel on an emergency medical service should be allowed to continue, and that deletion of this provision could impose a hardship on services which currently use nurses. Also, it seems clear that nurses will be grandfathered at the level of service they provide during the period from July 1 through December 31, 1992. Therefore, this proposed change was not adopted.

(5) Comment: Billings Deaconess Hospital believes the definition of "off-line medical director" in (29)(c) is impractical and creates an unworkable situation, since it requires the off-line medical director to be approved in writing by the medical staff of each local hospital or executive committee of each medical staff. They suggested rewording the definition to mean "a physician who has been approved in writing by the hospital and/or department of emergency medicine, if one exists, where medical control is based." Biscak Ambulance Service recommended deleting (c) altogether because it puts local ambulances in a bad political situation and may make it difficult for ALS services to agree on a medical director.

Response: The department agreed the proposed definition could present a problem and adopted a change making one hospital's approval sufficient.

(6) Comment: Regarding the definitions of "protocol" in (31) and "defibrillation protocol" in (8), Billings Deaconess Hospital believes it is not feasible to require physicians to sign off on protocols utilized in an emergency medical service in which they exercise no operational or programmatic control,

and they suggested deletion of the requirement that hospital medical staff do so.

Bicsak Ambulance Service also indicated that requiring the protocol to be approved by "each local hospital in the community..." would create a hardship for the ambulance services. Finally, the Montana Emergency Medical Services Association recommended a comparable modification of the definition.

Response: The department concurs with these changes and adopts them with the proviso, added to Rule XXXIV, that copies be provided to the hospitals to which patients are commonly transported.

(7) Comment: Billings Ambulance Service suggested adding a definition of "ambulance".

Response: Section 50-6-302, MCA, defines "ambulance", and the Montana Administrative Procedure Act prohibits unnecessary duplication, in rules, of statutory language; therefore, the definition was not added.

(8) Comment: Billings Ambulance Service and Bicsak Ambulance Service suggested the definition of "off-line medical director" in (29)(a) be changed to read: "... a physician who: (a) is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service at the EMT-defibrillation, EMT-intermediate, or advanced life support level". The Montana Private Ambulance Operators also expressed the same concern.

Response: The department concurred with the recommendation and adopted the change.

(9) Comment: Billings Ambulance Service suggested that a provisional license should have a time limit of 90 days.

Response: The department concurred with the recommendation and adopted the change.

(10) Comment: Kalispell Regional Hospital suggested that the requirement for fire extinguishers in the subsection (33) definition of "safety and extrication equipment kit" should be, in the case of air ambulances, for a fire extinguisher of the type and size required by the FAA.

Response: The department concurred with the recommendation and modified (33) accordingly.

(11) Comment: New Butte Mining requests that mine rescue teams organized, equipped, and trained under the provisions of 30 CFR Part 49 should be excluded from the provisions of the proposed regulations.

Response: The department believes that mine rescue teams, with a primary function of rescue, not primarily medical care, are not by definition emergency medical services and, therefore, are not required to be licensed.

(12) Comment: Reed Redman, representing the Denton Ambulance Service, expressed concern that a temporary work permit, defined in (38), will allow people to legally function who have not been tested by the state.

Response: This provision of the rules is contingent upon modifications to the EMT rules of the Montana Board of Medical Examiners. Recommendations will be made to the Board of Medical Examiners to assure adequate quality control for those

functioning under a temporary work permit. Therefore, no changes were adopted.

(13) Comment: Julie Hickethier, Montana Deaconess Medical Center, requested clarification of the definitions of "registered nurses with supplemental training" in (10)(b)(vi) and (35), since she was concerned they were not clear and could be subject to a variety of interpretations.

Response: In order to be clearer, the department amended the definitions to state that certification is by the emergency medical service's off-line medical director and constitutes certification that the training includes knowledge and skill objectives comparable to the level of EMT training corresponding to the level at which the service is licensed.

(14) Comment: Montana Deaconess Medical Center believes that off-line medical directors [defined in (29)] should be required to have American Heart Association Advanced Cardiac Life Support training.

Response: Because this requirement may impose an undue hardship on potential advanced life support services, and because cardiac care is only a very narrow portion of the function of an advanced life support service, the department did not adopt this change.

(15) Comment: The Montana Emergency Medical Services Association recommended deleting "as its primary objective" from the (28)(c) definition of "non-transporting medical unit". Their concern was that the current definition effectively ruled out fire departments, law enforcement, the Highway Patrol, and others whose response to medical emergencies is not their primary objective.

Response: The department does not believe that the Highway Patrol and other comparable agencies should be licensed as non-transporting medical units since they provide a medical response only secondary to their law enforcement activity. However, the department made the following minor change in (28)(c) to indicate that such a unit must provide a medical response to emergencies as one of its primary objectives.

(16) Comment: Sharon Tiedemann, Cascade County EMT Course Coordinator, seemed to state that registered nurses who function in the pre-hospital environment should be required to take EMT training.

Response: The department felt this would be a hardship for nurses, that their existing training would not be recognized, and that the supplemental training in the rules allows for nurses to obtain the knowledge and skill objectives necessary for them to function in the pre-hospital care environment. Therefore, no action was taken in response to her comment.

(17) Comment: Sharon Tiedemann also stated that the definition of "medical director" needed further explanation, that it could be interpreted several different ways, and that it was not feasible to have one doctor answer to 150 doctors.

Response: Since it was not clear what changes Ms. Tiedemann was recommending, the department did not adopt any.

(18) Comment: Maura Fields from North Valley Hospital, Whitefish, recommended the contents of the EMT-intermediate

kit, defined in (19), not be mandatory, but that the contents be determined by medical control and the advanced life support team.

Response: The department considers the contents of the EMT-intermediate kit to be the minimum necessary for licensure, although individual services, in cooperation with medical control, may exceed these requirements. Therefore, the suggested change was not adopted.

b. Rules I(33) and XVIII

(1) Comment: Clifford Halls thought it an unnecessary expense to have extrication equipment when such equipment was available from another source. The Billings Ambulance Service and the Montana Private Ambulance Operators also objected to requiring the safety kit in ambulances when extrication service is provided by another agency and suggested an amendment to waive the requirement when it could be shown that the ambulance was not the provider of extrication in their area.

Response: Since the cost of such equipment (pliers, screwdriver, wrench, hacksaw, etc.) is relatively small and the public is served by having extrication equipment immediately at hand, the suggested changes were not adopted.

(2) Comment: Rick Bandy suggested a separate basic equipment kit should be required for each patient the ambulance is capable of transporting.

Response: The department did not adopt the suggestion since it felt the rules should specify minimum levels only, as, for example, in the proposed definition provides; the rules do not, however, preclude an individual service from having higher standards.

c. Rule III

(1) Comment: Billings Ambulance Service suggested this rule be modified to include the specific information which is required for licensure and to be included on the license application.

Response: The actual requirements for licensure are reflected throughout the proposed rules and do not need to be again specified. The application form itself will ask for information upon which the department can evaluate whether the applicant has complied with the provisions of these rules. Therefore, the department did not adopt the proposed change.

(2) Comment: Billings Ambulance Service suggested that, in order to protect the Montana public, (9) be changed to require an out-of-state ambulance service, other than air ambulance, that enters Montana to transfer patients from a Montana medical facility to a non-Montana medical facility, to be licensed in Montana. Also, the Montana Private Ambulance Operators thought there was a need to look into licensing those out of state ground ambulance services that routinely transport patients into and out of Montana.

Response: The department's authority to require a license of an out-of-state ambulance is legally uncertain, but, until the issue is resolved, it agreed to exempt from Montana licen-

sure only those out-of-state services that are not licensed in their states of origin.

(3) Comment: To avoid an open-ended judgment call by non-medical personnel on the scene of an accident or injury, Billings Ambulance Service recommended deletion of (10).

Response: While the department understands the concerns of Billings Ambulance Service, this rule is necessary to implement the statement of intent attached to Senate Bill 407 which states: "If a licensed emergency medical service is not reasonably available, department rules should not preclude the occasional and infrequent transportation of patients by other means." Therefore, paragraph (10) was not deleted.

d. Rule IV

Comment: Billings Ambulance Service suggested adding an appeal provision to Rule IV concerning ambulance permits.

Response: The department agreed there should be an administrative appeal from a decision to deny or revoke an ambulance permit and added appropriate language allowing an appeal to the department's director.

e. Rule VI

(1) Comment: Billings Ambulance Service suggested a modified composition of the advisory council, recommending that the chairman be the medical director for the Department of Health and Environmental Sciences and that the members of the committee be appointed by the Governor based on recommendations from the department.

Response: The department declined to accept the recommendation because it felt that current rules for composition of the advisory council are adequate and will provide for thorough representation of all licensed emergency medical services and because Section 50-6-324, MCA, requires the advisory committee to be appointed by either the department or the board, rather than the Governor.

(2) Comment: Bill Murray, Cascade County, questioned the clarity of the total number and type of services represented on the advisory council, and whether a committee this large can be effective, but made no specific suggestion for a change.

Response: The department felt the number of licensed levels and types of services, and therefore the number of council members, were clear and felt the total number was manageable; therefore, no change was made.

f. Rule VII

Comment: Billings Ambulance Service suggested the method of disposing of contaminated materials in subsection (1) should be one approved by the state and/or federal government.

Response: The department added to the rule some additional minimum standards for disposal of infective waste that were gleaned from guidelines set by the Centers for Disease Control.

g. Rule VIII

(1) Comment: The Telecommunications Bureau of the Mon-

tana Department of Administration was concerned that units would not have to have a regional EMS dispatch/paging frequency, and therefore frequency 155.475 could be abused as a dispatch frequency instead of an emergency frequency. Bill Murray, Cascade County, did not want frequency 155.475 mandated, inquired about the EMS frequencies, and suggested limiting requirements to EMS channels, including regional EMS frequencies and frequency 153.905 mHz.

Response: The department concurs with the recommendation, has eliminated the requirement for 155.475 mHz, and added the requirement for the regional EMS frequencies (155.325 and 155.385).

(2) Comment: Tom Kaufman of St. Patrick's Hospital in Missoula, expressed some concern that the rules require communications and protocols, but they do not tie the two together. Specifically, he is concerned that emergency care providers be allowed to provide treatment when they are not in direct voice communications with medical control.

Response: The proposed rules do not require that providers be in direct voice communications with medical control prior to providing treatment. The protocols for the service may specify when the providers may function under standing orders. EMT-defibrillation, EMT-intermediate and EMT-paramedics are subject to the Board of Medical Examiners rules regarding medical control. Thus, Mr. Kaufman's concerns are adequately addressed without modifying the rules.

h. Rule XIII

(1) Comments: Billings Ambulance Service suggested the addition of a safety requirement for ambulances to the effect that they be allowed to display only ambulance markings that accurately reflect the level of care provided by the service.

Response: Rule III(7)(b) specifies that "No person may advertise, allow advertisement of, or otherwise imply provision of emergency medical services at a level of care higher than that for which the service is licensed." The department feels this adequately addresses the issue and has not adopted any further rules.

(2) Comment: Billings Ambulance Service suggested Rule XIII include a requirement that an ambulance be capable of being driven for at least 150 miles without refueling under encountered environmental conditions.

Response: Considering the variety of vehicles and circumstances under which ambulances function, the department feels this should not be a state requirement, but should be a matter decided locally. Therefore, the change was not adopted.

(3) Comment: Billings Ambulance Service suggested that Rule XIII require each ambulance to have one inflated spare wheel/tire assembly identical to those on the ambulance.

Response: Considering the variety of vehicles and circumstances under which ambulances function, the department feels this also should not be a state requirement, but should be a matter decided locally. Therefore, the change was not adopted.

(4) Comment: Billings Ambulance Service suggested that each ambulance be furnished with tools required for changing a spare mounted wheel/tire assembly with the on tire flat.

Response: Considering the variety of vehicles and circumstances under which ambulances function, the department feels this should not be a state requirement, but should be a matter decided locally. The change was not adopted.

(5) Comment: To provide more flexibility in the location of the carbon monoxide monitor, and absent any evidence of detriment to the patients, the department proposed eliminating the words "near the patient's head" in XIII(1)(a).

Response: This proposed amendment was presented at the Missoula public hearing, generated no adverse comment, and was adopted.

i. Rule XIV

(1) Comment: To provide more flexibility in the location of the carbon monoxide monitor while still protecting patients, the department proposed eliminating the words "near the patient's head" and "near the pilot's head" in XIV(6)(a).

Response: This proposed amendment was presented at the Missoula public hearing, generated no adverse comment and was adopted.

j. Rule XX through XXXIII (personnel requirements)

(1) Comment: The Board of Nursing pointed out that the standards in Rule XXI(1) and (2) were the same and could be consolidated.

Response: The department agreed and made the change.

(2) Comment: Earl Neff, Director of Emergency Medical Services for Community Memorial Hospital in Sidney, felt that EMT-basic was the lowest training level that should be allowed on ambulance services, rather than the first responder-ambulance level; that such a minimum level, if not required now, should be required in the future as of a specific date; and that an "EMT-intern" category, working toward EMT-basic status, would be a good idea. Mr. Neff's proposal was supported by several other persons. The Montana Private Ambulance Operators questioned whether a person trained at the first responder ambulance level would have training sufficient to assure good patient care; however, they made no specific suggestions for modification of the rules. Several other persons, including the Montana Emergency Medical Services Association, supported Mr. Neff's position. On the other hand, several other persons supported the rules as proposed.

Response: Although not identical to Mr. Neff's proposal, the general concept of "EMT-Intern" is reflected in the definition of a temporary work permit in Rule I, and will also be presented to the Montana Board of Medical Examiners for their consideration and action. To require two EMTs on an ambulance service would, the department feels, impose an undue hardship on many ambulance services. The proposed rules do require, with the exception of grandfathered advanced first aid personnel, that there be one EMT on each ambulance call by January 1,

1996. The department also believes the First Responder-Ambulance program, a significant improvement in quality and standardization from the Advanced First Aid and Emergency Care training program, will help to recruit EMS personnel to rural services plagued with personnel shortages, and will eventually substantially increase the number of EMTs on ambulance services in Montana. The First Responder-Ambulance concept is also consistent with the legislative intent. Therefore, the proposed changes were not adopted.

(3) Comment: The Montana Emergency Medical Services Association, Billings Deaconess Medical Center, Glendive Medical Center, Sharon Tiedemann, and several other individuals felt that, at least by 1995 or 1996, the lowest level of training acceptable for any staffer of a basic life support ground ambulance service should be EMT-Basic, rather than first responder-ambulance. On the other hand, several individuals supported the First Responder-Ambulance concept and felt it would help to recruit EMS providers to rural areas, and that it would encourage them to become EMTs.

Response: See the comments to (2) above. For those reasons, the proposed changes were not adopted.

(4) Comment: The Montana Emergency Medical Services Association and several others suggested that, if First Responder-Ambulance is allowed as a minimum level of training, there should be a certain date by which this certification would no longer be available.

Response: The department feels that the First Responder-Ambulance program will help recruit persons to emergency medical services and that, eventually, many of them will proceed to EMT training. Since the proposed rules require (with the exception of grandfathered advanced first aid personnel) one (1) EMT on each run of a basic life support ambulance by January 1, 1996, the department does not believe there would be merit in establishing a time limit for the First Responder Ambulance program and has not adopted the change.

(5) Comment: The Montana Emergency Medical Services Association requested that Advanced First Aid trained personnel should not be allowed to practice on air ambulances.

Response: Adopting this change would provide, without justification, inconsistency between the personnel requirements for the various types and levels of services. Therefore, the department did not adopt this change.

(6) Comment: The Montana Emergency Medical Services Association stated that a First Responder-Ambulance trained person should not be responsible for patient care if there is a crew member that has a higher level of field training available.

Response: The department feels this should be a matter of local protocol rather than state intervention. It is difficult for a person at the First Responder Ambulance level to receive any patient care experience if s/he is not allowed to care for patients. Therefore, the proposed change was not adopted.

(7) Comment: The Wibaux Board of County Commissioners and the Wibaux Ambulance Service objected to the eventual re-

quirement of one EMT on each ambulance call, and indicated this will be impossible to comply with unless funding is made available. They feel advanced first aid people are experienced and more plentiful. This concept was also supported by Reed Redman of the Denton Ambulance Service and appeared to be supported by Gary Gershmel, Mayor-Elect of Winnett and a member of the Winnett ambulance service.

Response: Existing advanced first aid personnel, and those trained for the next several years, will be "grandfathered" and allowed to function on ambulance services. With that exception, there will need to be one EMT on each ambulance run by January 1, 1996. With the First Responder Ambulance program readily accessible to ambulance services, the department feels the proposed personnel requirements are reasonable, can be met by all ambulance services in Montana, and represent an improvement in the quality of care. Consequently, the department did not adopt the suggested changes.

(8) Comment: The Montana Deaconess Medical Center believes there should be additional detail in Rule XXIX concerning the "...aeromedical training program approved by the department" and assuring it is "signed off" by the local faculty.

Response: The department believes the current language is clearly defined, provides sufficient authority to the local medical director, and does not need to be modified. No change was adopted.

(9) Comment: In addition to recommending the deletion of a First Responder Ambulance as an optional ambulance staffer after January 1, 1996, [Rule XXV(2)(b)], the Montana Emergency Medical Services Association recommended the rule disallow having only two "grandfathered advanced first aid" personnel on a call after January 1, 1996.

Response: The department clearly specified to the legislature that current advanced first aid personnel would be able to remain on the service providing they maintained their certification. Adopting this change would not be consistent with legislative intent.

(10) Comment: Maura Fields, North Valley Hospital, objected to including special requirements for nurses in the personnel requirements, indicated that R.N. training and education already has a provision for ALS training and certification, and believed that nurses are being singled out for special requirements. She felt there should be a category of other "licensed health care professionals", and that the references to "registered nurse" and "nurse" should be eliminated throughout the rules.

Response: Since nursing personnel are regularly functioning in the pre-hospital environment at basic and advanced life support levels, the department believes there should be some assurance they have the necessary pre-hospital emergency medical skills and knowledge. While there are a variety of training and certification programs for nurses, they do not deal with ability to function in the pre-hospital emergency medical situation. The rules specify a reasonable program of supplemental training for nurses, phased in over several years, which

builds on the considerable knowledge and skill base of the registered nurse and effectively complements their existing education. The rules provide flexibility for the local medical director to verify the skills and knowledge of the registered nurse while assuring consistency with national standards. Since many of the other "licensed health care professionals" mentioned in Ms. Fields letter do not have the knowledge and skill base of the registered nurse, the rules do not provide that they may function in the pre-hospital emergency medical environment. The department has not adopted the recommended changes.

(11) Comment: The Board of Nursing requested the addition of a registered nurse to the exceptions in Rule XX(1)(e).

Response: The intention of the rules is to provide standardization and quality control of pre-hospital emergency medical care. This rule is intended to assure that all personnel meet minimum training requirements, and that the service has the necessary equipment, medical control, protocols, and requirements to support the level of service authorized. Registered nurses may function, without supplemental training, during inter-facility transfers. This proposed change is not consistent with need to standardize levels of service and training and was not adopted by the department.

k. General

(1) Comment: The Montana Emergency Medical Services Association requested that protocols and supplemental training should be approved by the department and the off-line medical director.

Response: The intent of this comment was not clear to the department. The proposed rules require protocols and supplemental training at defibrillation, intermediate, and advanced life support levels to be approved by the off-line medical director, although no off-line medical director is required at the basic life support level. Given the fact that the intent of the comment was unclear and the fact that the off-line medical director supervises protocols, etc., at the levels where such control is needed, no action was taken by the department.

(2) Comment: Billings Ambulance Service suggested a number of amendments to the rules to reflect Senate Bill 26 regulating the practice of physician assistants.

Response: Section 37-20-403, MCA, specifies that "a physician assistant-certified must be considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified under the utilization plan. A health care provider shall consider the instructions of a physician assistant-certified as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified under the utilization plan." Given that statutory language, the department feels that physician assistants-certified may be appropriately utilized on emergency medical services providing this function is authorized in their approved utilization plan. No rule changes are necessary.

(3) Comment: Kalispell Regional Hospital recommended that the personnel section should mention other licensed personnel who may be involved with EMS operations, such as LPNs, respiratory therapists, M.D.'s, physician's assistants, etc.

Response: The proposed rules reflect personnel requirements for those persons who are specifically trained to function in pre-hospital emergency medical services. The other licensed personnel referenced by Kalispell Regional Hospital are not so trained, though in certain instances they may, consistent with these rules, function in addition to the minimum personnel required. The issue of physician assistants has been separately addressed. No action was taken by the department.

(4) Comment: Kalispell Regional Hospital recommended that the Emergency Nurses Association should be given the authority to mandate the current standards of practice for pre-hospital nursing.

Response: The Emergency Nurses Association does not currently have a training and certification program for pre-hospital emergency nursing. The proposed supplemental training requirements for nurses provide considerable flexibility to the off-line medical director, while still assuring consistency with the national standard EMT curricula. The specific intention for modification of the rules was not clear; no changes were adopted by the department.

(5) Comment: Because of confusion about whether comments could be provided via a telephone conversation rather than presented in writing or at a public hearing, Dave Kneebone of New Butte Mining requested an extension of the public comment period so he can adequately prepare a response.

Response: There was substantial opportunity for public comment, including a succession of informal and formal hearing across the state. Mr. Kneebone had ample opportunity, after being notified of the need to make written comments, to make those comments to the department, and did so. Therefore, no extension of the public comment period was granted.

(6) Comment: Bill Murray, Cascade County, submitted a letter outlining a number of suggested changes in the basic EMS legislation and in the draft rules. His comments appeared to be based on a previous set of draft rules, rather than the rules currently subject to consideration. Where his comments are understandable in the context of the current rules, they were addressed earlier.

Response: None required.

(7) Comment: The Cascade County Commissioners and the Belt Volunteer Fire Department requested a delay in the implementation of these rules until a "five year plan" was made available to them. The Belt Fire Department indicated that some of the rules might be very hard if not impossible for the volunteer services in the rural areas to meet. Gary Haigh, Ennis, suggested that the proposed rules should not be adopted but should go back to the drawing board and then return for further public hearings. A number of identical form letters were received from the Madison County area indicating the care rendered by ambulance services throughout Montana should be, at

a minimum, EMT level, and thus requested the entire set of proposed rules not be adopted.

Response: During the last year the department has conducted over thirty public meetings throughout Montana and three formal public hearings (Glendive, Lewistown, and Missoula) to solicit comments and suggestions for incorporation into both the legislation and the rules. The department conducted a survey of numerous EMS providers to determine recommendations for inclusion in the rules. Hundreds of copies of draft rules were mailed to numerous EMS providers and many changes made prior to publishing them in the Montana Administrative Register. Exceeding the requirements of the Montana Administrative Procedure Act, the department sent notices of the public hearings to several thousand individuals, issued press releases, and again mailed hundreds of copies of the proposed rules. The department believes there has been ample opportunity to participate in the development of the rules and to review and comment on the proposed rules, and that requests for additional comment time, to "go back to the drawing board", and to reject the entire set of rules are totally without merit.

(8) Comment: Patricia England, Executive Secretary and legal counsel to the Board of Medical Examiners, requested that all Roman numerals be changed to arabic numerals for consistency with other rulemaking in the ARM and the other board rules that the medical examiners have to supervise.

Response: The Secretary of State mandates the format for rule notices, including the use of Roman numerals for notices proposing new rules. When each such rule is finally adopted, the customary arabic rule number is assigned.

/s/ William J. Gatz
DONALD E. PIZZINI, Director

Certified to the Secretary of State December 11, 1989.

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

In the matter of the adoption of rules I through V relating to reports by emergency care personnel of exposure to infectious disease and subsequent control measures. ARM 16.30.801 through 16.30.805	NOTICE OF ADOPTION OF NEW RULES FOR REPORTS OF UNPROTECTED EXPOSURE TO INFECTIOUS DISEASE (Emergency Medical Services)

To: All Interested Persons

1. On November 9, 1989, the department published notice of the proposed adoption of the above rules at page 1733 of the 1989 Montana Administrative Register, issue no. 21.

2. The department has adopted the rules as proposed, with the following amendments (new material is underlined, material to be deleted is interlined):

RULE I (16.30.801) TRANSMITTABLE INFECTIOUS DISEASES Same as proposed.

RULE II (16.30.802) REPORTABLE UNPROTECTED EXPOSURE

(1) The types of exposures to the infectious diseases specified in [Rule I] that may be reported to a health care facility by an emergency services provider are:

(a)-(b) Same as proposed.

(c) transmittal of other body fluids (~~urine~~, semen, ~~breast milk, tears,~~ vaginal secretion, amniotic fluid, feces, wound drainage, or cerebral spinal fluid) onto the mucous membranes of the emergency services provider;

(d) Same as proposed.

RULE III (16.30.803) UNPROTECTED EXPOSURE FORM Same as proposed.

RULE IV (16.30.804) RECOMMENDED MEDICAL PRECAUTIONS AND TREATMENT Same as proposed.

RULE V (16.30.805) OTHER REQUIREMENTS (1)-(4) Same as proposed.

(5) Each health care facility must maintain a permanent record of all unprotected exposure report forms it receives, and must retain each form for the same period of time that it keeps medical records. The record must contain at least the following information:

(a)-(f) Same as proposed.

3. The following comments were received; responses to each are noted:

a. Rule I

Comment: Billings Ambulance Service recommended changing Rule I(1) to read "The following are some of the infectious

diseases that are designated as having the potential...."

Response: The recommendation was not adopted because the department is charged by law with designating specific diseases that will be subject to the notification requirements of Title 50, Chapter 16, Part 7, MCA, and the list of such diseases cannot be open-ended.

b. Rule II

(1) Comment: Billings Deaconess Medical Center requested that urine, tears, and breast milk, be removed from Rule II(1)(c) as a vehicle for transmission of disease, since the most current information is that those bodily fluids are not likely to be transmission vehicles for the diseases listed in Rule I.

Response: The department concurs with the recommendation and has made the appropriate changes in Rule II(1)(c).

(2) Comment: Billings Ambulance Service requested that filing of the unprotected exposure form be mandatory for EMS providers.

Response: Section 50-16-702(2), MCA, specifies the EMS provider may submit the unprotected exposure form, but does not require its submission. Since the rules cannot mandate something the law makes discretionary, the department did not adopt the recommendation.

c. Rule IV

(1) Comment: Billings Ambulance Service requested that subsection (1) read:" At a minimum a health care facility must notify the individual receiving the unprotected exposure within 48 hours after test results are complete and inform them whether or not an infectious disease transmission is possible."

Response: The recommendation is inconsistent with Section 50-16-703, MCA, and is rejected.

(2) Comment: The Montana Hospital Association recommended that language should be added to clarify that a facility should make exposed EMS staff aware of the incorporated reference material even though a facility must follow precautions mandated by Centers for Disease Control (CDC) or Occupational Safety and Health Administrations (OSHA) which may be different.

Response: The department assumes that the Association is thinking of "universal precautions", etc., when it refers to CDC or OSHA standards, standards which are intended to prevent exposures. The standards incorporated in the rule, on the other hand, are intended for those who have already been exposed; therefore, there should be no conflict in the standards hospitals must meet and no change was made in the rule.

d. Rule V

(1) Comment: Jan Super of Kalispell Regional Hospital suggested that the wording might not be explicit enough to discourage people from trying to file after 72 hours.

Response: The law does not require potentially exposed persons to file a report by a specified deadline. If the

department tried to impose such a deadline by rule, it would in effect be limiting the right to file a report, which the department may not lawfully do. Consequently, the suggestion was not adopted.

(2) Comment: Jan Super also requested that Rule V(4) clarify who may sign for the receipt of the unprotected exposure form on behalf of the health care facility.

Response: Because there are several different types of health care facilities affected, with differing types of internal organization, it is difficult to determine who would be the best person designated for each to handle the reports; therefore, the department felt that decision should be left to the individual facility and did not make the requested change.

(3) Comment: Jan Super requested that Rule V(5) clarify how long the unprotected exposure form must be kept.

Response: The department agreed to require the forms to be kept the same period of time required by the facility for medical records.

(4) Comment: Billings Ambulance Service suggested wording changes to reflect and coordinate with the changes it proposed to Rule I.

Response: Since the recommendations made by Billings Ambulance Service for modification of Rule I were not adopted, these changes are unnecessary and were not adopted.

e. General

Comment: Jan Super requested insertion of a definition of "mucous membranes".

Response: The department feels this term is standard medical terminology which needs no further definition, and so did not adopt the recommendation.

for William J. Opitz
DONALD E. PIZZINI, Director

Certified to the Secretary of State December 11, 1989.

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

In the matter of the adoption of rules I through III relating to procedures for emergency medical service personnel to withhold life-sustaining procedures from living will declarants	)))))	NOTICE OF ADOPTION OF NEW RULES ESTABLISHING LIVING WILL PROCEDURES FOR EMERGENCY MEDICAL SERVICES PERSONNEL

(Emergency Medical Services)

To: All Interested Persons

1. On November 9, 1989, the department published notice of the proposed adoption of the above rules at page 1737 of the 1989 Montana Administrative Register, issue no. 21.

2. The department has adopted the rules as proposed, with the following amendments (new material is underlined, material to be deleted is interlined):

RULE I (16.30.901) DEFINITIONS Same as proposed.

RULE II (16.30.902) LIVING WILL PROTOCOL (1) Under any of the following three circumstances, emergency medical services personnel must follow the protocol approved by the board of medical examiners for withholding life-sustaining procedures from a patient:

(a) The identity of the patient has been clearly established and the personnel have been presented with any one of the following:

(i)-(iii) Same as proposed.

(b)-(c) Same as proposed.

(2) Same as proposed.

(3) This rule applies to an inter-hospital transfer of patients as well as a response to an emergency by emergency medical service personnel.

RULE III (16.30.903) SOURCE OF COMFORT ONE IDENTIFICATION Same as proposed.

3. The Montana Hospital Association made the following comments concerning Rule II:

Comment: The meaning of Rule II(1) would be clearer if, in the introductory phrases of (1) and (1)(a), language were added indicating that any one of the choices subsequently listed would be sufficient, thereby avoiding confusion over whether one or a combination of the listed items was required.

Response: The department agreed and adopted the suggested amendments.

Comment: It is unclear whether Rule II applies when a patient is being transported between hospitals by EMS person-

nel.

Response: The department agreed that the Living Will Act was intended to apply to inter-hospital transfers as well as emergency situations, and adopted clarifying language accordingly.

for William J. Gutz
DONALD E. PIZZINI, Director

Certified to the Secretary of State December 11, 1989 .

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

In the matter of the adoption of rules I through XXXII relating to asbestos control ARM 16.42.301 through 16.42.327, and 16.42.401 through 16.42.405	))))	NOTICE OF ADOPTION OF NEW RULES I THROUGH XXXII RELATING TO ASBESTOS CONTROL (Occupational Health)

To: All Interested Persons

1. On November 9, 1989, the Department of Health and Environmental Sciences published a notice of public hearing on the proposed adoption of rules relating to regulation of asbestos abatement projects, at page 1740 of the Montana Administrative Register, issue number 21.

2. As a result of the oral comments received at the hearing, the written comments received on the public record and the department's review of the comments and the proposed rules, the department has adopted all of the proposed new rules as proposed and has adopted the following rules as proposed with the following changes:

RULE I (16.42.301) APPLICABILITY AND PURPOSE Same as proposed.

RULE II (16.42.302) DEFINITIONS (1) Same as proposed.

(2) "Asbestos abatement" means the repair, enclosure, encapsulation, removal, and/or disposal of friable asbestos-containing material or asbestos containing material which may become friable as a result of or during the removal, repair, enclosure, disposal, or encapsulation process.

(3) through (16) Same as proposed.

(17) "Friable asbestos-containing material" means any material containing more than 1 percent asbestos ~~by weight~~ applied on ceilings, walls, structural members, piping, duct work, or any other part of a structure which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(18) "LEA" (local education agency) means:

(a) Any local educational agency as defined in 20 U.S.C. 3381, 1989 edition. Reference to "State" in this definition refers to the state of Montana.

(b) The owner of any nonpublic, nonprofit elementary, or secondary school building;

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921, et seq.).

(18) through (20) Will remain as proposed but will be

numbered (19) through (21)

~~(21) "School" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public and/or private expense.~~

(22) "School" means any public or private day or residential school that provides elementary or secondary education for grade 12 or under pursuant to state law.

(23) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of educational or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in this definition of "school building" under subsections (a), (b), or (c);

(e) Any portico or covered exterior hallway or walkway;

(f) Any exterior portion of a mechanical system used to condition interior space.

(22) through (25) Will remain the same as proposed but will be numbered (24) through (27).

RULE III (16.42.303) EXCLUSIONS Same as proposed.

RULE IV (16.42.304) EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES OTHER THAN ~~PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS~~ LEA SCHOOL BUILDINGS

(1) In a structure other than a ~~public or private elementary or secondary school~~ LEA school building, if the owner or other similarly placed person in charge of the structure chooses to evaluate the asbestos hazard in the structure through the use of an asbestos inspector, the asbestos hazard must be evaluated by the asbestos inspector according to the methods contained in 40 CFR 763.85, 1988 edition, (inspections and reinspection), 40 CFR 763.86, 1988 edition, (sampling), 40 CFR 763.87, 1988 edition, (analysis), and 40 CFR 763.88, 1988 edition (assessment). The asbestos inspector is solely responsible for failure to follow these inspection methods. The owner may be responsible under Rule VIII for hiring an asbestos inspector who is not accredited.

(2)(a) through (e) Same as proposed.

(f) Analysis for air samples or bulk samples is to be done by phase contrast microscopy (PCM) utilizing the National Institute of Occupational Safety and Health (NIOSH) 7400 method published in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(g) Analysis for air samples or bulk samples is to be done by a laboratory approved by EPA or the National Institute for Standards and Technology (NIST).

(3) Same as proposed.

RULE V (16.42.305) CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES OTHER THAN ~~PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS~~ LEA SCHOOL BUILDINGS (1)(a) At the conclusion of any asbestos abatement project performed in a structure other than a ~~public or private elementary or secondary school~~ LEA school building, the asbestos abatement contractor or the person in charge of the asbestos abatement project, such as the owner or manager of a structure, shall ensure that the maximum allowable indoor concentration for airborne fibers in a non-occupational setting is not more than 0.01 fibers per cubic centimeter of air (f/cc), represented by an average of the results of five air samples. The standard of 0.01 f/cc is not applicable where asbestos abatement in a building has occurred immediately prior to demolition of a building.

(b) Same as proposed.

(c) Collection must involve aggressive air sampling techniques such as use of leaf blowers and/or fans placed in a setting sufficient to create maximum air disturbance in all potentially occupiable areas. Aggressive air sampling is not necessary where asbestos abatement in a building has occurred immediately prior to demolition and in areas which are not occupied, such as crawl spaces.

~~(d) Each sample shall represent an eight hour time weighted average (TWA).~~

~~(e)~~(d) For each sample collected, the minimum volume of air drawn through the collecting filter must be 1,199 liters of air for 25 mm filters or 2,799 liters of air for 37 mm filters.

~~(f)~~(e) Analysis for air samples will be done by phase contrast microscopy (PCM) utilizing the National Institute of Occupational Safety and Health 7400 method contained in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(f) Analysis for air samples is to be done by a laboratory approved by EPA or National Institute for Standards and Technology (NIST).

(2) Same as proposed.

(3)(a) In the event that the maximum allowable limit for airborne fibers is exceeded, the asbestos abatement contractor or the person in charge of the asbestos abatement project shall ensure that further evaluation is conducted on air samples, by PCM method outlined in subsection (1)(e) of this rule following further cleaning or by using TEM analysis as outlined in 40 CFR 763.90(i), 1988 edition.

(b) The individual(s) referred to in subsection (2) above must conduct the air sampling ~~and TEM analysis~~. If the TEM analysis indicates that the air concentration inside is higher than the air concentration outside, as specified in 40 CFR 763.90(i), 1988 edition, then the asbestos abatement contractor or person in charge of the asbestos abatement project must repeat the cleaning effort or response action until it is complete. A response action is complete when the requirements of the TEM analysis are met or when the air concentration is below

.01 f/cc as determined by the PCM analysis.

(c) through (f) Same as proposed.

(4) Same as proposed.

RULE VI (16.42.306) EVALUATION OF ASBESTOS HAZARDS IN ~~PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS~~ LEA SCHOOL BUILDINGS (1) In a ~~public or private elementary school~~ LEA school building, the asbestos hazard must be evaluated by the ~~school~~ LEA by the appropriate person accredited in an asbestos-type occupation according to the method outlined in 40 CFR 763.85, 1988 edition, (inspections and reinspection); 40 CFR 763.86, 1988 edition, (sampling); 40 CFR 763.87, 1988 edition, (analysis); 40 CFR 763.88, 1988 edition, (assessment); and 40 CFR 763.90, 1988 edition, (response actions).

(2) Same as proposed.

RULE VII (16.42.307) CLEARING ASBESTOS ABATEMENT PROJECTS IN ~~PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS~~ LEA SCHOOL BUILDINGS (1) A ~~public or private elementary or secondary school~~ LEA shall ensure that at the conclusion of any asbestos abatement project performed within a ~~public or private elementary or secondary school structure~~ LEA school building, inspections and/or sampling techniques, analytical techniques (PCM and TEM), phasing in of transmission electron microscopy (TEM) analysis, and visual inspection are performed and these techniques and analysis are performed in accordance with 40 CFR 763.90 (i), 1988 edition.

(2) Same as proposed.

RULE VIII (16.42.308) REQUIREMENTS OF ACCREDITATION AND PERMITTING FOR PERSONS ENGAGED IN AN ASBESTOS-TYPE OCCUPATION Same as proposed.

RULE IX (16.42.309) ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER (1) through (2) Same as proposed.

(3) A person seeking accreditation as an asbestos management planner must be an accredited asbestos inspector prior to taking the management planner course.

RULE X (16.42.310) through RULE XX (16.42.320) Same as proposed.

RULE XXI (16.42.321) ASBESTOS ABATEMENT PROJECT PERMITS

(1) through (3) Same as proposed.

(4) All asbestos removed during an asbestos abatement project must be properly disposed of in an approved asbestos disposal facility. Proper disposal must be done in accordance with the provisions outlined in ~~Federal Register Vol. 54, No. 6 (January 10, 1989)~~ 40 CFR part 61, subpart M.

(5) through (8) Same as proposed.

(9) The department hereby adopts and incorporates by reference 29 CFR 1926.58, 1988 edition, including all appen-

dices; 40 CFR Part 763, 1988 edition, 40 CFR 763.120, 1988 edition, 40 CFR 763.121, 1988 edition, and 40 CFR 763.124, 1988 edition, which set forth requirements for asbestos standards for the construction industry and worker protection; and ~~Federal Register Vol. 54, Nov. 6 (January 10, 1989)~~ 40 CFR part 61, subpart M which sets forth requirements for transportation and disposal of asbestos-containing material. A copy of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

RULE XXII (16.42.322) through RULE XXIII (16.42.323) Same as proposed.

RULE XXIV (16.42.324) ASBESTOS ABATEMENT PROJECT CONTROL MEASURES (1) Same as proposed.

(2) On-site air monitoring must be conducted by an accredited asbestos contractor/supervisor, an engineer or industrial hygienist.

RULE XXV (16.42.325) RECORDKEEPING (1) through (2)(f) Same as proposed.

(g) Transportation manifest records ~~as outlined in Federal Register Vol. 54, No. 6 (January 10, 1989)~~ which indicate the amount of asbestos containing material transported to an approved asbestos disposal facility and the name and location of such facility.

~~(3) The department hereby adopts and incorporates by reference Federal Register Vol. 54, Nov. 6 (January 10, 1989) which pertains to transportation and disposal of asbestos containing materials. A copy of Federal Register Vol. 54, No. 6 (January 10, 1989) may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.~~

RULE XXVI (16.42.326) through RULE XXVII (16.42.327) Same as proposed.

RULE XXVIII (16.42.401) FEES FOR PERMITS Same as proposed.

RULE XXIX (16.42.402) ACCREDITATION & ACCREDITATION RENEWAL APPLICATIONS (1)(a) through (c) Same as proposed.

(d) asbestos contractor/asbestos abatement supervisor $100

~~(e) asbestos abatement supervisor ..... $ 50~~

~~(f)~~(e) asbestos worker ..... $ 25

(2) Same as proposed.

RULE XXX (16.42.403) through RULE XXXII (16.42.405) Same as proposed.

4. The following comments were received on the proposed rules and the department makes the following responses:

RULE II (16.42.302) DEFINITIONS

COMMENT: A comment was received questioning the application of the definition of "asbestos abatement project" to installation of new ACM piping gaskets.

RESPONSE: The definition only applies to friable or potentially friable asbestos containing material. If the gaskets are properly handled and would not become friable or are not friable then the definition would not apply.

COMMENT: A comment was received indicating that the definition of "non-occupational setting" does not apply to areas of restricted public access.

RESPONSE: This definition does describe all areas which are occupied by individuals who during the course of daily work or activities do not handle, work with, or are exposed to asbestos resulting from an asbestos abatement project. This includes areas of restricted public access.

COMMENT: A comment was received requesting the removal of the term "by weight" from the definition of "friable asbestos-containing material" to be consistent with the definition contained within Public Law 99-519 (AHERA).

RESPONSE: This change has been incorporated in the proposed rules.

COMMENT: A comment was received requesting that the definition of "school" be changed to the AHERA definition for "LEA" (Local Education Agency) to be consistent with AHERA and facilitate EPA approval of the Montana Asbestos control program.

RESPONSE: This change has been incorporated along with the addition of a definition for "school" and "school building" to be consistent with AHERA. Additional changes in terms have been made in rules IV, V, VI, and VII to be consistent with the definitions.

RULE III (16.42.303) EXCLUSIONS

COMMENT: A comment was received asking if the rules apply to federal asbestos abatement projects on federal facilities, and can you require state permit fees and use of state accredited persons on federal facilities.

RESPONSE: The state does not have regulatory authority on federal facilities.

RULE IV (16.42.304) EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES OTHER THAN PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS

COMMENT: A comment was received indicating that Rule

IV(2)(d) should remove the qualification of a time weighted average on the basis that the time weighted average is not appropriate for evaluation of the asbestos hazard.

RESPONSE: The department feels that a time weighted average is appropriate in the evaluation of the asbestos hazard when aggressive air sampling techniques are not used.

COMMENT: A comment was received requesting the inclusion of a rule which would require that the analysis of asbestos samples be completed by a laboratory approved by the U.S. Environmental Protection Agency (EPA) or the National Institute for Standards and Technology (NIST).

RESPONSE: The department agrees that this inclusion is necessary for the protection of public health and safety. This change has been included in the rules.

COMMENT: A comment was received requesting a clarification to determine if this rule required evaluation of asbestos hazards in structures.

RESPONSE: This rule does not require evaluation of asbestos hazards in structures, but rather requires that if such evaluation is undertaken, it be done according to the standards set forth in this rule.

COMMENT: A comment was received stating that requiring AHERA-type inspections on all real estate is a very expensive proposition. "Perhaps it can be justified in public buildings, but certainly not in other real estate. The inspector should be required to explain the limitations of his findings, which he's probably already doing to protect himself from liability suits. The extra cost of an AHERA-type inspection will possibly keep people from soliciting an inspection."

RESPONSE: The proposed rules do not require inspections to be done in structures, however if such inspection is done by the inspectors accredited by the state, the inspection should be performed according to some uniform and protective standards. It is the opinion of the department that AHERA-type inspections constitute the most widely recognized standard of practice. It is not possible to be absolutely sure of asbestos inspection results without taking samples; the EPA has stated that without samples, one must assume that the material contains asbestos. An inspector who does not take samples, must not merely assume that questionable materials contain asbestos. A visual assessment is not necessarily reliable.

RULE V (16.42.305) CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES OTHER THAN PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS

COMMENT: A comment was received requesting waivers from Rule V(1)(a) to allow industrial facilities to use the OSHA

action level of 0.1 f/cc.

RESPONSE: The OSHA action level triggers asbestos worker monitoring and health surveillance requirements. The proposed rule is for protection of individuals who are not asbestos workers and therefore are not exposed to occupational levels of asbestos. The department does not believe that such a waiver is appropriate at this time. A mechanism for waivers is incorporated in the rules which will allow the department to grant waivers for clearance air sample methods providing a comparable degree of safety as such methods are developed by changing technology.

COMMENT: A comment was received suggesting that 0.01 f/cc (Rule V(1)(a)) is unnecessary in an unoccupied building due for demolition.

RESPONSE: The department concurs and a change has been incorporated which requires that air samples be completed prior to re-occupation of the structure. If the structure is scheduled for demolition and is not re-occupied the clearance standard would not be required.

COMMENT: A comment was received indicating that the way the rule is written, air clearance samples would be required for installation of asbestos-containing material in new construction. The commenter asks if this was the state's intention.

RESPONSE: It is the intention of the department that ACM being placed in new construction be subject to this rule if they become friable or are potentially friable.

COMMENT: A comment was received suggesting the requirement for aggressive air sampling in Rule V(1)(c) should be limited to normally occupied areas: "Aggressive air sampling in crawl spaces with dirt floors might make clearance unobtainable. Aggressive air sampling in glove/bag removal situations is also questionable. Perhaps aggressive air sampling could be limited to jobs of greater than 260 lineal feet or 160 square feet? In demolition situations when the building is unoccupied aggressive air sampling should not be required."

RESPONSE: The department agrees that aggressive air sampling is not necessary in areas which are not potentially occupiable and has incorporated a change reflecting such. Glove bag removal is normally done on small projects which are not subject to the proposed rules and if used on larger projects may be in violation of federal standards and may lead to some contamination when the glove bag is moved. The department has investigated many projects which were less than 160 square feet or 250 linear feet which resulted in contamination of the structure. To institute a limit larger than those proposed would leave a large segment of the public unprotected from

improperly completed asbestos abatement projects.

COMMENT: A comment was received requesting a deletion of Rule V(1)(d) on the basis that this requirement is not appropriate for clearance samples using aggressive air sampling techniques.

RESPONSE: The department concurs and a deletion of this requirement has been incorporated in the rules.

COMMENT: A comment was received regarding clarification of Rule V(2)(a) which lists persons who can collect air samples. Rule XXIV(2) lists a differing requirement. The commenter requested that the department clarify who is allowed to collect air samples, and whether this person must be allowed to collect air samples, and, if so, must this person be independent. The commenter suggests that independent sampling is important, and that the sampling technician should have at least 40 hours of on-site experience working with a senior technician in addition to the proper contractor/supervisor accreditation.

RESPONSE: The department concurs and has incorporated the appropriate change in Rule XXIV(2).

COMMENT: A comment was received stating that the cost of requiring an outside consultant to run the air samples on small jobs will be cost prohibitive. It was stated by the commenter that Rule V(2)(a) should be limited to public buildings and/or 260 lineal feet or 160 square feet of ACM.

RESPONSE: The rules do not allow a contractor to take his own clearance samples so as to avoid a possible conflict of interest and in order to insure the protection of the public health and safety. To institute a limit larger than those proposed would leave a large segment of the public unprotected from improperly completed asbestos abatement projects.

COMMENT: A comment was received which indicated that Rule V(2)(b) was not fair to contractors who cannot take their own samples for clearance.

RESPONSE: The rules will not allow a contractor to take his own clearance samples so as to avoid a possible conflict of interest and in order to insure the protection of the public health and safety. This rule does allow a contractor to collect samples for clearance when the contractor is contractually obligated to an annual permit holder and the permit holder assumes the responsibility to insure that the samples were collected properly and in the interest of the facility owner. No changes have been made.

COMMENT: A comment was received requesting that Rule V(3)(a) be clarified to indicate that a contractor may do

additional cleaning and PCM analysis of samples for clearance before resorting to TEM analysis.

RESPONSE: The department concurs and has made the necessary clarification in the rules.

COMMENT: A comment was received indicating that the reference to TEM analysis should be deleted from Rule V(3)(b) because the individual contractor does not actually do the TEM analysis but rather an approved lab completes the analysis.

RESPONSE: The department concurs and the appropriate deletion has been made to the rules.

COMMENT: A comment was received indicating that Rule V(3)(b) would impose an added expense that is not needed.

RESPONSE: The department feels that TEM analysis is indicated if the PCM air clearance standard cannot be met by repeated cleaning and sample analysis. TEM analysis unlike the PCM analysis can distinguish between asbestos and other fibers and meet the safety requirements if the PCM air clearance standard cannot be met. TEM analysis is only required if the PCM air clearance standard cannot be met with repeated cleaning and sampling.

RULE VIII (16.42.308) REQUIREMENTS OF ACCREDITATION AND PERMITTING FOR PERSONS ENGAGED IN AN ASBESTOS-TYPE OCCUPATION

COMMENT: A comment was received stating that there is no problem with state accreditation, however there is a problem with persons being limited to courses approved by the DHES. Persons should be allowed to go to the University of Kansas or University of Utah to take courses that interest them. It was stated that most likely, those institutions that teach quality courses will not be interested in paying the state's fees just so they can attract a few more students. It was stated that if the state is adamant about keeping this rule, it should drop the reciprocity idea because the rule implies that there are other non-sanctioned courses out there that meet or exceed the requirements of the DHES.

RESPONSE: Reciprocity will involve accreditation by the department. EPA has required the state to adopt an accreditation program and is no longer accrediting courses. It is anticipated that reciprocity will be needed and the proposed rules allow such without compromising the level of training required of a course.

Rule IX (16.42.309) ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER

COMMENT: A comment was received stating that the AHERA regulations allow a contractor, supervisor and designer all to

take a common four-day course which covers all applicable topics. An example is the "Practices and Procedures" presented by the University of Kansas. "Your regulations should permit such an interchangeable course as long as the necessary topics are covered."

RESPONSE: There is nothing in the proposed rules which would prohibit the approval of such a course which contains all of the appropriate topics.

RULE X (16.42.310) RENEWAL OF ACCREDITATION

COMMENT: Several commenters felt that a grace period should be instituted to allow individuals to continue to work after the expiration of their accreditation while waiting to complete the required refresher course.

RESPONSE: This is in violation of requirements under AHERA which requires the individual to complete the required refresher course prior to expiration of their accreditation. If such a grace period were instituted, the Montana program would not be approved by the EPA. A grace period is allowed for application of renewal of credentials but the individual may not work in the interim after the expiration of his/her accreditation. This will allow the person to apply for renewal rather than require the individual to complete the initial course again and apply for accreditation.

RULE XIII (16.42.313) COURSE APPROVAL

COMMENT: A comment was received stating that "it appears that a phase-in period on training course approval will be needed. With less than one month until the rules go into effect, courses will not be available in Montana. Acceptance of recognized out-of-state training, such as the University of Kansas, will be necessary on an expedited basis."

RESPONSE: The department will recognize EPA accredited courses completed prior to 12/31/89.

RULE XV (16.42.315) ASBESTOS MANAGEMENT PLANNERS COURSE

COMMENT: A comment was received indicating that to receive accreditation as a management planner, he must be an accredited inspector prior to taking the course for management planner under AHERA. This would be a required change in the rules for EPA approval of Montana's Asbestos Control Program.

RESPONSE: The necessary change has been incorporated in the rules.

RULE XVI (16.42.316) ASBESTOS ABATEMENT PROJECT DESIGNER'S COURSE

COMMENT: A comment was received suggesting a project designer, in addition to holding the proper asbestos accreditation, should be required by the rules to be a Registered Architect or Registered Professional Engineer. The DHES should

consider adopting educational standards as outlined in Qualifications (4), I. Model Contractor Accreditation Plan, Appendix C, Subpart E, 40 CFR 763.

RESPONSE: This option was discussed by the Asbestos Rules Advisory Committee. The majority of the committee was not in favor of such a rule, viewing it as professional fence building. The training requirements for the disciplines do address the role of other consultants and the need to use such consultants appropriately.

RULE XXI (16.42.321) ASBESTOS ABATEMENT PROJECT PERMITS

COMMENT: Several comments were received indicating the need to provide exact dates of an asbestos abatement project and that in the event these dates change, notification requirements would present a hardship on the contractor.

RESPONSE: The department recognizes that this rule will require some additional effort on the part of the contractor, however it is necessary to provide for the efficient operation of the program. The department will have an inspector in the field based on the dates provided for in the asbestos abatement project permit. Should the project not be in operation due to changes by the contractor when the inspector arrives that inspection trip may be wasted especially in the more rural areas of the state. This rule is necessary to insure that program resources are utilized as efficiently as possible. No changes have been made.

COMMENT: A comment was received indicating that the EPA has experienced a delay in the promulgation of regulations proposed in Federal Register Vol. 54, No. 6 (January 10, 1989) which will result in substantial changes. It was strongly suggested that the Federal Register cited be changed to 40 CFR Part 61, Subpart M, which is the current federal regulations.

RESPONSE: The department concurs and the necessary changes have been incorporated.

COMMENT: A comment was received indicating that it was unnecessarily burdensome to require submission of more than one notification to the department as required in Rule XXI(5).

RESPONSE: The department intends to require only one notification (in most cases) which will be forwarded to all necessary areas of the department. However it is possible in some cases such as under an annual permit that a project which requires state and federal notification would not be noticed to the asbestos control program within the required time frame if at all. This rule is necessary to insure that all required notices are submitted. It is the intent of the department to centralize and expedite notifications as much as is reasonably possible. No changes have been made.

COMMENT: One commenter questioned the significance of the 3 square feet or 3 linear feet per year on a continuous surface limitation.

RESPONSE: This rule is necessary to prevent a large project from being divided into several small projects separated by only short periods of time and therefore not being subject to regulation.

COMMENT: A comment was received suggesting the DHES should limit project permits to jobs involving public buildings and/or 260 lineal or 160 square feet of ACM. "The department has limited staff and will find itself spending a disproportionate amount of time on the little permits, thus reducing the amount of time it takes to properly review the larger jobs."

RESPONSE: The application of project permits is dictated by statute to be projects of 3 square feet or 3 linear feet or greater.

COMMENT: A comment was received stating as a regulatory agency, the DHES has an obligation to establish a time frame for permit review. A contractor should have an idea when a permit might be issued.

"The small project cost should be $5,000. Many projects are in the $4,000 range, with the added cost of the fee, the total is around $5,000.

The department should consider the following proposal:

Project Size	Review Period Not to Exceed
< $5,000	7 Calendar Days
$5,000 - $25,000	14 Calendar Days
> $25,000	21 Calendar Days"

RESPONSE: The small project time limitation for issuance of a permit is established by statute. The department does not favor any other time limitations without some sort of history establishing typical workloads and required resources.

RULE XXV (16.42.325) RECORDKEEPING

COMMENT: A comment was received indicating that the EPA has experienced a delay in the promulgation of regulations proposed in Federal Register Vol. 54, No. 6 (January 10, 1989) which will result in substantial changes. It was strongly suggested that the Federal Register cited be changed to 40 CFR Part 61, Subpart M, which is the current federal regulations.

RESPONSE: The department concurs and the necessary changes have been incorporated.

RULE XXVI (16.42.326) INSPECTIONS

COMMENT: A comment was received stating this rule is written in such a manner that the department could inspect as many times as it wished and charge $300 for each visit. "Something must be put in the rule to keep DHES personnel from

arbitrary inspections. There is no way a contractor would be able to anticipate how many inspections he is likely to receive during the course of a job."

RESPONSE: Additional inspections would only be done by the department to insure that corrective action had been completed pursuant to an order issued by the department. The best way for a contractor to reduce or avoid additional inspections is to insure compliance with the statute and rules. The department will not have the resources to do additional arbitrary or unnecessary inspections.

RULE XXVIII (16.42.401) FEES FOR PERMITS

COMMENT: Several comments were received indicating extreme opposition to the added cost of asbestos abatement projects in schools which would be imposed by the proposed asbestos abatement project permit fees.

RESPONSE: The asbestos abatement project permit fees will be paid by the contractor in most cases. It is reasonable to assume that the contractor will pass on this cost in the contract. The legislature did require that the asbestos control program be a self supporting program by the assessment of fees. The fees are based on the cost of the program and the best information currently available to the department. Once a history of workload, required resources and fee income is established, the fees will be reviewed and adjusted to reflect the actual cost of the program.

RULE XXIX (16.42.402) ACCREDITATION & ACCREDITATION RENEWAL APPLICATIONS

COMMENT: Several comments were received questioning who would enforce the payment of fees by out-of-state workers working in Montana and what would the fee be.

RESPONSE: The department has the enforcement authority for the rules and the fees are as stated in this rule.

COMMENT: A comment was received indicating that it would make sense to incorporate the asbestos contractor and asbestos abatement supervisor accreditation into one accreditation with one fee since the required training course is the same.

RESPONSE: The department concurs and the necessary change has been incorporated.

General Comments

One commenter was in general opposition to the rules. This commenter felt that the rules would result in an adverse economic impact on general industry without any incremental occupational or public protection from asbestos exposure. This feeling was based on the perception that the rules would be more restrictive or needlessly duplicate federal requirements. This commenter felt that there should be an exemption from the

rules for general industry at fixed plant facilities.

RESPONSE: The legislature did not provide for exemptions of such general industry facilities. However the legislature did provide for recognition of such facilities which have asbestos health and safety programs in providing for annual permits. The department does feel that the proposed rules do provide additional protection which is not provided for under current federal regulations. The proposed rules set a minimum standard of training for all asbestos workers which is not provided for under current federal requirements. In addition the proposed rules establish a clearance standard for the completion of asbestos abatement projects which protect those workers in such facilities who are not asbestos workers. Current federal requirements set standards which allow all workers to be exposed to levels of asbestos which are considered occupational exposures with no distinction between the asbestos worker and the worker who has a job which is incidental to the normal operation of the facility.

COMMENT: One commenter made the statement that the proposed rules reflected a "well thought out and structured set of regulations".

for DONALD E. PIZZINI, Director

Certified to the Secretary of State December 11, 1989 .

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

In the matter of the adoption of the amendment of the prevailing wage enforcement rule, ARM 24.16.9009 and the adoption of ARM 24.16.9010 placing all prevailing wage cases under wage claim proceedings.	))))))	NOTICE OF ADOPTION OF AN AMENDMENT TO THE PREVAILING WAGE ENFORCEMENT RULE AND THE ADOPTION OF A NEW RULE WHICH INCLUDES ALL PREVAILING WAGE CASES UNDER WAGE CLAIM PROCEEDINGS

TO: All interested persons:

1. On October 26, 1989, the Department of Labor and Industry published a notice of proposed adoption of an amendment to the prevailing wage enforcement rule, ARM 24.16.9009, and the adoption of a new rule placing all prevailing wage cases under wage claim proceedings. The notice was published at pages 1654 and 1655 of the 1989 Montana Administrative Register, Issue No. 20.

2. No comments or testimony concerning the rules were received.

3. The agency has amended and adopted the rules as proposed.

4. The authority of the agency to amend and adopt the proposed rules is based on section 18-2-431, MCA and the rules implement section 18-2-407, MCA.

Mario A. Micone, Commissioner
Department of Labor & Industry

Certified to the Secretary of State on December 11, 1989.

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules concerning the review of wage claims by the Board of Personnel Appeals	)))	NOTICE OF ADOPTION OF ARM 24.26.701-702; 24.26.705-707; 24.26.710-712 FOR THE BOARD OF PERSONNEL APPEALS

TO: All interested persons:

1. On October 26, 1989, the Board of Personnel Appeals published a notice of proposed adoption of new rules concerning the review of wage claims by the Board. The notice can be found on pages 1656 through 1659 of the 1989 Montana Administrative Register, Issue No. 20.

2. No comments or testimony concerning the rules were received.

3. The Board has adopted the rules as proposed.

4. The authority of the Board to adopt the proposed rules is based on section 2-4-201, MCA and the rules implement section 39-3-217, MCA.

Robert A. Poore, Chairman
Board of Personnel Appeals

BEFORE THE
DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF THE TRANSFER OF PART OF THE ORGANIZATION AND FUNCTION OF THE DIVISION OF WORKERS' COMPENSATION TO THE EMPLOYMENT RELATIONS DIVISION OF THE DEPARTMENT OF LABOR AND INDUSTRY	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. On January 1, 1990 the Division of Workers' Compensation will transfer to the Employment Relations Division, Department of Labor and Industry part of its organization and function.

2. This transfer is required because the 1989 Legislature transferred part of the organization and certain functions of the Workers' Compensation Division to the Department of Labor and Industry in SB 428, Ch. 613, L. 1989 effective on the earlier signing of an executive order creating the State Mutual Insurance Fund or January 1, 1990.

3. Effective January 1, 1990 ARM Title 24, Chapters 29 and 30 (with the exception of ARM 24.29.101(9) and Title 24, Ch. 29, Subchapter 35) are hereby transferred without change of citation.

MARIO MICONE, Commissioner
Department of Labor and Industry

Certified to the Secretary of State December 8, 1989.

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

In the Matter of Amendment of Rules 38.4.105, 38.4.127, 38.4.132, 38.4.136, and 38.4.148 Regarding Intrastate Rail Rate Proceedings	))))	NOTICE OF AMENDMENT OF RULES REGARDING INTRASTATE RAIL RATE PROCEEDINGS

TO: All Interested Persons

1. On October 30, 1989 the Department of Public Service Regulation published notice at page 1796 of the 1989 Montana Administrative Rules, Issue Number 21, of rules regarding standards and procedures for regulation of intrastate rail rates.

2. The Commission has adopted the rules with the following changes.

38.4.105 NOTICE PERIOD FOR FILING RAILROAD TARIFFS

(1) No changes.

(a) Tariffs on independently established new or reduced rates may become effective upon one day notice.

~~(b) Any tariff changes to independently established rates, rules or provisions which effect a reduction in the value of service or an increase in a rate shall be on file at least seven work days before the effective date.~~

~~(c)~~ (b) Except as provided in (a) ~~and (b)~~ for independently established rates, in ~~(e)~~ (d) for joint rate surcharges or cancellations, and in ~~(f)~~ (e) for railroad contracts, tariffs shall be on file at least 20 days prior to the effective date for rates or provisions on new service or changes resulting in increased rates or decreased value of service.

~~(d)~~ (c) Except as provided in (a) ~~and (b)~~ for independently established rates, in ~~(e)~~ (d) for joint rate surcharges or cancellations, and in ~~(f)~~ (e) for railroad contracts, tariffs shall be on file at least 10 days prior to the effective date for changes resulting in decreased rates or changes resulting in neither increases nor reductions.

~~(e)~~ (d) A rail carrier applying a surcharge or cancelling joint rates pursuant to 49 U.S.C. § 10705a shall file a notice with this commission at least 45 days prior to its effective date.

~~(f)~~ (e) Railroad contracts shall be filed with this commission pursuant to the provisions of ARM 38.4.141.

3. The Commission has adopted the rules as proposed:

38.4.127 GEOGRAPHIC COMPETITION

38.4.132 ZONE OF RATE FLEXIBILITY

38.4.136 NONAPPLICABILITY

38.4.148 LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF

4. Comments: No comments were received.

Howard L. Ellis

HOWARD L. ELLIS, Vice-Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 11, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register.	))))	NOTICE OF AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION FOR THE MONTANA ADMINISTRATIVE REGISTER.

TO: All Interested Persons:

1. On November 9, 1989, the Secretary of State published notice of the proposed amendment of ARM 1.2.419 relating to filing, compiling, printer pickup and publication dates for the Montana Administrative Register for 1990 at page 1806 of the Montana Administrative Register, Issue number 21.

2. The Secretary of State has amended the rule as proposed.

3. No comments or testimony were received.

MIKE COONEY
Secretary of State

Dated this 11th day of December, 1989.

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

In the matter of the amendment of Rules 46.12.1011, 46.12.1012 and 46.12.1015 pertaining to specialized nonemergency medical transportation	))))	NOTICE OF THE AMENDMENT OF RULES 46.12.1011, 46.12.1012 AND 46.12.1015 PERTAINING TO SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION

TO: All Interested Persons

1. On November 9, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.1011, 46.12.1012 and 46.12.1015 pertaining to specialized nonemergency medical transportation at page 1811 of the 1989 Montana Administrative Register, issue number 21.

2. The Department has amended Rules 46.12.1011, 46.12.1012 and 46.12.1015 as proposed except for the removal of section 53-6-141 MCA in the implementation section.

3. No written comments or testimony were received.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State December 11, 1989.

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

In the matter of the amendment of Rules 46.12.1201, 46.12.1204, 46.12.1205 and 46.12.1206 pertaining to reimbursement of nursing facilities for nurse aide wage increases and oxygen equipment, incorporation of the patient assessment manual and other matters	)))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.1201, 46.12.1204, 46.12.1205 and 46.12.1206 PERTAINING TO REIMBURSEMENT OF NURSING FACILITIES FOR NURSE AIDE WAGE INCREASES AND OXYGEN EQUIPMENT, INCORPORATION OF THE PATIENT ASSESSMENT MANUAL AND OTHER MATTERS

TO: All Interested Persons

1. On November 9, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.1201, 46.12.1204, 46.12.1205 and 46.12.1206 pertaining to reimbursement of nursing facilities for nurse aide wage increases and oxygen equipment, incorporation of the patient assessment manual and other matters at page 1814 of the 1989 Montana Administrative Register, issue number 21.

2. The Department has amended Rule 46.12.1201 as proposed, except that the proposed implemented section is changed from section 53-6-141 MCA to section 53-6-101 MCA.

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

46.12.1204 PAYMENT RATE Subsections (1) through (7)(a)(i) remain as proposed.

(ii) Providers must document and submit to the department information on nurse aides employed by each provider. Required information must be submitted monthly on reporting/billing forms provided by the department and must include: nurse aide name, certification date, date of hire/termination, wage amount paid prior to and after certification, hours worked PAID during the period, and the effective date of the wage increase AND THE EMPLOYER CONTRIBUTION PERCENTAGES FOR EACH CATEGORY OF BENEFITS (FICA, FEDERAL UNEMPLOYMENT INSURANCE (FUI), STATE UNEMPLOYMENT INSURANCE (SUI), WORKERS' COMPENSATION, AND ANY PENSION/RETIREMENT CONTRIBUTIONS). Following receipt of the provider's reporting/billing forms, the department will compute the payment due the provider under subsections ~~(b)~~ (c) AND (e) and will submit to the department's fiscal agent a claim adjustment form directing payment to the provider.

(iii) Payment is limited to the medicaid share of the nurse aide wage increase AND RELATED EMPLOYER CONTRIBUTIONS

based on the percentage of medicaid utilization at each facility computed from form ~~SRS-MA14--(Nursing-Home-Patient-Census/Revenue)~~ SRS-MA15 (MONTHLY NURSING HOME STAFFING REPORT) FOR THE THREE MONTH PERIOD SEPTEMBER, OCTOBER AND NOVEMBER 1989 ~~of-the-most-recently-submitted-facility-cost-report-on file-with-the-department.~~

(b) THE SUM OF F AS CALCULATED IN SUBSECTION (e) AND D AS CALCULATED IN SUBSECTION (c) FOR THE PROVIDER WILL EQUAL THE TOTAL MONTHLY PAYMENT TO THE PROVIDER FOR NURSE AIDE WAGE INCREASES AND EMPLOYER CONTRIBUTIONS.

(bc) the formula for computing the payment attributable to nurse aide wage increases is as follows:

I x H = D

where:

(C - P) x U = I, such that

if I is less than .20, I = I

if I is greater than or equal to .20, I = .20

where:

I = Medicaid percentage of the increase in wages ~~benefits~~ tied to certification;

P = Previous hourly rate of pay ~~and benefits~~ prior to certification;

C = Current hourly rate of pay ~~and benefits~~ after certification;

H = Hours ~~worked~~ PAID at increased hourly rate;

U = Medicaid utilization percentage (form SRS-MA145), WHICH EQUALS THE SUM OF medicaid days FOR SEPTEMBER, OCTOBER AND NOVEMBER 1989 DIVIDED BY THE SUM OF THE total days REPORTED FOR SEPTEMBER, OCTOBER AND NOVEMBER 1989; and

D = Payment amount for THE WAGE INCREASE FOR each nurse aide.

~~The-sum-of-D-for-all-nurse-aide-wage-increases-for-the provider-will-equal-the-total-payment-to-the-provider-for the-month.~~

(d) EMPLOYER CONTRIBUTION PERCENTAGE INCLUDES THE APPLICABLE PERCENTAGE THAT THE EMPLOYER MUST CONTRIBUTE ATTRIBUTABLE TO THE NURSE AIDE WAGE INCREASES. EMPLOYER CONTRIBUTIONS INCLUDE THE EMPLOYER'S SHARE OF FICA, FUI, SUI, WORKERS COMPENSATION AND RETIREMENT OR PENSION BENEFITS. PROVIDERS MUST REPORT THE PERCENTAGES APPLICABLE TO EACH CATEGORY OF BENEFITS ON THE REPORTING/BILLING FORM PROVIDED BY THE DEPARTMENT. THE PERCENTAGES FOR EACH OF THE EMPLOYER CONTRIBUTION CATEGORIES ON THE REPORTING/BILLING FORM WILL BE TOTALED TO COMPUTE A SINGLE PROVIDER-SPECIFIC EMPLOYER CONTRIBUTION PERCENTAGE PERTAINING TO THE INCREASE IN NURSE AIDE WAGES AS A RESULT OF CERTIFICATION.

(e) THE FORMULA FOR COMPUTING THE PAYMENT ATTRIBUTABLE TO THE EMPLOYER CONTRIBUTION PERTAINING TO THE NURSE AIDE WAGE INCREASE WILL BE COMPUTED BY APPLYING THE EMPLOYER CONTRIBUTION PERCENTAGE TO THE AMOUNT PAID TO THE PROVIDER FOR THE

WAGE INCREASE FOR EACH NURSE AIDE AS FOLLOWS:

D x E = F

WHERE:

D = PAYMENT AMOUNT FOR THE WAGE INCREASE FOR EACH NURSE AIDE AS CALCULATED UNDER SUBSECTION (c);

E = TOTAL EMPLOYER CONTRIBUTION PERCENTAGE;

F = PAYMENT AMOUNT FOR EMPLOYER CONTRIBUTIONS FOR EACH NURSE AIDE;

(f) EACH MONTH THE DEPARTMENT WILL PROVIDE A TURN AROUND DOCUMENT (REPORTING/BILLING FORM) TO THE PROVIDER WHICH LISTS THE INFORMATION SUBMITTED TO THE DEPARTMENT BY THE PROVIDER FOR THE PRECEDING MONTH. PROVIDERS MUST REVIEW AND VERIFY THE INFORMATION ON THE TURN AROUND DOCUMENT, FILL IN THE NURSE AIDE HOURS FOR THE NEW REPORTING PERIOD, MODIFY ANY OF THE REPORTING FIELDS THAT HAVE CHANGED FROM THE PRIOR REPORTING PERIOD AND RETURN THE DOCUMENT TO THE DEPARTMENT.

(eg) Nursing facilities will be required to keep documentation to support hours, and wages, AND EMPLOYER CONTRIBUTIONS reported to the department regarding nurse aide wage increases. This documentation is subject to audit and evaluation in accordance with ARM 46.12.1208 requirements. THIS DOCUMENTATION MUST BE MAINTAINED BY THE FACILITY FOR 3 YEARS FROM THE DATE THE FORM IS FILED WITH THE DEPARTMENT. If the department determines that documentation is not adequate to support the claim for nurse aide wage increases OR EMPLOYER CONTRIBUTIONS, or that an overpayment has otherwise occurred, the amounts paid under this subsection will be subject to recovery in accordance with ARM 46.12.1209. UNDERPAYMENTS WILL BE REIMBURSED ACCORDING TO THE PROVISIONS OF ARM 46.12.1209(4). A provider may object to the payment amount determined by the department or to an overpayment determination by the department through the administrative review and hearing process set forth in ARM 46.12.1210.

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

46.12.1205 PAYMENT PROCEDURES Subsections (1) through (2)(a)(cvx)(I) remain as proposed.

(II) Payment will be allowable only if a certificate of medical necessity indicating the PO2 level or oxygen saturation level is ~~attached~~ MAINTAINED BY THE FACILITY. The certificate of need must meet or exceed medicare criteria for authorization. This certificate of medical need must be signed and dated by the patient's physician AND MAINTAINED BY THE FACILITY TO SUPPORT ITS CLAIM. IF THIS CERTIFICATE IS NOT AVAILABLE ON REQUEST OF THE DEPARTMENT OR DURING AUDIT, THE DEPARTMENT WILL BE ENTITLED TO COLLECT THE CORRESPONDING PAYMENT FROM THE PROVIDER AS AN OVERPAYMENT IN ACCORDANCE WITH ARM 46.12.1209.

(III) The provider must attach to its billing claim a copy of the prior authorization form ~~and the certificate of medical necessity~~.

Subsections (2)(a)(cvx)(A)(IV) through (8) remain as proposed.

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

46.12.1206 PATIENT ASSESSMENTS, STAFFING REPORTS AND DEFICIENCIES (1) Each provider will report to the department each month the care requirements for each medicaid resident in the facility on the forms provided and ~~according to~~ in accordance with the patient assessment manual and instructions supplied by the department. The patient assessment manual dated ~~October 1989~~ JANUARY 1990, is hereby adopted and incorporated herein by reference. A copy of this manual is available from the Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, MT 59604-4210.

Subsections (2) through (9)(d) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The implementing statute in the first notice of proposed rules, 56-6-141 MCA, "Amount, Scope and Duration of Assistance," has been repealed. The correct implementing statute is 53-6-101 MCA, "Montana Medicaid Program Authorization of Services."

RESPONSE: The department has made this clarification.

COMMENT REGARDING OXYGEN CONCENTRATORS

COMMENT: The addition of prior authorization procedures for payment of the cost of oxygen concentrators is unnecessary. The department could informally review purchase invoices to establish a fee appropriate to the service. The certificate of medical necessity could be kept on file for department review rather than required to be submitted with every claim.

RESPONSE: The rule change to allow for direct reimbursement for depreciation of oxygen concentrators is significant. The department does not believe that prior authorization of reimbursement for this type of cost is unreasonable. However, the department will revise the rule to allow providers to maintain the certificate of medical necessity in the recipient's medical record rather than submitting it with each claim form.

COMMENTS REGARDING NURSE AIDE WAGE INCREASES

COMMENT: The department should modify ARM 46.12.1204(7)(a)(iii)(e) to allow for correction of underpayment as well as overpayment.

RESPONSE: The existing language of the proposed rule allows a provider to "object to the payment amount determined by the department" in accordance with the provisions of ARM 46.12.1209. This language allows a provider to object to and obtain a fair hearing with respect to alleged underpayments. Language has been added to the rule specifying that underpayments are reimbursed in accordance with ARM 46.12.1209.

COMMENT: The proposed language pertaining to the nurse aide wage increase requires that wage and hour information be provided on a monthly basis. Because many facility pay periods do not coincide with calendar months, we urge the department to provide for reporting according to the facility's pay periods. This will allow facilities to use information currently available, instead of having to create separate records for purposes of this report.

RESPONSE: The department is aware that there are many different payroll cycles at nursing facilities. The department will accept a reporting form that as closely as possible corresponds to the month the form is being submitted for. This will make it easier for providers as they will not have to prorate payroll cycles for purposes of reporting nurse aide wages. The provider must indicate on the reporting form what period the information pertains to. The department will accept only one reporting form from each provider per month and will provide a turn around form to be used for the next period for reporting and billing purposes.

COMMENT: The term "hours worked" and "hours paid" appear to be used interchangeably. It is important that the term "hours paid" be used in the regulations so that the calculation can be based on all hours for which a nurse aide is paid, including vacation and sick leave hours.

RESPONSE: The department agrees with this comment and will change the rule language to "hours paid" so that the increase is applicable to all hours for which the nurse aide is paid during the reporting period.

COMMENT: The proposal for reimbursement for nurse aide wage increases bases the calculation of the Medicaid share of the wage increases on the MA-14 cost report form for the most recently submitted cost report period. We urge the department

to base this calculation on more current data. The department has monthly data on Medicaid days and patient days for facilities. This would be a much more accurate way to calculate the Medicaid share in light of the repeal of the Medicare Catastrophic Coverage Act (MCCA) since many facilities' most recent cost report would include a substantial period of time during which Medicare coverage was in effect. The repeal of the MCCA will mean decreased Medicare days and increased Medicaid days, which must be accounted for. If this provision is not changed, Medicaid will be paying for considerably less than its fair share of the cost of this wage increase.

RESPONSE: The department agrees that the most current information on Medicaid utilization should be used if it is readily available. The department proposes to change the language in the reimbursement rules pertaining to the use of form MA-14 to compute the Medicaid utilization percentage. The department will use in its place the average Medicaid utilization for the three month period September, October and November 1989, from each facility's form MA-15, Monthly Nursing Home Staffing Report. The sum of the Medicaid days for this three month period divided by the sum of the total days reported for the three months will be used to compute the Medicaid utilization percentage for each facility. This utilization percentage will be used through June 30, 1990 in the computation of the nurse aide wage increase. This will allow the most current utilization data to be used in the computation and should minimize the effects of the MCCA repeal on the utilization percentage.

COMMENT: The proposed rule changes require nursing facilities to keep documentation to support hours, wages and employer contributions reported to the department. This documentation is subject to audit and the department may determine whether the documentation is "adequate" to support the claims made. The department should clarify what documentation will be considered adequate, how long the documentation must be kept, and whether the audits referred to in this section will be done by the department, Medicare, or others.

RESPONSE: The department intends that the payments to facilities for nurse aide wage increases and employer contributions be subject to the general rules regarding documentation, audit and retention of records, as well as subject to the specific requirements in the proposed rules. Language has been added to the proposed rules clarifying that the general rules apply. The department has incorporated the requirements of ARM 46.12.1208 into this section. Section 1208(5) specifies the documentation that the facility will maintain to support costs submitted to the department and the audit requirements are listed at a 1208(6). The records and documentation in support

of this claim for nurse aide wage increases should be maintained by the facility for three years from the date it is filed, as is specified in the Maintenance of Records section of ARM 46.12.1208.

COMMENT: The legislature intended that payments to nursing facilities for nurse aide wage increases would include not only up to 20 cents per hour for actual wage increases tied to certification, but in addition would include increases in employer contributions attributable to the actual wage increases. Nursing facilities should not be required to pay these additional amounts without reimbursement from the department, and employer contributions should not be taken from the up to 20 cents per hour intended as actual wage increases to the nurse aides.

RESPONSE: The department has confirmed that the legislature so intended and agrees with the comment. The department has modified the rule language regarding distribution of funding for nurse aide wage increases. The final rule provides for reimbursement for nurse aide wage increases up to the 20 cent maximum appropriated by the legislature and, in addition, provides for reimbursement for employer contributions attributable to the nurse aide wage increases. The budgetary impact for state fiscal year 1990 for the nurse aide wage increase will be $396,209 for the nurse aide wage increase and approximately $98,000 for the employer contribution portion of the reimbursement to facilities.

COMMENTS REGARDING THE PATIENT ASSESSMENT MANUAL

COMMENT: The first notice of the rule changes incorporates the Patient Assessment Manual (PASM) dated October 1989 but the revised language that was issued to providers incorporates the manual as revised January 1990.

RESPONSE: The revised manual dated January 1990 will be the manual that is incorporated into the final rule. Providers and associations provided suggestions that resulted in subsequent revisions and clarifications to the draft of October 1989 and which resulted in the final manual dated January 1990.

COMMENT: There still remain questions whether the PASM provides appropriate management minutes for coding. This manual was developed in Tennessee more than ten years ago. Montana's health care system has changed but SRS has never validated the system.

RESPONSE: The department believes the PASM is an appropriate and valid system. The PASM contains the National Health Corporation (Tennessee) Patient Assessment System. The Tennessee system is recognized nationally by governmental agencies and health care providers as a statistically valid system for measuring nursing staff time spent in caring for particular patients over and above the basic care which must be provided by the facility to every resident. The system is not intended to measure or give credit for basic care which must be provided to every patient or for care provided by non-nursing staff, except as necessary to provide nursing care.

The department has been using the Tennessee system since 1982. In 1982 a sample group of Montana nursing facilities used the system on a trial basis. Following this trial period, the providers preferred the Tennessee system to the prior system and National Health Corporation found the system to be valid for use by Montana facilities.

The statistical validity of the Tennessee system depends upon retaining the system as an integrated whole. Because the various specific allocations, credits and other components are interdependent, changes to these specific items cannot be made without invalidating the system as a whole. The department has eased the documentation requirements of the PASM to coincide with Department of Health and Environmental Science (DHES) survey requirements and Medicare requirements, and to make the documentation requirements more reasonable.

The PASM does allow credit in two areas not allowed in the standard Tennessee system. The PASM uses criteria for disoriented residents which are more liberal than the criteria in the standard system, because Montana facilities have traditionally cared for a greater number of mentally ill and mentally retarded residents than facilities in other states. The PASM also is more liberal in granting credit for patient family education related to discharge planning, because long travel distances in Montana make it unusually difficult for relatives to be present at the facility for five consecutive days as required in the standard system.

The system is periodically updated by National Health Corporation to reflect changes in nursing facility standards and practices, and the department has incorporated all revisions that have been made to the patient assessment system. National Health Corporation has statistically validated this system and any of the changes that have been made regarding management minute coding or computation.

COMMENT: The PASM is not appropriate for the rule. Over the years the manual has been subject to differing interpretation by providers, SRS staff and the Montana/ Wyoming Foundation for Medical Care. Would changing on-going interpretations require rule changes and would an interpretation have the force of rule if the manual language interpretation is disputed?

RESPONSE: Incorporation of the PASM makes it clear to facilities that the manual sets the rules that must be followed in completion of the long term care abstracts that are submitted on each Medicaid nursing home resident. It also assures providers that the manual must be used by the department in interpreting or answering questions concerning patient assessment. Many revisions and clarifications were incorporated into the manual after several discussions with providers and association representatives over the course of several months. Hopefully, these discussions and changes to the manual will clarify many of the issues subject to differing interpretations in the past. Incorporation of the PASM into the administrative rules will give the manual the same force and effect as other administrative rules. By the same token, as administrative rules, the provisions of the manual will be subject to the same requirements as other rules with respect to updating and amendment. As with other rules, the meaning of particular provisions of the manual would be determined under applicable rules of statutory construction.

COMMENT: Providers request a detailed written summary of all manual changes prior to implementation and would appreciate a grace period time to familiarize themselves with the criteria prior to monitoring.

RESPONSE: A letter will accompany the provider copy of the January 1990 PASM stressing the importance of carefully reading every page to identify the changes. The department will still provide ongoing training over the telephone and will provide individual training to facilities at their request. A formal training session will be held at a later date, possibly in conjunction with the spring association conventions at invitation by the association. No grace period will be allowed.

COMMENT: The department should not design a flowsheet to be used, since there are already too many forms for providers to complete.

RESPONSE: The department is designing a flowsheet at the request of several providers to illustrate the department's documentation requirements. This flowsheet is intended to assist providers in meeting PASM requirements, and is not an additional form to be completed by providers.

COMMENT: The suggested changes to the PASM do not delineate between licensed and non-licensed nursing care minutes.

RESPONSE: The January 1990 PASM clearly delineates between licensed and non-licensed minutes.

COMMENT: May preparation of nursing summaries be started by the sixth day of the month?

RESPONSE: Summaries may be done as soon as 5 days of treatment have been documented and as late as the 7th day of the following month. These summaries must clearly indicate the month being summarized.

COMMENT: PASM documentation requirements for certain procedures indicate that documentation must be contained in nurses notes. Some evaluations are documented in therapy notes or elsewhere in the medical record.

RESPONSE: The department agrees. The January 1990 PASM indicates that documentation must be found in the resident's medical record rather than the nurse's notes.

COMMENT: Diabetics should be included under obesity and contractures because diabetics require a lot of time. There is not always a specific identifiable problem, but diabetics may have several care needs such as professional cutting of toenails and circulation problems.

RESPONSE: Diabetes, its problems and required treatments, can be coded in several areas. Insulin injections may be coded under multiple injections, glucometer checks may be coded under vital sign evaluation and the sliding dose of insulin may be coded under drug regulation. Coding this diagnosis with obesity and contractures is inconsistent with the Tennessee system which the department has adopted.

COMMENT: In the latest draft of the PASM, Diagnosis and Evaluation, Contractures - numbers 718.41 through 718.49 have been added. When do providers use numbers other than 718.40?

RESPONSE: These are specific coding numbers under the International Code of Diseases (ICD9) coding system. These codes designate contracted joint areas.

COMMENT: Is the obesity chart designation of 30% above ideal body weight a standard?

RESPONSE: Yes. This is the standard used by DHES during the PAC survey process.

COMMENT: The PASM gives less credit for dressing residents that are bed/chair confined than residents confined to wheelchairs. Bed/chair confined patients must be dressed and it takes considerable time.

RESPONSE: The January 1990 PASM gives the same credit for dressing bed/chair confined residents as for dressing residents in wheelchairs. This change was made after consulting with DHES, which indicated that surveyors require that bed/chair residents be fully dressed.

COMMENT: Several comments addressed the lack of credit for dietary intervention, such as feeding of nutritional aides for a bowel program and calorie counting to assess the amount of calories consumed by residents. The commenters felt that credit should be allowed for these functions.

RESPONSE: The PASM addresses only nursing care and the staff time needed to provide that needed care. These resident dietary assessments are included in the basic nursing facility rate that includes dietary, maintenance, administrative and other costs. The feeding of high fiber foods would be already given credit under eating/feeding.

COMMENT: Transfer credit must be coded "2" if the resident puts their feet on the floor, even though they require two or three staff to assist in the transfer.

RESPONSE: There is no difference in the amount of credit whether coding a "2" or a "3". Assistance with transfer is determined by weight bearing ability.

COMMENT: Much time is spent on residents suffering from dementia who scream constantly, ask where their room is, etc. Is there an area where credit can be given for this care time?

RESPONSE: Residents suffering from dementia would most likely be considered disoriented and credit would be given as such. In certain circumstances such residents may also meet the criteria for "inappropriate threatening".

COMMENT: The PASM does not allow credit for bladder/bowel incontinence which occurs at night, since continence is documented for waking hours only.

RESPONSE: The January 1990 PASM allows "waking hours" credit only if the resident is on a bladder/bowel program. If the resident is not on a program, continence is determined based on a 24-hour period.

COMMENT: When should a resident be coded under "unable to determine" in the orientation area?

RESPONSE: The January 1990 PASM indicates that mentally retarded and mentally ill residents should be coded under disoriented if spheres of orientation cannot be determined. "Unable to determine" coding is to be used for residents who are semi-comatose and for whom level of consciousness cannot be determined.

COMMENT: May validation therapy be given credit in place of reality orientation?

RESPONSE: If validation therapy is done daily and meets the criteria for other rehabilitation and maintenance programs, credit may be given.

COMMENT: There were several comments regarding the bowel training program for residents suffering from constipation, and the perceived inability to obtain proper credit for a successful bowel or bladder program because the resident was incontinent at night.

RESPONSE: The bowel maintenance program described in the January 1990 PASM is for only those residents who suffer from incontinence. The resident who is constipated should be assessed as follows: if constipation presents a medical complication, code under observation and assessment; if constipation presents a potential medical complication, code under overall management. If suppositories are required, these should be charted as medication. If a resident is on a bladder and bowel program and is continent during the waking hours but incontinent at night, continence should be considered only during waking hours to determine success of the program.

COMMENT: Rehabilitation and Maintenance programs must be done twice daily and not daily to gain credit. Some of these programs, such as the ADL training program, teach self-dress, self-bathing and self-grooming skills, and are done only once a day. Credit should be given when such programs are done once a day.

RESPONSE: The Tennessee system allows credit for specific programs only if done twice daily. The department does not have validated data to support a change without invalidating the system. ADL programs would be done twice a day, but may not include exactly the same activities each time, i.e., dressing and undressing.

COMMENT: Would turning and positioning done twice daily suffice for a scheduled turning program for impaired skin integrity?

RESPONSE: No. The January 1990 PASM criteria for a scheduled turning and positioning program are the same as required by DHES in the survey process. Turning and positioning must be done at least every two hours. The care plan approach must state that turning and positioning is to be done every two hours. This must be done in response to an identified resident problem.

COMMENT: Since weekly charting has been replaced by monthly charting for tube-feeders, charting for intake, output and oxygen therapy should be changed also.

RESPONSE: The January 1990 PASM has changed the requirement for "other services" under special skin care, oxygen therapy, trach care, intake and output, inhalation therapy, and tube feeding to monthly documentation instead of weekly, if it is not at the initiation of treatment and if there are no complications.

COMMENT: Some treatments are not done for 5 consecutive days but are very time consuming: i.e., central line dressing changes recommended for change every 48 hours, stasis ulcer dressing ordered 3 times weekly, or large wound dressings that may be ordered every other day.

RESPONSE: Dressing site and dressing must be checked daily and documented. If dressing is not changed but dressing is checked and site is assessed by professional staff, an ordered treatment has been done and should be coded.

COMMENT: The only credit given by the PASM for terminal pain care is by injection. Would pain control with a PCA pump be allowed under drug regulation or multiple injection? The usual method is by catheter or IV line.

RESPONSE: The January 1990 PASM allows drug regulation credit for a terminal resident's increased need for pain medication. A PCA pump can be coded under this category, and, if appropriate, credit may be given for IV and possibly observation and assessment. Montana Medicaid also provides Hospice benefits for the terminally ill.

COMMENT: Does special skin care require a physician order?

RESPONSE: No. Skin care may be provided to a resident with a documented skin disorder. Such care may not be coded if it is palliative or done to prevent a possible skin disorder.

COMMENT: Can PRN (as necessary) medications be included in drug regulation?

RESPONSE: PRN medication may be included in drug regulation if all criteria are met. Many PRN medications would more appropriately be coded under observation and assessment.

COMMENT: Why is no credit allowed for blood transfusions unless done for five consecutive days? Blood transfusions are almost never done for five days.

RESPONSE: If a resident requires blood transfusions, their medical condition would be such that this resident also required observation and assessment. The Tennessee system allows blood transfusions to be coded specifically under I.V., which requires five consecutive days treatment.

COMMENT: Only one 10% credit is given for any of the following conditions even though residents may meet definitions of contractured, obese, disoriented and inappropriate threatening at the same time.

RESPONSE: The department does not have any data available to support a change in this allocation of minutes without invalidating the system.

COMMENT: Several comments addressed the fact that several maintenance and rehabilitative programs may be provided to one resident but credit is being given for only one.

RESPONSE: If maintenance/rehabilitative programs other than bladder/bowel, and turning/positioning are being provided, 30 management minutes credit is given for only one program and one credit of 10 licensed minutes is given for anything entered in the rehabilitative section. The department has made the assessment of minutes consistent with the Tennessee system.

COMMENT: Why are categories "14 Behavior Observation" and "18 Overall Management" included when they receive no credit?

RESPONSE: These categories are included in the Tennessee System which the department has adopted.

COMMENT: There were several comments regarding credit not being allowed for turning and positioning on residents who were ambulatory or ambulatory with assistance, or who were transferred unassisted and had no decubitus. If credit was allowed for residents who met the criteria for turn and position, then credit was not allowed for range of motion programs as well.

RESPONSE: "Ambulates with assistance" was eliminated from the turn and position criteria in the January 1990 PASM. The PASM still allows credit only where the resident needs assistance to transfer or decubitus are present. The minutes for turning and positioning were calculated based upon turning every 2 hours during a 24-hour day. If turning and positioning is done only while the resident is in bed (for 8 hours) and range of motion is done while out of bed, the system treats range of motion as a substitution for the turn and position service.

COMMENT: Patients with tracheostomies usually require suctioning and cleaning several times a day, yet special treatments credit is given for only one time a day.

RESPONSE: Special treatments are calculated under the Tennessee system based on a 24-hour day and the needs that must be met in that time frame. Credit in minutes is assessed accordingly.

COMMENT: The PASM does not give credit for positive outcome, e.g., residents with healed decubitus, residents whose Foley catheters have been removed, and residents no longer requiring restraints.

RESPONSE: Under the PASM, all residents in a nursing facility are assessed 30 licensed minutes with no regard to care requirements or other minutes credited. For residents who had decubitus that has healed, credit may have been given for turn and position, range of motion, ambulation, walk with help or other areas. If a Foley catheter is removed, credit may have been given for incontinent bladder. If restraints are no longer required, credit may have been given for reality orientation or behavior modification, depending upon the individual circumstances.

COMMENT: Vital sign evaluation, observation and assessment are not both given credit even though they are provided for different reasons.

RESPONSE: The Tennessee system allows credit for only one of these services even though both may be provided. The department does not have validated data that would support a change in this area without invalidating the system.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State December 11, 1989.

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

In the matter of the adoption of Rule I, amendment of Rules 46.25.101, 46.25.722, 46.25.725, 46.25.728, 46.25.730, 46.25.731 and 46.25.742, and the repeal of Rule 46.25.732 pertaining to general relief	)))))))	NOTICE OF THE ADOPTION OF RULE I, AMENDMENT OF RULES 46.25.101, 46.25.722, 46.25.725, 46.25.728, 46.25.730, 46.25.731 and 46.25.742, AND THE REPEAL OF RULE 46.25.732 PERTAINING TO GENERAL RELIEF

TO: All Interested Persons

1. On November 9, 1989, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule I, amendment of Rules 46.25.101, 46.25.722, 46.25.725, 46.25.728, 46.25.730, 46.25.731 and 46.25.742, and the repeal of Rule 46.25.732 pertaining to general relief at page 1825 of the 1989 Montana Administrative Register, issue number 21.

2. The Department has adopted the following rule as proposed with the following changes:

(RULE I) 46.25.734 TRANSITION-TO-WORK ALLOWANCE

(1) Transition-to-work allowances will be provided to the extent that appropriations are available. ~~When--the appropriated-funds-are-expended,-transition-to-work-allowances will-no-longer-be-provided.~~

(2) As an alternative to the programs and services described in ARM 46.25.731~~-and-46.25.732~~, a transition-to-work allowance will be provided to recipients of general relief assistance for basic necessities who have obtained employment ~~out-of~~ in another county or state.

Subsections (3) and (4) remain as proposed.

~~(5)--Transition-to-work-allowance-shall-be-limited-to-the following:~~

~~(a)--Transportation-by-the-least-expensive-means-available-to-assist-the-person-to-relocate-to-the-nearest-point-out-of-state-where-it-is-documented-that-employment-has-been-obtained;~~

~~(b)--Relocation-expenses-to-assist-the-person-to-relocate-to-the-nearest-point-out-of-state-where-it-is-documented-that employment-has-been-obtained;~~

~~(6)~~(5) Transition-to-work allowances shall not exceed the household monthly income and resource standard times four found in ARM 46.25.727 ~~except-as-described-in-subsection-(7)-of-this-rule.~~

~~(7)--The-department-may-designate-that-the-limit-to-the transition-to-work-allowance-described-in-subsection-(6)--of this-rule,-be-exceeded-if:~~

~~(a) transportation and relocation expenses exceed the household monthly income and resource standard found in ARM 46.25.727; or~~

~~(b) nonpayment of the additional transportation and relocation expenses would hinder relocation.~~

~~(8) Transportation and relocation expenses of the transition-to-work allowance under this rule shall not exceed the household monthly income standard found in ARM 46.25.744(5).~~

~~(9)~~(6) All claimants ~~persons in a household which~~ who elect to receive the transition-to-work allowance are ineligible for general relief assistance ~~for basic necessities~~ including general relief medical for a period of 16 months.

(7) The request for transition-to-work allowance will be processed by the employment specialist. The department or its designee is responsible for issuing payment to eligible claimants.

~~(10) The period of ineligibility does not preclude eligibility for general relief medical assistance.~~

~~(11) A person who utilizes the transition to work allowance defined in this rule is not eligible for the one additional month of general relief medical assistance as described in ARM 46.25.744(4).~~

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-3-205 MCA

3. The Department has repealed ARM 46.25.732 as proposed.

4. The Department has amended Rules 46.25.725 and 46.25.742 as proposed.

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

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

(1) "Assessment" means the ~~determination initial finding of a person's employability classification by the presence or absence of serious barriers to employment or chemical dependency. of what services and activities the structured job search and training program can offer to enable a participant to obtain employment~~ PROCESS USED TO DETERMINE A GENERAL RELIEF ASSISTANCE FOR BASIC NECESSITIES CLAIMANT'S EMPLOYABILITY CLASSIFICATION, INCLUDING METHODS TO IDENTIFY SERIOUS BARRIERS AND CHEMICAL DEPENDENCY.

~~(2) "Barriers to employment" means limitations such as parental status, criminal records, lack of child care and physical or mental status which preclude or hinder an individual from seeking, obtaining and retaining employment.~~

Original subsection (3) remains as proposed.

(4) "Chemical dependency" means current drug usage, prescription or non-prescription, or alcohol usage which interferes with the ability to establish or maintain employment.

Original subsections (4) through (8) remain the same in text but will be recategorized as subsections (5) through (9).

(9~~12~~) "Employability DEVELOPMENT plan (EDP)" means an individualized plan of action to get a job, INCLUDING TRAINING OR TREATMENT TO OVERCOME SERIOUS BARRIERS OR CHEMICAL DEPENDENCY. THE EMPLOYABILITY DEVELOPMENT PLAN IS jointly developed by the CLAIMANT AND employment specialist. ~~and client after the initial month of participation in the project work program training components a written plan which outlines the steps necessary to obtain employment. The employability plan must, at a minimum, include assessment of job readiness and skills, barriers to employment, specific employment and training needs, services identified to meet needs and transition steps to employment~~

~~(13) "GRA/PWP employment specialist" means the person who acts as the single point of entry into the project work program. The GRA/PWP employment specialist:~~

~~(a) recommends to the county office of human services whether general relief assistance for basic necessities applicants are exempt, unemployable or employable; and~~

~~(b) refers all employable general relief assistance for basic necessities applicants to project work program training components and monitors their continued participation and provides project work program reports to county office of human services.~~

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

Original subsection (11) remains the same in text but will be recategorized as subsection ~~(19)~~ (20).

Original subsection (12) remains the same in text but will be recategorized as subsection ~~(14)~~ (15).

~~(15)~~(16) "General relief assistance benefit month" means any month for which a general relief for basic necessities benefit check has been or will be issued. Pro-rated benefits for a month count as one benefit month, regardless of the number of days included.

Original subsection (13) remains the same in text but will be recategorized as subsection ~~(16)~~ (17).

Original subsection (14) remains the same in text but will be recategorized as subsection ~~(17)~~ (18).

~~(15)18)~~(19) "Good cause" means the test used to determine whether a general relief for basic necessities claimant has failed to comply with THE REQUIREMENTS OF 53-3-303, 53-3-305 MCA. ~~project work or other employment related requirements. inability to participate because of circumstances beyond the person's control and includes, but is not limited to:~~

~~(a) illness of the participant;~~ ~~Reasons for failure to comply with either project work program or other employment related requirements~~ GOOD CAUSE may include, but are IS not limited to:

~~(i)~~ (a) illness of the individual;

~~(ii)~~ (b) serious illness of a household member which requires the ~~person's~~ CLAIMANT'S presence;

~~(iii)~~ (c) unanticipated emergencies;

~~(iv)~~ (d) the ~~person's~~ CLAIMANT'S incarceration or court appearance;

~~(v)~~ (e) an employer practicing unlawful discrimination;

~~(vi)~~ (f) harassment or mistreatment;

~~(vii)~~ (g) the verifiable cost of employment exceeds amount of income received; and

~~(viii)~~ (h) working conditions that are dangerous to THE CLAIMANT'S health and safety.

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

~~(c) an unanticipated emergency as determined by the county director.~~

Subsection (16) remains the same in text but will be recategorized as subsection ~~(20)~~ (21).

~~(17)~~ (10) "Eligible members" are those persons who meet the non-financial criteria for general relief assistance for basic necessities or general relief medical in a financially eligible household.

(11) "Employability classification" means a DETERMINATION THAT A CLAIMANT IS ~~person has been determined as~~ employable, OR unemployable ~~or exempt from project work program participation~~.

(13) "EMPOWER" MEANS TO GIVE A PERSON THE CHOICE, ABILITY, AND TOOLS TO ACHIEVE HEALTHINESS AND/OR SELF-SUFFICIENCY.

(14) "ENABLE" MEANS TO ALLOW ACTIVITIES WHICH KEEP ANOTHER PERSON SICK AND/OR DEPENDENT.

Original subsection (18) remains the same in text but will be recategorized as subsection ~~(21)~~ (22).

Original subsection (19) remains the same in text but will be recategorized as subsection ~~(22)~~ (23).

Original subsection (20) remains the same in text but will be recategorized as subsection ~~(23)~~ (24).

Original subsection (21) remains the same in text but will be recategorized as subsection (2).

~~(22) "indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible for assistance under this chapter.~~

Original subsection (23) remains the same in text but will be recategorized as subsection ~~(24)~~ (25).

~~(24 25)~~ (26) "Job readiness training" means training which teaches a person how to get a job. It includes

instruction in how to look for a job, what type of job to look for, and development of work maturity skills. It includes efforts to secure employment using skills learned. Job readiness TRAINING may include orientation to the world of work, labor market and occupational information, values clarification and personal understanding, career planning and decision making, job seeking skills, counseling, and limited testing and assessment. ~~a program component that uses motivational counseling, job development and referral, practicing and coaching of telephone and interview techniques, refinement of job hunting skills, classroom training, peer support and group job search to assist a recipient in obtaining employment.~~

~~(25)~~(26) "Job skills training" means JTPA classroom, work experience, or on-the-job training, designed to give persons the information and technical skills necessary to perform a job or group of jobs. ~~training that is necessary to raise the functional skill level of participants to the point at which they can successfully enter employment.~~

Original subsection (26) remains the same in text but will be recategorized as subsection ~~(27)~~ (28).

Original subsection (27) remains the same in text but will be recategorized as subsection ~~(28)~~ (29).

~~(29)~~(30) "Overcoming chemical dependency" means programs and/or training components to assist persons to overcome drug and/or alcohol dependency. It may include, but is not limited to, inpatient or outpatient recovery programs, other primary treatment programs, counseling to overcome denial, formal aftercare plans, and on-going support groups such as Alcoholics and Narcotics Anonymous.

~~(30)~~(31) "Peer counseling" means a training program designed to help persons overcome social, personal and other barriers in order to get a job. Peer counseling may include, but is not limited to, mentor relationships with regularly scheduled meeting times, support group meetings with topics such as: success stories from previous general relief for basic necessities recipients, obsessive/compulsive behavior, and social skills development.

Original subsection (28) remains the same in text but will be recategorized as subsection ~~(31)~~ (32).

~~(32)~~(33) "Project work program training components" means ~~all project work program activities available to employable persons and employable persons with serious barriers~~ INITIAL MONTH OR SUCCESSIVE MONTH ACTIVITIES THAT EMPLOYABLE CLAIMANTS OF GENERAL RELIEF FOR BASIC NECESSITIES MUST PARTICIPATE IN AS A CONDITION OF ELIGIBILITY. These training components include, but are not limited to, ASSESSMENT FOR SERIOUS BARRIERS AND CHEMICAL DEPENDENCY, structured job search, ~~supervised job search~~, work experience, job skills training, job readiness TRAINING, remedial education, peer counseling, and PROGRAMS TO overcoming chemical dependency.

~~(33)~~(34) "Project work program (PWP)" means the state of Montana's employment and training program that all general relief assistance for basic necessities persons are referred to.

~~(34)--"Relocation expenses for transition to work allowance" means meals, lodging and other expenses to assist persons to relocate out of state for employment purposes.~~

(2935) "Remedial education" means training designed to enhance employability by upgrading basic skills through remedial education coursework. Coursework may include, but is not limited to, math, reading, communication, social studies, consumer education, GED preparation and English as a second language. It may also include training provided in the primary language of the person with limited English proficiency. ~~that is necessary to raise the functional educational level of a participant to the point at which they can successfully enter employment.~~

Original subsection (30) remains the same in text but will be recategorized as subsection (36).

Original subsection (31) remains the same in text but will be recategorized as subsection (37).

(38) "Serious barriers to employment" means a limitation in obtaining employment resulting from:

(a) lack of work skills, experience or training NECESSARY TO SECURE EMPLOYMENT;

(b) failure to attain a high school education or its equivalent; or

(c) illiteracy.

Original subsection (32) remains the same in text but will be recategorized as subsection (39).

(~~33~~40) "Structured job search ~~and training~~" means a classroom approach to getting a job, where persons attend eight hours a day and make employer contacts in a concentrated effort to secure employment. Structured job search may include, but is not limited to, instruction in job seeking skills such as writing resumes, filling out applications, learning telephone techniques and interviewing skills; receiving counseling and other activities to refine work maturity skills; and receiving limited job readiness training. ~~Structured job search will not contain any testing and assessment designed to identify aptitudes and/or barriers; a program consisting of three components: assessment and testing, job readiness and extended job search.~~

Original subsection (34) remains the same in text but will be recategorized as subsection (41).

(42) "Supervised job search" means a monitored, self-directed approach to getting a job. A person must report each day to inform the supervised job search training component operator of ~~their~~ daily job search plan, which must include employer contacts as part of a concentrated effort to secure employment. A person must report at the end of the day also. Supervised job search may include, but is not limited to,

instruction in job seeking skills, counseling, refinement of work maturity skills, AND limited job readiness training. ~~excluding testing and assessment designed to identify aptitudes and/or barriers;~~

~~(3543)~~ "Testing" means the use of an instrument (such as GENERAL APTITUDE TEST BATTERY (GATB), BASIC OCCUPATIONAL LITERACY TEST (BOLT), TEST FOR ADULT BASIC EDUCATION (TABE), MINNESOTA MULTIPHASIC INVENTORY (MMPI), etc.) ~~the general aptitude testing battery and/or the specific aptitude test battery to develop a set of steps to accomplish the goal of employment~~ to determine a person's skill and/or knowledge level.

Original subsection (36) remains the same in text but will be recategorized as subsection ~~(47)~~ (45).

~~(44) "Transportation expense for transition to work allowance" means the least expensive means available to relocate a person out of state for employment purposes;~~

~~(45) "Transition to work allowance" means the payment for transportation and relocation expenses for persons who have obtained employment out of state;~~

~~(46)~~ (44) "Work experience" means a WORKFARE PROGRAM AS PROVIDED IN 53-3-304 MCA. ~~non-JTPA job skills training component where persons physically report to pre-selected worksite to perform duties of a particular position;~~

AUTH: Sec. 53-2-201, 53-2-803, 53-3-102, 53-3-109 and 53-3-114 MCA
IMP: Sec. 53-2-201, 53-3-109, 53-3-301, 53-3-304, 53-3-305, 53-3-802 and 53-3-822 MCA

46.25.722 PROVISION AND VERIFICATION OF ELIGIBILITY INFORMATION Subsections (1) through (3)(e) remain as proposed.

(f) household composition; ~~and~~
(g) social security number;;
(h) citizenship or proof of legal status; AND
(i) identity.

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

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-109 and 53-3-205 MCA

46.25.728 INCOME AND RESOURCE COMPUTATION Subsections (1) through (5)(c) remain as proposed.

(6) When two or more ~~households~~ CLAIMANTS share living space and are each applying for general relief assistance for basic necessities, they shall be treated as one household for grant computation purposes.

(7) Issuance of benefit checks FOR CLAIMANTS WHO WERE NOT ELIGIBLE FOR A CHECK IN THE PREVIOUS MONTH will be as follows:

(a) ~~for all claimants of general relief assistance for basic necessities, who did not receive a general relief assistance for basic necessities benefit payment in the previous month, benefits will not be paid until after ten days of participation in project work program have been completed;~~ FOR EMPLOYABLE CLAIMANTS, AFTER ELIGIBILITY HAS BEEN DETERMINED AND AT LEAST TEN (10) DAYS OF SUCCESSFUL PARTICIPATION IN THE PROJECT WORK PROGRAM HAVE BEEN COMPLETED; OR

(b) ~~for successive months, all benefits will be issued on the last working day prior to the 16th of the month.~~ FOR UNEMPLOYABLE CLAIMANTS, AFTER ELIGIBILITY HAS BEEN DETERMINED AND A DETERMINATION OF UNEMPLOYABILITY HAS BEEN COMPLETED.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-109, 53-3-205, 53-3-206, 53-3-209, 53-3-311 MCA

46.25.730 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF ASSISTANCE Subsections (1) through (3)(c) remain as proposed.

~~(4) Length of general relief assistance for basic necessities eligibility period shall be determined by a person's employability classification and willingness to participate, or actual participation in training programs.~~

~~(a) Persons exempt from project work program participation may receive general relief assistance for basic necessities for six months in any twelve month period.~~

~~(b) Unemployable persons may receive general relief assistance for as long as they remain eligible.~~

~~(c) employable persons may receive general relief assistance for basic necessities for four months in any twelve month period unless:~~

~~(i) chemical dependency has been established and the person is undergoing active treatment in an approved program. Employable persons with chemical dependency may receive general relief assistance for basic necessities for nine months in any twelve month period.~~

~~(A) chemically dependent persons are eligible for a one time additional extended benefit period while undergoing approved treatment.~~

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-206, 53-3-209, and 53-3-321 MCA

46.25.731 STRUCTURED JOB SEARCH AND TRAINING PROGRAM

~~(1) Recipients of general relief assistance, unless exempted elsewhere in this rule, are required to participate in~~

~~the structured job search and training program. The program shall consist of 3 components:~~

~~(a) assessment and testing;~~

~~(b) job readiness; and~~

~~(c) extended job search.~~

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

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

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

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

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

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

~~(i) remedial education;~~

~~(ii) counseling;~~

~~(iii) job skills training;~~

~~(iv) workfare; or~~

~~(v) job seeking or other related activities.~~

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

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

~~(a) Child care:~~

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

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

~~(b) Transportation:~~

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

~~(ii) payment will be made only for recipients who live one or more miles from the work site or service unit;~~

~~(iii) use of private transportation will be reimbursed at the rate of 6.1cS per mile up to a maximum of $10.00 per day for each recipient participating in the structured job search training and work program.~~

~~(c) Work clothing:~~

~~(i) where necessary, up to $100.00 toward the purchase of work clothing will be made through a vender payment.~~

~~(d) Haircut:~~

~~(i) up to $10.00 of the $100.00 available for work clothing may be utilized to pay for one haircut during the program.~~

~~(e) Other:~~

~~(i) a maximum of $15.00 per recipient may be spent to obtain necessary employment and training items such as school transcripts, birth certificates, driver's license and application fees.~~

~~(3) All claimants for general relief assistance for basic necessities will be referred to the project work program (PWP). Project work consists of two parts:~~

~~(a) the general relief assistance for basic necessities/project work program employment specialist; and~~

~~(b) the project work program training components.~~

~~(2) Claimants will report to the general relief assistance for basic necessities/project work program employment specialist for initial recommendation of employable, unemployable or exempt classification.~~

~~(3) All claimants of general relief assistance for basic necessities regardless of their recommended status or employability classification must participate in project work program fully for ten (10) days prior to a general relief assistance for basic necessities check being issued.~~

~~(a) All persons recommended as exempt will be referred back to the county office of human services. The following persons are exempt from project work:~~

~~(i) primary caretaker of child(ren) under 6 years old;~~

~~(ii) children under the age of 16;~~

~~(iii) persons over age 16, who are full time high school students actively pursuing a degree or its equivalency; or~~

~~(iv) persons enrolled full time in a JTPA or other job training program certified by the department of labor and industry.~~

~~(b) All persons recommended as unemployable will be referred back to the county office of human services for GSI application process and monitoring. Unemployable persons are those who:~~

~~(i) are at least 55 years old and have a limited ability to obtain or retain suitable employment because of advanced age; or~~

~~(ii) have been determined infirm by the department contract physician. A person claiming to be infirm shall be referred to the contract physician by the general relief assistance for basic necessities project work program employment specialist.~~

~~(c) Employable persons are all those not determined unemployable or exempt.~~

~~(i) All employable persons will be immediately referred to project work program training components.~~

~~(ii) All employable persons must participate forty (40) hours per week in project work training components.~~

~~(4) Project work program training components are mandatory for all employable applicants for, or recipients of, general relief assistance for basic necessities.~~

~~(a) After referral to project work program, initial month participation for all persons recommended as employable consists of structured and/or supervised job search and work experience:~~

~~(i) no barriers shall be identified; and~~

~~(ii) emphasis shall be on getting a job.~~

~~(b) After initial month participation, all participants who have not secured fulltime employment shall meet with general relief assistance for basic necessities/project work program employment specialist to jointly develop an employability development plan (EDP). The EDP shall identify:~~

~~(i) whether or not the participant has serious barriers to employment. Serious barriers are:~~

~~(A) lack of work skills, experience or training necessary to secure employment;~~

~~(B) failure to obtain a high school education or its equivalent; or~~

~~(C) illiteracy.~~

~~(ii) whether or not the participant is chemical dependent;~~

~~(iii) whether or not the client is willing to participate in training component designed to assist them overcome serious barriers; or if they are chemically dependent, whether or not they are participating in an approved program to overcome dependency;~~

~~(iv) what steps need taken in order to facilitate the participant's entry into employment; or~~

~~(c) Successive months participation for employable persons with serious barrier or chemical dependencies consist of at least eight (8) hours a week must be spent in a job search training component. The other thirty two (32) hours per week will be spent participating in a combination of components as described in the employability development plan.~~

~~(i)----For employable participants with no barriers successive months participation shall consist of some or all of the following training components:~~

~~(A)--structured job search;~~

~~(B)--supervised job search;~~

~~(C)--work experience;~~

~~(D)--job readiness training; and~~

~~(E)--other training components as described in the county plan;~~

~~(ii)--Successive months participation for employable participants with serious barriers or chemical dependency shall consist of some or all of the following training components:~~

~~(A)--structured job search;~~

~~(B)--supervised job search;~~

~~(C)--work experience;~~

~~(D)--job readiness training;~~

~~(E)--job skills training;~~

~~(F)--remedial education;~~

~~(G)--overcoming chemical dependency;~~

~~(H)--peer counseling; and~~

~~(I)--other training components as described in the county plan;~~

(1) THE PURPOSE OF THE PROJECT WORK PROGRAM IS TO EMPOWER MONTANANS TO ACHIEVE SELF-SUFFICIENCY, RATHER THAN TO ENABLE THEM TO CONTINUE ACTIVITIES WHICH MAY ENCOURAGE DEPENDENCY.

(2) ALL CLAIMANTS FOR GENERAL RELIEF ASSISTANCE FOR BASIC NECESSITIES WILL BE REFERRED BY THE COUNTY OFFICE OF HUMAN SERVICES TO THE PROJECT WORK PROGRAM, WHERE THE EMPLOYMENT SPECIALIST WILL DO AN INTAKE INTERVIEW AND INITIAL ASSESSMENT TO DETERMINE WHETHER THE CLAIMANT IS EMPLOYABLE OR UNEMPLOYABLE.

(3) DURING THE INTERVIEW AND ASSESSMENT, ALL GENERAL RELIEF ASSISTANCE/PROJECT WORK PROGRAM RULES ARE EXPLAINED, ALONG WITH CONSEQUENCES OF NON-PARTICIPATION. CLAIMANTS' RIGHTS AND RESPONSIBILITIES ARE ALSO EXPLAINED.

(4) BASED ON INFORMATION GAINED DURING THE INTAKE AND ASSESSMENT, THE EMPLOYMENT SPECIALIST WILL RECOMMEND TO THE COUNTY OFFICE OF HUMAN SERVICES THAT THE CLAIMANT BE CLASSIFIED AS EITHER EMPLOYABLE OR UNEMPLOYABLE.

(5) ALL UNEMPLOYABLE CLAIMANTS WILL BE REFERRED TO THE COUNTY OFFICE OF HUMAN SERVICES. UNEMPLOYABLE CLAIMANTS ARE THOSE WHO:

(a) ARE AT LEAST 55 YEARS OLD AND HAVE LIMITED ABILITY TO OBTAIN OR RETAIN SUITABLE EMPLOYMENT BECAUSE OF ADVANCED AGE; OR

(b) HAVE BEEN DETERMINED UNEMPLOYABLE, AS DEFINED BY 53-3-109 MCA, BY THE DEPARTMENT'S CONTRACT PHYSICIAN.

(6) ALL EMPLOYABLE CLAIMANTS WILL IMMEDIATELY BE REFERRED TO THE PROJECT WORK PROGRAM, AND WILL PARTICIPATE FOR FORTY (40) HOURS PER WEEK.

(a) THE FOLLOWING EMPLOYABLE CLAIMANTS WILL BE EXCUSED FROM PARTICIPATION:

(i) PRIMARY CARETAKERS OF CHILD(REN) UNDER SIX YEARS OLD;

(ii) CHILDREN UNDER THE AGE OF SIXTEEN;

(iii) CLAIMANTS ENROLLED FULLTIME IN A JTPA OR OTHER JOB TRAINING PROGRAM CERTIFIED BY THE DEPARTMENT OF LABOR AND INDUSTRY; OR

(iv) CLAIMANTS OVER AGE 16, WHO ARE FULLTIME HIGH SCHOOL STUDENTS ACTIVELY PURSUING A DEGREE OR ITS EQUIVALENCY.

(7) DURING THE INITIAL MONTH, EMPLOYABLE CLAIMANTS SHALL INFORM THE EMPLOYMENT SPECIALIST OF SERIOUS BARRIERS TO EMPLOYMENT OR CHEMICAL DEPENDENCY. IN ADDITION, ALL OTHER EMPLOYABLE CLAIMANTS WILL BE OBSERVED FOR INDICATIONS OF SERIOUS BARRIERS OR CHEMICAL DEPENDENCY.

(8) THE INITIAL MONTH OF THE PROJECT WORK PROGRAM SHALL CONSIST OF UP TO TWENTY DAYS OF JOB SEARCH AND WORK EXPERIENCE. A DESCRIPTION OF HOW THESE COMPONENTS AND SERVICES WILL BE PROVIDED AND COORDINATED AT THE LOCAL LEVEL IS CONTAINED IN EACH OF THE TWELVE STATE-ASSUMED COUNTY PLANS.

(a) INDIVIDUAL COUNTY PLANS ARE NOT INCORPORATED INTO THESE RULES BY REFERENCE. HOWEVER, THEY ARE AVAILABLE FOR REVIEW AT THE DEPARTMENT.

(9) IF SERIOUS BARRIERS AND/OR CHEMICAL DEPENDENCY ARE NOT FOUND OR IDENTIFIED DURING THE INITIAL MONTH, EMPLOYABLE CLAIMANTS WILL BEGIN THE SUCCESSIVE MONTHS' PARTICIPATION IN PROJECT WORK PROGRAM.

(10) IF AT ANY TIME DURING THE INITIAL MONTH, SERIOUS BARRIERS AND/OR CHEMICAL DEPENDENCY ARE FOUND OR IDENTIFIED, THE CLAIMANT WILL BE REFERRED FOR FURTHER ASSESSMENT AND DEVELOPMENT OF AN INDIVIDUALIZED PLAN.

(11) CLAIMANTS WITH CHEMICAL DEPENDENCY WILL BE REFERRED TO A CERTIFIED CHEMICAL DEPENDENCY COUNSELOR FOR ASSESSMENT AND RECOMMENDATION OF TREATMENT.

(a) AN EDP AND TREATMENT PLAN WILL BE JOINTLY DEVELOPED BY THE CLAIMANT AND THE EMPLOYMENT SPECIALIST.

(12) CLAIMANTS WITH SERIOUS BARRIERS WILL MEET WITH THE EMPLOYMENT SPECIALIST FOR FURTHER ASSESSMENT.

(a) AN EDP AND TRAINING PLAN WILL BE JOINTLY DEVELOPED BY THE CLAIMANT AND THE EMPLOYMENT SPECIALIST.

(13) ALL GENERAL RELIEF ASSISTANCE FOR BASIC NECESSITIES CLAIMANTS WHO ARE EMPLOYABLE OR EMPLOYABLE WITH SERIOUS BARRIERS OR CHEMICAL DEPENDENCY, WILL BE REQUIRED TO PARTICIPATE FOR FORTY (40) HOURS PER WEEK IN SUCCESSIVE MONTHS OF THE PROJECT WORK PROGRAM.

(a) FOR EMPLOYABLE CLAIMANTS WITH NO SERIOUS BARRIERS OR CHEMICAL DEPENDENCY, SUCCESSIVE MONTHS' PARTICIPATION SHALL CONSIST OF AT LEAST EIGHT HOURS PER WEEK OF JOB SEARCH, AND A COMBINATION OF OTHER COMPONENTS, INCLUDING WORK EXPERIENCE, JOB READINESS TRAINING, AND OTHER COMPONENTS IDENTIFIED IN EACH INDIVIDUAL COUNTY PLAN.

(b) CLAIMANTS WITH SERIOUS BARRIERS SHALL PARTICIPATE IN ACCORDANCE WITH THEIR INDIVIDUALIZED EDP/TRAINING PLANS.

(c) CLAIMANTS WITH CHEMICAL DEPENDENCY SHALL PARTICIPATE IN ACCORDANCE WITH THEIR INDIVIDUALIZED EDP/TREATMENT PLANS.

(d) FOR EMPLOYABLE CLAIMANTS WITH SERIOUS BARRIERS OR CHEMICAL DEPENDENCY, SUCCESSIVE MONTHS' PARTICIPATION SHALL CONSIST OF SOME OR ALL OF THE FOLLOWING COMPONENTS:

(i) STRUCTURED JOB SEARCH;
(ii) SUPERVISED JOB SEARCH;
(iii) WORK EXPERIENCE;
(iv) JOB READINESS TRAINING;
(v) JOB SKILLS TRAINING;
(vi) REMEDIAL EDUCATION;
(vii) OVERCOMING CHEMICAL DEPENDENCY;
(viii) PEER COUNSELING; AND
(ix) OTHER TRAINING COMPONENTS AS DESCRIBED IN THE COUNTY PLAN.

(e) A DESCRIPTION OF COORDINATION WITH LOCAL RESOURCES TO PROVIDE THESE COMPONENTS IS INCLUDED IN EACH COUNTY PLAN.

(14) IF AT ANY TIME DURING SUCCESSIVE MONTHS' PARTICIPATION IN THE PROJECT WORK PROGRAM, A SERIOUS BARRIER OR CHEMICAL DEPENDENCY IS FOUND OR IDENTIFIED, THAT CLAIMANT WILL MEET WITH THE EMPLOYMENT SPECIALIST TO HAVE FURTHER ASSESSMENT DONE TO DETERMINE IF A SERIOUS BARRIER OR CHEMICAL DEPENDENCY EXISTS. AN INDIVIDUALIZED EDP/TRAINING/TREATMENT PLAN WILL BE JOINTLY DEVELOPED.

(15) FOR SERIOUS BARRIER OR CHEMICAL DEPENDENCY CLAIMANTS, INDIVIDUALIZED PLANS SHALL ALLOW THE CLIENT TO CHOOSE THE JOB SEARCH COMPONENT.

~~(iii)~~(16) CLAIMANTS Persons with serious barriers identified in the EDP must be willing to participate in a component to assist them to overcome ~~that~~ THOSE barriers to be eligible for an additional two months of general relief assistance for basic necessities benefits.

~~(iv)~~(17) CLAIMANTS Persons with chemical dependency, as identified in THE EDP, must be participating OR WILLING TO PARTICIPATE in an approved program to assist them overcome their dependency to be eligible for additional two months of general relief assistance for basic necessities benefits.

(18) CHEMICAL DEPENDENCY SHALL NOT BE CONSIDERED AS A GOOD CAUSE REASON FOR A WAIVER OF STATUTORY PENALTIES FOR A CLAIMANT FAILING TO PARTICIPATE IN THE PROJECT WORK PROGRAM OR FOR A CLAIMANT QUITTING A JOB AFTER AN APPROVED TREATMENT PLAN HAS BEEN STARTED.

~~(4)~~(19) Upon application for general relief assistance for basic necessities, persons who have previously been referred to (or enrolled in) the project work program, shall be required to start the entire project work program process again.

~~(5)~~(20) The following supportive services, if necessary for participant's search for employment, will be provided:

(a) transportation;
(b) haircuts;
(c) clothing;
(d) child care; and
(e) any other ~~time~~ ITEM necessary to search for employment.

~~(6)~~(21) In the initial month of the project work program, each participant may be provided up to $25.00 in supportive service payments if need for such services is identified in the intake interview.

(a) After the initial month of project work program, each participant may receive up to $75.00 per month supportive service payments, if exceptional need is identified in their employability development plan.

(b) Supportive service payments may be made to the participant or actual service provider.

(c) Childcare payments are excluded from the above supportive service limits. If childcare is necessary for participation in project work, up to $160.00 per child per month may be provided. Childcare payments must be made by voucher to the childcare provider.

(d) A ~~participant~~ CLAIMANT may be provided ten cents (10¢) per mile for actual miles driven:

(i) transportation is determined to be a necessary support service;

(ii) the ~~participant~~ CLAIMANT uses their own vehicle for transportation; and

(iii) the total claimed does not exceed the limits on reimbursement set above.

~~(7) All employable claimants of general relief assistance for basic necessities shall be required to register for employment at the local job service office, maintain an active job registration file, and accept any available employment for as long as they continue to receive general relief assistance for basic necessities benefits.~~

AUTH: Sec. 53-2-201, 53-2-803, and 53-3-114 MCA
IMP: Sec. 53-3-304, 53-3-305, 53-3-822 MCA

6. The Department has thoroughly considered all commentary received:

Numerous style and structural changes have been incorporated in this adoption and amendment. In several cases there have been additions to or deletions from the statutes relied upon as authority. A claimant willing to participate in a proper treatment program for chemical dependency will now be allowed six months of eligibility. Later proposals may allow a further three months of eligibility for the chemically dependent. Many of these changes were suggested by the legislative council's staff.

COMMENT: The department should reconsider making the benefit issuance date the 16th of the month.

RESPONSE: The department concurs. The 51st Montana Legislature enacted 53-3-322, MCA which allows benefit issuance after performance. The intent of that statute can be implemented by requiring that employable claimants who were not eligible in the previous month to perform before benefit issuance. Of course, no benefits will be issued until eligibility has been determined.

Counties will continue to issue benefits to all households with established eligibility on their normal schedule.

COMMENT: The transition-to-work allowance would work better if the amount was increased and if it was granted for intrastate moves.

RESPONSE: The department concurs and has modified Rule I to increase the potential amount a household could receive to an amount equal to four month's benefits. The logic is that that amount equals the amount an employable claimant/household could have received in a calendar year. Savings should still be realized because acceptance of the allowance eliminates general relief benefits of all types for sixteen months.

This allowance will be available for both interstate and intrastate moves. It is felt that anything that assists needy Montanans in relocating to verified employment is a positive step towards self-sufficiency.

COMMENT: The department's decision to follow a market based employability assessment is not supported by 53-3-321, MCA.

RESPONSE: Section 53-3-321, MCA requires assessment of claimants who have serious barriers to employment or suffer from chemical dependency. These assessments are carried out in several distinct steps.

Persons claiming they have barriers to employment will be assessed by an employment specialist. Some barriers that are not claimed may be identified by the department's employment specialist or by the marketplace. In all cases a course of action is followed to make the person job ready as soon as possible.

In addition, persons who either claim to be or are observed to be chemically dependant will be assessed by a chemical dependency counselor. A treatment plan will be decided upon with the goal of making the person job ready as soon as possible.

Persons with either a serious barrier to employment or who are chemically dependent will be required to participate

in training, treatment and either job search or work experience training, at their option, for a full forty hours a week. It is hoped that many will opt to seek work during this period because studies have shown that many of these individuals can work and work will provide a better income and a better self image for them.

COMMENT: Chemically dependent persons may fail to participate fully in all mandatory programs. Will they receive the penalties required by 53-3-305, MCA?

RESPONSE: The department recognizes that chemical dependency is a separate category requiring treatment. Therefore, the department will grant a good cause exemption for a failure but only if the failure is clearly caused by the chemical dependency. After the person's treatment plan is established, his failure to participate will not be excused.

Chemically dependent public welfare claimants will have a difficult time in improving their lot if they do not fully cooperate. To excuse their failure makes the state merely an "enabler" and therefore, part of the problem. Consequently, our stance of "firm but fair" is judged best able to guide these claimants toward self-sufficiency.

COMMENT: The proposed rules fail to demonstrate that the department is coordinating its general relief program with other available governmental and community programs. Such coordination is necessary to utilize all available resources efficiently.

RESPONSE: The legislature has always been clear in its intent that the general relief program not be duplicative. See 53-3-121 and 53-3-207, MCA. The statement of intent to the 51st Montana Legislature's SB 128 makes it clear that available resources are to be coordinated.

The department believes that the rules demonstrate the expected coordination. The exact language of SB 128 was not reiterated, but 2-4-305(2), MCA prohibits that.

The twelve state assumed counties have all developed their own different versions of the project work programs. The different communities have different resources available. The individual plans set out locally available resources and indicate how they will be coordinated. Such coordination is a part of the internal management of the programs, but does not fit the definition of that which needs to be in a rule. See 2-4-102(10), MCA. There will be coordination to utilize community resources and other available programs.

COMMENT: The program will fail because no jobs are out there.

RESPONSE: This department believes there are unfilled jobs that many public welfare claimants could fill. With training and treatment more claimants will be eligible for these jobs.

Sometimes the jobs are not where the people are. The transition-to-work allowance helps remove that barrier.

Some jobs are not the preferred jobs but claimants must remember that experience and success in the job market may lead to the better jobs.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 11, 1989.

VOLUME NO. 43 OPINION NO. 44

COUNTIES - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;
COUNTY COMMISSIONERS - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;
COUNTY OFFICERS AND EMPLOYEES - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;
PEACE OFFICERS - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;
SALARIES - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;
SHERIFFS - Calculation of base salary and longevity pay for sheriffs and deputy sheriffs;
MONTANA CODE ANNOTATED - Sections 7-1-2111, 7-4-2503, 7-4-2508, 7-4-2510;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 34 (1989), 39 Op. Att'y Gen. No. 78 (1982), 39 Op. Att'y Gen. No. 65 (1982), 39 Op. Att'y Gen. No. 21 (1981).

HELD: 1. The "base salary" of a sheriff under section 7-4-2503, MCA, is based on the class of the county and the county's population. For purposes of calculating longevity payments for sheriffs, total years of service with the sheriff's department are included.

2. The "minimum base annual salary" of a deputy sheriff or undersheriff for purposes of determining longevity payments under section 7-4-2510, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA. Each year of service with the sheriff's department is included when calculating longevity payments for a deputy sheriff or undersheriff.

November 28, 1989

David L. Nielsen
Valley County Attorney
P.O. Box 1187
Glasgow MT 59230

Dear Mr. Nielsen:

You have requested my opinion on the following questions:

1. What amounts are included in the "base salary" for purposes of computing longevity pay for county sheriffs, and is the longevity payment applied retroactively to include years of service completed before July 1, 1989, the date of effect of the recently-adopted House Bill 440?

2. What amounts are included in the "minimum base annual salary" for purposes of computing longevity pay for deputy sheriffs or undersheriffs, and is the time of service completed by a deputy prior to the effective date of the longevity statute included for the purpose of computing longevity pay?

Longevity pay for sheriffs, addressed in section 7-4-2503(2)(c), MCA, is based on the sheriff's "base pay," as defined in section 7-4-2503(1), MCA, as amended by House Bill 440 in 1989. The longevity pay of deputy sheriffs and undersheriffs is provided for in section 7-4-2510, MCA, and involves a formula based on the "minimum base annual salary of the deputy or undersheriff."

I have researched the relevant statutes, §§ 7-4-2503 and 7-4-2510, MCA; the legislative history of House Bill 440 amending section 7-4-2503, MCA; and Opinions of the Attorney General, including 39 Op. Att'y Gen. No. 21 at 82 (1981), 39 Op. Att'y Gen. No. 65 at 242 (1982), and 39 Op. Att'y Gen. No. 78 at 299 (1982). Based on my research, I come to the following conclusions.

Base salary for county sheriffs under section 7-4-2503(1), MCA, is dependent upon two factors: the class of the county and the population of the county. In counties of the first through fifth classes a sheriff's annual base salary is equal to $14,000 plus $10 for each 100 persons in the county. In counties of the sixth and seventh classes, a sheriff's base salary is equal to $12,000 plus $20 for each 100 persons in the county. In section 7-4-2503(1), MCA, subsection (a) defines base salary for sheriffs in one set of counties and subsection (b) represents the definition of base salary for county sheriffs in another set of counties.

This statutory language is clear and unambiguous. With a statute speaking for itself, there is nothing to be construed. State v. Hubbard, 39 St. Rptr. 1608, 1611, 649 P.2d 1331, 1333 (1982). However, even if one were to argue that the language is not clear and unambiguous,

the legislative history including supplemental information provided to the House Committee on State Administration upon discussion of House Bill 440 supports the above discussion. The information provided to the House Committee included a typical calculation of a sheriff's salary.

The committee members were told that a sheriff's base salary is dependent upon and determined by two factors: (1) the class of the county which is based on the county's taxable value (§ 7-1-2111, MCA) and (2) the population of the county. This representation to the Committee evidences the Committee's intent and expectations as to how the calculation of base salary was to be made. Minutes of the House Committee on State Administration, February 10, 1989 (hereinafter Minutes). While dictum in 39 Op. Att'y Gen. No. 65 suggested a different approach to calculation of base salary, the legislative intent is clear and unequivocal.

The second part of your first question concerns whether or not longevity payments apply retroactively to include years of service completed prior to the enactment and effective date of House Bill 440. The legislative history showing legislative intent and discussion by the House Committee on State Administration included the following information:

COMMENTS ON THE BILL

> According to testimony, the intent of the bill is to give sheriffs the same longevity payment that deputy sheriffs currently receive.
>
> Under this bill, a sheriff would receive a longevity payment equal to 1% of his base salary of each year of service with the sheriff's department. [Minutes.]

An illustration was made to the Committee involving a sheriff who had ten years of service. The Committee indicated that after enactment of this amendment, the computation of longevity for the sheriff used in the example would require multiplication of a dollar figure by ten. Thus, it seems clear the Committee intended that the longevity payment be based on a sheriff's total years of service and not merely years of service performed after July 1, 1989.

Your second question involves section 7-4-2510, MCA. The calculation of compensation for an undersheriff is "95% of the salary of that sheriff" not including longevity payments or payments for hours worked

overtime. § 7-4-2508(1), (3), MCA. For a deputy sheriff, the statutory scheme is based on county population and a percentage of the sheriff's salary. § 7-4-2508(2)(a), MCA. This question has been answered by a prior Attorney General's Opinion, 39 Op. Att'y Gen. No. 21 at 82 (1981). The "minimum base annual salary" of a deputy sheriff or undersheriff for purposes of determining longevity payments under section 7-4-2510, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA.

A recent Attorney General's Opinion, 43 Op. Att'y Gen. No. 34 at 4 (1989), answers your final question regarding the calculation of the years of service of undersheriffs and deputy sheriffs and longevity pay. That opinion points out that each year of service with the sheriff's department is included when calculating longevity payments for a deputy sheriff or undersheriff.

THEREFORE, IT IS MY OPINION:

1. The "base salary" of a sheriff under section 7-4-2503, MCA, is based on the class of the county and the county's population. For purposes of calculating longevity payments for sheriffs, total years of service with the sheriff's department are included.

2. The "minimum base annual salary" of a deputy sheriff or undersheriff for purposes of determining longevity payments under section 7-4-2510, MCA, is based on the sheriff's base salary as set forth in section 7-4-2508, MCA. Each year of service with the sheriff's department is included when calculating longevity payments for a deputy sheriff or undersheriff.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 45

JUVENILES - Application of registration requirements of Sexual Offender Registration Act to person under 18 adjudicated delinquent pursuant to Youth Court Act;
YOUTH COURT ACT - Application of registration requirements of Sexual Offender Registration Act to person under 18 adjudicated delinquent pursuant to Youth Court Act;
MONTANA CODE ANNOTATED - Sections 41-5-206, 45-2-101.

HELD: A juvenile who is adjudicated delinquent under the Youth Court Act and whose case has not been transferred to district court is exempt from the registration requirement of the Sexual Offender Registration Act.

November 29, 1989

Curt Chisholm, Director
Department of Institutions
1539 11th Avenue
Helena MT 59620

Dear Mr. Chisholm:

You have requested my opinion concerning the following question:

> Does the registration portion of the Sexual Offender Registration Act apply to a person under 18 who has been adjudicated delinquent pursuant to the Youth Court Act, but whose conduct, had he been an adult, would have been a violation of the offenses enumerated in the Sexual Offender Registration Act?

The 1989 legislative session enacted chapter 293, entitled the Sexual Offender Registration Act (SORA). Under section 5 of SORA, a sexual offender is required to register with the chief of police or the county sheriff within 14 days of entering a county of residence. A person subject to this registration requirement must comply for a period of ten years after conviction under section 7.

The new act does not include an express statement of purpose, although the purpose may be implied from section 9 of SORA, which states:

> Sentence upon conviction--restriction on employment. A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

The original draft of this section reveals that occupational prohibitions were aimed particularly at child day care facility and school district employees, which suggests that one of the purposes of the Act is the prevention of potential contact between known sexual offenders and children.

Given this purpose, it could be argued that the Legislature's concern for protecting children extends not only to sexual offenders over the age of 18, but also to sexual offenders under 18 years of age whose employment puts them in close contact with children. In light of the ten-year registration period, these sexual offenders could be prevented from entering the target employment areas well into their adulthood, thereby furthering this purpose of SORA. However, I am constrained to conclude that SORA's registration requirement is not intended to extend to youths adjudicated delinquent under the Youth Court Act because of the definition of a sexual offender under SORA.

A sexual offender is defined in SORA as "a person who has been convicted of a sexual offense" under section 2, subsection 2 of the Act. A conviction is defined in section 45-2-101, MCA, of the criminal code as follows:

> (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

Unlike the conviction procedure of the criminal code, the Youth Court Act is based upon an adjudication process which is noncriminal in nature. Section 41-5-106, MCA, provides:

> No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution.

> No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

Given that an adjudication of delinquency under the Youth Court Act is not to be deemed a criminal conviction unless the matter is transferred to a district court under section 41-5-206, MCA, a youth adjudicated delinquent under the Act cannot be considered a sexual offender for purposes of SORA. A juvenile who is adjudicated delinquent under the Youth Court Act and whose case has not been transferred to district court is exempt from SORA's application.

THEREFORE, IT IS MY OPINION:

> A juvenile who is adjudicated delinquent under the Youth Court Act and whose case has not been transferred to district court is exempt from the registration requirement of the Sexual Offender Registration Act.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 46

PROPERTY, REAL - Applicability of property tax limitations to water and sewer district assessment levies;
TAXATION AND REVENUE - Applicability of property tax limitations to water and sewer district assessment levies;
WATER AND SEWER DISTRICTS - Applicability of property tax limitations to assessment levies;
MONTANA CODE ANNOTATED - Sections 7-13-2301 to 7-13-2303, 15-10-401 to 15-10-412, 15-10-402, 15-10-412, 76-15-515, 76-15-623;
MONTANA LAWS OF 1989 - Chapter 662;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 73 (1988), 42 Op. Att'y Gen. No. 21 (1987);
REVISED CODES OF MONTANA, 1947 - Section 16-4524.

HELD: The property tax limitations in sections 15-10-401 to 412, MCA, apply to assessment levies pursuant to section 7-13-2302, MCA, by a water and sewer district for the purpose of repaying a general loan obligation even if such district has never previously exercised its levy authority under that provision.

December 7, 1989

Thomas R. Scott
Beaverhead County Attorney
2 South Pacific, CL #2
Dillon MT 59725-2713

Dear Mr. Scott:

You have requested my opinion concerning the following question:

> Do the property tax limitations in sections 15-10-401 to 412, MCA, apply to a water and sewer district which, although formed in 1971, has never utilized its levy authority under section 7-13-2302, MCA, where the proposed levy will be used to repay a federal loan?

I conclude that water and sewer district levies under section 7-13-2302, MCA, to satisfy expenses of the kind involved here do constitute property taxes within the scope of sections 15-10-401 to 412, MCA, and that the limitations in those provisions apply to any such district created prior to 1986 even though it has never previously utilized its levy authority.

The Beaverhead County Water and Sewer District serving Wisdom, Montana was created in 1971. Since formation it has relied exclusively on income from water-user service charges fixed pursuant to section 7-13-2301, MCA, to finance its operations. The district's board of directors, however, has recently determined that use of an assessment levy pursuant to section 7-13-2302, MCA, is necessary to meet federal loan repayment obligations. There is no indication that the expenses of the loan repayment can be segregated on the basis of specific benefits conferred upon particular parcels of property as opposed to the district as a whole. The instant issues are thus whether such a levy would constitute a property tax within the scope of Initiative No. 105 (codified at sections 15-10-401 and 15-10-402, MCA) and the clarifying legislation contained in sections 15-10-411 and 15-10-412, MCA, and, if so, whether the limitations in those provisions apply to a taxing unit which, while in existence prior to tax year 1986, has never used its levy-authorization powers. I note that the proposed use of the income from the levy is unrelated to the payment of principal or interest on bonded indebtedness and that applicability of the exception in section 15-10-412(8)(c), MCA, for "levies pledged for the repayment of bonded indebtedness" need not be considered.

Water and sewer districts are authorized to finance their activities through service charges and assessment levies. §§ 7-13-2301, 7-13-2302, MCA. Service charge amounts derive from the sale and distribution of water to the district's users (§ 7-13-2301(1), MCA) and, as a general matter, are based upon rates which "will pay the operating expenses of the district" (§ 7-13-2301(2), MCA). Assessment levies may be utilized "[i]f from any cause the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district[.]" § 7-13-2302(1), MCA. The amount of the levy with respect to a particular parcel of land must be predicated on either the ratio of such parcel's acreage to the total assessed acreage or the ratio of the parcel's taxable valuation to the total valuation of assessed lands. § 7-13-2303(1), MCA. Water and sewer districts should thus ordinarily attempt to discharge their financial obligations through service charges and resort to assessment levies only when revenues from user fees are insufficient to satisfy outstanding debts and provide suitable cash reserves. It is also clear that assessment levy amounts need not be related to the actual benefit conferred upon a particular parcel of property by the district, since neither the parcel's

relative size nor its relative taxable valuation is necessarily an accurate measure of such benefit.

In 42 Op. Att'y Gen. No. 73 (1988), Attorney General Greely held that regular and special assessments by conservation districts under sections 76-15-515 and 76-15-623, MCA, were properly characterized as taxes subject to the property tax limitations in sections 15-10-401 to 412, MCA. The individual taxpayer's liability under either form of assessment was predicated upon the property's taxable valuation. The controlling consideration in that opinion was whether the levies were intended "'to compensate the district for benefits directly conferred upon a particular piece of property within its jurisdiction in direct proportion to the cost of those benefits[.]'" Id., slip op. at 3 (quoting from 42 Op. Att'y Gen. No. 21 (1987)). Because no direct correlation existed between the amount of the assessment and the value of the benefit bestowed on the assessed property, conservation district levies were deemed taxes subject to the limitations.

42 Op. Att'y Gen. No. 73 governs presently with respect to the first issue. As developed above, a water and sewer district board of trustees is required under section 7-13-2301(2), MCA, to establish water service rates sufficient to pay the district's expenses, and an assessment levy under section 7-13-2302, MCA, is appropriate only when the service charges are inadequate to satisfy the district's expenses. The levy is assessed on the basis of proportional land size or valuation and without reference to whether the amount taxed bears a direct relationship to the benefit specially conferred on the particular taxpayer's property. In this respect, water and sewer districts are therefore situated almost identically to conservation districts.

I am aware that Parker v. County of Yellowstone, 140 Mont. 538, 374 P.2d 328 (1962), apparently construed a levy under section 16-4524, R.C.M. 1947, the predecessor provision to section 7-13-2302, MCA, to be an assessment and not a tax. There the Montana Supreme Court confronted a claim that section 16-4524, R.C.M. 1947, was unconstitutional because it delegated to a water and sewer district the power to tax without regard to the benefits conferred on the taxed property. The Court rejected this claim, concluding that the evidence supported the district court's finding that all property within the district would be benefited by at least the amount planned to be expended. 140 Mont. at 544-46, 374 P.2d at 331-32. I do not construe Parker, however, as standing for the proposition that all levies under

section 7-13-2302, MCA, are properly viewed as special assessments. The contrary would seemingly be the rule. I accordingly find it inappropriate to expand Parker beyond its facts--i.e., beyond a case where a demonstrably close relationship exists between the assessment levy amount and the economic benefit actually conferred upon the taxed property by the expense giving rise to the levy. Under the facts here that close relationship does not exist, since the assessment's purpose is to meet general loan repayment obligations.

The second issue raised by your question is whether the proposed levy is exempt from the property tax limitation provisions because the water and sewer district has never used its taxing authority under section 7-13-2302, MCA. Section 15-10-402(1), MCA, unambiguously proscribes any taxing jurisdiction from imposing taxes in excess of "the amount levied for taxable year 1986" with respect to most forms of property. Although that proscription has been modified somewhat by the Legislature, those changes constitute only exceptions to the general prohibition. Attorney General Greely accordingly concluded that the literal language of section 15-10-402(1), MCA, governed with respect to the analogous question of whether the tax limitation provisions applied to a taxing unit which had levied an unusually low amount in 1986 because of a budget surplus from a previous year. 42 Op. Att'y Gen. No. 21, slip op. at 9-10. While such a result may appear inequitable, it is nonetheless the only one faithful to the statute, whose provisions neither a court nor I may ignore or rewrite. E.g., Reese v. Reese, 196 Mont. 101, 104, 637 P.2d 1183, 1185 (1981) ("the function of the Court is simply to ascertain and declare what is in terms or in substance contained [in a statute], not to insert what has been omitted or omit what has been inserted"); Chennault v. Sager, 187 Mont. 455, 461-62, 610 P.2d 173, 176 (1980) (same).

My conclusion concerning the second issue is buttressed by a 1989 amendment to section 15-10-412(2), MCA, adding the following underscored proviso:

> The limitation on the amount of taxes levied is interpreted to mean that ... the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, <u>except in a taxing unit that levied a tax in tax years</u>

> 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

1989 Mont. L., ch. 662, §(1) (emphasis supplied). The Legislature determined through this amendment to provide limited relief only to taxing jurisdictions which imposed levies for tax years 1983 through 1985 but not for tax year 1986--a determination reflecting a legislative judgment that, in all other situations with respect to taxing units existing as of tax year 1986, the limitation imposed in section 15-10-402(1), MCA, and restated in section 15-10-412(2), MCA, applies unless specifically ameliorated by another provision. See Orlando v. Prewett, 218 Mont. 5, 10, 705 P.2d 593, 596 (1985) ("[w]e will not graft an exception on to a statute when the language does not allow for an exception"); see generally 2A N. Singer, Sutherland Statutory Construction § 47.11 (4th ed. 1984) ("[w]here there is an express exception, it comprises the only limitation on the operation of the statute and no other exceptions will be implied"). The water and sewer district may therefore impose an assessment levy for the purposes described earlier only upon compliance with the resolution and election procedure in section 15-10-412(9), MCA.

THEREFORE, IT IS MY OPINION:

> The property tax limitations in sections 15-10-401 to 412, MCA, apply to assessment levies pursuant to section 7-13-2302, MCA, by a water and sewer district for the purpose of repaying a general loan obligation even if such district has never previously exercised its levy authority under that provision.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 47

CONFLICT OF INTEREST - Dual trusteeship of volunteer fire department and fire service area;
FIRE DEPARTMENTS - Dual trusteeship of volunteer fire department and fire service area;
PUBLIC OFFICERS - Dual trusteeship of volunteer fire department and fire service area;
MONTANA CODE ANNOTATED - Sections 2-2-102(1), 2-2-125, 7-33-2311, 7-33-2401, 7-33-2402, 7-33-4101, 7-33-4109;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 94 (1988).

HELD: 1. Concurrent trusteeship of both a volunteer fire department and a fire service area does not constitute a conflict of interest.

2. Trusteeship in a volunteer fire department is not incompatible with simultaneous trusteeship in a fire service area.

December 7, 1989

Patrick C. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Dear Mr. Paul:

You have requested my opinion concerning the following questions:

1. Is there a conflict of interest if any board members or other members of a volunteer fire department serve on the board of a fire service area?

2. If board members of a volunteer fire department can serve on the board of a fire service area, is there a conflict of interest if the same board members constitute a quorum and a majority of both boards?

Your questions concern the Fort Shaw Fire Service Area and the Fort Shaw Volunteer Fire Department, each of which is governed by a board of trustees composed of five persons. The two boards share three common members. Therefore, the same three individuals may constitute both a quorum and a majority of each board.

Your questions are prompted by section 7-33-2402, MCA, which provides as follows:

> A fire service area created pursuant to 7-33-2401 may provide residents of an area with:
>
> (1) fire equipment, housing for the equipment, and related maintenance, for use by a fire service agency providing service to the area; or
>
> (2) fire protection by contracting for the services of a fire service agency.

The Fort Shaw Volunteer Fire Department is a "fire service agency providing service to the area" within the meaning of the foregoing statutory provision. Thus section 7-33-2402, MCA, provides authorization for the volunteer fire department and the fire service area to engage in cooperative interaction.

Your specific concern is whether such interaction constitutes a conflict of interest for the persons occupying dual trusteeship of these respective entities. I conclude that dual trusteeship does not implicate the provisions of Montana's conflict of interest statutes in this instance.

The standards for the regulation of the conduct of public officers and employees are set forth in Title 2, chapter 2, part 1, MCA. The provisions therein "set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana." § 2-2-101, MCA. The code of ethics provides advisory principles as well as specific rules of conduct the violation of which constitutes a breach of fiduciary duty. Section 2-2-125, MCA, provides in pertinent part as follows:

> 2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.
>
> (2) An officer or employee of local government may not:
>
> (a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

> (b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

There is no indication that any of the trustees in question have private business interests which would be implicated by the activities of the volunteer fire department and the fire service area. Therefore, section 2-2-125(2)(a), MCA, has no application in this instance.

It is clear that the trustees are representatives or agents of the foregoing entities within the meaning of section 2-2-125(2)(b), MCA. However, neither of those entities constitutes a "business or other undertaking" within the meaning of the foregoing statutory provision. Section 2-2-102(1), MCA, defines the term "business" for the purpose of the statutory code of ethics as follows:

> (1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

Volunteer fire departments and fire service areas are governmental entities provided by law. See, e.g., §§ 7-33-2311, 7-33-2401, 7-33-4101, 7-33-4109, MCA. The execution of their statutory function must not be confused with private business-oriented activity. The trustees' status as representatives or agents of the foregoing entities is not within the purview of section 2-2-125(2), MCA. Therefore, cooperative interaction pursuant to section 7-33-2402, MCA, does not constitute a breach of fiduciary duty under section 2-2-125(2)(b), MCA, for those occupying dual trusteeship of the respective governmental entities involved.

The analysis of your questions does not end with the conclusion that dual trusteeship does not constitute a conflict of interest in this instance. Simultaneous tenure in multiple public offices has been a traditional area of public concern. The holding of incompatible public offices was prohibited at common law. 63A Am. Jur. 2d Public Officers and Employees § 65. Although similar, the doctrine of incompatible public offices is perhaps better suited than strict conflict-of-interest law for analysis of issues concerning dual office holding.

> Although the reasoning behind each is similar, incompatibility of office or position is not the same as conflict of interest. Incompatibility of office or position involves a conflict of duties between two offices or positions. Of course, this conflict of duties is also a conflict of interest. But a conflict of interest can exist when only one office or position is involved, that conflict being between that office or position and a non-governmental interest. Incompatibility of office or position requires the involvement of two governmental offices or positions. Incompatibility of office or position may be sufficient for vacation of an office when conflict of interest is not.

Coyne v. State ex rel. Thomas, 595 P.2d 970, 973 (Wyo. 1979). The doctrine of incompatible offices serves the following interests.

> The purposes attributed to such provisions include: (1) preventing multiple position-holding, so that offices and positions of public trust would not accumulate in a single person; (2) preventing individuals from deriving, directly or indirectly, any pecuniary benefit by virtue of their dual position-holding; (3) avoiding the inherent conflict which occurs when an employee's elected position has revisory power over the employee's superior in another position; and (4) generally, to insure that public officeholders and public employees discharge their duties with undivided loyalty. 3 E. McQuillan [sic], Municipal Corporations § 12.67 (3d rev. ed. 1982).

Acevedo v. City of North Pole, 672 P.2d 130, 134 (Alaska 1983). The operation of the doctrine of incompatible offices is quite simple. Acceptance of a second public office incompatible with a current public position operates as an implied resignation from the latter position. Mulholland v. Ayers, 109 Mont. 58, 99 P.2d 234, 239 (1940); State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 P. 648, 650 (1914). See also 42 Op. Att'y Gen. No. 94 (1988). Public offices are incompatible under the following conditions:

> Offices are "incompatible" when one has power of removal over the other [citations omitted], when one is in any way subordinate to the other [citations omitted], when one has power

> of supervision over the other [citations omitted], or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both [citations omitted].

State ex rel. Klick v. Wittmer, supra, 144 P. at 649-50.

I conclude that the offices of trusteeship of a volunteer fire department and a fire service area are not incompatible under the foregoing test. Volunteer fire departments and fire service areas are separate governmental entities. Neither owes its creation or continued existence to the other. Each lacks any form of supervisory authority with respect to the personnel of the other. Finally, there is no indication that dual trusteeship imposes an insurmountable obstacle to the proper discharge of the attendant duties thereof.

In view of the foregoing conclusion that dual trusteeship does not constitute a conflict of interest in this instance, there is no reason to answer your second question.

THEREFORE, IT IS MY OPINION:

1. Concurrent trusteeship of both a volunteer fire department and a fire service area does not constitute a conflict of interest.

2. Trusteeship in a volunteer fire department is not incompatible with simultaneous trusteeship in a fire service area.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1989. This table includes those rules adopted during the period October 1, 1989 through December 31, 1989 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1989, 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 1989 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I-XIII and other rules - Veteran's Employment Preference - Veteran's and Handicapped Person's Employment Preference, p. 1361
2.21.8017 and other rule - Grievances, p. 1997
(Public Employees' Retirement Board)
2.43.302 and other rules - Montana's Retirement Systems - State Social Security Program - Purchasing Service Credit - Post-retirement Benefit Adjustments - Return to Covered Employment After Retirement, p. 1999
(Teachers' Retirement Board)
I-VII and other rules - Crediting Military Service - Payment of Benefits at Death - Payment of Child's Benefit - Bonuses as Compensation - Correcting Errors on Wages Not Reported, p. 800, 1276

AGRICULTURE, Department of, Title 4

I-V Production of Mint, p. 1374, 1839
(Montana Agriculture Development Council)
I-XIII and other rules - Growth Through Agriculture Program, p. 810, 1190, 1338
4.5.203 Designation of Noxious Weeds, p. 628, 899
4.12.2618 Bond Schedule for Itinerant Merchants, p. 1037, 1482
4.15.101 and other rule - Fees - Agriculture Debt Mediation Scheduling and Agreement Procedures, p. 807, 1278

STATE AUDITOR, Title 6

I-IX Establishment and Operations of a Surplus Lines Stamping Office - Imposition Upon Transactions of Surplus Lines Insurance of a Stamping Fee - Compulsory Membership in a Surplus Lines Advisory Organization, p. 2008
6.6.505 Policy Definitions and Terms, p. 1252
6.6.506 and other rules - Medicare Supplement Insurance Minimum Standards, p. 1039, 1230, 1301

COMMERCE, Department of, Title 8

(Board of Athletics)
8.8.2803 and other rules - Prohibitions - Boxing Contestants - Physician Requirements - Weights and Classes - Scoring - Down - Equipment - Judges - Inspectors - Appeals - Appeal of Decisions of Officials, p. 630, 967, 1483
8.8.2901 and other rules - Boxing Contestants - Down - Fouls - Appeals, p. 1254, 2046
(Board of Cosmetologists)
8.14.814 and other rules - Fees, Initial, Renewal, Penalty and Refund - Salons - Cosmetological/Manicuring, p. 1062, 1663
(Board of Dentistry)
I Prior Referral for Partial Dentures, p. 1065
8.16.101 and other rules - Board Organization - Examinations - Allowable Functions - Minimum Qualifying Standards - Minimum Monitoring Standards - Facility Standards - Reporting Adverse Occurrences - Fees - Oral Interview - Applications - Mandatory CPR, p. 942
8.16.402 and other rules - Examination - Permit Required for Administration or Facility, p. 1066
(Board of Hearing Aid Dispensers)
8.20.401 and other rules - Traineeship Requirements and Standards - Fees - Notification of Address Change - Record Retention - Code of Ethics - Disciplinary Actions - Fines - Hearings - Minimum Testing and Recording Procedures, p. 694, 1069, 1840
(Board of Horse Racing)
I-VI Superfecta Sweepstakes - Tri-superfecta Wagering, p. 1693
8.22.301 and other rules - Simulcast Horse Racing - Simulcast Race Meets Under the Parimutuel System for Wagering, p. 1683
8.22.501 and other rules - Definitions - Parimutuel Exercise Persons - Jockeys - Pony Persons - Trainers - Veterinarians - General Requirements - Medication, p. 635, 968
(Board of Landscape Architects)
8.24.403 and other rules - Applications - Seals - Examinations - Reciprocity - Suspensions and Revocations -

Complaint Process - Disciplinary Actions - Fines, p. 698, 1279

(Board of Morticians)

8.30.406 and other rules - Examinations - Fee Schedule - Itemization, p. 1624

(Board of Nursing)

8.32.411 Renewals, p. 1627

(Board of Occupational Therapists)

8.35.402 and other rules - Definitions - Applications for Limited Permit - Pass-Fail Criteria - Fees - Unprofessional Conduct - Limited Permits - Reciprocity, p. 819, 1191

(Board of Outfitters)

8.39.504 and other rules - Licensure -- Approved Operations Plan - Conduct -- Standards of Outfitter and Professional Guide - Conduct -- Additional Required Outfitter Procedures - Outfitter Records, p. 460, 1192

(Board of Pharmacy)

8.40.415 and other rule - Suspension or Revocation - Gross Immorality and Dangerous Drugs, p. 703, 1193

(Board of Physical Therapy Examiners)

8.42.601 and other rules - Unprofessional Conduct - Disciplinary Actions, p. 174, 833

8.42.702 and other rules - Reported Violations, p. 463, 833

(Polygraph Examiners)

8.47.404 License Renewal - Date, p. 465, 972

(Board of Public Accountants)

8.54.204 and other rules - Licensing of Public Accountants, p. 1870

8.54.817 and other rules - Credit for Service as Report Reviewer - Definitions - Filing of Reports - Alternatives and Exemptions Reviews and Enforcement, p. 1866

(Board of Radiologic Technologists)

8.56.409 Fees Schedule, p. 430, 753

8.56.602 and other rules - Permit Applications - Course Requirements - Permit Examinations - Temporary Permits - Permit Restrictions, p. 949

(Board of Realty Regulation)

8.58.411 Fee Schedule, p. 432, 754

8.58.412 Inactive Licenses - Reactivation of Licenses - Continuing Education, p. 467, 1339

(Board of Sanitarians)

8.60.408 Minimum Standards for Registration Certificate, p. 1629

8.60.413 Fee Schedule, p. 2014

(Board of Social Work Examiners and Professional Counselors)

8.61.1601 and other rules - Hours, Credits and Carry Over - Fee Schedule - Ethical Standards, p. 434, 755

(Board of Speech/Language Pathologists and Audiologists)

8.62.404 and other rules - Speech/Language Pathology and Audiology, p. 1699

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

SECRETARY OF STATE, Title 44

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46