MONTANA ADMINISTRATIVE REGISTER

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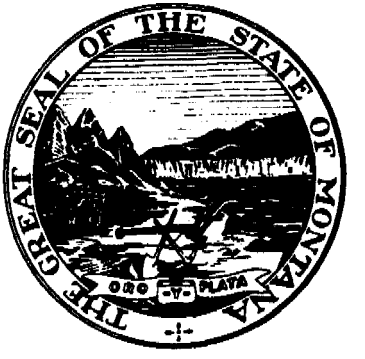

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.12.1221, 4.12.1224 through 4.12.1230; and the repeal of ARM 4.12.1202, 4.12.1222 and 4.12.1223	))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL OF RULES PERTAINING TO ALFALFA LEAFCUTTING BEES

NO PUBLIC HEARING CONTEMPLATED

1. On February 12, 1990, the department of agriculture proposed to amend and repeal rules pertaining to alfalfa leafcutting bees.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined).

A. Certain references to the department of agriculture in these rules are amended to substitute the name of the alfalfa leafcutting bee committee. This change is made because of statutory clarifications made in the 1989 legislative session to reflect that this committee is attached to the department of Agriculture for administrative purposes only.

4.12.1202 DEFINITIONS This section at ARM p. 4-415 will be deleted in its entirety. The 1989 Legislature included the definitions previously listed by this rule as part of the statute, along with additional definitions.

AUTH: Sec. 80-6-1103, MCA; IMP: Sec. 80-6-1102, MCA

4.12.1220 PURPOSE OF RULES (1) The purpose of these rules is to implement HB ~~815~~ 675 enacted by the 1987~~9~~ Montana Legislature (80-6-1101 MCA, et. seq.).

REASON: The amendment simply conforms the rule to the Bill No. in which the most recent statutory changes were made.

AUTH: Sec. 80-6-1103, MCA; IMP: Sec. 80-6-1103, MCA

4.12.1221 REGISTRATION PROCEDURES AND FEES (1) All persons who own, possess or control alfalfa leafcutting bees shall register with the ~~department of agriculture~~ committee.

(2) All registration requests shall be made on forms provided by the ~~department~~ committee.

(3) The registration fee shall be transmitted with each registration request.

(4) Annual registration shall be from ~~the date of adoption of these rules to June 1, 1987 and the from~~ November 1 to ~~January~~ April 1 ~~for each year thereafter~~.

(5) Any person owning or possessing bees that are not re-registered on or before ~~June 1, 1987 and then January~~ April 1 of each year ~~thereafter~~ shall be considered to be unregistered and shall be subject to the ~~late~~ penalty~~ies~~ imposed under section 80-6-1110 and 80-6-1111, MCA.

~~(6) Any bees not re-registered after June 15, 1987 and~~

~~April 1 thereafter may in addition to the late registration penalty be subject to penalties set forth in section 80-6-1110, MCA.~~

(~~7~~6) Each person who registers bees shall pay a registration fee of ~~$50.00~~ $15.00." ~~Upon payment of the registration fee, the registrant shall send in one sample for laboratory analysis for pathogens and parasites. Additional laboratory services may be provided upon request based on appropriate fee schedules.~~

~~(8) Parasites and pathogens that the bees are to be especially examined for include:~~

~~(a) Parasites:~~

~~(i) Minute chalcid (Tetrastichus megachi);~~

~~(ii) Sapyga wasp (Sapyga pumila);~~

~~(iii) Canadian chalcid (Pteromalus venustus);~~

~~(iv) Imported chalcid (Monodontomerus obscurus). (b) Pathogens which include alfalfa leafcutting bee chalkbrood (Ascosphaera sp.).~~

REASON: Changes in the registration date was suggested by the industry. The reason is that beekeepers do not know how many pounds of bees they have until they prepare the bees for incubation.

In addition, this rule is amended to reduce the registration and sampling fee and eliminate the requirement to send one alfalfa leaf cutting bee sample for registration, since it is no longer required by the statute.

AUTH: Sec. 80-6-1103 and 80-6-1109, MCA; IMP: Sec. 80-6-1109, MCA

4.12.1222 is proposed for repeal in its entirety. The rule imposed certain restrictions on parasite and pathogen levels in bees submitted for sampling at the time of registration. (For full text see page 4.417 ARM.) The rule is proposed for repeal since a registration sample is no longer required.

AUTH: Sec. 80-6-1103, MCA; IMP: 80-6-1103, MCA

4.12.1223 is proposed for repeal in its entirety. The rule set out sampling procedures for the registration of bees. (For full text see page 4.417 ARM.) The rule is proposed for repeal since a registration sample is no longer required

AUTH: Sec. 80-6-1103, MCA; IMP: 80-6-1103, MCA

4.12.1224 OFFICIAL CERTIFICATION PROCEDURES AND FEES

(1) In addition to the required registration of bees, beekeepers may certify bees according to the following procedure:

(a) All requests for official certification shall be made on forms provided by the ~~department of agriculture~~ committee.

(b) All certification fees shall be transmitted within 10 days after the official sampling has been completed.

(c) Any person owning or possessing bees within Montana who desires to apply for certification shall do so on or before ~~May 15, 1987~~ April 1, and arrange a date for sampling of said lot(s) of bees; ~~thereafter all requests shall be made before April 1 in future years.~~

~~(d) A certification fee of 36 cents per pound will be assessed for all bees certified by the state. Each person~~

~~requesting certification shall pay a laboratory fee of $35.00 per sample.~~

(d) Each person requesting certification shall pay a certification fee of $30.00 per sample. Each person shall also pay per diem and mileage charges as established in Title 2, Ch. 18, Part 5, MCA for state employees and a sampling fee of $10.00 per hour during the time the department employee is collecting the certification samples including travel time.

(e) The certification fee shall provide laboratory services for the determination of pathogens, parasites, ~~percent of emergence,~~ predators, nest destroyers, and live larvae count~~,~~ , and sex ratio . Additional laboratory services may be provided upon request based on appropriate fee schedules.

(f) A beekeeper may deliver entire lots of leafcutting bees to an inspector to be officially sampled for certification purposes.

~~(2) The certification fee may provide for limited amount of field service work.~~

~~(3) All bees certified for year 1987 at the date of the adoption of these rules shall be treated as being properly certified under these rules and shall be assigned a certification standard.~~

REASON: The rule amends subsection (1)(d) to eliminate the 36 cents per pound certification fee and $35.00 per sample laboratory fee, and replace it with straight $30.00 fee per sample thus reducing cost.

Subsection (1)(c) is amended to eliminate the requirement of analysis for percent emergence and sex ratio and makes them optional upon request. The requirement is made optional because the sex ratio analysis is an additional laboratory analysis and expense, is of limited value to the beekeepers and is requested by only a small number of beekeepers. Subsection (2) is eliminated since field service work will no longer be included, to reduce costs.

AUTH: 80-6-1103, MCA; IMP: 80-6-1103, 80-6-1105 & 80-6-1109, MCA

4.12.1225 BEE SAMPLING PROCEDURE FOR THE CERTIFICATION OF BEES (1) The following procedure shall be used to sample bees under the bee certification program:

(a) All bees must be in loose cell stage before samples can be taken.

(b) A two ounce (2 oz.) sample shall be taken from each 200 pounds of bees requested for certification. ~~owned or possessed by a beekeeper~~. An official sample size shall not consist of less than eight ounces (8 oz.). If the beekeeper requests for certification ~~owns or possesses~~ more than 200 pounds, then the cocoon larvae will be divided into 200 pound lots and official samples shall be obtained from each lot. All official samples shall become the property of the ~~department~~ committee.

(c) Once the official sample has been obtained, the

remaining composite sample shall be officially sealed and left in the possession of the owner/manager. The owner/manager has 30 days from date of receipt of certification to appeal the original laboratory test results.

(d) All samples shall be collected using a random sampling procedure, i.e., a uniform sample from the top, middle, and bottom within the bee storage containers.

(e) All official samples shall be obtained by department personnel in the presence of the owner/manager of the bees or the owner/manager under the direct supervision of the department.

(f) All official sample containers shall be sealed with a label showing lot number, date sampled, and signature of department employee.

(g) All official sample lot numbers must correspond with lot numbers attached to beekeeper storage containers.

(h) A grower whose total bees consist of less than 100 pounds may have an official sample consisting of a 2 ounce (2 oz.) sample drawn from each 20 pounds of bees; and from a composite sample an official sample of 4 ounces (4 oz.) may be drawn.

REASON: A beekeeper may not always want to certify all of his bees. The change allows a beekeeper to certify only the amount of bees he wishes to certify.

AUTH: Sec. 80-6-1103, MCA; IMP: 80-6-1105, MCA

4.12.1226 MINIMUM STANDARD FOR LEAFCUTTING BEES CERTIFIED BY THE ~~DEPARTMENT~~ COMMITTEE (1) The following bee certification standards apply to the official sample analyzed at a designated laboratory.

(a) Unconditional certification: Alfalfa leafcutting bees that have been officially examined and analyzed and determined to contain less than 10% composite infestation by parasites and contain 0% infestation by designated pathogens, shall be eligible for unconditional certification for:

(i) possession within the state,

(ii) for sale within ~~or without~~ the state,

(iii) import into the state of Montana.

Zero percent means nondetected within the official sample.

(b) Restricted certification: Alfalfa leafcutting bees that are officially reported as containing composite parasite infestation levels of 10% to 25%, or composite pathogens infestation levels of more than 0% to 30% shall be designated as being restricted certification and,

(i) may be sold out-of-state,

(ii) shall not be imported, transferred, or distributed in the state without prior written approval of the ~~department~~ committee.

(2) Parasites and pathogens that bees are to specifically be examined for are:

(a) Parasites:

(i) Minute chalcid (Telrastichus megachi),

(ii) Sapyga wasp (Sapyga pumila),

(iii) Canadian chalcid (Pteromalus venustus),

(iv) Imported chalcid (Monodontomerus obscurus).

(b) Pathogens:

(i) Alfalfa leafcutting bee chalkbrood (Ascosphaera sp.)."

REASON: Rule is amended to clarify that certification no longer applies to alfalfa leafcutting bees being sold out of state. The committee and the industry believe that such a restriction is costly to Montana beekeepers exporting bees out of state and does not influence the health of bees remaining in Montana. It is expected that state's receiving export of Montana bees will be responsible for checking for disease. The committee understands that most beekeepers receiving such export will require that the bees be certified.

AUTH: Sec. 80-6-1103, MCA; IMP: 80-6-1103 & 80-6-1105, MCA

4.12.1227 IMPORTED ALFALFA LEAFCUTTING BEES - CERTIFICATION (1) Alfalfa leafcutting bees imported from any state or foreign country must meet the standards for certification of alfalfa leafcutting bees set forth in these rules.

(2) Alfalfa leafcutting bees that do not meet the unconditional certification standards shall not be released for distribution or delivery within the state without written approval of the committee.

(3) The committee will allow importation, transfer or distribution of alfalfa leafcutting bees with pathogen (chalkbrood) levels which are equal to or less than the pathogen (chalkbrood) levels present in the Montana beekeeper's bees in the area in which the bees are to be located. The Montana beekeeper's pathogen (chalkbrood) levels shall be established through the official certification procedure.

(~~3~~4) The importer of the bees shall be notified by certified mail of the fact of noncertification, together with a notice that said bees must be removed from the state of Montana, at the importer's expense within 30 days, or the said bees will be destroyed.

REASON: The committee recognizes that certain areas of the state may not want to maintain disease free areas. Therefore, geographic areas may be established by the committee. The rule would clarify what is the acceptable disease level for the established area.

AUTH: 80-6-1103, MCA; IMP: 80-6-1103 & 80-6-1105, MCA

4.12.1228 SALES OF BEES (1) All sales of bees within the state of Montana shall be reported to the ~~department~~ committee. These sales reports shall contain the name, address, pounds sold and location of the new owners. These sales shall be reported to the ~~department~~ committee within 30 days of sale.

(2) A sale of a person's entire inventory of bees shall be reported to the ~~department~~ committee.

REASON: Please see paragraph 2.A above.

AUTH: Sec. 80-6-1103, MCA; IMP: 80-6-1105, MCA

4.12.1229 FEES ESTABLISHED FOR SERVICE SAMPLES (1) Laboratory analysis - ~~$35.00~~ $30.00 per sample which includes

pathogens , ~~and~~ parasites , and larvae count/lb . ~~Additional services and respective fees are:~~ In addition to the $30.00 laboratory analysis, each sample may be tested for sex ratio and percent emergence for an additional fee of $10.00."

~~(a) Larvae count/lb - $10.00 per sample.~~
~~(b) Sex ratio and percent emergence - $15.00 per sample.~~
~~(c) Percent Emergence - $10.00 per sample.~~
~~(d) Field service - current Montana rates for mileage/per diem.~~

REASON: The amendment lowers service sample analysis fees as well as fees for optional sex ratio and percent emergence analysis.

AUTH: Sec. 80-6-1103, MCA; IMP: Sec. 80-6-1109, MCA

4.12.1230 DISEASE CONTROL - WILD TRAPPING PERMIT - FEE

(1) A person intending to engage in wild trapping shall apply to the ~~department~~ committee for a permit prior to commencing trapping activities.

(2) The application for a permit to trap wild bees shall contain: name, address, location of wild trapping activities, (1/4 section, township, range), number of bee boxes, and permission of property owners.

(3) The fee for wild trapping shall be set at $10.00 per laminated board.

(4) Only new laminated boards or laminated boards sterilized using approved ~~department~~ committee methods will be used for wild trapping.

(5) The person applying for a permit shall obtain the signature of the property owner on which the bees are to be wild trapped.

(6) Any person keeping bees or nesting materials on property other than their own, shall clearly mark the trapping materials with his or her correct name, mailing address and phone number. The lettering shall not be less than 1 inch in size.

REASON: Please see paragraph 2.A above.

AUTH: Sec. 80-6-1103, MCA; IMP: Sec. 80-6-1108, MCA

3. Interested persons may submit their data, views or arguments concerning the proposed amendment and repeal, in writing to the Department of Agriculture, Ag/Livestock Building, Capitol Station, Helena, MT 59620, no later than February 9, 1990.

4. If a person who is directly affected by the proposed amendments and repeals wishes to express his/her data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he/she has to the Department of Agriculture, Ag/Livestock Building, Capitol Station, Helena, MT 59620, no later than February 9, 1990.

5. If the department receives requests for a public hearing on the proposed amendment and repeal from either 10% or 25%, whichever is less, of those persons who are directly

affected by the proposed amendments and repeals, 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.

Gil Sorg, Chairman
Alfalfa Leafcutting Bee Committee

Oran Roy Bjornson, Administrator
Plant Industry Division

Certified to the Secretary of State December 29, 1989.

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

In the matter of the adoption of rules regarding the establishment and operations of a prelicensing education program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES GOVERNING PRELICENSING EDUCATION

TO: All Interested Persons.

1. On February 6, 1990, at 9:00 a.m., a public hearing will be held in Room 270 of the Mitchell Building, 111 Sanders, Helena, Montana, to consider the proposed adoption of rules I through VII.

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

3. The proposed rules provide as follows:

RULE I PURPOSE AND SCOPE (1) In accordance with 33-17-207 et seq., MCA, the commissioner of insurance declares that the purpose of these rules is to implement Title 33, chapter 17, part 2, MCA.

(2) These rules provide for the establishment of prelicensing education guidelines, including course content, certification of individuals who seek to be qualified as instructors, instructional format standards and application forms to document completion of the courses.

AUTH: 33-1-313, MCA IMP: 33-17-207 through 33-17-209, MCA

RULE II DEFINITIONS (1) "Approved prelicensing education program" means a course of studies which:

(a) is proctored by an approved program director;

(b) is taught by an approved instructor;

(c) presents all course material as designated in Rules IV and V; and

(d) has been approved by the commissioner of insurance.

(2) A prelicensing education program includes one which meets the criteria for an "individual study program".

(3) No prelicensing education program may have more than 8 hours of instruction per day.

(4) "Individual study program" or "correspondence course" means a course of studies which:

(a) is proctored by an approved program director;

(b) presents all course materials as designated in Rules IV and V;

(c) must include an examination which requires a score of 70% or better to earn a certificate of completion. For each approved course, the sponsoring organization shall maintain a pool of tests sufficient to maintain the integrity of the testing process. A written explanation of test security and

administration methods shall accompany the course examination materials. The examinations shall be administered, graded, and the results recorded by the organization to which approval was originally granted. Completed tests shall be retained by the sponsor organization and shall not be returned to any licensee.

(d) All correspondence courses or individual study programs must be submitted for approval by the organization which compiles, publishes, or sponsors the course materials and must be approved by the commissioner of insurance prior to being offered to licensees for prelicensing education credit. Any such course approval is not transferable to any other entity.

(5) "Classroom" means any classroom, office, room, building or other enclosed structure approved by the commissioner of insurance.

(6) "Structured setting" is one which meets at a set time and at a fixed location.

AUTH: 33-1-313, MCA IMP: 33-17-207 through 33-17-209, MCA

RULE III QUALIFICATIONS FOR PROGRAM DIRECTORS AND INSTRUCTORS (1) To qualify as an approved program director, an individual must meet the following criteria:

(a) hold a high school diploma; and

(b) acquired the following experience:

(i) 5 or more years of experience as an instructor or an education administrator; or

(ii) 5 or more years of experience in the insurance industry with 2 years in insurance management; or

(iii) earned the designation of CLU, CPCU, FLMI, CIC, or, CHFC.

(c) No person may qualify as a program director who:

(i) has been convicted of a felony; or

(ii) has had his/her insurance producer's license suspended in Montana or in any other state; or

(iii) at the time of application, has outstanding any fines imposed by the commissioner of insurance for insurance related disciplinary offenses.

(2) To qualify as an approved instructor, an individual must meet the following criteria:

(a) hold a high school diploma; and

(b) acquired the following experience:

(i) 3 or more years of managerial, supervisory or teaching experience in the insurance lines the individual plans to teach; or

(ii) earned the designation of CLU, CPCU, FLMI, CIC or CHFC; or

(iii) approved by the commissioner of insurance.

(c) No person may qualify as an approved instructor who:

(i) has been convicted of a felony; or

(ii) has had his/her insurance producer's license suspended in Montana or any other state; or

(iii) at the time of application, has outstanding any fines imposed by the commissioner of insurance for insurance related disciplinary offenses.

AUTH: 33-1-313, MCA IMP: 33-17-207 through 33-17-209, MCA

RULE IV EDUCATIONAL REQUIREMENTS FOR LIFE AND DISABILITY INSURANCE PRELICENSING EDUCATION COURSES

(1) To qualify as an approved prelicensing education program for life and disability insurance prelicensing education, the program shall include instruction in the following areas of study and for each of these areas, shall provide not less than the smaller of the below designated hours of instruction. Any departure from these designated hours must be approved by the commissioner of insurance.

I. Introduction to Life Insurance 5-7 Hours
   (a) Function of Life Insurance
   (b) Life Insurance and Annuities
   (c) Life Insurance Classifications
   (d) Forms of Life Insurance
   (e) Kinds of Policies
   (f) Registered Products
   (g) New Developments in Policies

II. Life Insurance as a Contract 5-7 Hours
   (a) General Provisions
   (b) Nonforfeiture Values
   (c) Dividends
   (d) Optional Provisions

III. Special Life Policies 5-7 Hours
   (a) Mortgage Redemption
   (b) Family Maintenance
   (c) Modified Whole Life
   (d) Universal Life
   (e) Family Income

IV. Special Annuities 2-3 Hours
   (a) Joint and Survivor
   (b) Variable
   (c) Guaranteed to Period Certain

V. Introduction to Health Insurance 4-6 Hours
   (a) The General Nature of Health Insurance
   (b) Importance of Health Insurance in Family Financial Planning

VI. Disability Insurance 5-7 Hours
   (a) The General Nature of Disability Insurance
   (b) The Need for Disability Income
   (c) Disability Income Policies
   (d) Individual vs. Group Policies
   (f) Cost of Policies
   (g) Important Exclusions

VII. Medical Insurance 4-6 Hours
   (a) Kinds of Insurers

(b) General Provisions of Policies
(c) Service Providers
(d) Indemnity Policies
(e) Individual vs. Group Contracts

VIII. Ethics, Insurance Laws, & Regulations 4-6 Hours
(a) Montana Insurance Laws & Regulations
(b) Registered Product Regulations
(c) Ethical Practices in Sales and Marketing
(d) Codes of Professional Conduct

(2) The total hours of such prelicensing education courses must equal no less than 40 hours within the stated limitations. Nothing in this section shall preclude an approved prelicensing education program from offering additional or supplemental materials or instruction in the area of life and disability insurance provided, however, that the program continues to meet the requirements set forth above.

AUTH: 33-1-313, MCA IMP: 33-17-207 through 33-17-209, MCA

RULE V EDUCATIONAL REQUIREMENTS FOR PROPERTY AND CASUALTY INSURANCE PRELICENSING EDUCATION COURSES

(1) To qualify as an approved prelicensing education program for property and casualty insurance prelicensing education, the program shall include instruction in the following areas of study, and for each of these areas, shall provide not less than the smaller of the designated hours of instruction. Any departure from these designated hours must be approved by the commissioner of insurance.

I. History of Property Insurance 4-6 Hours
(a) Fire Insurance
(b) The Standard Fire Policy
(c) Forms
(d) Endorsements

II. The Homeowners Policy 4-6 Hours
(a) History, General Nature, Section 1
(b) Coverages, Perils Insured
(c) Optional Coverages

III. Other Personal Property Insurance 2-3 Hours
(a) Dwelling Fire, Mobile Home, Flood Personal Marine, Earthquake
(b) Title Insurance

IV. Commercial Property Insurance 5-7 Hours
(a) Coverage Forms, Indirect Loss
(b) Boiler and Machinery, Marine
(c) Dishonesty Insurance, Package Policies

V. Negligence and Legal Liability 4-6 Hours
(a) Tortious Acts, Obligations of Property Owners

(b) Defenses against Liability Claims

VI. Personal Liability Insurance 3-5 Hours
(a) Section II of the Homeowners Policy
(b) Personal Liability and Medical Payments
(c) Professional Liability
(d) Umbrella Liability

VII. Commercial Liability Insurance 5-7 Hours
(a) General Liability Insurance, Claims Made vs. Occurrence
(b) Forms, Commercial Auto, Aviation
(c) Excess Liability, Umbrella Liability
(d) Workers Compensation

VIII. Ethics, Insurance Laws & Regulations 4-6 Hours
(a) FAIR Plan, Assigned Risk, Voluntary Market Plan, Residual Markets
(b) Ethical Practices in Sales & Marketing
(c) Codes of Professional Conduct

IX. Personal Automobile Policy 2-3 Hours
(a) History, General Nature, Coverages; Liability, Collision, Other Than Collision, Medical Payments, Uninsured Motorist & Underinsured Motorist

(2) The total hours of such prelicensing education courses must equal no less than 40 hours within the stated limitations. Nothing in this section shall preclude an approved prelicensing education program from offering additional or supplemental materials or instruction in the area of property and casualty insurance provided, however, that the program continues to meet the requirements set forth above.

AUTH: 33-1-313, MCA IMP: 33-17-207 through 33-17-209, MCA

RULE VI REQUIREMENTS FOR COURSE COMPLETION CERTIFICATES

(1) A certificate of prelicensing course completion may be issued to the applicant only if the applicant and instructor or program director certify to the commissioner of insurance that:

(a) the applicant has satisfactorily completed the minimum required course studies totalling not less than 40 hours; and

(b) the applicant has been present in a structured setting with an approved instructor; or

(c) the applicant has successfully completed an individual study program or correspondence course for those areas of study not completed in a classroom or structured setting.

(2) Credit shall be given for partial completion of the 40 hours of prelicensing education only upon completion of a course scheduled for less than 40 hours. Such course must comply with the composite requirements of an approved 40 hour

course.

(3) The commissioner of insurance may refuse to accept a certificate of course completion:

(a) unless on the form provided by the commissioner of insurance the approved instructor or program director and the applicant certify under penalties of perjury that the applicant has received the minimum required hours of instruction at the location and times indicated on the application; or

(b) if, after notice and opportunity for hearing, the commissioner of insurance finds that any applicant has completed fewer than the minimum number of hours of instruction or that the instruction was received at a location or at a time other than that reported to the commissioner of insurance.

(4) Each instructor or program director of an approved prelicensing education program shall maintain a complete record of each person attending or enrolled in the course. The record must:

(a) indicate each person's attendance;

(b) indicate his/her final grade in the course if individual study program or correspondence course;

(c) be available for review by the commissioner of insurance.

(5) Each instructor or program director for prelicensing education programs shall submit a certificate to the applicant at the completion of every course which lists the program director and/or instructor of the course, the location and times the course was offered if conducted in a classroom or structured setting, the line or lines of insurance included in the course and the grade obtained by the student in the course if conducted as an individual study program or correspondence course. This certificate must be provided within 10 days of course completion.

(6) An applicant for a license must submit the original certificate of completion at time of license examination.

AUTH: 33-1-313, MCA IMP: 33-17-207 through 33-17-209, MCA

RULE VII SUBMISSIONS AND CERTIFICATES (1) All requests for approval of courses, instructors, and program directors shall be submitted on forms approved by the commissioner of insurance.

(2) Certificates of course completion shall be upon a form approved by the commissioner of insurance.

AUTH: 33-1-313, MCA IMP: 33-17-207 through 33-17-209, MCA

4. The State Auditor and Commissioner of Insurance is proposing these rules because they are necessary to establish prelicensing education requirement guidelines and assist insurance producers to comply with Title 33, Chapter 17, Part 2, MCA.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Susan C. Witte, Chief Legal Counsel, State Auditor's Office, Mitchell

Building, P.O. Box 4009, Helena, Montana 59604-4009, no later than February 14, 1990.

6. Susan C. Witte, Chief Legal Counsel for the Office of the State Auditor and Commissioner of Insurance, has been designated to preside over and conduct the hearing.

David Barnhill
Deputy Commissioner of Insurance

Certified to the Secretary of State this 2nd day of January, 1990.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed) adoption of rules relating to) guaranteed tax base)	NOTICE OF PUBLIC HEARING ON RULES RELATING TO GUARANTEED TAX BASE, TITLE 10, CHAPTER 45, RULES I THROUGH V

To: All Interested Parties.

1. On February 8, 1990, at 9:00 a.m., at Room 108, State Capitol, Helena, Montana, a public hearing will be held to consider the adoption of rules which relate to guaranteed tax base funding in the school equalization program.

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

3. The proposed rules provide as follows:

Rule I. DEFINITIONS (1) In the calculation of GTB mill values and distribution of GTB aid, the following definitions apply:

(a) "Permissive mill levy" are the mills levied in support of an elementary or high school district to fund the guaranteed overschedule permissive amount of the general fund budget, as defined in 20-9-366 and 20-9-145, MCA.

(b) "Retirement mill levy" are the mills levied in accordance with 20-9-501, MCA, in support of a county's elementary and high school retirement funds.

(c) "Statewide mill value per elementary ANB for permissive mill levy GTB calculations" is the total of the taxable valuation of all elementary districts in the state plus the taxable value of the nontax revenue of all the elementary districts in the state divided by 1,000 divided by the total ANB of all the elementary districts in the state.

(d) "Statewide mill value per high school ANB for permissive mill levy GTB calculations" is the total of the taxable valuation of all high school districts in the state plus the taxable value of the nontax revenue of all the high school districts in the state divided by 1,000 divided by the total ANB of all the high school districts in the state.

(e) "Statewide mill value per elementary ANB for retirement levy GTB calculations" is the total of the taxable valuation of all counties in the state plus the taxable value of the nontax revenue of all elementary retirement funds in the state divided by 1,000 divided by the total elementary ANB of the state.

(f) "Statewide mill value per high school ANB for retirement levy GTB calculations" is the total of the taxable valuation of all counties in the state plus the taxable value of the nontax revenue of all high school retirement funds in the state divided by 1,000 divided by the total high school ANB of the state.

(g) "Statewide mill values per ANB" in (c) through (f) are expressed by the mathematical formula:
{[taxable valuation + taxable value of nontax revenue]/1000}/ANB=
statewide mill value per ANB.

(h) "OPI" is the Office of Public Instruction.

(i) "DOR" is the Department of Revenue.

(j) "GTB" is guaranteed tax base, as provided for in sections 20-9-366 through 20-9-369, MCA.

(2) For the purpose of calculating the district mill value per ANB, the following definitions apply:

(a) "Nontax revenue included in the guaranteed tax base (GTB) calculation" is the following revenue that was deposited in an elementary or high school district general fund during the twelve month period covering June 1 of the previous calendar year through May 31 of the calendar year in which the calculation is being made:

(i) light vehicle and motorcycle fees (61-3-504 and 61-3-357, MCA);

(ii) recreational vehicle fees, including motor homes (61-3-522, MCA), travel trailers (61-3-523, MCA), campers (61-3-523, MCA), off-road vehicles (23-2-803), snowmobiles (23-2-615, MCA), boats (23-2-517, MCA), and airplanes (67-3-205, MCA);

(iii) individual and district tuition and fees received by the district (sections 20-5-307 and 20-5-311, MCA);

(iv) personal property tax reimbursement (section 15-1-111, MCA);

(v) local government severance tax (15-36-101, MCA); and

(vi) coal gross proceeds tax (15-23-701, MCA).

In calculating a district mill value per ANB for FY1991, the following revenues deposited during the period June 1, 1989 through May 31, 1990 into the district's comprehensive insurance fund must also be included in the "nontax revenue included in the guaranteed tax base(GTB) calculation":light vehicle and motorcycle fees (61-3-504 and 61-3-357, MCA); recreational vehicle fees, including motor homes (61-3-522, MCA), travel trailers (61-3-523, MCA), campers (61-3-523, MCA), off-road vehicles (23-2-803, MCA), snowmobiles (23-2-615, MCA), boats (23-2-517, MCA), and airplanes (67-3-205, MCA); and personal property tax reimbursement (section 15-1-111, MCA).

(b) "Mills" are the mills as certified by the county clerk and recorder levied for support of the elementary or high school district's general fund in the August preceding the calendar year in which the GTB calculation is made. For the FY91 GTB calculation, the mills levied in August 1989 for support of the elementary or high school district's comprehensive insurance fund must be included with the mills levied for the general fund. In the GTB calculation, mills are expressed as in mill form. For example, 20.58 mills is expressed as 20.58.

(c) "Taxable valuation" is the value of all the taxable property in the elementary or high school district as certified in accordance with 15-8-706 and 15-10-202, MCA, for the year in which the GTB calculation is being made.

(d) "Taxable value of nontax revenue" is the nontax revenue included in the GTB calculation divided by the district's mills and multiplied by 1,000. Formula: [nontax revenue/mills] X 1000 = taxable value of nontax revenue.

(e) "ANB" is the "average number belonging" (ANB) total as reported on forms provided by OPI to calculate the district's foundation schedule payment for the school year that will begin in the calendar year in which the GTB calculation is being made.

(f) "District mill value per elementary ANB" is the taxable valuation of an elementary district plus the taxable value of nontax revenue of the district divided by 1,000 divided by the district's ANB.

(g) "District mill value per high school ANB" is the taxable valuation of a high school district plus the taxable value of nontax revenue of the district divided by 1,000 divided by the district's ANB.

(h) "District mill value per ANB" is expressed by the mathematical formula:

{[taxable value +taxable value of nontax revenue]/1,000}/ANB= district mill value per ANB.

(3) For the purpose of calculating the county mill value per ANB, the following definitions apply:

(a) "Nontax revenue included in the GTB calculation" is the following revenue that was deposited in an elementary or high school county retirement fund during the twelve month period covering June 1 of the previous calendar year through May 31 of the calendar year in which the calculation is being made:

(i) light vehicle and motorcycle fees (61-3-504 and 61-3-537);

(ii) recreational vehicle fees, including motor homes (61-3-522, MCA), travel trailers (61-3-523, MCA), campers (61-3-523, MCA), off-road vehicles (23-2-803, MCA), snowmobiles (23-2-615, MCA), boats (23-2-517, MCA), and airplanes (67-3-205, MCA);

(iii) personal property tax reimbursement (section 15-1-111, MCA);

(iv) local government severance tax (15-36-101, MCA);

(v) coal gross proceeds tax (15-23-701, MCA); and

(vi) forest reserve funds (17-3-213, MCA).

(b) "Mills" are the mills as certified by the county clerk and recorder levied for support of an elementary or high school retirement fund in the August preceding the calendar year in which the calculation is being made. In the GTB calculation, mills are expressed in mill form. For example, 20.58 mills is expressed as 20.58.

(c) "Taxable valuation" is the value of all the taxable property in the county as certified in accordance with 15-8-706 and 15-10-202, MCA, for the year in which the GTB calculation is being made.

(d) "Taxable value of nontax revenue" is the nontax revenue included in the GTB calculation for each retirement fund divided by that retirement fund's mills and multiplied by 1,000. A separate calculation is made for each county's elementary retirement fund and each county's high school retirement fund.

Formula:

[nontax revenue/mills] X 1,000 = taxable value of nontax revenue.

(e) "Elementary ANB" is the sum of all the county's elementary districts' "average number belonging" (ANB) total as reported on forms provided by OPI to calculate the districts' foundation schedule payment for the school year that will begin in the calendar year in which the GTB calculation is being made.

(f) "High school ANB" is the sum of all the county's high school districts' "average number belonging"(ANB) total as reported on forms provided by OPI to calculate the districts' foundation schedule payment for the school year that will begin in the calendar year in which the GTB calculation is being made.

(g) "County mill value per elementary ANB" is the taxable valuation of the county plus the taxable value of nontax revenue in the elementary retirement fund divided 1,000 divided by the elementary ANB.

(h) "County mill value per high school ANB" is the taxable valuation of the county plus the taxable value of nontax revenue in the high school retirement fund divided 1,000 divided by the high school ANB.

(i) "County mill value per ANB" is expressed by the mathematical formula:

{[taxable value+taxable value of nontax revenue]/1000}/ANB = county mill value per ANB.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-369, 15-23-607, and 15-23-703, MCA)

Rule II. DATA USED IN GTB CALCULATIONS (1) Nontax revenue included in the GTB calculation will be compiled from monthly reports submitted by county treasurers on forms provided by OPI.

(2) Each county treasurer will submit monthly data on the amount of nontax revenue included in the GTB calculation as defined in Chapter 45, rule I(2)(a) and I(3)(a). This data will be submitted on forms provided by OPI as part of the county collection report required in 15-1-504, MCA. The nontax revenue report is due to the state treasurer by the 20th of each month for revenue deposited to these accounts during the previous month.

(3) If a county treasurer fails to provide necessary nontax revenue data for any district or county retirement

fund, OPI shall impute the value of nontax revenue included in the GTB calculation, based on the data contained in other reports required to be submitted to OPI.

(4) OPI may, after consultation with the county treasurer and based upon reasonable written documentation, change nontax revenue data submitted on the forms referenced in (2) that school district, county, or OPI staff find is erroneous. Such changes may be made until July 3 of each year. After July 3 of each year, OPI will change the nontax revenue data used in a district's or county's GTB mill value calculation for that year only if: (a) an audit determines the data used was erroneous; and (b) the new data will change the district's or county's taxable value for GTB purposes by more than 5%. No changes will be made in the statewide mill values due to changes in district or county mill values made after July 3 of each year.

(5) Preliminary district, county, and statewide mill values per ANB will be based on the preliminary determination of the taxable value of each district and county for the tax year provided to OPI by DOR by June 1 of each year.

(6) Final district, county, and statewide mill values per ANB will be based on the final determinations of the taxable value of each district and county as provided to OPI by DOR by July 1 of each year. This final determination of taxable value for each district and county which DOR provides to OPI by July 1 of each year will be the value used in all GTB calculations and payments. No subsequent changes in taxable value made by the DOR or its agents shall be considered in GTB calculations.

(7) In calculating the amount of GTB aid for which a county or district is eligible, mill levies as certified by county clerks and recorders to OPI will be used.

(8) On the annual report form on district and county education mill levies provided by OPI, every county superintendent must report the number of mills levied to fund the permissive amount; any emergency budgets meeting the requirements of Chapter 45, rule III(7); and retirement net levy requirements. This report, which must be certified by the county clerk and recorder, must be filed with OPI by September 15 of each year.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

Rule III. CALCULATION OF MILL VALUES AND GTB AID PAYMENTS

(1) OPI will calculate preliminary statewide, county, and district mill values per ANB by June 15 of each year.

(2) On or before June 15 of each year, OPI will send notice to each school district and county of its preliminary mill value per ANB and the preliminary statewide mill value per ANB. The notice to each district or county will show the DOR's preliminary determination of taxable value for that district or county, the nontax revenue used in the GTB calculation, the mills, and the ANB used to calculate the mill

value for that district or county.

(3) During the period June 15 to July 1 of each year, school district and county officials may review the preliminary mill values per ANB. If a school or county official thinks there has been an error or incorrect data used in calculating a preliminary mill value figure, the following procedure should be followed:

(a) if the alleged error involves ANB data or calculation of GTB mill values, the official shall contact OPI in writing by July 1, detailing the alleged error and providing the necessary information to make corrections. Upon receipt of written notification and the required information, OPI will review the calculation and make corrections, if warranted. Any notification of error received after July 1 will not be taken into account in establishing the final statewide, district, and county mill values per ANB.

(b) if the alleged error involves nontax revenue, the official shall contact the county treasurer in the county in writing by July 1, detailing the alleged error and requesting correction be made. A copy of the letter to the county treasurer must be mailed to OPI. The county treasurer shall send notice to OPI by July 3 of any necessary change in nontax revenue data. OPI will make any changes received by July 3 in accordance with Chapter 45, Rule II(4).

(c) if the alleged error involves taxable valuation, the official shall contact the county assessor of his county in writing by June 25, detailing the alleged error and requesting correction be made. Copies of the letter to the county assessor must be mailed to OPI and the Property Assessment Division, Department of Revenue, Steamboat Block Building, Helena, Avenue, Helena, MT. 59601. The Department of Revenue will make any necessary change and include the revised taxable valuation in the final determination of taxable valuations for each district and county sent to OPI by July 1 of each year, in accordance with 20-9-369, MCA.

(4) OPI shall calculate final statewide, county, and district mill values per ANB by July 15 of each year.

(5) On or before July 15 of each year, OPI will send notification to each district and each county of its final mill value per ANB and the statewide mill values per ANB.

(6) In order to receive GTB aid, a county or district must:

(a) have a mill value per ANB lower than the applicable statewide mill value per ANB,as defined in Chapter 45, Rule I(1)(c-f);

(b) have set its permissive mill levy or retirement levy in accordance with the requirements of 20-9-141 or 20-9-501, MCA.

(7) Districts that adopt emergency general fund budgets in accordance with 20-9-161 through 20-9-167, MCA, are eligible for GTB aid on mills levied to pay the amount calculated in 20-9-167(3), MCA, if:

(a) the district is eligible for GTB aid in the year the emergency budget mill levy is imposed; and

(b) the amount to be raised by the emergency budget mill levy when combined with the district's general fund budget for the current school year is less than or equal to 135% of the district's current year foundation program amount.

(8) Within 60 days after receiving the certified copy of permissive levy; emergency budget mill levy meeting the requirements of Chapter 45, Rule III(7); or retirement mill levy as required in Chapter 45, Rule II(8), OPI will calculate the amount of GTB aid each eligible district and county will receive based on the final district, county, and statewide mill values per ANB and the certified permissive and retirement mill levies.

(9) Net retirement levy requirements for joint districts and districts that are members of special education cooperative agreements are calculated in accordance with section 20-9-501, MCA. GTB aid available to the retirement funds of the counties in which these districts are located is calculated based on the county mill value per elementary or high school ANB for each county involved and the retirement mills levied in that county.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

Rule IV. DISTRIBUTION AND REVERSION OF GTB AID (1) OPI will distribute GTB aid to districts and counties that meet the requirements of section 20-9-367, MCA, and Chapter 45, Rule III(6) on the following schedule: 40% of the total GTB aid for the fiscal year within 60 days after receipt of the copy of certified mills as required in Chapter 45, Rule II(8), at least 7% of the total each month thereafter, with the balance paid during the last month of the fiscal year.

(2) County officials shall distribute any GTB aid received in support of retirement levies to all school districts within the county based upon the ratio each district's final retirement budget bears to the total of all elementary or high school districts' retirement budgets for that year. By July 30 of each year, each county superintendent of a county that received GTB aid must provide a list to OPI showing the amount of GTB aid in support of retirement levies paid to each district during the previous fiscal year.

(3) In accordance with section 20-9-368, MCA, GTB aid is provided to counties and districts to finance a portion of general fund budget expenditures and retirement expenditures. By September 1 of each year, any unexpended balance of GTB aid received during the previous fiscal year must be reported to OPI on forms it provides. OPI will deduct this balance from the equalization and GTB aid payments made to the district or county during the next fiscal year.

(4) The amount of the unexpended balance of GTB aid for permissive levies is calculated at the end of each fiscal year as follows:

(a) the district must determine the ratio total GTB aid for permissive levies received during the fiscal year bears

to revenue deposited into the general fund that year, excluding the revenue listed in chapter 46, Rule III(6);

(b) the district must multiply this ratio times the district's unreserved balance in the general fund at the end of the fiscal year, excluding the revenue listed in chapter 46, Rule III(6).

(c) the product is the unexpended GTB aid the district must report to OPI. Formula:
{GTB aid/[general fund revenue-certain revenues]} X [unreserved general fund balance-certain revenues]=unexpended GTB aid.

(5) The amount of the unexpended balance of GTB aid for retirement levies is calculated at the end of each fiscal year as follows:

(a) the district must determine the ratio total GTB aid for retirement levies received during the fiscal year bears to the total retirement revenue received during the year;

(b) the district must multiply this ratio times the unreserved balance in the retirement fund;

(c) the product is the unexpended GTB aid the district must report to OPI.
Formula:
[GTB aid/retirement fund revenue] x retirement fund unreserved balance = unexpended GTB aid.

(6) To ensure that GTB aid reversions are being made in accordance with section 20-9-368, MCA, OPI will review:

(a) data contained in reports districts and counties are required to submit to OPI; and

(b) records of district payments to the Teachers' Retirement System, the Public Employees' Retirement System, the Unemployment Insurance Division, Department of Labor, and the Social Security Administration.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

Rule V. RECORDS OF GTB CALCULATIONS AND AID PAYMENTS

(1) OPI must keep records of:

(a) the data used in calculating district, county, and statewide mill values per ANB.

(b)the data used in calculating the amount of GTB aid paid to each eligible district and county;

(c) GTB aid payments made each year.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

4. The Office of Public Instruction is proposing these rules in order to implement Chapter 11, Special Legislative Session, June 1989.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Mt. 59601 until 5:00 p.m. on February 15, 1990.

6. An official of the Legal Services Division, Office

of Public Instruction, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on 20-9-369, MCA.

Nancy Keenan

Nancy Keenan, Superintendent of Public Instruction

Certified to the Secretary of State on December 27, 1989

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules relating to spending and reserve limits	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES RELATING TO SPENDING AND RESERVE LIMITS, **TITLE 10, CHAPTER 46, RULES I THROUGH IV**

To: All Interested Parties.

1. On February 8, 1990, at 9:00 a.m., in Room 108, State Capitol, Helena, Montana, a public hearing will be held to consider the adoption of rules relating to spending and reserve limits for school district budgets.

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

3. The proposed rules provide as follows:

RULE I. DEFINITIONS (1) In calculating reserve and spending limits, the following definitions apply:

(a) (Effective through June 30, 1990) "Foundation program" includes 80% of the maximum-general-fund-budget-without-a-voted-levy, as defined in 20-9-303, MCA.

(b) (Effective July 1, 1990) "Foundation program" includes amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320, MCA, and payments in support of special education programs under 20-9-321, MCA.

(c) "General fund budget," as defined in 20-9-301, MCA, includes the amount of any emergency budget for the general fund adopted during the fiscal year, in accordance with 20-9-161 through 20-9-165, MCA.

(d) (Effective through June 30, 1990) "State equalization aid" is revenue received by school districts from the state to equalize revenues raised at the county and district levels in support of the foundation program, special education, and the permissive amount, as provided in 20-9-303, 20-9-321, and 20-9-352, MCA.

(e) (Effective July 1, 1990) "State equalization aid" is revenue received by districts from the state to equalize revenues raised at the county level in support of the foundation program.

(f) (Effective through June 30, 1990) "Foundation program entitlement" is the total foundation program amount the district is entitled to receive from the foundation program schedules, as provided in 20-9-316 through 20-9-320, MCA, plus 80% of special education allowable costs, as

provided in 20-9-321, MCA.

(g) (Effective July 1, 1990) "Foundation program entitlement" is the total foundation program amount the district is entitled to receive from the foundation program schedules, as provided in 20-9-316 through 20-9-320, MCA, plus special education allowable costs, as provided in 20-9-321, MCA.

(h) "General bonus payment" is the amount of financial assistance received during a fiscal year by school districts that reorganized under the voluntary consolidation and annexation incentive plan, in accordance with 20-6-401 through 20-6-408, MCA.

(i) "Superintendent" is the Superintendent of Public Instruction.

(AUTH: 20-9-102, MCA; IMP: 20-9-104 and 20-9-315, MCA)

Rule II. SPENDING LIMITS (1) When setting the general fund budget of a school district for the ensuing school year, the trustees may not adopt a general fund budget amount in excess of the greater of:

(a) 135% of the foundation program amount for the ensuing school fiscal year; or

(b) 104% of the district's general fund budget for the current school fiscal year.

(2) For purposes of determining the spending limit:

(a) For FY91, the fiscal year 1989-90 general fund budget does not include comprehensive insurance amounts.

(b) For school districts participating in special education cooperatives, "foundation program amount" and "general fund budget" shall include a portion of the payments received by a special education cooperative in support of special education programs. These payments shall be apportioned among the school districts participating in the cooperative in the manner provided in 20-9-501, MCA. This apportionment will be based on each district's December child count in the most recent year for which data is available. By May 1 of each year, OPI will notify each school district participating in a cooperative of its apportioned payments for use in setting its spending limits for the ensuing school fiscal year.

(c) Public Law 81-874 fund are not included in calculating the spending limit.

(3) OPI shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-315, MCA. The superintendent shall request a revised budget from the chairman of the board of trustees of any district whose general fund budget is in excess of the limit. When making this request, the superintendent shall also notify the county superintendent of the county in which the district is located.

(4) Within 30 days after receiving a request for a revised budget from the superintendent, the chairman of the board of trustees shall submit a budget in compliance with the limits established in 20-9-315, MCA, to both the county

superintendent and the superintendent of public instruction.

(5) If the superintendent does not receive the revised budget within 35 days after initial notice to the district, he shall give written notice of the violation to the Board of Public Education. The Board of Public Education may, pursuant to 20-9-344, MCA, order the Office of Public Instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from the district.

(AUTH: 20-9-102, MCA; IMP: 20-9-315, MCA)

Rule III. RESERVE LIMITS (1) In accordance with 20-9-104, MCA, the trustees of each school district shall designate the portion of the end-of-the-year general fund balance that is to be earmarked as cash reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school year.

(2) (Temporary--effective through June 30, 1990) Except as provided in 2-9-111, MCA, the trustees shall combine the fiscal year 1990 end-of-the-year balance in the comprehensive insurance fund and the comprehensive insurance reserve fund with the fiscal year 1990 end-of-the-year balance of the general fund. This combined balance shall be used in determining the amounts available for reserves and as cash reappropriated for fiscal year 1991.

(3) The amount of general fund end-of-year balance designated as cash reserve may not exceed:

(a) 35% of the final general fund budget of the district for the ensuing school year if the district did not receive state equalization aid during the current school fiscal year;

(b) 30% of the final general fund budget of the district for the ensuing school year if the district received state equalization aid equal to 25% or less of its foundation program schedule entitlement in the current school fiscal year; and

(c) 20% of the final general fund budget of the district for the ensuing school year if the district received state equalization aid equal to more than 25% of its foundation program schedule entitlement in the current school fiscal year.

(4) The percent of state equalization aid received by a district in relation to the district's foundation program entitlement is calculated by dividing the amount of state equalization aid received by the district for the current school fiscal year by the foundation program entitlement of the district for the current school fiscal year.

Formula:

state equalization aid/foundation program entitlement = % of state equalization aid received.

(5) The limits in subsection (3) do not apply when the amount earmarked as cash reserve is:

(a) $10,000 or less; or

(b) cash reappropriated meeting the requirements of Rule IV(4).

(6) The amount earmarked as reserves can exceed the limitations by the greater of:

(a) any amount received under Public Law 81-874;

(b) the unused balance of any amount received in settlement of tax payments protested prior to July 1, 1990;

(c) the unused balance of any amount received from a tax audit; or

(d) any amount received as a general bonus payment.

(7) OPI shall monitor the general fund budgets of each school district to ensure compliance with the reserve limits established in 20-9-104, MCA. The superintendent shall request a revised budget from the chairman of the board of trustees of any district whose cash reserve is in excess of the limit. When making this request, the superintendent shall also notify the county superintendent of the county in which the district is located.

(8) Within 30 days after receiving a request for a revised budget from the superintendent, the chairman of the board of trustees shall submit a budget in compliance with the limits established in 20-9-104, MCA, to both the county superintendent and the superintendent of public instruction.

(9) If the superintendent does not receive the revised budget within 35 days after initial notice to the district, written notice of the violation shall be given to the Board of Public Education. The Board of Public Education may, pursuant to 20-9-344, MCA, order the Office of Public Instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from the district.

(AUTH: 20-9-102, MCA; IMP: 20-9-104 and 20-9-105, MCA)

Rule IV. CASH REAPPROPRIATED (1) Any unreserved general fund end-of-the-year balance must be designated as cash reappropriated to be used for property tax reduction, in accordance with 20-9-315 and 20-9-141, MCA.

(2) Cash reappropriated must be used to reduce the amount of additional financing required to fund a district's general fund budget in excess of the foundation program amount.

(3) Cash reappropriated must be applied in the following order:

(a) first, to reduce the revenue needed to be raised to fund the permissive amount, as defined in Chapter 47, Rule I(1); and

(b) second, to reduce the amount needed to be raised to fund the voted amount, as defined in Chapter 47, Rule I(3).

(4) If a district has cash reappropriated remaining after fully funding the general fund budget amount in excess of the foundation program, its trustee shall notify the superintendent by September 1. The cash reappropriated remaining must be accounted for in a separate reserve fund and designated as cash reappropriated to be used for property tax relief in the subsequent school fiscal year. The balance in this separate reserve account may, when combined with the

balance in the cash reserve account, exceed the reserve limit established in Rule III(3).

(AUTH: 20-9-102, MCA; IMP: 20-9-315 and 20-9-141, MCA)

4. The Office of Public Instruction is proposing these rules in order to implement Chapter 11, Special Legislative Session, June 1989.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Mt. 59601 until 5:00 p.m. on February 15, 1990.

6. An official of the Legal Services Division, Office of Public Instruction, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on 20-9-102, MCA.

Nancy Keenan

Nancy Keenan, Superintendent of Public Instruction
Certified to the Secretary of State on December 27, 1989

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules relating to permissive amount, voted amount, and school levies	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES RELATING TO PERMISSIVE AMOUNT, VOTED AMOUNT, AND SCHOOL LEVIES TITLE 10, CHAPTER 47, RULES I THROUGH VII

To: All Interested Parties.

1. On February 8, 1990, at 9:00 a.m., at Room 108, State Capitol, Helena, Montana, a public hearing will be held to consider the adoption of rules relating to the permissive amount, voted amount, and school district levies for school budgeting purposes.

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

3. The proposed rules provide as follows:

Rule I. DEFINITIONS (1) "Permissive amount" is the general fund budget amount that is in excess of the foundation program amount and less than 135% of the current year's foundation program.

(2) "Permissive mills" are mills levied to fund the permissive amount of a district's general fund budget. Permissive mills are imposed by resolution of the trustees and may not be submitted to the electorate.

(3) "Voted amount" is the general fund budget amount that is in excess of the permissive amount and within the spending limit established in 20-9-315, MCA.

(4) "Voted mills" are mills levied to fund the voted amount of a district's general fund budget. They must be submitted to a vote, in accordance with 20-9-353, MCA.

(5) "Other revenue available to the district for other than foundation program support" (hereinafter called "other revenue") includes that portion of the revenue sources enumerated in 20-9-141(1)(b), MCA, that has been reappropriated to or is anticipated to be deposited in the district's general fund during the fiscal year for which the permissive levy is being set. Until the state receives approval of an application to equalize the funds under 20 U.S.C. 240(d), Public Law 81-874 funds are not required to be included as other revenue in calculating permissive and voted levies.

(6) "Foundation program" includes amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320, MCA, and payments in support of special education programs under 20-9-321, MCA. For school

districts participating in special education cooperatives, "foundation program" includes a portion of the payments received by special education cooperatives in support of special education programs. These payments shall be apportioned among the school districts participating in the cooperative in the manner provided in 20-9-501, MCA. This apportionment will be based on each district's December child count in the most recent year for which data is available. By May 1 of each year, OPI will notify each school district participating in a cooperative of its apportioned payments for use in calculating its permissive amount for the ensuring school year.

(AUTH: 20-9-102; IMP: 20-9-145 and 20-9-353, MCA)

Rule II. PERMISSIVE AMOUNT AND PERMISSIVE LEVY (1) In accordance with 20-9-145, MCA, trustees in each district may adopt a general fund budget containing a permissive amount. The permissive amount may not exceed 35% of the district's foundation program amount for the year in which the budget is adopted.

(2) The permissive amount is funded by:

(a) guaranteed tax base aid for eligible districts, as provided in 20-9-368, MCA;

(b) property tax revenue generated by permissive mills imposed by resolution of the trustees; and

(c) other revenue available to the district for other than foundation program support.

(3) To determine the permissive net levy requirement needed to help fund the permissive amount, the county superintendent shall subtract the other revenue available to the district for other than foundation program support, except as provided in (5). The remaining amount is the permissive net levy requirement.

(4) To determine the permissive mills needed, the permissive net levy requirement is divided by:

(a) for districts eligible for GTB aid, the product of the statewide mill value per ANB, as defined in Chapter 45, Rule I(1)(c) or (1)(d), multiplied by the district's ANB, as defined in Chapter 45, Rule I (2)(e). Formula:
{net levy requirement/[statewide mill value/ANB X district ANB}=permissive mills.

(b) for districts that are not eligible for GTB aid, the district's taxable valuation, as defined in Chapter 45, Rule I(2)(c). Formula:
net levy requirement/district taxable value=permissive mills.

(5) Because the following other revenue has been taken into account in the GTB calculation as provided in Chapter 45, rule II, it may not be subtracted from the permissive amount in determining the permissive net levy requirement for those districts eligible for GTB subsidy:

(a) light vehicle and motorcycle fees (61-3-504 and 61-3-357, MCA);

(b) recreational vehicle fees, including motorhomes (61-

3-522, MCA), travel trailers (61-3-523, MCA), campers (61-3-523, MCA), off-road vehicles (23-2-803, MCA), snowmobiles (23-2-615, MCA), boats (23-2-527, MCA), and airplanes (67-3-205).

(c) individual and district tuition and fees received by the district, in accordance with 20-5-307 and 20-5-311, MCA;

(d) personal property tax reimbursement, in accordance with 15-1-111, MCA;

(e) local government severance tax (15-36-101, MCA); and

(f) coal gross proceeds tax (15-23-701, MCA).

(6) Except as provided in (7), all districts, including those eligible for GTB aid and those not eligible for GTB aid, must use total "other revenue" as defined in Chapter 47, Rule I(5) to fund the permissive amount.

(7) Districts that receive Public Law 81-874 funds are not required to use these funds to finance the permissive amount. Trustees of the district may determine how these funds are spent, in accordance with federal law.

(8) Permissive mills are imposed by resolution of the trustees and may not be submitted to the electorate for approval. The trustees' resolution imposing the permissive amount must state:

(a) the reasons and purposes for exceeding the foundation program amount; and

(b) the amount of the net levy requirement for permissive mills. Trustees must send a copy of the resolution imposing the permissive amount to the county superintendent with the preliminary budget, filed in accordance with 20-9-113, MCA.

(9) When reporting the net general fund levy requirements to the county commissioners in accordance with 20-9-141, MCA, each county superintendent must report the following information for each district eligible for GTB aid:

(a) the final district mill value/ANB and the statewide mill value/ANB for the current fiscal year, as provided by OPI in accordance with Chapter 45, Rule III(5); and

(b) the calculation used to determine the mills needed to fund the net levy requirement for the permissive amount.

(AUTH: 20-9-102, MCA; IMP: 20-9-145 and 20-9-141, MCA)

Rule III. VOTED AMOUNT AND VOTED LEVY (1) If a district's spending limit established in accordance with 20-9-315, MCA, exceeds the permissive amount, the trustees may adopt a general fund budget containing a voted amount.

(2) The voted amount is funded by:

(a) other revenue (except that listed in Chapter 46, Rule III(6) and Rule IV(4)) that has not been used to fund the permissive amount; and

(b) property tax revenue generated by mills approved by the electorate, in accordance with 20-9-353, MCA.

GTB aid may not be used to fund the voted amount.

(3) The amount of the voted net levy requirement is calculated by subtracting from the voted amount any other

revenue (except that listed in Chapter 46, Rule III(6) and Rule IV(4)) that has not been used to fund the permissive amount. This net levy requirement is then divided by the district's taxable valuation, as defined in Chapter 45, Rule I(2)(c), to determine the voted mills needed to help finance the voted amount.

(4) The amount of the voted net levy requirement must be approved by voters in accordance with 20-9-353, MCA.

(AUTH: 20-9-102, MCA; IMP: 20-9-353, MCA)

Rule IV. RETIREMENT LEVIES (1) Net levy requirements for retirement funds are determined in accordance with 20-9-501, MCA.

(2) Because the following revenue has been taken into account in the GTB calculation as provided in Chapter 45, Rule II, it may not be subtracted from the final retirement budget amount in determining the retirement net levy requirement for those counties eligible for GTB subsidy:

(a) light vehicle and motorcycle fees (61-3-504 and 61-3-357, MCA);

(b) recreational vehicle fees, including motorhomes (61-3-522, MCA), travel trailers (61-3-523, MCA), campers (61-3-523, MCA), off-road vehicles (23-2-803, MCA), snowmobiles (23-2-615, MCA), boats (23-2-527, MCA), and airplanes (67-3-205, MCA).

(c) forest reserve funds (17-3-213, MCA);

(d) personal property tax reimbursement, in accordance with 15-1-111, MCA;

(e) local government severance tax (15-36-101, MCA); and

(f) coal gross proceeds tax (15-23-701, MCA).

(3) To determine the retirement mills needed for each county's elementary and high school retirement fund, the retirement net levy requirement for each county retirement fund is divided by:

(a) for counties eligible for GTB aid, the product of the statewide mill value per ANB, as defined in Chapter 45, Rule I(1)(e) or (1)(f), multiplied by the counties's ANB, as defined in Chapter 45, Rule I(3) (e) or (f). Formula:
{net levy requirement/[statewide mill value/ANB X county ANB]}=retirement mills

(b) for districts that are not eligible for GTB aid, the district's taxable valuation, as defined in Chapter 45, Rule I(3)(c). Formula:
net levy requirement/county taxable value=retirement mills

(4) All counties, including those eligible for GTB aid and those not eligible for GTB aid, must use all revenue enumerated in 20-9-501, MCA, including the revenue listed in (2) to fund the final retirement budget.

(5)When reporting the net retirement levy requirements to the county commissioners in accordance with 20-9-501, MCA, each county superintendent must report the following information for each county eligible for GTB aid:

(a)the final county mill value per elementary ANB, county

mill value per high school ANB, statewide mill value per elementary ANB, and statewide mill value per high school ANB, as provided by OPI in accordance with Chapter 45, Rule III(5); and

(b)the calculation used to determine the mills needed to fund the net retirement levy requirements.

(AUTH: 20-9-102 and 20-9-369, MCA; IMP: 20-9-501 and 20-9-368, MCA)

Rule V. EXEMPTION FROM I-105 (1) The limitations established by Initiative 105 (15-10-401 through 15-10-412, MCA) do not apply to levies adopted for elementary and high school district purposes. These levies include but are not limited to the following levies:

(a) general fund;
(b) county and district transportation;
(c) county elementary and high school retirement;
(d) bus depreciation reserve;
(e) county and district tuition;
(f) debt service;
(g) building reserve;
(h) adult education;and
(i) non-operating.

(AUTH: 20-9-102, MCA; IMP: 15-10-412, MCA)

Rule VI. STATE EQUALIZATION LEVY All proceeds of the 40 mill state equalization levy imposed in 20-9-360, MCA, must be remitted to the state treasurer. The state treasurer shall deposit the proceeds to the credit of the state special revenue fund for state equalization aid.

(AUTH: 20-9-102, MCA; IMP: 20-9-360, MCA)

Rule VII. BASIC EQUALIZATION LEVY SHORTFALL (1) In accordance with 20-9-331 and 20-9-333, MCA, OPI will increase the state equalization aid to districts in a county if the revenue received from the sources listed in 20-9-331(2) and 20-9-333(2), MCA, is insufficient to fully fund the percentage determined in 20-9-347(1)(b), MCA, and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), MCA.

(2) If a county is eligible for an apportionment of state equalization aid, the county superintendent must assume when distributing county equalization moneys to districts each year that the revenue received from the sources listed in 20-9-331(2) and 20-9-333(2), MCA, is sufficient to fully fund the percentage determined in 20-9-347(1)(b), MCA, and make the distribution on that basis.

(3) In each county eligible for an apportionment of state equalization aid, the county superintendent must notify OPI by February 10 of each fiscal year if in his judgement the revenues received from the sources listed in 20-9-331(2) or 20-9-333(2), MCA, during the current fiscal year will be insufficient to fund the percentage determined in 20-9-347(1)(b), MCA. In the notification to OPI, the

superintendent must state the estimated amount of and reasons for the shortfall.

(4) After reviewing the notification and concurring with the estimate, OPI will increase the state equalization aid to districts in the county in the amount necessary to fully fund the percentage.

(5) OPI will notify the county superintendent of the additional state equalization aid sent to the county treasurer to the credit of each district as a result of the shortfall. In distributing county equalization money in subsequent months during that fiscal year, the county superintendent must ensure that no district receives state equalization payments in excess of the foundation schedule amount for the district as provided in 20-9-318 and 20-9-319, MCA. If revenues received from the sources listed in 20-9-331(2) and 20-9-333(2), MCA, when combined with state equalization aid payments to the district would exceed a district's foundation schedule amount, the county superintendent must reduce county equalization aid payments accordingly and send the total of the excess amount for each district to the state treasurer no later than June 20 of the fiscal year in which the shortfall was estimated, in accordance with 20-9-331(1)(b) and 20-9-333(1)(b), MCA.

(6) Within thirty days after the end of each fiscal year, each county superintendent who notified OPI of an estimated shortfall must provide a report to OPI of the amount of revenue received from the sources listed in 20-9-331(2), MCA, and the amount, if any, of county equalization money remitted to the state treasurer in accordance with (4).

(AUTH: 20-9-102, MCA; IMP: 20-9-331 and 20-9-333, MCA)

4. The Office of Public Instruction is proposing these rules in order to implement Chapter 11, Special Legislative Session, June 1989.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Mt. 59601 until 5:00 p.m. on February 15, 1990.

6. An official of the Legal Services Division, Office of Public Instruction, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on 20-9-102, MCA

Nancy Keenan

Nancy Keenan, Superintendent of Public Instruction
Certified to the Secretary of State on December 27, 1989

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendments of Rule 12.6.901 pertaining to water safety regulations	)))	NOTICE OF PROPOSED AMENDMENTS OF RULE 12.6.901 CLOSING CERTAIN WATERS

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On February 10, 1990, the Montana Fish and Game Commission proposes to amend Rule 12.6.901.

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

12.6.901 WATER SAFETY REGULATIONS (1) Remains the same. (a) The following waters are closed to use for any motor-propelled water craft except in case of use for official patrol, search and rescue, maintenance of hydroelectric projects and related facilities with prior notification by the utility, or for scientific purposes, or for special events such as testing motorized watercraft by prior written approval of the director;

Beaverhead County:	(A)	Big Hole River
Big Horn County:	(A)	Arapooish fishing access area
	(B)	That portion of the Bighorn River from Afterbay Dam to the Big Horn access area.
Cascade County:	(A)	Smith River
	(B)	Pelican Point fishing access ponds
	(C)	That portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle and that portion of the Missouri River from the Warden Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.
Custer County:	(A)	Branum Pond
Deer Lodge County:	(A)	Big Hole River
Gallatin County:	(A)	Bozeman Ponds
	(B)	East Gallatin Pond
Granite County:	(A)	Bear Mouth rest area pond
Hill County:	(A)	Bearpaw Lake
Jefferson County:	(A)	Park Lake

Lewis & Clark County:	(A)	Wood Lake
	(B)	Spring Meadow Lake
Madison County:	(A)	Big Hole River
Meagher County:	(A)	Forest Lake
	(B)	Smith River
Missoula County:	(A)	Frenchtown Pond
	(B)	Harpers Lake
Ravalli County:	(A)	Twin Lakes
Richland County:	(A)	Gartside Reservoir
Silver Bow County:	(A)	Big Hole River
Toole County:	(A)	Henry Reservoir
	(B)	Fitzpatrick Lake
Yellowstone County:	(A)	Lake Elmo

Sections (b), (i) and (ii) remain the same.

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

Broadwater County:	(A)	remains the same.
Carbon County:	(A)	remains the same.
Daniels County:	(A)	remains the same.
Fergus County:	(A)	remains the same.
Flathead County:	(A)	and (B) remain the same.
Hill County:	(A)	Beaver Creek Reservoir
	(B)	Fresno Reservoir: the area around the Fresno boat club docks, public boat ramp area, swimming and beach area as buoyed and signed.
Lewis and Clark County:	(A)	through (D) remain the same.
Lincoln County:	(A)	and (B) remain the same.
Madison County:	(A)	remains the same.
Missoula County:	(A)	and (B) remain the same.

Sections (d) through (2) remain the same

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

3. These ponds are too small to safely accommodate both motorized and non-motorized craft. By written approval, motorboat testing could be allowed at infrequent intervals.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Erv Kent, Administrator, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than February 8, 1990.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written

comments he has to Erv Kent, Administrator, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than February 8, 1990.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

Ron Marcoux

Ron Marcoux, Deputy Director
Montana Department of
Fish, Wildlife and Parks

Certified to the Secretary of State January 2, 1990.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM rule 12.9.210 Warm Springs Game Preserve	NOTICE OF PROPOSED REPEAL OF ARM RULE 12.9.210 WARM SPRINGS PRESERVE

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On February 10, 1990, the Montana Department of Fish, Wildlife and Parks proposes to repeal ARM rule 12.9.210 regarding the Warm Springs Game Preserve.

2. The rule proposed to be repealed is on page 12-615 of the Administrative Rules of Montana.

3. The Warm Springs Game Preserve was established by the Fish and Game Commission a number of years ago to protect pheasants raised and released at Warm Springs. The pheasant raising program was discontinued in the early 1980's for economic and biological reasons, but the preserve status has continued.

There is no biological reason for continuing preserve status for this area. Two landowners would like to permit hunting on their properties, which are included within the Preserve. One landowner has formally petitioned to abolish the preserve. The final landowner will not permit hunting, but does not object to abolishment of the preserve. Therefore, the preserve performs no beneficial purpose and should be abolished to permit hunting access and reduce unnecessary regulations.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don Childress, Administrator, Wildlife Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than February 8, 1990.

5. If a person who is directly affected by the proposed repeal 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 Don Childress, Administrator, Wildlife Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than February 8, 1990.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected,

a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the department to make the proposed repeal is based on section 87-5-402(3), MCA, and the rule implements section 87-5-402(3), MCA.

Ron Marcoux

Ron Marcoux, Deputy Director
Montana Department of
Fish, Wildlife and Parks

Certified to the Secretary of State January 2, 1990.

BEFORE THE PETROLEUM TANK RELEASE
COMPENSATION BOARD OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules I through XXIV for the Petroleum Tank Release Compensation Program.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED RULES FOR PETROLEUM TANK RELEASE COMPENSATION BOARD

TO: All Interested Persons:

1. On February 12, 1990, at 10 a.m., a public hearing will be held in the conference room (Room C-209) of the Cogswell Building, Broadway and Sanders, Helena, Montana, in the matter of the proposed rules for the Petroleum Tank Release Compensation Program.

2. The Board is proposing these rules in order to carry out the program for reimbursing certain costs incurred by owners or operators of leaking petroleum storage tanks, as set up by House Bill 603 (Chapter 528) of the 1989 Montana Legislature. Specific rationales are set forth following most of the twenty-four proposed rules.

3. The proposed rules would read as follows:

RULE I. ORGANIZATION OF BOARD.

(1) History. The Petroleum Tank Release Compensation Board was created by section 8, chapter 528, Laws of 1989.

(2) Divisions. The Board is a unitary organization without divisions.

(3) Director. The seven members of the board exercise the powers of a director of a department.

(4) Functions. The functions of the board are to provide a financial assurance mechanism, as required under the Superfund Amendments and Reauthorization Act of 1986 (42 U.S. Code Sec. 6991), to assure the cleanup of petroleum products which leak from storage tanks, and to reimburse the owners or operators of eligible tanks for their expenditures in cleaning up such leaks and compensating persons who live or own property near such leaking tanks for any bodily injury or property damage they may sustain as a result of the leaks. The Board operates in close conjunction with the Solid and Hazardous Wastes Bureau of the Department of Health and Environmental Sciences.

(5) General or specific inquiries regarding the Board may be addressed to the Executive Director, Petroleum Tank Release Compensation Board.

(6) The mailing address of the Executive Director is as follows:

Executive Director
Petroleum Tank Release Compensation Board
Cogswell Building
Helena, MT 59620

(7) A descriptive chart of the Board's organization is omitted as unnecessary. (AUTH: Sec. 2-4-201, MCA; IMP:

2-4-201, MCA).

RULE II. ATTORNEY GENERAL'S MODEL RULES -- INCORPORATION AND SUPPLEMENTATION.

(1) The Board adopts and incorporates by reference the Attorney General's Model Rules 1 through 28 and Forms 1 through 23, as set forth at ARM 1.3.101 through 1.3.233 (with the addition noted in subsection (2) of this rule).

(2) The Board also adopts the following policy on rehearing and reconsideration of its final decisions. A motion to rehear the facts of, or to reconsider the conclusions of, a final order in a contested case must be filed within 10 days of the issuance and mailing of the final order. (AUTH: 2-4-201, MCA; IMP: 2-4-201, MCA.)

RULE III. GUIDELINES FOR PUBLIC PARTICIPATION.

(1) Pursuant to 2-3-103, MCA, the Board declares that any interested person is encouraged to participate in its deliberations. The following policies will support this objective.

(2) A mailing list will be maintained for persons who wish to know when the Board is meeting. Any person may add their name and address to this list by contacting the Executive Director.

(3) The Board will mail a copy of its preliminary or tentative agenda to each person on the foregoing mailing list sufficiently in advance of each meeting.

(4) Copies of Board determinations, orders, and decisions will be made and sent only upon specific request and payment of reasonable copying charges. However, the Board may produce and distribute a newsletter, briefly summarizing its actions, to interested parties on the mailing list if such publication is warranted by the numbers of interested persons.

(5) The Board will notify the State Library of the technical publications from the EPA which come to the attention of the Board. The Board will also maintain a small library of government and nongovernment publications on corrective action technologies which any person may consult upon making prior arrangements with the Executive Director. (AUTH: 2-3-103, MCA; IMP: 2-3-103, MCA.)

RULE IV. ASSESSMENT OF ENVIRONMENTAL IMPACT.

(1) A decision of the Board to reimburse expenditures made to implement a corrective action plan could, if viewed in isolation, be considered subject to the Montana Environmental Policy Act. However, the actions of the Department of Health and Environmental Sciences in reviewing, modifying, and approving a corrective action plan are also reports and recommendations on the same subject matter within the meaning of 75-1-201, MCA. In order to avoid duplication and to expedite the cleanup process, the Board will consider any preliminary environmental review or environmental impact statement prepared by the Department, should the Department

deem such action necessary on a particular corrective action plan. The Board will adopt the Department's analysis and will independently apply the criteria of 75-1-201, MCA, in making its decision.

(2) The Board may participate in a programmatic environmental impact statement, such as a non-site-specific review of a cleanup technology, or find itself making a decision under circumstances where the Department's environmental assessment is not adequate. In such cases, the Board adopts and incorporates by reference the rules of the Department found at ARM 16.2.624 through 16.2.646. (AUTH: 2-3-103, 2-4-201, MCA; IMP: 2-3-104, 75-1-201, MCA.)

RULE V. DEFINITIONS.

(1) As used in this chapter,

(a) "Act" means chapter 528, Laws of 1989, as enacted by House Bill 603 of the 51st Montana Legislature.

(b) "Bodily injury," as defined in 75-11-302 (3), MCA, will be measured by the Board to include detriment that is currently in existence or certain to occur in the future, based on competent evidence as opposed to conjecture or speculation [(27-1-203, MCA; Ewing v. Esterholt, 684 P.2d 1053 (Mont. 1984)].

(c) "Day" means a calendar day, including weekends and holidays. Whenever a period of days specified in the Act or this chapter ends on a day state offices are not open for business, the period ends on the next day state offices are open.

(d) "Property damage," as defined in 75-11-302 (17), MCA, will be measured by the Board in terms of diminution of market value, unless the cost of repairing damage is less than the diminution of market value [Spackman v. Ralph Parsons Co., 147 Mont. 500, 414 P.2d 918 (1966)].

(e) "Responsible party" means the person, whether owner or operator, who undertakes a cleanup plan after a release from a tank, or the representative of such person, and designated on Form 5 and filed with the Board.

(2) The Act defines fifteen other terms at 75-11-302, MCA. (AUTH: 75-11-318, MCA; IMP: 75-11-307 through 75-11-318, MCA.)

Rationale: This rule supplements the statutory definitions.

RULE VI. CONDUCT OF BOARD MEETINGS.

(1) All meetings of the Board, other than contested case hearings, shall be conducted by the chairman. In the absence of the chairman the vice-chairman shall exercise the chairman's powers.

(2) The chairman may call any meeting of the Board to order, pursuant to notice, when he determines that a quorum is present. A quorum is at least four members present, physically or by teleconference media.

(3) The chairman may impose time limits on the oral

presentation of any person appearing before the board at any meeting other than a contested case hearing.

(4) The chairman may appoint a hearing examiner to conduct a contested case hearing within the agenda of a board meeting. A member of the Board, including the chairman, may question a witness through and by leave of a hearing examiner so appointed. (AUTH: 75-11-318, MCA; IMP: 75-11-318, MCA.)

Rationale: This rule specifies the chairman's powers during a regular business meeting and establishes that the Board itself will be present at contested case hearings, in order to expedite final decisions.

RULE VII. OFFICERS; VOTING.

(1) The Board shall elect a chairman and a vice-chairman for terms of one year each at its first meeting after October 1 of each year.

(2) Members shall vote on all motions in the order prescribed in Robert's Rules of Order.

(3) All votes must be personally cast, whether in person, by a teleconference medium, or by mail ballot if the chairman has, by unanimous consent, adopted a mail ballot procedure for all Board members. No voting by proxy may be counted. (AUTH: 75-11-318, MCA; IMP: 75-11-318, MCA.)

Rationale: This rule specifies terms of office, and clarifies that voting may be conducted by conference call or mail ballot, but may not be cast by proxy.

RULE VIII. VOLUNTARY REGISTRATION.

(1) An owner or operator may register his tank(s) with the Board for the purposes of expediting future applications for reimbursement and for procuring a certificate of registration.

(2) A person may apply for such registration on Form 1, which must contain the following information:

(a) the location (street address if available) of each tank;

(b) the name and address of any insurer covering any risks or liabilities associated with releases from the tank;

(c) the name and address of the responsible individual; if the entity seeking registration is a sole proprietorship or in a partnership or joint venture among individuals;

(d) the names and addresses of the resident agent and the chief executive officer if the entity seeking registration is a corporation or a partnership or joint venture including corporations; and

(e) declarations that, to the best of the declarant's knowledge,

(i) each tank listed would not be ineligible for possible reimbursement by virtue of its size, ownership, use, or location,

(ii) each tank listed was not releasing petroleum products on or before April 12, 1989,

(iii) that neither the owner nor the operator is ineligible to be reimbursed under the program.

(3) If the declarant on the application is not the responsible individual listed on the application, the declarant's capacity to speak for and relationship to the responsible individual must be set forth.

(4) The Board will not investigate applications for registration or the declarations therein. If the information on the application would, if true, establish potential eligibility for reimbursement, the Board will issue a certificate to that effect to the applicant. (AUTH: 75-11-318, MCA; IMP: 75-11-318, MCA.)

Rationale: While the Act does not require tanks to be registered, the Board proposes to offer voluntary registration under this rule. The benefits are expedited review of applications after a release has been reported, and provision of a certificate which may assist owners and operators in dealing with their insurance companies for supplemental or other coverage. The same information will be requested on the same form if a tank is not registered, after the release has occurred.

RULE IX. PRE-APPLICATION PROCEDURE; NOTICE OF RELEASE.

(1) When a person notifies the Department of a release from a petroleum tank, the Board will:

(a) record the dates of release and notification;

(b) mail to the responsible party or parties a copy of Form 1 to determine their potential eligibility, unless the form is already on file under the voluntary registration procedure (Rule VIII);

(c) mail to parties potentially eligible for reimbursement blank assents to audit (Form No. 2), to be executed by any persons who contract with the responsible party to carry out any portion of the approved corrective action plan.

(2) Unless the release is clearly ineligible for reimbursement under the Act, the Board shall monitor the submission and review of the corrective action plan. The Board may authorize its staff to comment on proposed corrective action plans. (AUTH. 75-11-318, MCA; IMP: 75-11-309, MCA.)

Rationale: Rule IX sets up a procedure for the preliminary determination of eligibility if a tank is not under the voluntary registration program, and provides for early distribution of contractors' agreements to audit.

RULE X. REVIEW OF CORRECTION ACTION PLAN; WHEN BOARD APPROVAL REQUIRED.

(1) The Act authorizes the Department and the Board to each review and approve a corrective action plan. The Department's authority appears at 75-11-309 (1) (c) (ii), MCA, with rulemaking power delegated to establish requirements for approval at 75-11-319 (1), MCA. The Board's power to establish procedures for approval is delegated at 75-11-318 (5) (c),

MCA, and is also reflected in the statement of intent as amended by the Senate Taxation Committee on March 29, 1989.

(2) The Board interprets the legislature's intent to be that the Board review upon its own motion, or the the applicant's request, Department decisions on cleanup or corrective action plans. If the responsible party does not request the Board to review a corrective action plan, and if all comments submitted by Board staff to the Department have been accepted by the Department, then the Department-approved plan will be presumed as approved by the Board without further formal action by the Board. However, this presumptive approval may be reconsidered by a motion to reconsider adopted by the Board.

(3) Review or reconsideration of a cleanup or corrective action plan approved by the Department, when set in motion by any of the events described in the preceding paragraph, will be conducted by the Board at a scheduled meeting, after notice to all interested parties, including the local governments concerned. The Board may modify a corrective action plan if the testimony it hears establishes that another cleanup strategy would provide equal or greater improvement of the affected environment at less cost. (AUTH. 75-11-318; IMP: 75-11-318, MCA.)

Rationale: The purpose of Board review is to assure that options to the cleanup strategy approved by the Department are identified and analyzed, if such options exist.

RULE XI. APPLICATION PROCEDURE -- REIMBURSEMENT AFTER EXPENDITURE.

(1) Upon completion of any aspect of an approved corrective action plan, the responsible party may apply to the Board for reimbursement of expenditures on Form 3, together with the following attachments:

(a) Attachment A -- a copy of the approved corrective action plan, together with any amendments or modifications approved by the Department as the corrective action was being undertaken;

(b) Attachment B -- a copy of each contract made pursuant to the corrective action plan, together with the contractor's invoice and assent to audit (Form 2);

(c) Attachment C -- where bids or proposals were taken for any work under the corrective action plan, a copy of each bid, proposal, or estimate;

(d) Attachment D -- where third-party damages have been paid, the documents described in Rule XXI.

(2) The balance of the application must include the applicant's certification, verified by a notary public, that the individual signing the application is authorized to represent the owner or operator and that the statements in the application are true to the best of the signer's knowledge.

(3) Applications may be submitted in a piecemeal manner on the cleanup of a single release in situations where the cleanup would require a considerable perod of time. (AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA.)

Rationale: This rule sets out the basic content of application for reimbursement.

RULE XII. APPLICATION FOR GUARANTEE OF REIMBURSEMENT OF FUTURE OR UNAPPROVED EXPENDITURES.

(1) The Act allows an applicant to request the Board to guarantee reimbursement for eligible costs not yet approved by the Board, including estimated costs not yet incurred. Since the Board cannot determine whether estimated expenditures will be actually and reasonably incurred, it will issue the requested guarantee, with no specific dollar amount, if it is able to make the necessary findings under (2) of this rule.

(2) The Board must find, before guaranteeing reimbursement of future or unapproved expenditures, that the release, the tank, and the applicant are each eligible for reimbursement and that the expenditure or proposed expenditure would be of a type necessary in order to implement an approved corrective action plan or to settle eligible third-party damage claims.

(3) A person shall apply to the Board for this guarantee on the basic application, Form 3, entering "not applicable" where appropriate. (AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA.)

Rationale: The Board would utilize the same form for reimbursement applications and for guarantee applications; the applicant would subsequently furnish the information on actual expenditures initially omitted on the guarantee application.

RULE XIII. REVIEW AND DETERMINATION.

(1) The Board's staff shall review all applications for reimbursement following the Department review. The staff will promptly advise the applicant of any incompleteness or deficiency which appears on the application. Further review will be suspended pending the submission of such further information as the applicant, acknowledging an incomplete or deficient application, agrees to furnish. An applicant who believes any request for additional information by the staff is not authorized by the Act or these rules may request the Board to process and consider his application, and the Board shall proceed.

(2) The Board will normally consider applications filed and submitted as complete (by staff recommendation or applicant request) up to 60 days preceding a scheduled Board meeting. Applications filed and submitted as complete less than 60 days preceding a Board meeting will not be considered at that meeting unless, and only to the extent that, expedited review and reimbursement or commitment is necessary to prevent environmental damage which would occur if consideration is held for the following Board meeting. The agenda for consideration of applications will follow the order in which applications were submitted as complete.

(3) The recommendations of the Department and Board staff shall be mailed to each Board member and to the applicant at least 7 days prior to a Board meeting which is scheduled to consider the application.

(4) The applicant may appear before the Board and make a statement on his application and on the recommendations. Any other interested party may also make a statement. The Board may establish a fair and reasonable limit on the time allowed for oral presentations. The Board shall thereafter proceed to consider the application and may grant it in whole, in such part as may to the Board seem proper, or may deny the application. Reasons for partial or total denials or disallowed expenses must be stated in the minutes of the meeting, and must be mailed to the applicant within 10 days of the Board's decision. The minutes of a Board meeting will reflect the sequence of actions approving applications.

(5) An applicant dissatisfied with the denial or disallowance of all or any part of his application may request a formal hearing. This request, with a specification of the grounds for dissatisfaction, must be filed in writing with the Board within 15 days of the mailing of the Board's determination to the applicant. Upon receiving such request, the Chairman of the Board shall appoint a hearing examiner to supervise any discovery and prehearing matters and to conduct the hearing at a subsequent meeting of the Board.

(6) Any time periods specified in this rule may be extended by agreement. (AUTH: 75-11-318, MCA; IMP: 75-11-309 (2), (3), MCA.)

Rationale: This rule sets various time frames for the processing of applications.

RULE XIV. "FUEL STORED FOR NONCOMMERCIAL PURPOSES IN FARM OR RESIDENTIAL".

(1) A farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes is not eligible under the program.

(2) The Board considers storage for commercial purposes to mean holding for resale under license from the Weights and Measures Bureau, Department of Commerce (82-15-105, MCA) or for later removal to another location where the fuel will be resold. Any other purpose of storage is presumed to be a noncommercial purpose.

(3) The Board will follow the definitions of a farm tank or residential tank promulgated by the Department at ARM 16.45.101A (20), (55), and its definitions of heating oil at ARM 16.45.101A (27). (AUTH: 75-11-318, MCA; IMP: 75-11-308 (2), MCA.)

Rationale: This rule states the Board's interpretation of the language in the Act.

RULE XV. "BELONGING TO THE FEDERAL GOVERNMENT" CONSTRUED.

(1) A tank belonging to the federal government is not

eligible under the program.

(2) The Board considers "belonging" to mean (a) currently under the possession and control of a federal agency, or (b) located on land held by a federal agency if the tank is operated by a contractor for the primary benefit of a federal agency. However, if the contract binds the operator to hold the federal agency harmless from liability for any release from the tank and the federal agency required its contractor to make this commitment prior to March 31, 1990, the tank is not considered as belonging to the federal government. (AUTH: 75-11-318, MCA; IMP: 75-11-308 (2), MCA.)

Rationale: This rule states the Board's interpretation of the language in the Act.

RULE XVI. ELIGIBLE PERSONS: COMPLIANCE; SUBSTANTIAL VIOLATIONS.

(1) The Act requires the operation and management of a tank to have been in compliance with applicable state and federal statutes and rules, other than for the release which led to the application for reimbursement, at the time of the release and after its detection. The Board will normally consider compliance with the following requirements essential to eligibility: installation of a tank which meets design standards (ARM 16.45.103, 16.45.401, or 16.45.402, as applicable), upgrading tanks for spill and overfill prevention per ARM 16.45.301 and for anti-corrosion protection per ARM 16.45.302, reporting a release within 24 hours of detecting it, taking the initial response and abatement measures set forth at ARM 16.45.602, and notifying the Department of tank installations per ARM 16.45.901 and .902. Any other regulatory requirement must be met if an inspection by the Department has called the operator's attention to it, but the above-described requirements must be met whether or not an inspector has called them to an operator's attention. The Board will consider whether an operator has made a good faith effort to comply with the requirements of the Department; noncompliance which is neither knowing nor negligence may be waived in such cases if the effect of such noncompliance does not increase eligible costs.

(2) The Act states that an owner or operator who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks is ineligible to seek reimbursement for any costs he incurs following a release. The Board will consider a conviction to include any criminal sentence. The length of time following such conviction that the defendant remains ineligible to consider the fund a financial assurance mechanism may be limited by Art. II, Sec. 28 of the Montana Constitution and by 46-18-801, MCA. (AUTH: 75-11-318, MCA; IMP: 75-11-308 (1) (e); (2) (f), MCA.)

Rationale: The federal requirements published by EPA emphasize that compliance requirements must be tempered with an effort to let operators know when they are not in compliance

before a release occurs. This rule reflects the federal policy for minor, technical infractions and states the core or basic regulatory requirements which should not need a visit from an inspector to emphasize their importance.

RULE XVII. CRITERIA FOR DECISION -- COSTS ACTUALLY, NECESSARILY, AND REASONABLY INCURRED.

(1) In deciding whether to reimburse expenditures, the Board is required by law to find that such expenditures were actually, necessarily, and reasonably incurred. The following statements of policy illustrate but are not a complete catalog of the applications of these criteria.

(2) "Actually incurred" means that one entity -- the owner, the operator, or the insurer of either -- has made a payment and that only that entity is receiving reimbursement from the Board. Time and labor contributed by the owner or operator or by an unpaid volunteer is not an expenditure actually incurred, but the labor of an employee or a contractor reflected by checks and treated by the recipient as income is actually incurred. The Board will also require proof of payment, such as a cancelled check or an invoice marked paid in full.

> EXAMPLE: A contractor is employed to remove several cubic yards of contaminated soil. His invoice for backhoe use and operator labor, marked paid, document actually incurred costs. However, a neighbor who removes contaminated soil along the boundary line with his own labor and rented equipment does not generate actually incurred costs unless he invoices the tank operator for the backhoe rental and his time and the operator pays the neighbor on that invoice.

(3) "Necessarily incurred" means, in the case of correction action expenditures, that the work was either contemplated in the approved plan, or if of an emergency response nature, was clearly necessary to avoid much greater damages in a very short time. In the case of third party damages, expenditures are necessarily incurred if the damages are a direct and proximate consequence of the release.

> EXAMPLE: A site remediation plan approved by the Department and the Board is silent on whether a leaking tank should be removed. The plan discusses soil removal and landfarming at another approved site. If the contaminated soil is underneath the tank, removal of the tank is necessary to carry out the plan, but if the contamination is beside the tank, removal is not a necessary expenditure.

(4) "Reasonably incurred" means, in the case of corrective action expenditures, that any work performed other than emergency response work was contracted to the lowest qualified bidder after soliciting bids, estimates, or proposals from at least two sources, unless it appears to the Board's satisfaction that in the relevant locality there were not two sources qualified to do the work, or although two or more were qualified, two were not available to do the work. The Board may investigate and gather information as to the competitive market rate in the locality for a particular product or service, and may find a reasonable cost for reimbursement whether or not bids were received. In the case of third party damages, a payment is reasonably incurred when it is reduced to judgment or agreement, if the Board has received timely notice of pending litigation or negotiations under Rule XX. When the Board has not received such notice, a judgment or settlement of third-party damages will be treated as reasonably incurred if it is supported by substantial competent evidence as to the damages.

> EXAMPLE: An operator contacts a consultant, one of several in his region who does assessment work. The consultant quotes a flat fee without estimating the number of hours he is projecting to spend on the job. The operator should obtain another proposal from a different consultant. If the first consultant is selected, the Board may audit his records to determine how many hours he spent on the job and whether his fee, considered on an hourly basis, is reasonable.

(AUTH: 75-11-318, MCA; IMP: 75- 11-309, MCA.)

Rationale: These three determinations are the heart of the Board's responsibilities. This rule lays out some broad guidelines for the Board's discretion, which must still be exercised on a case-by-case basis.

RULE XVIII CORRECTIVE ACTION EXPENDITURES: DOCUMENTATION. (1) Expenditures made by the responsible party pursuant to an approved corrective action plan must be documented as set forth in the requirements for Appendices B and C of the application (Form 3).

(2) The responsible party may also reimburse a third party who undertakes action to mitigate damages to third parties or their property which would be compensable damages under the Act. The Board shall, unless the Department has already done so, amend the corrective action plan to reflect the performance of any such work by a third party. The portion of this reimbursement allowed as an eligible cost must meet the actual, necessary, and reasonable standards applied by the Board to all expenditures. (AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA.)

RULE XIX. ASSENT TO AUDIT.

(1) Each contractor employed to carry out a corrective action plan in whole or in part shall assent to an audit of the documentation supporting his invoices;

(2) The responsible party shall obtain the contractor's assent on Form 2 or shall incorporate language identical to that on the form in his agreement with the contractor. A form may be executed by the contractor before or after the work is completed. (AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA.)

Rationale: The Board must reserve the right to audit a contractor's invoices in order to determine, in some cases, that the expenditures were actually, necessarily, and reasonably incurred.

RULE XX. THIRD-PARTY DAMAGES: PARTICIPATION IN ACTIONS AND REVIEW OF SETTLEMENTS.

(1) Any potentially responsible party who is sued for damages resulting from a release shall notify the Board within one week of being served with a summons and complaint. The party shall also advise the Board if any insurer is defending him, and the name of such insurer.

(2) Any potentially responsible party who, prior to litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the Board of such demand or negotiations.

(3) The Board may review the conduct of any such litigation or negotiation. The Board will not assume any legal costs incurred by the defendant but may participate in discovery or trial proceedings or settlement negotiations which bear on the determination of a plaintiff's damages. If the parties wish to employ a judge pro tempore under the provisions of 3-5-113, MCA, and consult with the Board in the selection process, the Board will consider participating in the compensation of the judge pro tempore.

(4) The Board may review any settlement negotiations for the purpose of determining the dollar amount of bodily injury or property damages actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs. (AUTH: 75-11-318, MCA; IMP: 75-11-309 (1) (g), MCA.)

Rationale: Although the Board does not assume the costs of legal defense of an action for damages, its role is otherwise similar to that of an insurance company in investigating and possibly settling claims. This rule states the roles the Board would play in such cases.

RULE XXI. THIRD-PARTY DAMAGES: DOCUMENTATION.

(1) An applicant's payments for third-party damages pursuant to a judgment entered in a court shall include copies of the notice of entry of judgment, abstract of costs, and a

declaration of the fees paid by the defendant to each attorney who appeared in the proceeding.

(2) An applicant's payments for third-party damages made by agreement in settlement of litigation shall include copies of the settlement agreement and such supporting documents as may be required under paragraph (4) of this rule.

(3) An applicant's payments for third-party damages made by agreement without reference to litigation shall include copies of the settlement agreement and such supporting documents as may be required under paragraph (4) of this rule.

(4) The Board may require a third party claiming bodily injuries to be examined by a physician and the physician's report submitted to the Board. The Board may require a third party claiming property damage to allow a property appraiser or claims adjuster retained by the Board to enter upon the property, inspect it, and report to the Board. Such examinations are more likely to be required if the applicant has not kept the Board apprised of the course of litigation or settlement negotiations as required under Rule XX. (AUTH: 75-11-18, MCA; IMP: 75-11-309 (g), MCA.)

Rationale: The documentation required to support a settlement is similar to that which any insurance company would require.

RULE XXII. INSURANCE COVERAGE: DISCLOSURE; COORDINATION OF BENEFITS.

(1) An owner or operator who incurs or may incur eligible costs under the Act must disclose to the Board any policy of insurance on the tank or its premises which may cover some or all of the expenses arising from a release of petroleum products from the tank. This disclosure must be made on Form 1 and must contain current information as of the date of a release. A copy of the policy or policies must be furnished to the Board by an applicant upon request by the Board.

(2) The Board may agree to coordinate benefits with an insurer who covers the same risks or other risks arising out of a release from the tank. The Executive Director is authorized to execute such agreements on behalf of the Board. An agreement to coordinate benefits may designate which party is primarily responsible for which risks and may divide costs of claims investigation or adjustment. (AUTH: 75-11-318, MCA; IMP: 75-11-309, MCA.)

Rationale: Many operators will carry premises liability insurance which may cover some of the same risks the Act covers. The Board needs to be aware of such other coverage in order to assure that expenditures are actually incurred by a responsible party and to minimize, where appropriate, costs of claims administration and to prevent unjust enrichment through double compensation.

RULE XXIII DESIGNATION OF REPRESENTATIVE.

(1) An owner or operator may designate its insurer, contractor, or any other party as its representative to

receive reimbursement for expenditures made for eligible costs as determined by the Board.

(2) This designation shall be made on Form 5, "Designation of Representative" by a person who has already submitted evidence of eligibility to the Board on Form 1. A designated representative may execute and file all forms and documents, other than Form 1, required by the Board. (AUTH: 75-11-318, MCA; IMP: 75-11-307 (3), MCA.)

Rationale: This rule sets out a procedure for the appointment of a representative as allowed under the Act. Its primary application would be to allow an insurer of a tank operator to pay cleanup costs and claims and to be reimbursed to the level deemed eligible by the Board.

RULE XXIV. FORMS.

(1) The Board has adopted the following forms:

(a) Form 1, "Eligibility Checklist and Application for Voluntary Registration."

(b) Form 2, "Assent to Audit."

(c) Form 3, "Application for Reimbursement."

(d) Form 4, "Cleanup Cost and Completion Schedule Estimate."

(e) Form 5, "Designation of Representative."

(AUTH: 2-4-201, MCA; IMP: 75-11-302 through 75-11-318, MCA.)

4. Interested parties may submit their data, views, and arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Jean Riley, Executive Director
Petroleum Tank Release Compensation Board
Cogswell Building
Helena, MT 59620

no later than February 14, 1990.

5. Roger Tippy, counsel to the Petroleum Tank Release Compensation Board, has been designated to preside over and conduct the hearing.

Petroleum Tank Release Compensation Board
Howard Wheatley, Chairman

By: Jean A. Riley
Jean Riley, Executive Director

Certified to the Secretary of State January 2, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of RULE I through V for Property Tax - Reappraisal of Real Property.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION of Rules I through V for Property Tax - Reappraisal of Real Property.

TO: All Interested Persons:

1. Public hearings will be held on the following dates and locations:

January 31, 1990, at 1:30 p.m., in the City/County Library, 301 East Main Street, Main Floor Meeting Room, Missoula, Montana.

February 1, 1990, at 10:00 a.m., in the Conference Room, Courthouse East, Kalispell, Montana.

February 5, 1990, at 7:00 p.m., in the Montana Room, Heritage Inn, Great Falls, Montana.

February 6, 1990, at 7:00 p.m., in the Butte Civic Center, Conference Meeting Room (upstairs), 1340 Harrison Avenue, Butte, Montana.

February 7, 1990, at 1:00 p.m., Judge Thomas Olson's Courtroom, Courtroom #1, Justice Center, 615 16th Street, Bozeman, Montana.

February 7, 1990, at 7:00 p.m., Parmly Billings Library, 3rd Floor Conference Room, 510 North Broadway (use south entrance), Billings, Montana.

2. The proposed new rules are as follows:

RULE I DESIGNATED AREAS - RESIDENTIAL For purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, the sales assessment areas for residential property are:

(1) Area 1.0:

(a) Carbon County-the exterior borders of Carbon County.

(2) Area 2.0:

(a) Cascade County-the exterior borders of Cascade County except the area described in 2.1, 2.2 and 2.3.

(3) Area 2.1:

(a) Great Falls Outlying Urban - Area Legal Description.

(i) Township 21 North, Range 3 East.

(A) All of sections 35 and 36.

(ii) Township 20 North, Range 4 East.

(A) All of sections 4, 9, 16, 17, 18, 19, and 30

(iii) Township 20 North, Range 3 East.

(A) All of sections 13, 14, 15, 22, 23, 24, 25.

(b) Great Falls Outlying Urban - Area General Description.

(i) Area 2.1 begins at the intersection of 38th Street

and 10th Avenue South; proceed two miles north to a point near the edge of Missouri River, then due east one mile, then proceed south along the east edge of the city limits for a distance of 3 miles; proceed west along section lines for 2 miles, then south along the section lines for an additional 2 miles; proceed west for 2 miles to a point on the west edge of the Missouri River; then proceed north 1 mile to the Lewis and Clark Park Road, then west 2 miles; from the previous point proceed north approximately 2½ miles to the Sun River, then east to the point where the Sun River joins the Missouri River; proceed from that point east along 10th Avenue South to where it intersects 38th Street. Area 2.1 also includes an area on the north edge of Great Falls. That area begins at the intersection of 15th Street and Smelter Avenue; proceed west 2 miles, then north 1 mile, then east 2 miles to Bootlegger Trail; from that point proceed south 1 mile to the point of beginning.

(4) Area 2.2:

(a) Great Falls East - Area Legal Description.

(i) Township 21 North, Range 04 East.

(A) All of section 31.

(ii) Township 20 North, Range 04 East.

(A) All of sections 5, 6, 7 and 8.

(iii) Township 20 North, Range 03 East.

(A) That portion of section 1 lying south and east of the Missouri River.

(B) That portion of section 2 lying east of the Missouri River.

(C) That portion of section 11 lying east of the Missouri River.

(D) All of section 12.

(b) Great Falls East - Area General Description.

(i) Area 2.2 begins at the intersection of 10th Avenue South and 38th Street; proceed west along 10th Avenue South to the point where 10th Avenue South crosses the Missouri River, then proceed in a northeasterly direction along the Missouri River to where the river intersects 14th Street; proceed north approximately 1¼ mile along Bootlegger Trail; then east 1 mile and then south 1 mile to a point near the north edge of the Missouri River; then proceed east 1 mile to a point on the southern edge of the Missouri River; then proceed south 2 miles down 38th Street to 10th Avenue South, to the point of beginning.

(5) Area 2.3:

(a) Great Falls West - Area Legal Description.

(i) Township 20, Range 3 East.

(A) That portion of section 1 lying west of the Missouri River.

(B) That portion of section 2 lying north and west of the Missouri River.

(C) All of sections 3, 4, and 10.

(D) That portion of section 9 lying north of the Sun River.

(E) That portion of section 11 lying west of the Missouri River.

(F) That portion of section 14 lying north of the Sun River.

(G) That portion of section 15 lying north of the Sun River.

(b) Great Falls West - Area General Description.

(i) Beginning at the intersection of 15th Street and Smelter Avenue, proceed west along the section lines for a distance of approximately 4 miles, then south about 1 mile to a point of intersection with the Sun River; proceed in a southeasterly direction along the Sun River to the mouth of the Sun River, then in a northeasterly direction along the Missouri River to the point where the Missouri River intersects 15th Street, then north a short distance to the point of beginning.

(6) Area 3.0:

(a) Gallatin County - the exterior borders of Gallatin County except the area described in 3.1.

(7) Area 3.1:

(a) Bozeman - Area Legal Description.

(i) Township 3 South, Range 5 East.

(A) All of sections 1-36.

(ii) Township 3 South, Range 6 East.

(A) All of sections 1-36.

(iii) Township 2 South, Range 5 East.

(A) All of sections 1-36.

(iv) Township 2 South, Range 6 East.

(A) All of sections 1-36.

(v) Township 2 South, Range 7 East.

(A) All of sections 1-36.

(vi) Township 1 South, Range 5 East.

(A) All of sections 1-36.

(vii) Township 1 South, Range 6 East.

(A) All of sections 1-36.

(viii) Township 1 South, Range 7 East.

(A) All of sections 1-36.

(ix) Township 2 South, Range 4 East.

(A) All of sections 1 and 12.

(b) Bozeman - Area General Description.

(i) The greater Bozeman area includes the Gallatin Valley and some of the surrounding foothills. Beginning at the northeast corner of Township 1 South, Range 7 East, proceed in a westerly direction along the baseline meridian 36 miles to the northwest corner of Range 5 East; then South 6 miles to the southwest corner of Township 1 South; proceed West 1 mile to Jackrabbit Lane; then South two miles; then East 1 mile; then proceed South to the Southwest corner of Township 3 South, Range 5 East; then East to the southeast corner of Township 3 South, Range 6 East; proceed North to the southeast corner of Township 2 South, Range 6 East; then east to the county line; then North to the point of beginning.

(8) Area 4.0:

(a) Jefferson County - the exterior borders of Jefferson County.

(9) Area 5.0:

(a) Lewis and Clark County - the exterior borders of

Lewis and Clark County except the area described in 5.1.

(10) Area 5.1:

(a) Urban Helena - Area Legal Description.

(i) Township 8 North, Range 6 West.

(A) All of sections 1-36 lying within Lewis and Clark County.

(ii) Township 9 North, Range 6 West.

(A) All of sections 1-36 lying within Lewis and Clark County.

(iii) Township 10 North, Range 6 West.

(A) All of sections 24, 25, 35 and 36 lying within Lewis and Clark County.

(iv) Township 8 North, Range 5 West.

(A) All of sections 1-36 lying in Lewis and Clark County.

(v) Township 9 North, Range 5 West.

(A) All of sections 1-36 lying in Lewis and Clark County.

(vi) Township 10 North, Range 5 West.

(A) All of sections 19-36.

(vii) Township 9 North, Range 4 West.

(A) All of sections 1-36 lying within Lewis and Clark County.

(viii) Township 10 North, Range 4 West.

(A) All of sections 1, 2, 3, 10, 11, 12, 13, 14, 15, and 23 through 36.

(ix) Township 11 North, Range 4 West.

(A) All of sections 1, 2, 11, 12, 13, 14, 24, 25, and 36.

(x) Township 9 North, Range 3 West.

(A) All sections 1-36 lying within Lewis and Clark County.

(xi) Township 10 North, Range 3 West.

(A) All of sections 1-36.

(xii) Township 11 North, Range 3 West.

(A) All of sections 1-36.

(xiii) Township 12 North, Range 3 West.

(A) All of sections 31-36.

(xiv) Township 9 North, Range 2 West.

(A) All of sections 1-6 lying within Lewis and Clark County.

(xv) Township 10 North, Range 2 West.

(A) All of sections 1-36.

(xvi) Township 11 North, Range 2 West.

(A) All of sections 1-36.

(xvii) Township 12 North, Range 2 West.

(A) All of sections 31 and 32.

(xviii) Township 9 North, Range 1 West.

(A) All of sections 1-6 lying within Lewis and Clark County.

(xix) Township 10 North, Range 1 West.

(A) All of sections 1-36.

(xx) Township 11 North, Range 1 West.

(A) All of sections 1-36.

(xxi) Township 9 North, Range 1 East.

(A) All of section 6 lying within Lewis and Clark County.

(xxii) Township 10 North, Range 1 East.

(A) All of sections 6, 7, 18, 19, 30 and 31.

(xxiii) Township 11 North, Range 1 East.

(A) All of sections 5, 6, 7, 18, 19, 30, and 31.

(b) Urban Helena - Area General Description.

(i) Beginning at a point approximately 3 miles north of U.S. Highway 12 on the county line separating Powell County and Lewis and Clark County, proceed east to the intersection of U.S. Highway 12 and the Fort Harrison Road (also known as Montana Highway 356); then proceed north along the west side of the Helena valley for a distance of approximately 12 miles to the top of the North Hills; proceed approximately 22 miles east to a point on the county line which separates Broadwater County and Lewis and Clark County; proceed south along the county line to the southeast corner of Lewis and Clark County; proceed west along the county line to the southwest corner of Lewis and Clark County; proceed north along the county line to the point of beginning.

(11) Area 6.0:

(a) Lincoln County - the exterior borders of Lincoln County.

(12) Area 7.0:

(a) Madison County - the exterior borders of Madison County.

(13) Area 8.0:

(a) Missoula County - the exterior borders of Missoula County except the area described in 8.1, 8.2 and 8.3.

(14) Area 8.1:

(a) Eastern Urban Missoula - Area Legal Description.

(i) Township 12 North, Range 19 West.

(A) All of sections 1-36.

(ii) Township 12 North, Range 20 West.

(A) All of sections 1, 11 and 12.

(iii) Township 13 North, Range 19 West.

(A) All of sections 1-3, 10-14, east 1/2 of 15, all of 22 except the NW¼ located north of the railroad tracks and west of Orange Street, all of section 23, all of section 24 except the East Missoula subdivisions, Bratten Addition, and Art Pine Addition, all of sections 25-27, all of section 28 except the portion in the NW¼ located north of Stephens Avenue, SE¼ of section 29 located south of the railroad tracks, all of section 32 except the area west of railroad tracks, all of sections 33-36.

(iv) Township 14 North, Range 19 West.

(A) All of sections 34-36.

(b) Eastern Urban Missoula - Area General Description.

(i) West boundary of Area 8.1 borders Area 8.2 and consists of a line running south from the main line of the Montana Rail Link Railroad along Orange Street; across the Clark Fork River; and continues south on Orange Street and southwest on Stephens Avenue to Mount Avenue; then directly west along Mount Avenue to the Bitterroot branch of Montana Rail Link, then continuing along this railroad to a point where it intersects with Brooks Street and Area 8.3. The west boundary continues southwest and then south along the west boundary of Township 12

North, Range 19 West. The south boundary of this area is the south boundary of this township. The east boundary is the range line dividing Ranges 18 West and 19 West.

(15) Area 8.2:

(a) Central Urban Missoula - Area Legal Description.

(i) Township 13 North, Range 19 West.

(A) All of sections 4, 5, 8, 9, the west ½ of section 15, 16, 17, all of section 20 south of 3rd Street, and 21 except area east of Orange Street and Stephens Avenue, NW¼ of section 22 west of Orange Street and north of the railroad tracks, the NW¼ of section 28 involving all of the area northwest of Stephens Avenue, all of section 29 except the area southeast of the railroad tracks, and section 32 located northwest of railroad tracks.

(b) Central Urban Missoula - Area General Description.

(i) This area is bounded on the east and south by Area 8.1 and on the west and north by Area 8.3.

(16) Area 8.3:

(a) Western Urban Missoula - Area Legal Description.

(i) Township 11 North, Range 20 West.

(A) All of sections 1-6.

(ii) Township 12 North, Range 20 West.

(A) All of sections 2-10 and 13-36.

(iii) Township 13 North, Range 19 West.

(A) All of sections 6, 7, 18, 19, and all of section 20 north of 3rd Street, and all of sections 30 and 31.

(iv) Township 13 North, Range 20 West.

(A) All of sections 1-36.

(v) Township 14 North, Range 19 West.

(A) All of sections 1-33.

(vi) Township 14 North, Range 20 West.

(A) All of sections 1, 12, 13, 23-26, 35 and 36.

(b) Western Urban Missoula - Area General Description.

(i) Area 8.3 is bounded on the north, west and south by large federal land holdings and generally more rural development. The eastern physical boundary is primarily Reserve Street which connects Interstate 90 with Highway 93 South.

(17) Area 9.0:

(a) Silver Bow County - the exterior borders of Silver Bow County.

(18) Area 10.0:

(a) Stillwater County - the exterior borders of Stillwater County.

(19) Area 11.0:

(a) Yellowstone County - the exterior borders of Yellowstone County except the areas described in 11.1, 11.2, 11.3, 11.4, 11.5, and 11.6.

(20) Area 11.1:

(a) Billings Lockwood - Area Legal Description.

(i) Township 1 North, Range 26 East.

(A) Beginning at the northeast corner of Swords Park in section 27, Township 1 North, Range 26 East, then east along south boundary of O'Leary Subdivision, then north along east boundary of O'Leary Subdivision to Billings Benchwater

Association Canal, then north along B.B.W.A. Canal to the east section line of section 9, then north to the northeast corner of section 9, then east 2 miles to the northeast corner of section 11, then south 1 mile to the southeast corner of section 11, then east 3 miles to the northeast corner of section 17, Township 1 North, Range 27 East.

(ii) Township 1 North, Range 27 East.

(A) From the northeast corner of section 17, then south 1¼ miles to Interstate 90, then east along Interstate 90 to the east line of section 22, then south to the southeast corner of section 27, then west 2 miles to the southwest corner of section 28, then south 1 mile to the southeast corner of section 32, then west 4½ miles to the Yellowstone River, then north to Highway 87, then west to Main Street, then north to the intersection of 6th Avenue North and Main Street, then north along Swords Bypass Road to its intersection at Airport Road, then north along the East boundary of Swords Park to the P.O.B.

(b) Billings Lockwood - Area General Description.

(i) Area 11.1 consists of Lockwood and the older portion of the Billings Heights area. It is east of the Billings Benchwater Association Canal, which serves as a dividing line between Area 11.1 and Area 11.5. Area 11.1 extends out from this natural boundary to the north, south and east, to the point where the developed land stops and the rural land begins.

(21) Area 11.2:

(a) Billings South Side - Area Legal Description.

(i) Township 1 South, Range 26 East.

(A) Beginning at the King Avenue West Interchange, proceed northeast along the railroad tracks to North 27th Street, then northwest along North 27th Street to the rimrocks, then east along the rimrocks to the intersection of 6th Avenue North and Main Street, then south along Main Street to its intersection at Highway 87, then east along Highway 87 to the Yellowstone River, then south by southwest along the Yellowstone River to the point at the south quarter corner of section 11, Township 1 South, Range 26 East, then west 1¼ miles more or less to Interstate 90, then south by southwest along Interstate 90 to the King Avenue Interchange.

(b) Billings South Side - Area General Description.

(i) Area 11.2 consists of the older section of Billings. North of the railroad tracks, it lies east of North 27th Street and south of the rimrocks to Exposition Drive. It extends south of the railroad tracks to Interstate 90 on the south and the Yellowstone River on the east.

(22) Area 11.3:

(a) Billings South West Side - Area Legal Description.

(i) Township 1 South, Range 26 East.

(A) Beginning at the intersection of 6th Avenue North and 27th Street North proceed southeast along 27th Street to the railroad tracks, then southwest along the railroad tracks to a point on the east line of section 28, Township 1 South, Range 25 East; proceed north to the northwest corner of section 3, Township 1 South, Range 25 East, then east along Grand Avenue to the intersection of Grand Avenue and 6th Avenue North, then

north east along 6th Avenue East to the point of beginning at the intersection of 6th Avenue North and 27th Street North.

(b) Billings South West Side - Area General Description.

(i) Area 11.3 consists of the southwest portion and the downtown area of Billings. The railroad is the southern boundary for Area 11.3 and divides it from Area 11.2 and Area 11.0. Area 11.3 is bordered on the north by Grand Avenue and 6th Avenue North. Area 11.3 extends out from these natural boundaries to a point where the developed land stops and the rural land begins.

(23) Area 11.4:

(a) Billings West Side - Area Legal Description.

(i) Township 1 North, Range 26 East.

(A) Beginning on the corner of 6th Avenue North and 27th street north in section 32, Township 1 North, Range 26 East, proceed northwest along 27th Street to Highway 3, then northwest along Highway 3 to a point along the north line of section 28; proceed west to the northwest corner of section 30, Township 1 North, Range 25 East; then south to the southwest corner of section 31, then east along Grand Avenue to the intersection of Grand Avenue and 6th Avenue North; proceed northeast on 6th Avenue North to 27th Avenue North to the point of beginning.

(ii) Township 1 South, Range 26 East.

(A) All of section 27.

(b) Billings West Side - Area General Description.

(i) Area 11.4 consists of that portion of downtown Billings bordered on the south by Grand Avenue and 6th Avenue North and bordered on the north by Highway 3 and bordered on the east by 27th Street. Area 11.4 extends to the west from these boundaries to a point where the developed land stops and the rural land begins.

(ii) Area 11.4 also includes the Briarwood Subdivision. That subdivision includes all property within the immediate vicinity of the Briarwood Golf Course.

(24) Area 11.5:

(a) Billings Heights - Area Legal Description.

(i) Township 1 North, Range 26 East.

(A) Beginning at the northeast corner of Swords Park in section 27, Township 1 North, Range 26 East, then east along south boundary of O'Leary Subdivision, then north along east boundary of O'Leary Subdivision to the Billings Benchwater Association Canal, then north along the canal to the east section line of section 9, Township 1 North, Range 26 East; then north to the northeast corner of section 9; then west to the northwest corner of section 9; then south to the southwest quarter corner of section 9; then west to the southwest corner of section 8; then south to Highway 3; then east along Highway 3 to North 27th Street; then east along the rimrocks to its intersection of 6th Avenue North and Main Street; then north along Swords Bypass Road to its intersection at Airport Road; then north along the east boundary of Swords Park to the P.O.B.

(b) Billings Heights Area - Area General Description.

(i) Area 11.5 contains the newer section of Billings Heights area lying west of the Billings Benchwater Association

Canal and north of the Rimrocks. Area 11.5 is bordered on the south by Highway 3. Again, Area 11.5 extends out from these natural boundaries to where developed land stops and rural land begins.

(25) Area 11.6:

(a) Laurel - Area Legal Description.

(i) Township 2 South, Range 24 East.

(A) Beginning at the east quarter corner of section 2, proceed west along east to west midsection line of sections 2 and 3 for 2 miles to the west quarter corner of section 3, then north ½ mile to the northeast corner of section 4; proceed west 1 mile to the northwest corner of section 4, then south ½ mile to the west quarter corner of section 4, then west ½ mile along the east to west midsection line of section 5 to the west quarter corner of section 5; proceed south 2½ miles to the southwest quarter corner of section 17, then east 3 miles to the southeast corner of section 15; proceed north approximately 1¼ miles to Interstate 90, then northeast along Interstate 90 to a point along the east section line of section 11, then north to the point of beginning which is the east quarter corner of section 2.

(b) Laurel - Area General Description.

(i) The town of Laurel and the land immediately adjacent to its exterior borders is considered to be a single area. The southern boundary of the area is the interstate highway.

(26) Area 12.0:

(a) Sanders County - the exterior borders of Sanders County.

(b) Mineral County - the exterior borders of Mineral County.

(27) Area 13.0:

(a) Flathead County - the exterior borders of Flathead County except for area described in 13.1.

(b) Lake County - the exterior borders of Lake County.

(c) Ravalli County - the exterior borders of Ravalli County.

(28) Area 13.1:

(a) Greater Kalispell - Area Legal Description.

(i) Township 26 North, Range 21 West.

(A) All of sections 1-4, 9-16, 21-28, and 33-36.

(ii) Township 26 North, Range 20 West.

(A) All of sections 1 and 6-7, 12, 17-21, and 28-33.

(iii) Township 26 North, Range 19 West.

(A) All of sections 6-7.

(iv) Township 27 North, Range 23 West.

(A) All of sections 1-4 and 9-16.

(v) Township 27 North, Range 22 West.

(A) All of sections 1-18.

(vi) Township 27 North, Range 21½ West.

(A) All of sections 1-2 and 11-14.

(vii) Township 27 North, Range 21 West.

(A) All of sections 1-35.

(viii) Township 27 North, Range 20 West.

(A) All of sections 1-27 and 34-36.

(ix) Township 27 North, Range 19 West.
(A) All of sections 1-36.
(x) Township 27 North, Range 18 West.
(A) All of sections 1-36.
(xi) Township 27 North, Range 17 West.
(A) All of sections 4-9, 16-21, and 28-33.
(xii) Township 28 North, Range 23 West.
(A) All of sections 1-5, 8-17, 20-29, and 32-36.
(xiii) Township 28 North, Range 22 West.
(A) All of sections 1-36.
(xiv) Township 28 North, Range 21 West.
(A) All of sections 1-36.
(xv) Township 28 North, Range 20 West.
(A) All of sections 1-36.
(xvi) Township 28 North, Range 19 West.
(A) All of sections 6-7, 17-21, and 26-36.
(xvii) Township 28 North, Range 18 West.
(A) All of sections 31-36.
(xviii) Township 28 North, Range 17 West.
(A) All of sections 31-32.
(xix) Township 29 North, Range 23 West.
(A) All of sections 1-5, 8-17, 20-29, and 32-36.
(xx) Township 29 North, Range 22 West.
(A) All of sections 1-36.
(xxi) Township 29 North, Range 21 West.
(A) All of sections 1-36.
(xxii) Township 29 North, Range 20 West.
(A) All of sections 2-11, 14-23, and 25-36.
(xxiii) Township 30 North, Range 23 West.
(A) All of sections 1-2, 11-14, 23-26, and 35-36.
(xxiv) Township 30 North, Range 22 West.
(A) All of sections 1-36.
(xxv) Township 30 North, Range 21 West.
(A) All of sections 1-36.
(xxvi) Township 30 North, Range 20 West.
(A) All of sections 1-36.
(xxvii) Township 30 North, Range 19 West.
(A) All of sections 1-36.
(xxviii) Township 30 North, Range 18 West.
(A) All of sections 5-8, 17-20, and 29-32.
(xxix) Township 31 North, Range 23 West.
(A) All of sections 1-3, 10-15, 22-27, and 34-36.
(xxx) Township 31 North, Range 22 West.
(A) All of sections 1-36.
(xxxi) Township 31 North, Range 21 West.
(A) All of sections 1-36.
(xxxii) Township 31 North, Range 20 West.
(A) All of sections 1-36.
(xxxiii) Township 31 North, Range 19 West.
(A) All of sections 1-36.
(xxxiv) Township 31 North, Range 18 West.
(A) All of sections 5-8, 17-20, and 29-32.
(xxxv) Township 32 North, Range 23 West.
(A) All of sections 1-3, 10-15, 22-27, and 34-36.

(xxxvi) Township 32 North, Range 22 West.
(A) All of sections 1-36.
(xxxvii) Township 32 North, Range 21 West.
(A) All of sections 1-36.
(xxxviii) Township 32 North, Range 20 West.
(A) All of sections 1-36.
(xxxix) Township 32 North, Range 19 West.
(A) All of sections 1-36.
(xxxx) Township 32 North, Range 18 West.
(A) All of sections 5-8, 17-20, and 29-32.
(b) Greater Kalispell Area - Area General Description.
(i) The Greater Kalispell area consists of the Flathead Valley. The area is bounded on the south by Flathead Lake, on the east by the Swan Mountains and Glacier National Park, on the north by the Whitefish Mountains and the Stillwater State Forest and on the west by the Salish Mountains.
(29) Area 14.0:
(a) Judith Basin County - the exterior borders of Judith Basin County.
(b) Fergus County - the exterior borders of Fergus County.
(c) Petroleum County - the exterior borders of Petroleum County.
(d) Sweet Grass County - the exterior borders of Sweet Grass County.
(e) Musselshell County - the exterior borders of Musselshell County.
(f) Treasure County - the exterior borders of Treasure County.
(g) Golden Valley County - the exterior borders of Golden Valley County.
(h) Wheatland County - the exterior borders of Wheatland County.
(30) Area 15.0:
(a) Powell County - the exterior borders of Powell County.
(b) Granite County - the exterior borders of Granite County.
(c) Deer Lodge County - the exterior borders of Deer Lodge County.
(d) Beaverhead County - the exterior borders of Beaverhead County.
(e) Broadwater County - the exterior borders of Broadwater County.
(f) Meagher County - the exterior borders of Meagher County.
(g) Park County - the exterior borders of Park County.
(31) Area 16.1:
(a) Glacier County - the exterior borders of Glacier County.
(b) Blaine County - the exterior borders of Blaine County.
(c) Phillips County - the exterior borders of Phillips County.

(d) Roosevelt County - the exterior borders of Roosevelt County.

(32) Area 17.0:

(a) Big Horn County - the exterior borders of Big Horn County.

(b) Rosebud County - the exterior borders of Rosebud County.

(33) Area 18.0:

(a) Richland County - the exterior borders of Richland County.

(b) Dawson County - the exterior borders of Dawson County.

(c) Wibaux County - the exterior borders of Wibaux County.

(d) Fallon County - the exterior borders of Fallon County.

(e) Powder River County - the exterior borders of Powder River County.

(34) Area 19.0:

(a) Chouteau County - the exterior borders of Chouteau County.

(b) Hill County - the exterior borders of Hill County except for the area described in area 19.1.

(c) Liberty County - the exterior borders of Liberty County.

(d) Pondera County - the exterior borders of Pondera County.

(e) Teton County - the exterior borders of Teton County.

(f) Toole County - the exterior borders of Toole County.

(35) Area 19.1:

(a) Greater Havre - Area Legal Description.

(i) Township 32 North, Range 16 East.

(A) All of sections 4-9, W½ of section 10, W½ of section 15, all of sections 16-18 and W½ of section 22.

(B) That portion of section 3 lying south of the railroad tracks.

(ii) Township 33 North, Range 16 East.

(A) The S½ of the SE¼ of section 32.

(B) All of sections 33 and 34 lying south of the railroad tracks.

(C) All of section 2 which begins at the intersection of U.S. Highway 2 and 48th Avenue East and which lies between the railroad tracks and U.S. Highway 2.

(iii) Township 32 North, Range 15 East.

(A) All of section 1 which lies south of a line beginning at the intersection of the railroad tracks and the east section line and which follows the railroad tracks to the point where if continued would intersect the Milk River, then follows the Milk River to the west section line of section 1, Township 32 North, Range 15 East.

(B) Sections 2-5, S½ of the NE¼ of section 6, N½ of the SE¼ of section 6, NE¼ of the SE¼ of section 8 all of sections 9-16, and NW¼ of the NE¼ of section 28.

(C) All of section 22 lying northwest of line running parallel to and located 200 feet southeast of Highway 87.

(iv) Township 33 North, Range 15 East.

(A) All of sections 33 and 34 lying south of the Milk River.

(b) Greater Havre - Area General Description.

(i) The point of beginning is the north intersection of U.S. Highway 2 and 48th Avenue East. To delineate the north boundary, proceed west along the Burlington Northern Railroad tracks approximately 2 miles, then north to include the area near the end of the pavement on the Shepherd Road (County Road 435 North). Then due west along the north township line between Township 32 North, Range 16 East and Township 33 North, Range 16 East, including that land south of the Milk River in sections 33 and 34, Township 33 North, Range 15 East. Then continuing west to the former Stramit Plant located north of U.S. Highway 2 West. This building is approximately at the intersection of 106 Avenue West and U.S. Highway 2.

(ii) To delineate the west boundary, proceed approximately ¼ mile south and ½ mile west. Then proceed ½ mile south, ½ mile east, ¼ mile south, and 1 mile east to a point near U.S. Highway 2. Proceed ½ mile south, ½ mile west, ¼ mile south, ¼ mile east, then south 2¼ miles to the southwest corner of Area 19.1.

(iii) To delineate the south boundary, then proceed east from the intersection of 48th Street West and 82nd Avenue West to U.S. Highway 87, including that area south of U.S. Highway 87. Then generally northeast to the south section line of section 14, Township 32 North, Range 15 East. From this point, due east to the Junction of County Road 639 West and County Road 637 West and continuing due east to the northwest corner of section 22, Township 32 North, Range 16 East. Then south, including the entire area of Saddle Butte, to the junction of County Road 565 and the Bull Hook Road.

(iv) To delineate the east boundary, then proceed due north from the south quarter corner of section 22 to the south section line of section 3, Township 32 North, Range 16 East. Then South and East along the South and East section lines of Section 3 to U.S. Highway 2 East. Then east along U.S. Highway 2 to the junction of U.S. Highway 2 and 48th Avenue East, the original point of beginning.

(36) Area 20:

(a) Carter County - the exterior borders of Carter County.

(b) Custer County - the exterior borders of Custer County except the area described in 20.1.

(c) Daniels County - the exterior borders of Daniels County.

(d) Garfield County - the exterior borders of Garfield County.

(e) McCone County - the exterior borders of McCone County.

(f) Prairie County - the exterior borders of Prairie County.

(g) Sheridan County - the exterior borders of Sheridan County.

(h) Valley County - the exterior borders of Valley County.

(37) Area 20.1:
(a) Miles City - Area Legal Description.
(i) Township 8 North, Range 47 East.
(A) All sections.
(ii) Township 8 North, Range 48 East.
(A) All of sections 4-9, 16-21 and 28-33.
(iii) Township 7 North, Range 47 East.
(A) All of sections 1-4, 10-15, and 23-26.
(iv) Township 7 North, Range 40 East.
(A) All of sections 4-9 and 16-21.
(b) Miles City - Area General Description.
(i) Beginning at the northwest corner of section 6, Township 8, Range 47 East proceed in an easterly direction to the northeast corner of section 4, Township 8 North, Range 48 East, then south along section lines to the southeast corner of section 21, Township 7 North, Range 48 East, proceed westerly along section lines to the Northeast corner of section 25, Township 7 North, Range 47 East, then southerly along section line to the southeast corner of section 25, Township 7 North, Range 47 East, then westerly along section lines to the southwest corner of section 26, Township 7 North, Range 47 East, then northerly along section line to the southwest corner of section 14, Township 7 North, Range 47 East, then westerly along section line to the southwest corner of section 15, Township 7 North, Range 47 East, then northerly along section line to the southwest corner of section 3, Township 7 North, Range 47 East, then westerly along section line to the southwest corner of section 4, Township 7 North, Range 47 East, then northerly along section line to the southeast corner of section 32, corner of section 31, Township 8 North, Range 47 East, then northerly along section lines to the point of beginning. (AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111, MCA).

RULE II RESIDENTIAL AREA MAPS AND DESCRIPTIONS (1) Residential area maps and area descriptions may be obtained by contacting the county appraisal offices or the Property Assessment Division, Montana Department of Revenue in Helena 59620. (AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111, MCA).

RULE III DESIGNATED AREAS - COMMERCIAL For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, sales assessment areas for commercial properties are:
(1) Area 100:
(a) Silver Bow County - the exterior borders of Silver Bow County.
(b) Lewis and Clark County - the exterior borders of Lewis and Clark County.
(2) Area 200:
(a) Cascade County - the exterior borders of Cascade County.
(3) Area 300:

(a) Yellowstone County - the exterior borders of Yellowstone County.
(4) Area 400:
(a) Missoula County - the exterior borders of Missoula County.
(5) Area 500:
(a) Lincoln County - the exterior borders of Lincoln County.
(b) Sanders County - the exterior borders of Sanders County.
(c) Mineral County - the exterior borders of Mineral County.
(d) Lake County - the exterior borders of Lake County.
(e) Ravalli County - the exterior borders of Ravalli County.
(f) Beaverhead County - the exterior borders of Beaverhead County.
(g) Granite County - the exterior borders of Granite County.
(h) Powell County - the exterior borders of Powell County.
(i) Deer Lodge County - the exterior borders of Deer Lodge County.
(j) Jefferson County - the exterior borders of Jefferson County.
(k) Broadwater County - the exterior borders of Broadwater County.
(l) Meagher County - the exterior borders of Meagher County.
(m) Park County - the exterior borders of Park County.
(6) Area 600:
(a) Gallatin County - the exterior borders of Gallatin County.
(b) Madison County - the exterior borders of Madison County.
(7) Area 700:
(a) Flathead County - the exterior borders of Flathead County.
(8) Area 800:
(a) All other counties.
(AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111, MCA).

RULE IV COMMERCIAL AREA MAPS AND DESCRIPTIONS (1) Commercial area maps and area descriptions may be obtained by contacting the county appraisal offices or the Property Assessment Division, Montana Department of Revenue in Helena, MT 59620.(AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111, MCA).

RULE V TREATMENT OF CERTAIN PROPERTIES (1) For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, condominiums are considered residential properties.
(2) For the purposes of conducting the sales assessment

ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, duplexes, apartment houses and other multi-family structures will be treated as commercial properties.

(3) For the purposes of applying any percentage adjustments as a result of the sales assessment ratio study required by 15-7-111, MCA, personal property mobile homes (tax class 12) will be considered as residential properties. Sales of personal property mobile homes will be excluded from the sales assessment ratio study.

(4) For the purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, all industrial properties are considered commercial properties. (AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-7-111, MCA).

3. The 1989 Legislature considered and passed House Bill 703. The new law requires the Department of Revenue to annually review and, if necessary, adjust property values. The determination of adjustments must be made using sales assessment ratio studies.

The law requires the Department to partition the state into residential and commercial property areas for the purpose of conducting the studies and making the necessary property value adjustments. These areas must, by law, be adopted by administrative rule. The area designations can't be appealed by property owners. Thus, the hearing on the administrative rule is the property owners' only opportunity to contest the area designation for their property.

In determining the areas, the Department carefully considered available economic and demographic information as provided in rules proposed November 27, 1989. The areas designated by the Department are economically and demographically homogeneous and contain a sufficient number of sales for a valid study. The area boundaries are described using both legal and general terms. The Department is including by reference in the rules, maps of those residential property areas which include cities. This will aid property owners in distinguishing the area boundaries.

Rule V specifies the inclusion of certain properties in either the commercial or residential study. This will clarify for property owners which studies will impact the value of their property. This rule also addresses the exclusion from the studies of sales information on certain mobile homes since realty transfer certificates aren't required for these properties.

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:

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

no later than February 9, 1990.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearings.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 2, 1990.

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

In the matter of the amendment of Rules 46.12.571, 46.12.581 and 46.12.588 pertaining to coverage requirements and reimbursement for clinic services, psychological services and clinical social work services	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.571, 46.12.581 AND 46.12.588 PERTAINING TO COVERAGE REQUIREMENTS AND REIMBURSEMENT FOR CLINIC SERVICES, PSYCHOLOGICAL SERVICES AND CLINICAL SOCIAL WORK SERVICES

TO: All Interested Persons

1. On February 1, 1990, at 9:00 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.571, 46.12.581 and 46.12.588 pertaining to coverage requirements and reimbursement for clinic services, psychological services and clinical social work services.

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

46.12.571 CLINIC SERVICES, REQUIREMENTS Subsections (1) through (7) remain the same.

(8) Six (6) hours per state fiscal year may be used for psychological testing of the recipient, and or consultation with family members or agencies involved with the care of the recipient.

(a) For every unit of time spent in face-to-face contact with the recipient for psychological testing, two units of time may be allowed for test interpretation (record review, scoring and report writing).

(9) Psychological services and social worker services provided in a hospital on an inpatient basis and covered by medicaid as part of the diagnosis related group (DRG) payment under 46.12.505 are not a clinic service.

(10) Individual therapy includes diagnostic interviews where testing instruments are not used.

(11) Telephone contacts are not a clinic service.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.581 PSYCHOLOGICAL SERVICES, REQUIREMENTS

(1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(~~1~~2) Psychological services are limited to those allowed under 37-17-102(5) MCA.

(~~2~~3) Group psychological services shall consist of one and one-half hour sessions with no more than eight individuals participating in the group.

(~~3~~4) Psychological services and/or licensed social worker services, as defined in ARM 46.12.587, are limited to 22 hourly visits or the equivalent per fiscal year.

(a) Six (6) hours of the twenty-two hour limit upon services may be used for psychological testing of the recipient, and or consultation with family members or agencies involved with the care of the recipient.

(b) For every unit of time spent in face-to-face contact with the recipient for psychological testing, two units of time may be allowed for test interpretation (record review, scoring and report writing).

~~(4) When an eligible child receives psychological services, and the psychologist consults with the parent as part of the child's treatment, time spent with the parent shall be billed to medicaid under the child's name. The provider shall indicate on the claim that the child is the patient and state the child's diagnosis. He shall also indicate consultation was with the parent. Any treatment done in this manner shall be charged against the 22 hours available to the child.~~

(5) Individual therapy includes diagnostic interviews where testing instruments are not used.

(6) Telephone contacts are not a psychological service.

(7) Inpatient psychological services and social worker services provided in a hospital on an inpatient basis and covered by medicaid as part of the diagnosis related group (DRG) payment under 46.12.505 are not a psychological service.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.588 LICENSED CLINICAL SOCIAL WORK SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(~~1~~2) Licensed social work services are limited to:

Original subsections (1)(a) through (1)(c) remain the same in text but will be recategorized as subsections (2)(a) through (2)(c).

(~~2~~3) Licensed social work group counseling services shall consist of one and one-half hour sessions with no more than 8 individuals participating in the group.

(~~3~~4) Licensed social work services and/or psychological services as defined in ARM 46.12.580 are limited to 22 hourly visits or the equivalent per state fiscal year.

(~~4~~a) When an eligible child receives social work services and the social worker consults with the parent as part of the child's treatment, the time with the parent shall be billed to medicaid under the child's name. The provider shall

indicate on the claim that the child is the patient and state the child's diagnosis. He shall also indicate consultation was with the parent. Any treatment done in this manner shall be charged against the 22 hours available to the child.

(5) Telephone contacts are not a social work service.

Original subsection (5) remains the same in text but will be recategorized as subsection (6).

(7) Inpatient social work services provided in a hospital or on an inpatient basis and covered by medicaid as part of the diagnosis related group (DRG) payment under 46.12.505 are not a social work service:

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. Mental health clinic and psychologists' services need to be revised to change the method of reimbursing for psychological testing. The current policy of allowing time with the patient to be billed is too restrictive in the light of current practice of these practitioners in billing private patients. The Montana Psychological Association has proposed that 6 hours of the 22 hour per state fiscal year limit be allowed for testing, report writing, results interpretation, or communication of results. The Montana Council of Mental Health Centers has recommended that billable time for psychological testing be limited to face-to-face time with patient and that two units of time be used for test interpretation time for every unit of time spent with a patient. This ARM change will incorporate the features of both of these recommendations. In addition, mental health clinic, psychologists' and licensed clinical social workers' services will be amended to clarify the rules for coverage when these services are provided to hospital inpatients.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than February 8, 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 January 2, 1990.

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

In the matter of the adoption of Rules I through LXV and the repeal of Rules 46.30.201, 46.30.203, 46.30.205 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.30.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 and 46.30.429 pertaining to child support enforcement procedures and administration	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I through LXV AND THE REPEAL OF RULES 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.30.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427, AND 46.30.429 PERTAINING TO CHILD SUPPORT ENFORCEMENT PROCEDURES AND ADMINISTRATION

TO: All Interested Persons

1. On February 1, 1990, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through LXV and the repeal of 46.30.201, 46.30.203, 46.30.205, 46.30.207, 46.30.209, 46.30.211, 46.30.213, 46.30.215, 46.30.217, 46.30.219, 46.30.301, 46.30.303, 46.30.305, 46.30.307, 46.30.401, 46.30.403, 46.30.405, 46.30.407, 46.30.411, 46.30.413, 46.30.415, 46.30.417, 46.30.419, 46.30.421, 46.30.423, 46.30.425, 46.30.427 and 46.30.429 pertaining to child support enforcement procedures and administration and can be found on 46-8049 through 46-8160 of the Administrative Rules of Montana.

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

RULE I DEFINITIONS For the purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) Insofar as they are not inconsistent with, or clarified by the more specific definitions set forth in this chapter, the definitions set forth in 40-5-201 and 40-5-403, MCA, are adopted and incorporated herein by reference. A copy of 40-5-201 and 40-5-403, MCA, may be obtained from the Child Support Enforcement Division, Old Livestock Building, Helena, Montana, 59620.

(2) "CSED" means the child support enforcement division, an agency within the department of social and rehabilitation services charged with the responsibility of providing support enforcement services under Title IV-D of the Social Security Act.

(3) "Hearing office" means the CSED office and staff which provide logistical and clerical support to a hearing officer.

(4) "Hearing officer" means a person who is appointed by CSED to conduct hearings related to paternity establishment, establishment and enforcement of child support and other administrative actions of like nature brought by the CSED.

(5) "Party" or "parties" mean a person or persons affected by, or concerned with or in privity to a matter before the CSED. Where the context so requires, "party" shall also include the CSED.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-261 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434 MCA

RULE II APPLICABILITY OF RULES The provisions of this chapter set forth and limit the rules pertaining to actions by the CSED under Title IV-D of the Social Security Act. Unless specifically so provided, other department rules do not apply to such CSED actions notwithstanding any statement of general applicability contained in the rule. The provisions of this chapter do not apply to actions by the department under other chapters.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-261 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434 MCA

RULE III TIME COMPUTATION (1) Except as otherwise specifically provided by statute:

(a) In computing any period of time prescribed by this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included;

(b) The last day of the period so computed is to be included, unless it is a saturday, sunday, or legal holiday in which event the period runs until the end of the next day which is neither a saturday, sunday nor a holiday.

(c) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice, order or other paper, and the notice, order or paper is served by mail, three days shall be added to the prescribed period.

(2) The hearing officer or the court, if the matter is before a district court on judicial review or other referral, will be solely responsible for determining timeliness.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-261 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434 MCA

RULE IV DISTRIBUTION OF COLLECTIONS (1) Except as provided in subsection (3), when the CSED is enforcing a support obligation established by a court or administrative order, collections shall first be applied to satisfy the current support obligation for the

month in which the payment was collected. If any amount is collected in excess of the current support payment, the excess amount shall first be applied to satisfy fees, if any, awarded under 40-5-210, MCA, and the remainder shall be applied to satisfy any delinquency which is owing to the CSED by reason of 40-5-202 or 53-2-613, MCA. If the amount collected exceeds a delinquency owing to the CSED the excess amount shall be distributed to the obligee.

(2) When two or more obligees of the same obligor are receiving services from the CSED for the enforcement of a current support obligation, a collection of support which is less than the full amount of current support due to all the obligees, shall be distributed equally between the obligees. If the CSED is enforcing a delinquent support obligation for two or more obligees of the same obligor, after deducting fees and amounts owing to the CSED, if any, the delinquent amounts collected shall be distributed equally between the obligees, provided however, that the amount to be distributed shall not exceed the debt owing to each obligee.

(3) Payments collected to satisfy a support delinquency including but not limited to the proceeds from writs of execution, federal and state tax offsets, and lump sum payments will only be applied to satisfy fees and the delinquency. The collection or any part of it will not be applied towards current support even though the CSED may also be enforcing the current support obligation.

(4) Collections of delinquent support payments which are owing to the CSED under 40-5-202 and 53-2-613, MCA, after fees have been deducted shall be distributed in a sequence which will first satisfy the earliest unpaid installment of support due under a court or administrative order.

(5) When a payment received by the CSED is purported by an obligor to be a payment towards future support obligation under a court or administrative order, the amount shall not be applied to such future amounts unless and until any fees and delinquencies are first satisfied.

(6) In the absence of a court or administrative support order, voluntary payments made by an obligor shall first be applied to reimburse public assistance payments made to an obligee under Title IV-A of the Social Security Act. If the amount of the payment exceeds the amount necessary to reimburse such public assistance payments, the excess amount shall be distributed to the obligee. If no public assistance payments were paid to the obligee, the full amount of the voluntary payment shall be distributed to the obligee.

(7) Distribution of collections to an obligee who is a recipient of public assistance under Title IV-A of the Social Security Act, in addition to the provisions of this rule, shall also be made in substantial accord with the provisions of 45 CFR 302.51 and 302.52, as amended.

(8) For the purposes of distribution under this Rule, the effective date of a support collection shall be the date on which the payment is received by the CSED, or by the clerk of court if the payment is required to be made to a clerk of court, whichever

is earliest.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434 MCA

RULE V RECEIPT OF PAYMENTS REQUIRED (1) Whenever an obligor is paying support voluntarily through the CSED or upon direction by the CSED under 40-5-205, 40-5-412(2), MCA, or other order, or whenever a payer under 40-5-421, MCA, is required to deliver income to the CSED;

(a) payments will not be credited until actually received by the CSED;

(b) checks presented to the CSED as payment which are dishonored by the issuing bank will not be credited although received by the CSED;

(c) payments made out to or delivered to any person or agency other than the CSED shall not be credited.

(2) The withholding of income by a payer pursuant to an order under 40-5-421, MCA, shall not alone be sufficient for credit against an obligor's support obligation. The CSED shall not be liable for amounts withheld by a payer from an obligor's income which are not actually received by the CSED.

AUTH: Sec. 40-5-202 and 40-5-405 MCA
IMP: Sec. 40-5-205, 40-5-412 and 40-5-421 MCA

RULE VI HEARING REQUEST (1) Whenever an administrative hearing right is available to an obligor under applicable paternity establishment, or child support establishment and enforcement laws, regulations or rules, to request a hearing the obligor must:

(a) make the request in writing;

(b) mail or deliver the request to the hearing office so as to be received by the hearing office within the time permitted by law, regulation or rule for requesting a hearing. A request received at any other address or location will be treated as if it were not received at all;

(c) the written request must include:

(i) the name, mailing address and telephone number at which the person requesting the hearing can be reached;

(ii) for the purposes of identification only, the person's social security number;

(iii) a short, plain statement of the reason or reasons for requesting a hearing; and

(iv) a statement whether the person, will be represented or accompanied by an attorney or other person, and, if so, the name, mailing address and telephone number of such attorney or other person.

(2) The CSED will make hearing request forms consistent with this rule available for use by the person requesting a hearing.

(3) A request for hearing is not deemed as made until a written request is actually received by the hearing office.

(4) Informal contacts with the CSED, whether written or oral, will not constitute a hearing request, or toll or otherwise extend the time in which a hearing must be requested.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA.

RULE VII SERVICE OF SUBSEQUENT NOTICE, MOTIONS, BRIEFS, AND OTHER PAPERS (1) After service of notice under 40-5-208, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-103, MCA, and RULE XXXI, all subsequent notices including amendments to the aforedescribed notices, motions, briefs and other papers pertaining to a pending administrative action may be served by regular U.S. mail, postage prepaid, addressed to the obligor at:

(a) The address provided by the obligor in the request for hearing or subsequent address provided by the obligor, if any;

(b) The obligor's last known, residential address if no request for hearing was made, or if the request for hearing failed to include an address; or

(c) The address of the place where service of the original notice was achieved, if the obligor's residential address is not known to the CSED.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE VIII NOTICE OF HEARING (1) If the hearing officer determines that a hearing is properly requested, a time, date, and place for the hearing shall be designated. The time of the hearing shall be during regular business hours. The place of the hearing shall be:

(a) for a telephone hearing, at the location of the telephone number provided by the obligor and each of the other parties;

(b) for an in-person hearing, the county prescribed by the applicable statute, except that a party may request another location which is mutually convenient to all of the parties, provided however, that the requesting party shall pay the reasonable travel expenses of the other parties to such other location;

(c) for an in-person hearing granted to an obligor who resides outside the state, at the regional CSED office most convenient to the parties.

(2) No less than ten days prior to a hearing the hearing office shall issue a written notice of the date, time, and place for the hearing.

(3) A copy of the notice of hearing shall be provided to the CSED and to all other interested persons at least ten days prior to the hearing.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE IX CONDUCT OF HEARING (1) Administrative hearings, unless the hearing officer expressly orders to the contrary, shall initially be conducted by telephone conferencing methods. At the request of a party and upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearing officer may, at the close of a telephone hearing, grant a de novo in-person hearing.

(2) If a party fails to provide a telephone number for use at a telephone hearing, the hearing officer may notify the party that a telephone is available at the nearest regional CSED office or at the public assistance office in the county in which the party resides.

(3) At the discretion of the hearing officer, the hearing may be conducted in the following order:

(a) a statement and evidence of the CSED in support of its actions,

(b) a statement and evidence of affected parties supporting the CSED action,

(c) a statement and evidence of affected parties disputing the CSED action,

(d) rebuttal testimony.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE X DISCOVERY (1) Discovery shall be available to the parties prior to a contested case proceeding. The CSED hereby adopts and incorporates by reference attorney general's model rule 13 found in ARM 1.3.217 which sets forth procedures for discovery in contested cases. A copy of the model rule may be obtained by contacting either the Attorney General's Office, State Capitol, Helena, Montana 59604 or the Child Support Enforcement Division, Legal Services Bureau, Old Livestock Building, Helena, Montana, 59620.

(2) Notwithstanding the procedure set forth in the Montana Rules of Civil Procedure for the conduct of discovery, to obtain discovery a party must make a motion to the hearing officer. Upon motion the hearing officer after consulting with the other parties and after considering the time frames set out in Rule XXVII, will enter a scheduling order setting the times, form and nature of discovery.

(3) If discovery cannot be effectively completed prior to a hearing because of the timeframes set out in Rule XXVII and should there also be a surprise element introduced during a hearing, upon motion of a party or upon motion of the hearing officer, the

hearing officer may order the exchange of additional relevant information or exhibits. The hearing or final decision and order shall be delayed pending the exchange. Within ten days after the exchange is accomplished, at the request of a party or upon the hearing officer's motion, the hearing may be reconvened for the purpose of taking further testimony, or to cross-examine with regard to the exchanged information or exhibits.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-505 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XI EXCHANGE OF EXHIBITS (1) If any party to an administrative hearing intends to use or refer to any exhibit or other documentary evidence during the hearing, the party shall provide the hearing office with either the original or certified copies of the original within sufficient time to allow the hearing office to mail copies to all interested parties prior to the hearing. If an exhibit or other documentary evidence is offered for the first time during a hearing, the hearing officer may allow it to be introduced and shall do so freely. Should this occur refer to the procedures set forth in Rule X(3).

(2) Exhibits shall be marked and the markings shall identify the party offering the exhibits. The exhibits shall be preserved by the CSED as part of the record of the proceedings.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XII SUBPOENA, SUBPOENA DUCES TECUM (1) A request for a subpoena or subpoena duces tecum, except as provided for in 40-5-233, MCA shall be made in writing to the hearing officer. Such a request must be made at least ten days prior to a hearing in a contested case. The request must be supported by an affidavit which includes:

(a) a short, plain statement of the information requested;

(b) the name and address of the person or entity to be served;

(c) a statement as to why the information or testimony cannot be reasonably obtained from any other source;

(d) a statement setting forth the reasons why the production of the information or testimony is reasonable, necessary, and not unduly burdensome to the subpoenaed witness.

(2) The person requesting a subpoena or subpoena duces tecum will pay, if any, witness fees as set out in 26-2-501, MCA, and the reasonable costs of preparing copying and transmitting of documentary materials. The CSED may recover such fees and costs under the cost recovery schedule adopted pursuant to 40-5-210, MCA.

(3) Upon receiving objections to a subpoena or subpoena duces tecum from a party or the person or entity to whom the subpoena or subpoena duces tecum is directed, or upon motion of the hearing

officer, the hearing officer may:

(a) quash or modify a subpoena or subpoena duces tecum if it is unreasonable or requires evidence not relevant or material to any matter in issue; or

(b) impose additional conditions as may be just and reasonable.

(4) An order denying a subpoena or subpoena duces tecum is not a final agency decision for purposes of the judicial review provisions set out in 2-4-701 et.seq., MCA.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XIII INFORMAL DISPOSITION (1) After notice but before a hearing is held, the parties may informally resolve, in whole or in part, the issue(s) raised by the notice.

(2) All informal dispositions must be in writing and must be submitted to the hearing officer for review. The informal disposition will be binding on the hearing officer, the CSED and any other party unless the hearing officer finds, after considering the circumstances of the case and any other relevant evidence produced by a party, that the informal disposition is unconscionable.

(3) If the hearing officer finds the informal disposition to be unconscionable, the hearing officer may request the parties to submit a revised agreement or may order the matter set for hearing.

(4) If the informal disposition is not unconscionable, the hearing officer shall issue an order adopting the informal disposition as a final order of the CSED and it shall thereafter be enforceable by all remedies available to the CSED.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XIV STIPULATIONS At any time prior to entry of a final decision and order, the parties or a party in a contested case may stipulate to any fact or applicable law. The parties or the party so stipulating will be bound thereby in all subsequent proceedings, whether before the CSED or a district court, unless the stipulation is withdrawn prior to the entry of a final administrative order.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-405 and MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XV DELAYS AND CONTINUANCES (1) At any time prior to the day an activity or time frame in any contested case is to be completed, including the time in which to respond to an administrative notice, the hearing officer may grant an extension of the time

allowed upon written application of a party. The written application shall contain:

(a) a statement of the reason for the extension of time and, if applicable under Rule XXVII, a statement showing substantial prejudice to the party if the delay or continuance is not granted; and

(b) a statement indicating whether any other party opposes the extension of time.

(2) Before a delay or continuance can be granted, the timeframes provided for in Rule XXVII must be considered.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232. 40-5-413 MCA

RULE XVI DISMISSAL (1) A regional CSED supervisor, or CSED staff attorney may ex parte dismiss an administrative action without prejudice at any time prior to entry of a final decision and order. A copy of the ex parte dismissal shall be delivered to the obligor and all other interested parties, their attorneys and other representatives.

(2) The hearing officer will dismiss a hearing whenever a request for hearing is withdrawn by the requesting party. The hearing officer shall then enter a final decision and order in accordance with the notice.

(3) A hearing request shall be deemed withdrawn if the requesting party without good cause fails to appear at a scheduled hearing.

(4) A hearing and a final decision and order may be dismissed at any time by the hearing officer upon a showing that the CSED did not or does not have jurisdiction over the subject matter of the hearing or final decision and order.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XVII AMENDMENTS (1) A notice served on an obligor under 40-5-222, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-103, MCA, and RULE XXXI may be amended by the CSED at any time prior to the time an administrative hearing is held.

(a) If a hearing has been previously requested and found to be timely and appropriate with regard to the original notice, the party requesting the hearing does not need to further respond to or request a hearing on the amended notice.

(b) If, at the time after an amended notice is served, a hearing has not been requested, or if the request for hearing was denied for any reason, the party served with an amended notice may request a new hearing with regard to the issues claimed in the amended notice. The time for requesting such hearing, commencing from the date of service of the amended notice, shall be period of time allowed by statute or rule for requesting a hearing on the original notice.

(2) When issues not raised in the notice or request for hearing are determined during an administrative hearing by express or implied consent of the parties, they shall be treated in all

aspects as if raised by notice or request for hearing as may be necessary to conform them to the evidence. If a party objects to evidence offered at a hearing on grounds that is not within the issues raised by the notice or request for hearing, the hearing officer may allow the notice or request for hearing to be amended and shall do so freely. The hearing officer may continue the hearing to enable the objecting party to meet, refute, or rebut such evidence.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XVIII STANDARD OF PROOF The standard of proof in all hearings conducted under this chapter shall be by a preponderance of the evidence.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XIX EVIDENCE (1) During a hearing the hearing officer may receive any evidence offered by a party without ruling on its admissibility at the time it is offered. After the matter is submitted for decision, the hearing officer will then consider and determine the admissibility and sufficiency of the evidence, giving due regard to its materiality, relevance, and trustworthiness. Evidence may be excluded even though no objection was raised at hearing.

(2) This rule shall not be construed so as to prevent the hearing officer from limiting cumulative, irrelevant or other inadmissible testimony or evidence during the hearing.

AUTH: Sec 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XX DEFENSES (1) The following affirmative defenses are to be raised by written notice to the hearing office no less than ten days prior to a scheduled hearing:

(a) estoppel;
(b) laches;
(c) payment;
(d) release;
(e) waiver;
(f) statute of limitations;
(g) res judicata or collateral estoppel;
(h) the obligee is not eligible to receive IV-D services;
(i) the obligor is not the responsible parent;
(j) the child is self-supporting or otherwise emancipated; and

(k) any other matter constituting avoidance or other affirmative defense.

(2) Except as provided in RULE XII the CSED shall not be responsible for producing, or obtaining information, documents or witnesses to assist any other party in the proof of an affirmative defense. However, the CSED will provide upon written request any non-confidential information or documents in its possession.

(3) In the event an affirmative defense is raised for the first time less than ten days prior to a hearing or during a hearing, the hearing officer may, upon request of any other party, delay or continue the hearing to permit such other party to consider the affirmative defense and, if applicable, to provide testimony or other evidence to refute or rebut the affirmative defense.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXI PRESUMPTIONS (1) The hearing officer may apply the following presumptions when consistent with all surrounding facts and circumstances:

(a) The presumptions both conclusive and rebuttable which are set forth in Title 26, Chapter 1, Part 6, MCA and the rebuttable presumptions set out in 40-5-234 and 40-6-105, MCA.

(b) That mail or other communications properly addressed and transmitted to the post office or other common carrier, or by electronic means, with all postage, tolls or charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary courses of business;

(c) That a person who receives or has received public assistance is eligible or was eligible for such assistance.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXII OFFICIAL NOTICE (1) The Hearing officer shall take official notice of the following:

(a) federal law, including the constitution of the United States, congressional acts, resolutions, records, journals, and committee reports, the decisions of federal courts and administrative agencies, executive orders and proclamations, and all rules, orders and notices published in the Federal Register;

(b) state law, including the constitution, acts of the legislature, resolutions, records, journals and committee reports, decisions of the administrative agencies of the state of Montana, executive orders and proclamations by the governor, and all rules, orders and notices published in the Montana administrative register;

(c) agency organization, including organization, administra-

tion, officers, personnel, official publications and acts of the department of social and rehabilitation services.

(2) In the absence of controverting evidence, the hearing officer may, upon the request of a party, officially notice:

(a) general customs and practices followed in the transaction of business;

(b) facts generally and widely known to all informed persons as not to be subject to reasonable dispute;

(c) matters within the technical knowledge of the department as a body of experts, within the scope of its duties, responsibilities and jurisdiction;

(d) any material fact which shall be clearly and precisely stated by a party.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXIII BRIEFS (1) At any time up to and including the time of a scheduled hearing, any party may submit a brief for consideration by the hearing officer. A copy of the brief must be served on the other parties who within 10 days thereafter may submit a response brief.

(2) At the close of a hearing, on motion of the hearing officer or any party, the hearing officer may order post-hearing briefs by the parties, and shall set a schedule for the exchange of such briefs.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXIV HEARING OFFICER DUTIES AND POWERS In addition to the powers and duties set forth in 2-4-611, MCA, the hearing officer shall have the power and duty to carry out, undertake or perform any task or action expressly or implicitly required for a hearing officer under this chapter.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXV ENTRY OF DEFAULT (1) If an obligor fails to request a hearing within the times permitted by statute or if the obligor fails to appear at a scheduled paternity blood test under 40-5-233, MCA, and upon the CSED's verified application and proof of service of an applicable notice, the hearing officer may enter the obligor's default in accordance with the notice. Except as provided in 40-5-233 (2), MCA, the entry of default shall become a final order of the CSED without further action by either the CSED or the hearing officer unless, within ten days of the entry of default:

(a) a request for hearing and an affidavit showing good cause for failure to make a timely request is received by the hearing office; or

(b) in the case of failure to appear for a scheduled paternity blood test, the obligor presents to the hearing officer an affidavit showing good cause for such failure.

(2) If a default is entered the order must contain findings of fact and conclusions of law.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXVI DECISION AND ORDER (1) The hearing officer shall make findings of fact and conclusions of law, and enter an order based thereon. Such decision and order shall constitute a final agency decision subject to judicial review under the Montana Administrative Procedure Act.

(2) If a child support obligation is established by the decision and order, the findings of fact must clearly state the reason for any deviation from the child support guidelines promulgated under 40-5-209, MCA.

(3) Copies of the decision and order shall be provided to the obligor, the obligee, and to their respective attorneys or other representatives, and to the CSED.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXVII TIMEFRAMES FOR COMPLETION OF ACTIONS (1) Under federal regulation implementing Title IV-D of the Social Security Act at 45 CFR 303.101, except actions for income withholding, 90 percent of all administrative actions to establish or enforce support obligations must be completed within three months from time of successful service of process. Income withholding actions must be completed within 45 days after service of notice under 45 CFR 303.100.

(2) To enable the CSED to comply with federal time frames, pre-hearing motions, discovery, exchanges of briefs, scheduling and conduct of hearings, the granting of continuances, delays, and extensions of time and other related matters must be completed within such time as will permit the hearing officer to render a final decision and order within:

(a) 90 days after successful service of a notice under 17-4-103, 40-5-208, 40-5-222, 40-5-223, 40-5-225, and 40-5-235, MCA; or

(b) 45 days after successful service of a notice under 40-5-413, MCA.

(3) A variance from the foregoing time frames or from any other timeframes set out in this chapter will only be granted to

a party upon a showing that substantial prejudice will result if a variance is not granted.

(4) Failure by the CSED to meet the time frames does not deprive the CSED of either subject matter or personal jurisdiction.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405 MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413 MCA

RULE XXVIII TERMS AND CONDITIONS (1) In order to be eligible to receive, or to continue to receive, support enforcement services under 40-5-203, MCA, an obligee must:

(a) be a Montana resident;

(b) provide the CSED with information essential for the initiation or continuation of services;

(c) promptly advise the CSED of any material changes in information required for the initiation or continuation of services;

(d) surrender to the CSED all payments of support which were not received through the CSED;

(e) refrain from taking any action which may tend to compete with the efforts of the CSED;

(f) provide certified copies of support orders and modifications thereof, whether issued in Montana or elsewhere;

(g) indemnify the CSED for any monies collected by state or federal tax intercept which the CSED may be required to repay to the obligor or obligor's spouse because a return was amended, or because an injured spouse claim was made;

(h) abide by the rules and regulations regarding the distribution of support collections;

(i) provide written notice to the CSED when termination of services is desired, except, when the obligee's children are eligible for and receive Medicaid benefits the obligee may not terminate services without good cause.

(2) Collection of a current support obligation is available only when the child resides with the obligee, or current support is due under a support order.

(3) Except as provided in subsection 6 of this Rule, the CSED has the exclusive right to determine the type, timing and extent of services in accordance with the provisions of Title IV-D of the Social Security Act, and regulations promulgated thereunder.

(4) When providing services under 40-5-203, MCA, the CSED's involvement is to further the public interest at large and is not principally intended to benefit the obligee except in a fiduciary capacity. CSED staff attorneys assigned to an obligee's case represent the CSED and no attorney-client relationship will exist between the obligee and the CSED attorney. At any hearing or in any action undertaken by the CSED, the obligee may appear and be represented by independent counsel of his or her own choice.

(5) In all proceedings, the CSED assumes the right to promote and accept settlements and to compromise any claim or issue which is a part of or inherent to the services being rendered by the

CSED. In entering into settlements or compromises the discretion of the CSED will be guided by the totality of circumstances including the time and effort required to resolve a case in the absence of settlement or compromise, the resources of the CSED, the interest of the public at large, the needs of the child, and the fiduciary relationship with the obligee. The obligee will be bound by any settlement, compromise or final disposition obtained by the CSED unless written notice of termination of service is received prior to final CSED action.

(6) Unless an obligee's children are eligible for Medicaid benefits, the CSED shall, upon receipt of a written request from the obligee, refrain from the establishment or enforcement of health insurance orders, or the collection of past-due support through tax refund intercept.

(7) The CSED may terminate services in the event that a dispute arises between the obligor and the obligee which prevents the CSED from providing services.

(8) The CSED does not guarantee or warrant the results of services.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-203 MCA

RULE XXIX TELEPHONE COMMUNICATIONS Due to the need for maintaining confidentiality of records, it is essential that the CSED confirm the identity of persons to whom information is provided. Because a telephone caller's identity cannot be verified, no telephone inquiries concerning confidential information will be accepted by the CSED.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-203 MCA

RULE XXX PROVIDING INFORMATION (1) Whenever an obligor is required under 40-5-208, MCA to provide the CSED with information regarding health or medical insurance coverage, the obligor shall provide the information within 30 days following the receipt of a written request from the CSED. The information must be provided by a verified writing using a form provided by the CSED or a form provided by the obligor which contains essentially the same information.

(2) The request for health or medical insurance coverage information shall be deemed continuing, and the obligor must report changes in the information to the CSED within 30 days of the change.

(3) Failure to provide or update the information may result in the assessment of a monetary sanction under 40-5-208, MCA.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-208 MCA

RULE XXXI NOTICE TO OBLIGOR (1) If the CSED determines that an

obligor failed to provide or maintain health or medical insurance coverage pursuant to statute or court or administrative order, or if the obligor fails to provide information concerning such coverage, or both, the CSED may cause to be served upon the obligor, a notice of such failure. The notice shall include:

(a) Names of the obligor, the obligee and the child;

(b) A description of the court or administrative order, or statute which created the obligation to obtain and maintain insurance coverage;

(c) A statement of the monetary sanction to be assessed and the months for which the assessment is made;

(d) An order commanding the obligor to appear and show cause why the amount assessed should not become final;

(e) A statement that the amount finally assessed will be subject to income withholding, warrant for distraint and other remedies available to the CSED to collect the assessed amount; and

(f) A statement of possible defenses to the assessment of monetary sanctions.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-208 MCA

RULE XXXII REQUEST FOR HEARING If an obligor is served with a notice as provided in Rule XXI, to show cause why monetary sanctions should not be imposed on the obligor, and if the obligor desires to show cause, the obligor must, within 10 days after receipt of the notice, request an administrative hearing.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-208 MCA

RULE XXXIII AMOUNT OF MONETARY SANCTION The CSED will assess the amount of $100 for each month an obligor is determined to have failed to provide or maintain health or medical insurance as ordered or as required by statute. The CSED will assess an additional $100 for each month an obligor fails to provide or update information concerning coverage. When an obligor fails to obtain and maintain coverage and also fails to provide information regarding such coverage or lack of coverage, a total possible sanction of $200 per month may be assessed.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-208 MCA

RULE XXXIV NOTICE OF INTENT TO REPORT The notice of intent to report a support debt to a consumer reporting agency required by 40-5-261, MCA, may be given by incorporating a statement of such intent in the notices generally served on obligers under 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-103, MCA, and 45 CFR 303.72 as amended.

AUTH: Sec. 40-5-262 MCA

IMP: Sec. 40-5-261 MCA

RULE XXXV ELECTRONIC REPORTS For the purpose of reporting a support debt to a consumer reporting agency, upon a request by a consumer reporting agency, the CSED may provide such information by electronic means.

AUTH: Sec. 40-5-262 MCA
IMP: Sec. 40-5-261 MCA

RULE XXXVI AMOUNTS TO BE REPORTED (1) The CSED will report to the consumer reporting agency only those support debts when:

(a) the amount of the debt retainable by the CSED for the reimbursement of AFDC expenditures is a sum of $150 or greater; or

(b) the amount of the debt owing to an obligee is the sum of $500 or greater.

(2) Reports will be provided to a consumer reporting agency only upon request of an agency with whom the CSED has entered into an agreement which specifies the form and content of the reported information, and which imposes terms and conditions for the use of the information so as to protect its confidentiality.

AUTH: Sec. 40-5-262 MCA
IMP: Sec. 40-5-261 MCA

RULE XXXVII CONTESTING ACCURACY OF REPORTED INFORMATION (1) After service of notice specified in RULE I which contains a statement of intent to report a support debt to a consumer reporting agency, the obligor may contest the accuracy of the intended report during a hearing conducted pursuant to the notice.

(2) Except as provided in subsection (3) of this rule, at any time after a support debt is reported to a consumer reporting agency, an obligor may request an administrative hearing to contest the accuracy of the support debt. Except as provided in subsection (3) no hearing shall be denied for lack of timely request.

(3) An obligor may not be granted a hearing to contest the accuracy of a support debt whenever the amount of the debt:

(a) has previously been determined by a court or administrative final decision and order; or

(b) was at issue under a notice served upon the obligor under 40-5-222, 40-5-223, 40-5-225, 40-5-232, and 40-5-413, MCA, and the obligor either failed to timely request a hearing or failed to appear at a scheduled hearing.

AUTH: Sec. 40-5-262 MCA
IMP: Sec. 40-5-261 MCA

RULE XXXVIII MODIFICATION OF SUPPORT ORDERS (1) At the request of either an obligor or obligee, and upon a verified written petition showing a material change of circumstances, the CSED will review a support order which the CSED is enforcing for

possible modification. The material change of circumstances necessary to invoke such review are:

(a) a change in employment status;

(b) a change in prevailing economic conditions;

(c) chronic ill health of the obligor, obligee, or the child;

(d) personal injury or disability;

(e) a change in net income of the obligor or obligee greater than 10 percent;

(f) a permanent change in custody of a child;

(g) additions or decreases in either the obligor's or obligee's or both of their family sizes.

(2) If the CSED determines from a petition that a material change of circumstances exists or if the CSED finds on its own motion with reference to CSED written procedures that a modification may be appropriate, the CSED shall examine the financial circumstance of the obligee and the obligor. When the examination tends to show with reference to the child support guidelines developed under 40-5-209, MCA, that the support order should be adjusted by at least 25 percent or $25 per month, whichever is greater, the CSED shall:

(a) for support orders established under 40-5-225, MCA, order the non-petitioning party or parties to show cause at an administrative hearing why the support order should not be prospectively modified in accordance with the guidelines; and

(b) for support orders established by a district court, make application to the district court as provided for by 40-5208(2)(b)(iii), MCA.

(3) After service of a show cause order under (2)(a) of this rule, to contest a proposed modification a non-petitioning party must request a hearing within 20 days. Failure to request a hearing within the 20 day period shall be deemed an admission that the modification is well taken and thereafter the modification may be summarily ordered by the hearing officer.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-226 MCA

RULE XXXIX DEFINITIONS For the purposes of this sub-chapter (Rules XXXIX to XLVII), the following definitions apply:

(1) "Act" means the Child Support Enforcement Act, Title 40, Chapter 5, Part 4, MCA.

(2) "File" or "file with the department" for the purposes of 40-4-414(1), MCA, means that the request for hearing must be delivered to and received by the CSED hearing office within the time specified by law.

(3) "Notice" means a notice of intent to withhold income issued pursuant to 40-5-413, MCA.

(4) "Order" means an order to withhold income issued pursuant to 40-5-415, MCA, and, where the context requires, also means an order to modify issued pursuant to 40-5-417, MCA.

AUTH: Sec. 40-5-405 MCA

IMP: Sec. 40-5-401 through 40-5-434 MCA

RULE XL WITHHOLDING ENTITY The CSED is hereby designated the "income withholding entity" pursuant to 42 USC 666(b)(5).

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

RULE XLI VOLUNTARY WITHHOLDING Notwithstanding the provisions of 40-5-412(2), MCA, the CSED may, at the request of the obligor, take steps to implement income withholding at any earlier time, in an amount determined in accordance with 40-5-416, MCA.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

RULE XLII EFFECT OF DELAY OR CONTINUANCE If, due to a request for an extension of time by an obligor, a hearing decision cannot be rendered within the 45 day time provided for in 40-5-414 (6), MCA, (unless the appropriateness of withholding to pay current support is at issue), the withholding of income to pay current support shall commence on the day the extension of time is approved by the hearing officer. In such case, withholding to pay the alleged delinquent portion will not commence until after the hearing has been conducted and it has been determined what amounts are properly due and owing.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

RULE XLIII ISSUES DETERMINABLE AT HEARING (1) The administrative hearing provided in the act is limited to the determination of whether income withholding, including the amounts to be withheld, is improper because of a mistake of fact. To accomplish this purpose, and to facilitate the speedy resolution of disputes relating to income withholding, the obligor must state in his hearing request a mistake of fact which constitutes grounds upon which the request is based. If the obligor fails to state such grounds, the department may deny the hearing because there is no issue upon which a hearing may be granted.

(2) For purposes of this section, a "mistake of fact" shall be defined to include the following:

(a) mistakes concerning the identity of the obligor;

(b) mistakes concerning the existence or amount of the support obligation;

(c) mistakes in the determination that delinquent support amounts owed are equal to or greater than one month's support; and

(d) mistakes in the computation of delinquent support amounts owed.

AUTH: Sec. 40-5-405 MCA

IMP: Sec. 40-5-413 and 40-5-414 MCA

RULE XLIV PROMPT DELIVERY OF WITHHELD AMOUNT For purposes of 40-5-421(1), MCA, the term "promptly" as it relates to the delivery of withheld amounts shall be defined as being no more than 10 days after the obligor's regularly scheduled payday.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-421 MCA

RULE XLV AVAILABILITY OF HARDSHIP ADJUSTMENTS (1) In certain circumstances, the amount of money required to be withheld to defray delinquent support amounts owed under the terms of the act may be temporarily reduced at the discretion of the CSED. Such a "hardship adjustment" may be made upon a showing that extraordinary costs or expenses for special medical, dental, and mental health needs have been incurred by the obligor or the obligor's dependents; that these costs are actually being paid by the obligor; and that the obligor is not being reimbursed by insurance. A hardship adjustment may also be based upon special costs or expenses which are directly related to the obligor's ability to earn income available for withholding, and which, if not paid by the obligor, would result in a major loss of income. Further, a hardship adjustment may be considered if the total income of the obligor's household only minimally meets the subsistence level for food, housing, clothing, and other necessities as established by the United States poverty guidelines.

(2) Such exercise of discretion does not constitute a "contested case" under the terms of the Montana Administrative Procedure Act, nor does it represent a "mistake of fact" upon which a hearing may be granted.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-416 MCA

RULE XLVI EFFECT OF HARDSHIP DETERMINATION (1) A pending hardship determination does not stay or delay hearings on, or implementation of, income withholding.

(2) A request for hardship determination may be made at any time, without regard to whether income withholding is pending or has been previously implemented.

(3) A hardship adjustment applies only to the amount to be withheld to defray accumulated interest, fees, if any, and delinquent support amounts owed. It does not affect the amount of the obligor's current support obligation.

(4) Whenever the CSED has determined that a hardship adjustment is appropriate, it shall issue an order, or a modification of an existing order, which reflects the hardship adjustment. No order may be issued for the withholding of less than:

(a) the amount of current support plus $25.00 per month if the obligor owes an ongoing current support obligation; or

(b) $25.00 per month if the obligor's current support

obligation has terminated.

(5) When the hardship adjustment ceases, the CSED may, without further notice to the obligor, modify or amend the order to withhold the amount of delinquent support determined to be proper prior to the hardship adjustment.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-416 MCA

RULE XLVII PROCEDURES FOR DETERMINING HARDSHIP ADJUSTMENTS

(1) The CSED will use the following procedures as a guideline for the exercise of its discretion in determining hardship adjustments:

(a) The obligor must request a review of the case in writing. Such review will determine if the obligor is eligible for a reduction of the amount which would normally be withheld to defray the support delinquency and interest, if any.

(b) The review will be conducted ex parte by the CSED's regional office based solely upon the financial affidavit and supporting documents, if any, provided by the obligor. Since financial hardship may affect all members of the obligor's current household, the financial affidavit must include information pertaining to everyone residing with the obligor.

(c) The standard for review will be the application of a formula developed by the CSED, which takes into consideration the total net income and assets of the obligor and his current household, the United States poverty index promulgated each year by the United States department of health and human services, the actual amount of allowable special expenses described in Rule XLV, and other support obligations actually being paid by the obligor. The CSED will, upon request, provide copies of the formula to any interested person.

(d) The CSED will determine the length of time the hardship adjustment will continue, based on the information provided by the obligor. The hardship adjustment will terminate at the end of the determined period, or cessation of the hardship condition, whichever occurs first. In the event the hardship condition continues after the end of such period, it shall be the obligor's duty to request further review at that time.

(e) If the obligor disagrees with the CSED's determination, a request may be made in writing for further review by the CSED division administrator or designee.

(f) If a request for further review is received, the division administrator or designee will review the previous determination and make an independent determination based on the documents and affidavits provided by the obligor, and upon all other relevant considerations. The decision of the division administrator or designee will be final for all purposes.

(g) Only one request for a hardship review is available to the obligor for each claimed incident of hardship. Further review will not be granted except upon a showing of circumstances not existing at the time of the original determination.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-416 MCA

RULE XLVIII UNCLAIMED COLLECTIONS In non-public assistance cases wherein automatic income withholding has commenced in accord with 40-5-204(5) or 40-6-116(8), MCA, and the obligee has not yet made application for CSED services, the CSED shall deposit collections in a trust or escrow account to be held until such application is received or it has been determined that the obligee has abandoned all claim to the collections. Such abandonment shall be deemed to occur if the obligee has not made application for services within six months. Should this occur the CSED will terminate income withholding and return the withheld funds to the obligor minus fees, if any. Interest earned as a result of funds held in the trust or escrow account accrue to the benefit of the CSED and may not be claimed by either the obligee or the obligor.

AUTH: Sec. 40-5-405 MCA
IMP: Sec. 40-5-401 through 40-5-434 MCA

RULE XLIX OFFSET OF STATE TAX REFUNDS FOR CHILD SUPPORT DEBTS (1) The CSED will notify the state auditor as provided for by 17-4-105, MCA, of any past due debt resulting from or relating to a child support obligation owing to the state under Title IV-D of the Social Security Act. The debt must have accrued through a written contract, court judgment or administrative order, and shall be for a definite amount of money due and owing for support of a child, or for the repayment of support monies retained contrary to an assignment under 53-2-613, MCA, or for the costs or fees due under any contract, judgment or administrative order.

(2) If the tax refund exceeds the debt, the excess tax refund will be returned to the taxpayer by the state auditor.

(3) All cases which have a past due debt resulting from or relating to a child support obligation owing to the state under Title IV-D of the Social Security Act will be referred to the state auditor for tax offset except when there is a court order, administrative order, or written agreement of record which sets a payment schedule for the payment of the past due debt with which the taxpayer is in compliance and the order or agreement must also exclude tax offset, either expressly or implicitly.

AUTH: Sec. 17-4-105 MCA
IMP: Sec. 17-5-105 MCA

RULE L NOTICE OF STATE TAX REFUNDS FOR CHILD SUPPORT DEBTS After the state auditor gives written notice of a pending offset as provided by 17-4-105(2), MCA, and the taxpayer desires to contest the proposed offset, the taxpayer must request a hearing in accord with Rule VI, following the day the notice was mailed to the taxpayer.

AUTH: Sec. 17-4-105 MCA
IMP: Sec. 17-4-105 MCA

RULE LI CHILD SUPPORT OFFSET OF JOINT RETURN (1) If the refund to be offset is a joint return, the spouse who does not owe the child support obligation ("injured spouse") may object pursuant to the procedures set forth in ARM 42.16.107 through 42.16.109 to having his or her share of the refund applied against the child support obligation. Under those procedures, an adjustment will be made to the joint tax return reflecting that portion of the return that is attributable to the taxpayer who owes the child support arrearages and only that portion will be offset.

(2) Filing the "injured spouse statement " does not relieve the taxpayer who is liable for a past due debt resulting from or relating to a child support obligation payable to the state under Title IV-D of the Social Security Act from requesting a hearing under Rule L if the taxpayer wishes to contest the offset procedure or to present defenses to the debt.

AUTH: Sec. 17-4-105 MCA
IMP: Sec. 17-4-105 MCA

RULE LII INDEPENDENT SUPPORT ENFORCEMENT CONTRACTOR (1) The CSED as provided in 40-5-264, MCA, is authorized to enter into cooperative agreements with any person, firm, corporation, association, political subdivision or other department of the state for the purpose of carrying out its duties under state law and Title IV-D of the Social Security Act. Under such agreements the CSED may designate independent support enforcement contractors whose powers and duties are defined by the terms of the contract.

(2) An independent support enforcement contractor shall be accountable publicly and to the CSED, and shall comply with the terms and conditions of the contract, as well as with all applicable federal and state laws, regulations and rules, including policies and procedures of the CSED for processing casework.

(3) The jurisdiction and authority of an independent support enforcement contractor shall be limited to the terms of the contract and in no event may such jurisdiction and authority exceed that of the CSED unless otherwise provided by law.

(4) In any action taken by an independent support enforcement contractor under the contract, the independent support enforcement contractor will inform all parties, their counsel or other representative, and the court or administrative hearing officer that such action is being undertaken as an independent support enforcement contractor. On all documents and forms bearing the name of the CSED the independent support enforcement contractor shall include a statement in bold type of the status of independent support enforcement contractor as an independent contractor.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-264 MCA

RULE LIII AUTHORITY AND PURPOSE (1) This guideline is promulgated under the authority of 40-5-209, MCA, for the purpose of establishing a standard to be used by the district courts, child support enforcement agencies, attorneys and parents in determining child support obligations.

(2) This guideline is based on the principle that a child's standard of living should not, to the degree possible, be adversely affected because his or her parents are not living in the same household.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LIV REBUTTABLE PRESUMPTION (1) The guideline creates a presumption of the adequacy and reasonableness of child support awards. However, every case must be determined on its own merits and circumstances and the presumption may be rebutted by evidence that a child's needs are not being met.

(2) At the request of one of the parties and upon consideration of the factors set out in 40-4-208 and 40-6-116, MCA, a variance from the guideline may be granted if the evidence shows that the application of the guideline would be unfair for the child or one of the parties.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LV SPECIFICATION OF NET AVAILABLE RESOURCES In determining for each parent the net resources which can be made available for child support, the following considerations apply:

(1) Gross Income. (a) Gross income includes income from any source, except as excluded below, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment benefits, gifts and prizes.

(b) Gross income does not include benefits received from means-tested public assistance programs including but not limited to aid to families with dependent children (AFDC), supplemental security income (SSI), food stamps, and general assistance.

(c) Gross income from self-employment or proprietorship of a business, or joint ownership of a partnership or closely held corporation includes gross receipts minus ordinary and necessary expenses for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses which are not related to the disposable income of the parent.

(d) Gross income also includes expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business if such reimbursements

or in-kind payments reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

(2) Imputed Income. (a) If a parent is voluntarily unemployed or underemployed, income may be imputed based on the parent's ability or capacity to earn net income.

(b) Income should not be imputed to a parent who is physically or mentally incapacitated or is caring for legal dependents age two and younger.

(c) Imputed net income may be made according to one of two methods as appropriate:

(i) Determine employment potential and probable net earnings level based on the parent's recent work history, occupational qualifications, and prevailing job opportunities and earnings level in the community. If there is no recent work history, and no higher education or vocational training, income may be imputed at the minimum wage level.

(ii) When a parent is remarried, married, or is living with a person in a relationship akin to husband and wife, and the parent elects to stay home as homemaker, the value for homemaker services may be assessed and attributed to the parent as income.

(d) Whenever income is imputed to an unemployed parent who is providing in-home care for the child for whom support is being calculated, and if that parent would be required to incur child care expenses if employed at the imputed level, then the reasonable value of the parent's in-home child care service should be credited against the value of the imputed income. See Rule LVII.

(3) Income Attributed to Assets (a) In some situations, a parent may possess non-performing assets, primarily vacation homes, idle land and recreational vehicles which could yield a significant income stream if the assets were sold and the proceeds invested. In such cases a child is entitled to benefit from this potential income represented by the non-performing assets.

(b) Income will be attributed to the net-value or market value of non-performing assets at the current interest rates for long-term treasury bills at the time the determination is made or at another appropriate rate determined by a district court or administrative hearing officer.

(c) Income will not be attributed to the reasonable value of a parent's primary residence, home furnishings, and one vehicle. Also excluded will be income producing assets such as real property in the form of a farm or business, and vehicles, tools, or instruments used to produce a primary or significant source of income.

(4) Net Resources Available for Child Support (a) Net resources available for child support are determined by subtracting from gross income, including imputed and attributed income, any of those deductions required by law or which are required as a condition of employment such as union dues, retirement contributions and uniforms. Deductions for credit unions or merely for the convenience of the parent are not to be deducted from gross income.

(b) If a parent carries health or medical insurance for the child for whom support is being calculated under the guidelines, the cost of that coverage should be deducted from gross income.

If coverage is provided through an employer or other organization, only the parent's portion of the premium should be deducted.

(5) Annualized Income. Gross income and deductions from gross income used to derive a figure for net resources available for child support shall, to the extent possible, be annualized to provide a pattern of income producing abilities and to deter the possibility of a skewed application of the guidelines based on a temporary or seasonal aberration.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LVI DETERMINING BASIC CHILD SUPPORT (1) The basic child support obligation should be determined with reference to the support guideline table. To use the table, the combined net resources available for child support of both parents is compared to the income level columns and the line which shows the number and age of the children to arrive at a percentage figure. This percentage is then applied separately to each parent's net available resources to establish in dollar amounts the support obligation for each parent.

(2) When one parent has custody, the amount calculated for that parent is presumed to be spent directly on the child. For the non-custodial parent, the calculated amount establishes a percentage level of support to be awarded to the custodial parent.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LVII ADJUSTMENTS TO BASIC CHILD SUPPORT The basic child support obligation may be supplemented upon the following conditions:

(1) Child Care Costs. (a) Whenever a child support obligation is to be calculated based in part on the earnings of a custodial parent and that parent must incur child care expenses for that child as a prerequisite to employment, it is recommended that the reasonable costs of child care should be pro-rated between the parents and added to supplement the basic child support obligation.

(b) Determination of reasonable monthly child care costs should be based on annualized, average costs of receipted expenses, or, when the history of such expenses are not available, upon estimates based on the average necessary monthly costs of such service. The value of the federal income tax credit for child care should be subtracted to arrive at a figure for net costs which should be pro-rated between the parents on the same basis as the basic support obligation.

(2) Extraordinary Medical Expense (a) Extraordinary medical expenses incurred on behalf of a child which are likely to reoccur on a periodic basis should be pro-rated between the parents and added to supplement the basic child support obligation. Extraordinary medical expenses include physical therapy, special education, mental disorders, and any other chronic, unusual health problems.

(b) The amount to be paid each month for extraordinary medical expenses may be determined by adding a monthly average of past expenses if future costs are expected to be comparable.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LVIII DETERMINING CHILD SUPPORT IN SPECIAL CIRCUMSTANCES Child support may be determined in special circumstances as follows:

(1) Serial Family Parent. A "serial family parent" is a parent with an existing child support obligation who incurs an additional child support obligation in a subsequent family or as a result of a paternity judgment. The child support obligation for a serial family parent may be determined as follows:

(a) when the parent is subject to an existing court or administrative child support order subtract the amount of the order from the parent's gross income; or

(b) when the parent has other prior existing children legally under his or her care who are not subject to an existing court or administrative order, calculate a child support obligation for those children and subtract this amount from the parent's gross income. It may be necessary to acquire information with regard to the net available resources of the prior children's other parent.

(c) if the parent carries health or medical insurance for his or her other prior existing children, the parent's portion of the premium payment should also be deducted from gross income.

(2) Shared Physical Custody Parent. (a) For the purpose of the guideline, shared physical custody occurs when both parents have physical custody of the children 25 percent or more of a year or 91.25 days out of every 365 days. Any lesser allotment of physical custody is deemed to be sole custody even though a decree, judgment or order may refer to the matter as joint custody. Costs incurred by a non-custodial parent in exercising traditional visitation (less than 25 percent of a year) are considered to be incidental expenditures factored into the basic child support obligation and no adjustment is necessary.

(b) To calculate a child support obligation for a shared physical custody parent, a total child support obligation is calculated for each parent without initial regard to custody. The monthly support obligation of each parent should then be multiplied by the number of months the parent has custody. If one parent's annual obligation is greater than that owed by the other, the excess amount shall be pro-rated over 12 months with the pro-rated amount to be paid over to the other parent each month, including those months when the payor parent has custody of the child.

(c) For circumstances involving shared physical custody, the guideline presumes that the child's expenses are incurred in approximate proportion to the duration of physical custody. Some expenses, however, may not be borne proportionately. For example,

the parent having custody of a child during the major part of a school term may incur additional expenses for clothing, books, and recreation which the other parent does not incur. Adjustments on a case by case basis may be necessary to correct any such disparity.

(3) Split Custody Parent. (a) Split custody occurs when a parent who has two or more children by the same other parent has physical custody of one or more but not all of the children.

(b) To calculate a child support obligation for a split custody situation, the obligation for the children is initially calculated as in sole custody arrangements. Then the obligation is pro-rated based on the total number of children. For example, if there is one child with one of the parents and two children with the other, the obligation for the one child is based on one-third of the table amount for three children. These obligations are then offset, with the parent owing the greater amount paying the difference.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LIX SELF-SUPPORT RESERVE (1) For parents with net resources available for child support which are below the poverty index level (as set out annually in the Federal Register), regardless of the presumptive support level derived from the guideline table, a case-by-case determination of child support should be made. In such cases, the district court or administrative hearing officer should carefully review parental income and living expenses to determine the maximum amount of child support that can be reasonably ordered without denying the parent the means for self-support at a minimum subsistence level. A specific amount of child support should always be ordered, however, to establish the principle of that parent's obligation to provide monetary support to a child and to lay the foundation for increased orders when the parent's income increases. Except in unusual adverse circumstances, a minimum order of no less than $50.00 per month, per child, should be set in all cases.

(2) This recommended minimum payment is applicable only to the circumstances of this Rule. In some cases calculated under the guideline such as when the incomes of the parents are near equal, or in split or shared custody cases, the payment level may properly be less than $50.00 per month.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LX EXCLUSIONS FROM GUIDELINE (1) These guidelines do not take into account the economic impact of the following factors:

(a) spousal support;

(b) equitable distribution of property;

(c) tax consequences;

(d) income derived from other household members or step parents;

(e) families having more than six children; and

(f) educational expenses for a child (those incurred for private, parochial, or trade schools, or other schools where there is tuition or other costs beyond state/local tax contributions).

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LXI SUPPORT GUIDELINE TABLE/FORMS The following table and worksheets are to be used in the calculation of child support guidelines.

SUPPORT GUIDLINES TABLE

	$0 - $4,499	$4,500- $8,499	$ 8,500- $12,249	$12,250- $16,499	$16,500- $19,999	$20,000- $27,999	$28,000 $39,499	$39,500+
One Child								
0-11	21.8	21.8	21.4	19.7	18.0	17.4	16.3	13.6
12-17	27.0	27.0	26.5	24.4	22.3	21.5	20.2	16.8
Two Children								
0-11	33.8	33.8	33.2	30.7	28.0	27.1	25.3	21.1
12-17	41.8	41.8	41.0	38.0	34.6	33.5	31.3	26.1
Three Children								
0-11	42.4	42.4	41.5	38.4	35.1	33.8	31.7	26.5
12-17	52.4	52.4	51.3	47.5	43.4	41.8	39.2	32.8
Four Children								
0-11	47.7	47.7	46.8	43.4	39.6	38.2	35.7	29.8
12-17	59.0	59.0	57.9	53.6	48.9	47.2	44.1	36.9
Five Children								
0-11	52.1	52.1	51.1	47.3	43.2	41.6	38.9	32.6
12-17	64.4	64.4	63.1	58.4	53.4	51.4	48.1	40.3
Six Children								
0-11	55.7	55.7	54.6	50.5	46.2	44.5	41.6	34.9
12-17	68.9	68.9	67.5	62.4	57.1	55.0	51.4	43.1

For children in different age categories, pro-rate based on total number of children. Example: for one child age 7, one age 14, annual income of $18,000; use percentages for two children, divided by two - (28.0 / 2) + (34.6 / 2) =

MAR Notice No. 46-2-587

WORKSHEET #1

DETERMINATION OF CHILD SUPPORT

		Mother	Combined	Father
1.	Gross Income (annualized)			
	a. actual income	_____		_____
	b. imputed income	_____		_____
	c. asset derived income	_____		_____
	d. other _____	_____		_____
	e. TOTAL	_____		_____
2.	Deductions (annulized)			
	a. taxes	_____		_____
	b. FICA	_____		_____
	c. union dues	_____		_____
	d. mandatory retirement	_____		_____
	e. pre-existing child support	_____		_____
	f. health insurance for child	_____		_____
	g. other _____	_____		_____
	h. TOTAL	_____		_____
3.	Net Available Resources (line 1-e minus line 2-h)	_____		_____
4.	Combined Total Net Income		_____	
5.	Percentage from Table		_____%	
6.	Each Parent's Obligation (line 3 times line 5)	_____		_____
7.	Monthly Support Obligation (line 6 divided by 12 months)	_____		_____
8.	Obligation Supplement (line 6, worksheet 2)	_____		_____
9.	Total Support Obligation (line 8 added to line 7)	_____		_____
		* * * * * * * * * *		

Non-custodial parent will pay his/her monthly support obligation with supplement to the other parent.

WORKSHEET #2

CHILD CARE/EXTRAORDINARY COSTS & EXPENSES

		Mother	Combined	Father
1.	Combined net expenses (less child care tax credits)		_____	
2.	Percent of Resources (line 3 divided by line 4 on Worksheet #1)	_____%		_____%
3.	Pro-rated share of expenses (line 1 times line 2 for each parent)	_____		_____
4.	Monthly Supplemental Obligation (line 3 divided by 12)	_____		_____

WORKSHEET #3

(JOINT)
SHARED PHYSICAL CUSTODY

		Mother	Combined	Father
1.	Total days with each parent (must total 365 days)	_____	365	_____
2.	Percent each parent (line 1 divided by 365)	_____%		_____%
3.	Basic annual support obligation (line 6, Worksheet #1)	_____		_____
4.	Mother's adjusted obligation (line 3 times line 2 of father column)	_____		
5.	Father's adjusted obligation (line 3 times line 2 of mother column)			_____
6.	Adjusted monthly support obligation (lines 4 and 5 divided by 12)	_____		_____
		* * * * * * * * * *		
7.	Amount to be paid to other parent (subtract lesser amount on line 6 from the greater		_____	

WORKSHEET #4

SPLIT CUSTODY

		Mother	Combined	Father
1.	Annual Child support obligation (line 4 times line 5, Worksheet #1)		_____	
2.	Percent of resources (line 3 divided by line 4, Worksheet #1)	_____%		_____%
3.	Parent's share of children (number of children with each parent divided by total children)	_____%		_____%
4.	Pro-rated basic obligation for children with each parent (multiply line 1 by line 3)	_____%		_____%
5.	Mother's adjusted obligation (line 2, times line 4, of father column)	_____		
6.	Father's adjusted obligation (line 2, times line 4, of mother column)			_____
7.	Monthly adjusted support obligation (lines 5 and 6 each divided by 12)	_____		_____
		* * * * * * * * * *		
8.	Amount to be paid to other parent (subtract lesser amount on line 7 from the greater)		_____	

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-209 MCA

RULE LXII AUTHORITY AND PURPOSE This fee schedule is promulgated under the authority of 40-5-210, MCA, to compensate the CSED for services rendered in the establishment of paternity and the establishment and enforcement of support obligations including the obligation to obtain and maintain health insurance benefits for children.

AUTH: Sec. 40-5-202 and 40-5-210 MCA
IMP: Sec. 40-5-210 MCA

RULE LXIII DEFINITIONS For the purpose of this sub-chapter (Rule LXII to LXV), unless the context requires otherwise, the following definitions apply:

(1) "Actual costs" or "actual expenses" means any cost, fee, or expense represented by a bill, warrant, or invoice for a cost or expense incurred by the CSED in the provision of services under Title IV-D of the Social Security Act. Such costs or expenses include, but are not limited to, the following:

(a) genetic blood testing including phlebotomy;

(b) service of process or other notice required by law, rule or regulation to be served on a party;

(c) witness fees and expert witness fees together with any cost for transportation, meals and lodging;

(d) fees incurred or associated with the production of documents or exhibits, including copy costs, which result from a subpoena or subpoena duces tecum;

(e) state or federal tax intercepts;

(f) full federal internal revenue service collection fees; and

(g) hearing office services.

(2) "Standardized costs" mean an average of costs or expenses which are related to or derived from routine CSED activities and for which there are no specific bills, warrants, invoices or employee time sheets which represent specific costs or expenditures in a given case.

AUTH: Sec. 40-5-202 and 40-5-210 MCA
IMP: Sec. 40-5-210 MCA

RULE LXIV FEE SCHEDULE (1) In any judicial or administrative action (including post judgment proceedings) in which the CSED is the prevailing party the following fees will be charged to the obligor:

(a) Actual costs and expenses; and

(b) Standardized fees for administrative actions as follows:

(i) preparation of any notice under 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-103, MCA, 45 CFR 303.72, and RULE XXXI (including, if appropriate, notice and entry of default orders) _ _ _ _ _ _ _ _ _ _ $8.50; plus

(ii) obtaining informal disposition of a noticed matter through negotiation, settlement or compromise _ _ _ _ _ $53.50; or

(iii) preparation for administrative hearing including interviewing and preparing witnesses, preparing and copying exhibits, research and investigation, and attendance at the hearing $72.00.

(c) Standardized fees for judicial proceedings:

(i) commencement of judicial proceedings through preparation and filing of pleadings, complaints, or petitions, including clerical and caseworker preparation and investigation (also includes, if appropriate, notice and entry of default judgments or orders) $66.50; plus

(ii) obtaining informal disposition by caseworker or legal staff through negotiation, compromise, or settlement $36.00; or

(iii) preparation for judicial trial, hearing or other proceeding including discovery, research, caseworker investigation, interviewing and preparing witnesses, pre-hearing briefs, and attendance at judicial trial, hearing or other proceedings.

(I) paternity actions $715.00

(II) all others $240.00

(d) Standardized fees for central office parent/asset locate $ 11.00

(e) Standardized fees for interstate actions

(i) registration with central registry $ 8.00

(ii) preparation of interstate transmittal $ 33.00

(iii) preparation of URESA petitions $ 81.00

AUTH: Sec. 40-5-202 and 40-5-210 MCA
IMP: Sec. 40-5-210 MCA

RULE LXV WAIVER OR DEFERENCE OF FEES The CSED may not waive or defer any of the foregoing fees except to encourage expedient, informal dispositions.

AUTH: Sec. 40-5-202 and 40-5-210 MCA
IMP: Sec. 40-5-210 MCA

3. Changes in Montana's child support collection rules are being made to ensure compliance with federal laws such as the "Child Support Amendments of 1984," the "Family Support Act of 1988," and the regulations enacted thereunder by the U.S. Department of Health and Human Services, Office of Child Support Enforcement.

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 Rehabilitative Services, P.O. Box 4210, Helena, Montana 59604, no later than February 9, 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 January 2, 1990.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through XX regarding the installation of motorist information signs along interstate and primary highways	NOTICE OF THE ADOPTION OF RULES 18.7.301 - 18.7.309, 18.7.320 - 18.7.323, AND 18.7.330 - 18.7.336 ON MOTORIST INFORMATION SIGNS.

TO: All Interested Persons:

1. On October 26, 1989, the Department of Highways published notice of proposed adoption of new rules above concerning the installation of motorist information signs along interstate and primary highways at page 1641 of the 1989 Montana Administrative Register, issue number 20.

2. A public hearing was held on November 16, 1989, and was attended by about 20 persons. Formal comments were presented by seven persons and the department then answered questions. The hearing was tape recorded and the tapes are included in the file on this matter together with the report of the hearing officer. Six written comments were received by the department. In addition, counsel for the Administrative Code Committee commented prior to the hearing that the rulemaking authority should be 60-5-503 instead of 60-5-513, MCA. This change has been made. The comments received were generally favorable with some suggested changes. The specific comments are discussed below in reference to each rule where amendments were suggested.

3. Based upon the comments received the rules are being adopted as proposed with those changes given below.

RULE I (18.7.301) POLICY STATEMENT received no comments and is adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-513, MCA

RULE II (18.7.302) DEFINITIONS (1) and (2) are adopted as proposed.

(3) "Directional sign" is any structure that is visible from the primary highway and provides a motorist with sufficient information to find the location of a business without the need for additional information or directions.

(3) through (16) are renumbered and adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-513, MCA

COMMENT: Steve Shimek of the Department of Commerce suggested that the department consider omitting Section (4) of Rule X or defining directional sign. One person asked

whether tourist-oriented directional signs could be erected in urban areas where the area meets the definition of "rural" in section (11) of Rule III.

RESPONSE: The department wants to avoid unnecessary signing where the motorist already has the necessary directional information. A definition of "directional sign" has been added to clarify the requirements. The department stated that if an area falls within the definition of rural, a tourist-oriented directional sign could be erected within the corporate limits of municipality with a population of 1,500 or more. The department reviewed the definition of "rural" and feels that it clearly includes land which is sparsely populated, primarily devoted to agricultural use or has development which does not appear to be urban in character. Rule X (1) has also been amended to provide further clarification.

RULE III (18.7.303) BUSINESS ELIGIBILITY FOR SPECIFIC INFORMATION SIGNS (1) and (2)(a) are adopted as proposed.

(2)(b) Food and restaurant facilities shall:

(i) Be approved or licensed as required by the state agency or political entity having jurisdiction.

(ii) Be in continuous operation for at least 10 hours ~~to serve three meals~~ per day, seven days per week, ~~opening~~ Priority shall be given to restaurants within the applicable 3-mile increment which are in continuous operation for 10 hours per day, seven days per week, to serve three meals per day and which open no later than 8:00 a.m.

(iii) Provide restroom facilities.

(iv) Provide a telephone available for public use.

Subsections (c) and (d) are adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-514, MCA

COMMENT: Everett Stewart of Interstate Logos commented that some restaurants provide services and meet the three meal per day criteria but do not open at 8:00 a.m. He recommended that the department retain flexibility by omitting the opening time.

RESPONSE: The department considered the comment and the legislative mandate given in the statement of intent for the enabling legislation which states that "it is important for a traveler to obtain information about available services, even if the full range of services contemplated by federal guidelines is not available." The department decided that the motorist would be served by information about restaurants which may not serve breakfast. Priority will, however, be given to restaurants which serve three meals and are open for breakfast. If space is available restaurants opening later will be allowed to display signs. The department added a 10-hour minimum service time to avoid directing a motorist to a service which may be closed.

RULE IV (18.7.304) LOCATION OF QUALIFIED BUSINESSES FOR SPECIFIC INFORMATION SIGNS received no comments and is adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-512, MCA

RULE V (18.7.305) SPACING AND LOCATION OF SPECIFIC INFORMATION SIGNS (1) and (2) are adopted as proposed.

(3) Spacing between each specific information sign shall be not less than 800 feet, or more than 1,000 feet unless there are other intervening signs or other significant site considerations.

(4) through (7) are adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-513, MCA

COMMENT: Bob Brooks, Jr. of Logo Signs of America, Inc. suggested the additional language to address situations where the terrain or geology or other physical features affect the ability to construct signs within 1,000 feet of each other. Gary Walrack of Interstate Logos, Inc. of Montana, suggested allowing spacing of less than 800 feet between signs where interchanges are too close together to allow all service categories of signs. Elmer Frame, President of the Campground Owners Association of Montana, also suggested decreasing spacing where all signs cannot be erected within the available area.

RESPONSE: The department has adopted Mr. Brook's suggestion and recognizes that physical features could affect spacing and require a greater distance. The department is rejecting the suggestion to allow spacing of less than 800-feet. Most states have an 800-foot minimum and the Manual on Uniform Traffic Control Devices, which is used to regulate Montana highway signing, also recommends an 800-foot minimum spacing in section 2G-5.5. The department believes that a lesser minimum spacing may create a safety hazard.

RULE VI (18.7.306) SPECIFIC INFORMATION SIGN DESIGN AND ORDER (1) through (3) are adopted as proposed.

(4) Where there is insufficient space for all four specific service signs, the signs shall generally be erected with the following priority: GAS, FOOD, LODGING, and CAMPING. Where there is greater demand for signs in one service category than there is in a higher priority category, the franchisee may request approval from the department to set a different priority at that interchange.

~~(5) Combination signs may be erected only in remote rural areas where no more than two qualified businesses are available or are likely to become available within two years.~~

AUTH: 60-5-503, MCA IMP: 60-5-513, MCA

COMMENTS: Both Mr. Brooks and Mr. Walrack commented that subsection (5) is confusing and too restrictive. Mr.

Walrack felt that combination signs should be allowed where spacing restricts the number of available sign spaces. Mr. Frame suggested that the priority order in subsection (4) should be changed or the spacing minimum reduced in order to insure that a campground sign would be displayed.

RESPONSE: The department has deleted subsection (5) as it is sufficiently addressed in 60-5-512(3), MCA. The department does not have the authority to allow combination signs in urban areas where spacing requirements will not permit all four signs to be erected either under the statute or under section 2G-5.1 of the Manual on Uniform Traffic Control Devices. The priority as given in subsection (4) was not changed as the department believes that more motorists will be looking for gas, food and lodging than will need camping facilities. Since most camping facilities in Montana are seasonal, many of the signs will be down or covered during the winter months. The department believes that the motorists will be best served with the priority order given. The department has, however, added language to allow exceptions to the priority where more motorist information would be given to the public. To attempt to alleviate problems caused by space restrictions, the department will in its standards and specifications allow signs to display services for two exits on one sign with the clear identification of which exit the motorist should use wherever two interchanges are too close together to permit separate signing. For example, a sign could read "Gas-First Exit" with three logos below and then "Gas-Second Exit" with three more logos below the legend.

RULE VII (18.7.307) SUPPLEMENTAL DIRECTIONAL SIGNS (1) The information displayed on specific information signs must be repeated on supplemental directional signs when the qualified businesses identified on the specific information signs are not visible to traffic ~~approaching--from--the traveled-way~~ at the exit ramp terminus.

(2) through (8) are adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-513, MCA

COMMENT: Mr. Brooks commented that it would be easier to determine which businesses are visible from the end of the exit ramp than from the main traveled way of the interstate. His proposed amendment could reduce the need for supplemental signing.

RESPONSE: The proposed amendment has been adopted.

RULE VIII (18.7.308) TRAILBLAZER SIGNS and IX (18.7.309) BUSINESS SIGNS are adopted as proposed and no negative comments on them were received.

AUTH: 60-5-503, MCA IMP: 60-5-513, MCA

RULE X (18.7.320) TOURIST-ORIENTED DIRECTIONAL SIGNS - GENERAL

(1) Tourist-oriented directional signs may ~~not~~ only be erected ~~for an activity or site located~~ within ~~an urban~~ a rural area.

(2) is adopted as proposed.

(3) ~~When a qualified activity or its on-premise signing is visible from the primary highway, as determined by the department the activity may not qualify for a tourist-oriented directional sign unless operational safety requires an advance sign.~~ Tourist-oriented directional signs may not be erected for an activity visible from the primary highway. For the purpose of this section, "visible" means the activity or its on-premise sign can be clearly seen from a location on the highway which is greater than or equal to the estimated stopping sight distance from the approach or turn-off for the activity. The following chart shall be used to determine estimated stopping sight distances:

Posted speed limit (in miles per hour)	Estimated stopping sight distance (in feet)
25	150
30	200
35	250
40	325
45	400
50	475
55	550

(4) and (5) are adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-519, MCA

COMMENTS: Mr. Stewart suggested changing (1) to rural area in order to make it clear that tourist-oriented directional signs may be erected in those parts of urban areas which are defined as rural. Regarding section (3) Mr. Walrack stated that other states determine what is "visible" by distances such as 300 feet or driver reaction perception time so that the visibility distance allows enough time for the motorist to safely enter the business property. He suggested adding a distance or driver reaction perception time to the rule.

RESPONSE: The department has changed section (1) as suggested and has rewritten section (3) totally to provide adequate visibility for safe turning maneuvers. The department has included a chart which shows stopping sight distances in relation to posted speed limits.

RULE XI (18.7.321) TOURIST-ORIENTED DIRECTIONAL TRAILBLAZER SIGNS, RULE XII (18.7.322) DESIGN OF TOURIST-ORIENTED DIRECTIONAL SIGNS AND PANELS, and RULE XIII (18.7.323) TOURIST-ORIENTED DIRECTIONAL SIGN INSTALLATION received no comments and are adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-521, MCA

RULE XIV (18.7.330) APPLICATION PROCEDURE AND NOTICE (1) The franchisee shall give at least one public notice of ~~intent~~ desire to erect specific information sign panels at an interchange or tourist-oriented directional signs at an intersection or shall contact each qualified business in the area, or both, at least 30 days prior to ~~accepting requests~~ the deadline set for receiving applications to place business signs on a specific information sign or tourist-oriented directional sign. The notice ~~of intent~~ shall be published in a newspaper published in the county or counties where the signs will be erected. The notice shall specify from whom applications may be requested, and where and to whom the applications must be submitted for consideration.

(2) and (3) are adopted as proposed.

(4) The franchisee shall require that all requests be made by the owner of a qualified business or his designee.

(5) is adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-505, MCA

COMMENTS: Several persons commented that a 30-day period before accepting requests was unnecessary. They suggested that the franchisee should be allowed to accept requests at anytime but not act on them until the time period ends. Two persons suggested that 15 days would be a more reasonable time since businesses could decide whether or not they wish to participate in the program in two weeks and the signs would be erected sooner. Two persons felt that 30 days is a reasonable amount of time to give a business making such a major decision. Several people also disputed the need for public notice and felt that such notice would result in raised expectations for businesses which would not be eligible for the program. Mr. Brooks suggested changing "intent" to "desire" since the erection of the signs depends on business participation, not the intent of the franchisee. Mr. Stewart stated that his company has followed the public notice requirements under Nebraska rules and have had no problems or complaints. He felt that the public notice was helpful in preparing the businesses for later visits and discussions about the program. Mr. Brooks suggested changing subsection (4) to allow the owner to designate someone else to enter into lease agreements on behalf of the business. This is particularly necessary where the business is owned by a large corporation located elsewhere.

RESPONSE: The department has amended the rule to allow the franchisee to accept applications during the 30-day period but has decided not to shorten the period. The department feels that the program involves a major decision for small businesses and they should be allowed adequate time to make it. The department does not believe the additional two week waiting period will unduly interfere with construction of the signs. The rule leaves the choice of whether to give public notice by newspaper or contact each eligible business or both to the franchisee.

The department wants to insure that all eligible businesses are given the opportunity to apply. The department assumes that the franchisee will want to contact all of the eligible businesses personally but in certain situations where eligibility may be difficult to establish, public notice may be very useful. The word "intent" was changed to "desire." Section (4) was amended as proposed.

RULE XV (18.7.331) LEASE AGREEMENTS and RULE XVI (18.7.332) MAINTENANCE received no comments and are adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-505, MCA

RULE XVII (18.7.333) REMOVAL OF SIGNS AND COVERING SEASONAL SIGNS

(1) and (2) are adopted as proposed.

(3) If a business is closed due to fire, accident, remodeling, or other emergencies for more than seven, but not more than 90 days, then the franchisee shall have the business sign or the tourist-oriented directional sign covered to prevent inconvenience to the traveling public. The business shall not lose its priority or be required to reapply prior to the normal expiration of its contract. Extensions of time beyond 90 days may be granted by the franchisee in such case where insurance claims or financial arrangements require additional time. However, an owner who, due to his or her own negligence, fails to open within the 90-day period may lose his or her right to occupy the specific information sign panel or tourist-oriented directional sign panel.

(4) Within five working days of closure of the business, the franchisee shall cover or remove the signs for businesses which are operated on a seasonal basis or shall prominently display the word "closed" across the business sign. Where all of the businesses on a specific information sign are closed, the entire sign shall be removed.

AUTH: 60-5-503, MCA IMP: 60-5-505, MCA

COMMENTS: Mr. Brooks stated that subsection (3) is ambiguous because it does not address who may issue the extensions. Mr. Walrack commented that a sign with all of the business signs removed or covered may still be confusing to the motorist who may react to the service category heading and exit to look for services which are all closed. He suggested allowing a banner across the business sign to clearly indicate that it is closed.

RESPONSE: The department agrees that the authority to issue extensions was unclear and has added language to give the franchisee discretion to grant extensions. The department agrees that a blank sign with the category heading may be confusing and has added language to require that a sign with no business logos displayed for open businesses must be removed. The sign creates a potential safety hazard with no benefits to the motorist. The department has also added language which allows the franchisee to indicate the

closure of a business by a banner or other device rather than covering or removing the business sign where other business signs are displayed for open businesses.

RULE XVIII (18.7.334) GENERAL SERVICE SIGNS, RULE XIX (18.7.335) FEES FOR POSTING ON SPECIFIC INFORMATION SIGN PANELS AND TOURIST-ORIENTED DIRECTIONAL SIGNS and RULE XX (18.7.336) OVERSIGHT OF THE FRANCHISEE BY THE DEPARTMENT received no comments and are adopted as proposed.

AUTH: 60-5-503, MCA IMP: 60-5-605, 60-5-510, and 60-6-505, MCA, respectively

4. Rules I through XX will be codified in the order given as rules 18.7.301 through 18.7.309, 18.7.320 through 18.7.323, and 18.7.330 through 18.7.336.

Larry W. Larsen, P.E.
Director of Highways

By: Larry W. Larsen

Certified to the Secretary of State January 2, 1990.

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

In the matter of the amendment of ARM 36.21.415 concerning fees.	)))	NOTICE OF AMENDMENT OF 36.21.415 FEE SCHEDULE

TO: ALL INTERESTED PERSONS:

1. On November 9, 1989, the Board of Water Well Contractors published a notice of public hearing on the proposed amendment of the fee schedule, ARM 36.21.415 at pages 1790 and 1791, 1989 Montana Administrative Register, Issue number 21.

2. On December 1, 1989, the public hearing was held in the Director's Conference Room of the Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana. Jim Madden, Attorney for the board presided over and conducted the hearing. Present were board members Wesley Lindsay, Dan Fraser, Robert Bergantino, William Osborne, and Ron Guse; Diana Cutler, Program Specialist for the board; Patty Greene, Recording Secretary; Pat Byrne, Great Falls and Terry Lindsay, Clancy, representing the Montana Water Well Drillers Association.

No questions were asked specifically on the fee schedule. Mr. Byrne questioned how the system would work for currently licensed water well contractors who have obtained the monitoring well constructor's endorsement when their licenses were up for renewal. It was explained that the contractors would pay one fee of $115 and for those who had obtained the monitoring endorsement, their renewed licenses would indicate both water well and monitoring well construction.

No other questions were raised. No written comments were received.

3. The rule is being amended exactly as proposed.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BOARD OF WATER WELL CONTRACTORS

BY: Wesley Lindsay
WESLEY LINDSAY, CHAIRMAN

Certified to the Secretary of State, January 2, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.106 relating to Personal Income Tax Surcharge.	NOTICE OF THE AMENDMENT of ARM 42.15.106 relating to Personal Income Tax Surcharge.

TO: All Interested Persons:

1. On November 9, 1989, the Department published notice of the proposed amendment to ARM 42.15.106 relating to computation of withholding taxes at page 1801 of the 1989 Montana Administrative Register, issue no. 21.

2. No comments were received.

3. The Department amends ARM 42.15.106 as proposed.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 2, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.105 relating to Computation of Withholding Taxes.	NOTICE OF THE AMENDMENT of ARM 42.17.105 relating to Computation of Withholding Taxes.

TO: All Interested Persons:

1. On November 9, 1989, the Department published notice of the proposed amendment to ARM 42.17.105 relating to computation of withholding taxes at page 1803 of the 1989 Montana Administrative Register, issue no. 21.

2. No comments were received.

3. The Department amends ARM 42.17.105 as proposed.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 2, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.27.102 relating to Distributors Bond for Motor Fuels.	NOTICE OF THE AMENDMENT of ARM 42.27.102 relating to Distributors Bond for Motor Fuels.

TO: All Interested Persons:

1. On November 9, 1989, the Department of Revenue published notice of the proposed amendment of ARM 42.27.102 relating to Distributors Bond for Motor Fuels at page 1799 of the 1989 Montana Administrative Register, issue no. 21.

2. No written comments were received. Therefore, the Department amends ARM 42.27.102 as proposed.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State January 2, 1990.

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

In the matter of the repeal of Rules 46.10.407 pertaining to transfer of resources for the AFDC program	))))	NOTICE OF THE REPEAL OF RULE 46.10.407 PERTAINING TO TRANSFER OF RESOURCES FOR THE AFDC PROGRAM

TO: All Interested Persons

1. On November 22, 1989, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rule 46.10.407 pertaining to transfer of resources for the AFDC program at page 1896 of the 1989 Montana Administrative Register, issue number 22.

2. The Department has repealed Rule 46.10.407 as proposed.

AUTH: Sec. 53-2-601 and 53-4-212 MCA
IMP: Sec. 53-2-601 and 53-4-211 MCA

4. No written comments or testimony were received.

5. This repeal will become effective March 1, 1990.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 2, 1990.

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

In the matter of the amendment of Rule 46.12.3207 pertaining to ineligibility for certain medicaid benefits following certain transfers of resources	)))))	NOTICE OF THE AMENDMENT OF RULE 46.12.3207 PERTAINING TO INELIGIBILITY FOR CERTAIN MEDICAID BENEFITS FOLLOWING CERTAIN TRANSFERS OF RESOURCES

TO: All Interested Persons

1. On November 22, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3207 pertaining to ineligibility for certain medicaid benefits following certain transfers of resources at page 1898 of the 1989 Montana Administrative Register, issue number 22.

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

46.12.3207 TRANSFER OF RESOURCES Subsections (1) through (4)(e) remain as proposed.

(a5) FOR PURPOSES OF EVALUATING ALL TRANSFERS, REGARDLESS OF DATE, THe value of compensation received for transferred property is determined based ~~on~~ upon the agreement and expectations of the parties at the time of the transfer. Compensation may be in the form of:

Subsections (5)(a) through (5)(f) remain as proposed.

(a6) In all cases in which ~~an amount of uncompensated value is established, the individual must be advised of the fact before eligibility is approved or denied.~~ the department determines that an applicant or recipient has transferred non-excluded resources to establish or maintain eligibility, REGARDLESS OF THE DATE OF THE TRANSFER, the department must send a written

~~(i)~~ Nnotice ~~will be sent~~ to the individual, prior to a determination of eligibility or ineligibility, informing him that an uncompensated transfer of non-excluded ~~property~~ resources has been identified ~~in his case~~, stating the value of the property ~~so~~ transferred, and explaining the individual's right to rebut the presumption that the transfer was made to qualify for assistance.

(a7) ~~If the individual wishes to rebut t~~ FOR PURPOSES OF EVALUATING ALL TRANSFERS, REGARDLESS OF DATE, THe presumption that ~~real or personal~~ property was transferred ~~for the purpose of~~ to establish~~ing~~ medicaid eligibility shall apply unless ~~for medicaid, it is~~ the individual~~'s responsibility to~~ presents to the department, within 15 days of the department's mailing of notice, a rebuttal statement containing clear and convincing evidence that the ~~real or personal~~ property was transferred exclusively for some other reason. If the individual does not

present a rebuttal statement as provided herein, the department shall deny or terminate eligibility.

(~~i~~a) T~~t~~he individual's rebuttal statement ~~of rebuttal shall~~ must include, if applicable:

Subsections (7)(a)(i) through (7)(a)(vi) remain as proposed.

(~~ii~~b) The determination of whether a transfer covered by this section has occurred will be based upon consideration of all facts and circumstances. The presence of one or more of the following or other factors, while not necessarily conclusive, may indicate that ~~real or personal~~ the property was transferred exclusively for some purpose other than establishing eligibility~~.~~; ~~This list is not all inclusive.~~

(~~A~~i) T~~t~~he occurrence or onset after transfer ~~of the real or personal property~~ of ~~the~~ an unexpected event or condition which necessitates application for medicaid benefits. ~~traumatic onset of disability.~~

(~~B~~ii) T~~t~~he occurrence after transfer ~~of the real or personal property~~ of ~~the~~ an unexpected loss of:

Subsections (7)(b)(~~i~~i)(A) through (7)(b)(v) remain as proposed.

(~~a~~8) FOR PURPOSES OF EVALUATING ALL TRANSFERS, REGARDLESS OF DATE, I~~i~~f the individual had some other purpose for transferring the ~~real or personal~~ property but establishing eligibility for public assistance was also a factor or foreseeable ~~likely~~ result of his decision to transfer, the presumption is not ~~successfully~~ rebutted.

AUTH: Sec. 53-2-201, 53-2-601 and 53-6-113 MCA
IMP: Sec. 53-2-601 and 53-6-101 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The language in subsection (2) is repetitive of the definition of "institutionalization" in subsection (1)(j). This language should be replaced by use of the term "institutionalization."

RESPONSE: The department believes the additional language is justified. "Institutionalization" refers to actual admission to a nursing facility or medical institution, or actual commencement of waiver services. Subsection (2) specifies that transfer is evaluated not only on acutal admission or commencement of services, but also on application for such admission or services.

COMMENT: The proposed rule contains two separate rules for transfers prior to July 1, 1988 and transfers on or after July 1, 1988. These separate rules are contained in subsections (3) and (4) respectively. However, it is not clear whether

subsections (5) through (8) apply to all transfers, or only to transfers occurring during a certain time period.

RESPONSE: The department agrees that the rule could be clearer. Language has been added to clarify that subsections (5) through (8) apply to all transfers, regardless of date.

4. This rule will be applied retroactively to July 1, 1988.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 2, 1990.

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

In the matter of the amendment of Rule 46.25.726 pertaining to transfer of resources for general relief eligibility purposes	))))	NOTICE OF THE AMENDMENT OF RULE 46.25.726 PERTAINING TO TRANSFER OF RESOURCES FOR GENERAL RELIEF ELIGIBILITY PURPOSES

TO: All Interested Persons

1. On November 22, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.25.726 pertaining to transfer of resources for general relief eligibility purposes at page 1905 of the 1989 Montana Administrative Register, issue number 22.

2. Instead of Rule I General Relief, Transfer of Resources being adopted as a new rule, it will be included in Rule 46.25.726 as subsections (3) through subsections (9)(d).

3. The Department has amended the following rule as proposed with the following changes:

46.25.726 RESOURCES Subsections (1) and (2) remain as proposed.

(3) THE FOLLOWING DEFINITIONS APPLY TO THIS SECTION:

(a) "CLIENT" MEANS AN APPLICANT FOR OR RECIPIENT OF GENERAL RELIEF AND ANY OTHER PERSON WHOSE RESOURCES ARE REQUIRED TO BE CONSIDERED FOR GENERAL RELIEF ELIGIBILITY PURPOSES.

(b) "COMPENSATION" MEANS MONEY, FOOD, SHELTER, SUPPORT, MAINTENANCE, SERVICES, OR OTHER VALUABLE REAL OR PERSONAL PROPERTY, AS FURTHER SPECIFIED IN SUBSECTION (4), RECEIVED BY AN INDIVIDUAL IN EXCHANGE FOR THE TRANSFERRED PROPERTY.

(c) "FAIR MARKET VALUE" MEANS THE AMOUNT OF COMPENSATION AT WHICH PROPERTY WOULD CHANGE HANDS BETWEEN A WILLING BUYER AND AN UNRELATED SELLER, NEITHER BEING UNDER COMPULSION TO BUY OR SELL AND BOTH HAVING REASONABLE KNOWLEDGE OF THE RELEVANT FACTS.

(d) "NON-EXCLUDED RESOURCE" MEANS ANY PROPERTY WHICH WOULD HAVE COUNTED IN WHOLE OR IN PART AGAINST THE MONTHLY INCOME STANDARD AT THE TIME OF TRANSFER.

(i) IN INSTANCES WHERE THE PROPERTY TRANSFERRED IS THE INDIVIDUAL'S HOME, THE INDIVIDUAL, HIS SPOUSE OR A DEPENDENT RELATIVE MUST HAVE ACTUALLY BEEN LIVING IN THE HOME AT THE TIME OF THE TRANSFER IN ORDER FOR THE HOME TO BE CONSIDERED HIS PRINCIPAL RESIDENCE AND, THEREFORE, AN EXCLUDED RESOURCE.

(e) "TRANSFER OF PROPERTY" MEANS ANY TRANSFER OR RENUNCIATION OF A CLIENT'S FULL OR PROPORTIONATE RIGHT, TITLE OR INTEREST IN OR TO ANY REAL OR PERSONAL PROPERTY OR PROPERTY RIGHT. THIS DEFINITION INCLUDES TRANSFERS TO JOINT TENANCY OR TO TENANCY IN COMMON, AND TRANSFERS OF OR RESTRICTIONS UPON A

CLIENT'S RIGHT OF ACCESS TO OR LEGAL ABILITY TO DISPOSE OF PROPERTY, EXCEPT AS PROVIDED IN SUBSECTION (6)(c).

(f) "UNCOMPENSATED VALUE" MEANS THE FAIR MARKET VALUE OF PROPERTY AT THE TIME OF THE TRANSFER MINUS THE FAIR MARKET VALUE OF COMPENSATION RECEIVED BY THE INDIVIDUAL IN EXCHANGE FOR THE PROPERTY.

(4) AN APPLICANT FOR OR RECIPIENT OF GENERAL RELIEF IS INELIGIBLE FOR GENERAL RELIEF AS PROVIDED IN THIS SECTION WHEN THE DEPARTMENT DETERMINES THAT THE CLIENT HAS DIVESTED HIMSELF DIRECTLY OR INDIRECTLY OF ANY PROPERTY FOR THE PURPOSE OF QUALIFYING FOR GENERAL RELIEF. WHEN A CLIENT TRANSFERS NON-EXCLUDED RESOURCES FOR LESS THAN FAIR MARKET VALUE WITHIN 30 MONTHS BEFORE APPLICATION FOR OR REDETERMINATION OF ELIGIBILITY FOR GENERAL RELIEF, IT IS PRESUMED THAT THE TRANSFER WAS MADE TO ESTABLISH ELIGIBILITY UNLESS THE APPLICANT OR RECIPIENT PRESENTS CLEAR AND CONVINCING EVIDENCE THAT THE TRANSFER WAS EXCLUSIVELY FOR SOME OTHER PURPOSE.

(5) THE UNCOMPENSATED VALUE OF THE TRANSFERRED NON-EXCLUDED RESOURCES SHALL BE CONSIDERED AVAILABLE FOR GENERAL RELIEF ELIGIBILITY PURPOSES FOR THE NUMBER OF MONTHS DETERMINED BY DIVIDING THE UNCOMPENSATED VALUE BY THE APPLICABLE MONTHLY INCOME STANDARD, AND APPLYING ANY REMAINDER AGAINST THE APPLICABLE MONTHLY INCOME STANDARD FOR THE LAST MONTH, OR UNTIL IT IS REDUCED BY ONE OR BOTH OF THE FOLLOWING:

(a) ALL OR PART OF THE TRANSFERRED PROPERTY IS RETURNED AT WHICH TIME THE UNCOMPENSATED VALUE SHALL BE REDUCED BY THE FAIR MARKET VALUE OF THE RETURNED PROPERTY AS OF THE DATE OF TRANSFER; OR

(b) THE UNCOMPENSATED AMOUNT IS REDUCED BY DOCUMENTED FURTHER COMPENSATION, AT WHICH TIME THE UNCOMPENSATED VALUE SHALL BE REDUCED BY THE FAIR MARKET VALUE OF THE FURTHER COMPENSATION.

(6) THE VALUE OF COMPENSATION RECEIVED FOR TRANSFERRED PROPERTY IS DETERMINED BASED UPON THE AGREEMENT AND EXPECTATIONS OF THE PARTIES AT THE TIME OF THE TRANSFER. COMPENSATION MAY BE IN THE FORM OF:

(a) CASH, IN THE TOTAL AMOUNT PAID OR AGREED TO BE PAID IN EXCHANGE FOR THE PROPERTY, EXCLUDING INTEREST;

(b) ANY VALUABLE REAL OR PERSONAL PROPERTY WHICH IS VALUED ACCORDING TO ITS FAIR MARKET VALUE AND WHICH IS EXCHANGED FOR THE PROPERTY TRANSFERRED;

(c) SUPPORT AND/OR MAINTENANCE PROVIDED IN ACCORDANCE WITH A VALID WRITTEN CONTRACT ENTERED INTO BEFORE THE SUPPORT AND/OR MAINTENANCE WAS RENDERED. THE SUPPORT AND/OR MAINTENANCE WILL BE VALUED AT FAIR MARKET VALUE BASED UPON THE SUPPORT AND/OR MAINTENANCE PROVIDED AND THE LENGTH OF TIME OVER WHICH THE SUPPORT AND/OR MAINTENANCE MUST BE PROVIDED UNDER THE CONTRACT;

(d) SERVICES PROVIDED IN ACCORDANCE WITH A VALID WRITTEN CONTRACT ENTERED INTO BEFORE THE SERVICES WERE RENDERED. THE SERVICES WILL BE VALUED AT FAIR MARKET VALUE BASED UPON THE

SERVICES PROVIDED AND THE LENGTH OF TIME OVER WHICH THE SERVICES MUST BE PROVIDED UNDER THE CONTRACT;

(e) FOOD VALUED AT RETAIL PRICE; OR

(f) SHELTER VALUED AT FAIR MARKET VALUE.

(7) IN THE EVENT THE DEPARTMENT DETERMINES THAT AN APPLICANT OR RECIPIENT TRANSFERRED RESOURCES FOR THE PURPOSE OF QUALIFYING FOR GENERAL RELIEF, THE DEPARTMENT MUST SEND TO THE APPLICANT OR RECIPIENT A WRITTEN NOTICE OF DETERMINATION EXPLAINING THE REASON FOR AND THE LENGTH OF THE DISQUALIFICATION, AND EXPLAINING THE APPLICANT OR RECIPIENT'S RIGHT TO A FAIR HEARING.

(8) THE DETERMINATION WHETHER A PROHIBITED TRANSFER HAS OCCURRED SHALL BE BASED UPON CONSIDERATION OF ALL FACTS AND CIRCUMSTANCES KNOWN TO AND PRESENTED TO THE DEPARTMENT. IF THE APPLICANT OR RECIPIENT HAD SOME OTHER PURPOSE FOR TRANSFERRING THE PROPERTY, BUT ESTABLISHING OR MAINTAINING ELIGIBILITY FOR GENERAL RELIEF WAS ALSO A FACTOR OR FORESEEABLE RESULT OF THE DECISION TO TRANSFER, THE PRESUMPTION IS NOT REBUTTED.

(9) THE PRESENCE OF ONE OR MORE OF THE FOLLOWING OR OTHER FACTORS, WHILE NOT NECESSARILY CONCLUSIVE, MAY INDICATE THAT THE PROPERTY WAS TRANSFERRED EXCLUSIVELY FOR SOME PURPOSE OTHER THAN QUALIFYING FOR GENERAL RELIEF:

(a) THE OCCURRENCE OR ONSET AFTER TRANSFER OF AN UNEXPECTED EVENT OR CONDITION WHICH NECESSITATES APPLICATION FOR GENERAL RELIEF;

(b) THE CLIENT'S TOTAL COUNTABLE INCOME AND RESOURCES WOULD HAVE BEEN BELOW THE APPLICABLE MONTHLY INCOME STANDARD DURING EACH OF THE 30 MONTHS IMMEDIATELY PRECEDING APPLICATION OR DURING THE PERIOD OF ELIGIBILITY EVEN IF HE HAD RETAINED THE PROPERTY;

(c) THE PROPERTY TRANSFER OR RESTRICTIONS UPON THE AVAILABILITY OF THE PROPERTY TO ITS OWNER WERE ORDERED BY A COURT OF LAW BASED UPON AN APPLICABLE STATUTE, REGULATION, BONA FIDE CONDITION OF SETTLEMENT OR OTHER LEGAL REQUIREMENT AND NOT AT THE REQUEST OR SUGGESTION OF THE CLIENT OR THE CLIENT'S PARENT, CHILD, GUARDIAN, ATTORNEY OR OTHER LEGAL REPRESENTATIVE; OR

(d) THE CLIENT WAS THE VICTIM OF FRAUD, MISREPRESENTATION OR COERCION AND THE TRANSFER WAS BASED UPON SUCH FRAUD, MISREPRESENTATION OR COERCION, PROVIDED THAT THE CLIENT HAS TAKEN ANY AND ALL POSSIBLE STEPS, INCLUDING LEGAL ACTION, TO RECOVER SUCH PROPERTY OR COMPENSATION FOR THE LOSS OF SUCH PROPERTY.

Original subsections (4) through (4)(d) remain as proposed but will be renumbered as subsections (10) through (10)(d).

AUTH: Sec. 53-2-201 and 53-2-601 MCA
IMP: Sec. 53-2-601 MCA

4. No written comments or testimony were received.

Julia E. Rolma
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 2, 1990.

VOLUME NO. 43 OPINION NO. 48

COUNTY OFFICERS AND EMPLOYEES - Duty of county treasurer to account for city SID assessments;
PUBLIC FUNDS - Duty of county treasurer to provide city with accounting of city SID assessments collected by county treasurer;
SPECIAL IMPROVEMENT DISTRICTS - Duty of county treasurer to account for city SID assessments;
MONTANA CODE ANNOTATED - Section 7-6-2111;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 117 (1988), 39 Op. Att'y Gen. No. 39 (1981).

HELD: A county treasurer, when remitting taxes to a city, must break out the amount received from taxpayers as payment for the city's special improvement district assessments.

December 12, 1989

David N. Hull
Helena City Attorney
City-County Administration Building
316 North Park
Helena MT 59623

Dear Mr. Hull:

You have requested my opinion on the following question:

> Must a county treasurer, when remitting taxes to a city, break out the amount received from each taxpayer for payment of the city's special improvement district assessments?

Your letter of inquiry states that the county commissioners have advised the city that detailed information concerning the collection of the city's special improvement district (SID) assessments would no longer be provided to the city when the county remits the monthly collections of payments for city taxes and assessments which have been collected by the county treasurer. Correspondence between the county and the city, which you have included with your inquiry, indicates that the county has installed a new computer system in the treasurer's office and intends to charge the city for the cost of providing detailed taxpayer information, by fund or SID number, on the collection of SID assessments.

A city council has statutory authority to create special improvement districts and to designate them by number. § 7-12-4102, MCA. To defray the cost of each improvement, the council must adopt one of several prescribed methods of assessment against the benefited property in the district. §§ 7-12-4161 to 4165, MCA. In cities where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with section 7-6-4407, MCA, the city treasurer has the duty to certify all assessments for each SID to the county assessor, and the county treasurer is required by law to collect all such assessments at the same time the city's other taxes are collected. § 7-12-4181, MCA.

Your question requires an interpretation of section 7-6-2111, MCA, which sets forth the duties of the county treasurer. That statute provides:

> The county treasurer must:
>
> (1) receive all money belonging to the county and all other money directed to be paid to him by law, safely keep the same, and apply and pay them out, rendering account thereof as required by law;
>
> (2) keep an account of the receipt and expenditures of all such money in books provided for the purpose, in which must be entered:
>
> (a) the amount, the time when, from whom, and on what account all money was received by him;
>
> (b) the amount, time when, to whom, and on what account all disbursements were made by him;
>
> (3) so keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;
>
> (4) enter no money received for the current year on his account with the county for the past fiscal year until after his annual settlement for the past year has been made with the county clerk;

> (5) disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law. [Emphasis supplied.]

Subsection (1) requires the county treasurer to receive all money "directed to be paid to him by law." Since section 7-12-4181(2), MCA, directs the county treasurer to collect all special assessments and taxes levied and assessed under parts 41 and 42 of Title 7, chapter 12, MCA, the county treasurer has a duty to receive the SID assessments and "apply and pay them out, rendering account thereof as required by law." § 7-6-2111(2), MCA. The accounting that is required by law is described in subsections (2) and (3), which impose certain accounting requirements upon the county treasurer with respect to "all such money," a term which refers back to subsection (1) and includes money collected for the city as well as money belonging to the county. In particular, subsection (3) requires the county treasurer to keep books in which the amounts received and paid out on account of separate funds are exhibited in separate and distinct accounts.

The county treasurer receives money as payment for the city's SID assessments as part of the total property tax payment of the taxpayer after an itemized tax notice, which breaks out the amounts due for SID assessments, has been sent by the county treasurer to the taxpayer. See § 15-16-101(2)(d), MCA. The amounts received for SID assessments would be "received and paid out on account of separate funds" and must be exhibited in separate and distinct accounts.

Having concluded that the county treasurer must so keep his books that the amounts received as payment of city SID assessments are shown in separate accounts, I further conclude that the county treasurer has a duty to provide the city with the accounting information which he is required by section 7-6-2111(2) and (3), MCA, to maintain. This duty arises from the express statutory directive to render account of the city's money at the time the money is paid out to the city. § 7-6-2111(1), MCA.

The word "render" means to provide, furnish, or give in answer to requirement of duty or demand. See, e.g., Dayton v. Ewart, 28 Mont. 513, 72 P. 420 (1903); Manufacturer's & Merchant's Insurance Co. v. Zeitinger, 48 N.E. 179, 181 (Ill. 1897). The duty of the county treasurer to render account of the moneys paid directly

to him by members of the public has been imposed by statute since 1895 and has been recognized by the Montana Supreme Court in Gallatin County v. U.S.F.& G., 50 Mont. 55, 144 P. 1085 (1914).

In collecting city taxes and assessments, the county treasurer acts as an agent of the city. State ex rel. Wolf Point v. McFarlan, 78 Mont. 156, 252 P. 805 (1927); 39 Op. Att'y Gen. No. 39 at 159 (1981). In McFarlan, the Montana Supreme Court noted that there is no statutory provision for remuneration of the county treasurer for his services in collecting and paying over to a city the taxes and assessments which the city authorities cause to be levied; the county treasurer is a public officer, paid by the public, and the Legislature has the power to include among the duties of the county treasurer the duty of collecting, remitting, and accounting for moneys due the city. See also State ex rel. Cut Bank v. McNamer, 62 Mont. 490, 205 P. 951 (1922) (county treasurer has a duty to collect city taxes and immediately account therefor to the city).

It is true that the county treasurer is a ministerial officer, without authority other than that conferred on him by statute, either expressly or impliedly, and he is not required to perform any duties not imposed by law. Rosebud County v. Smith, 92 Mont. 75, 9 P.2d 1071 (1932); 42 Op. Att'y Gen. No. 117 (1988). I conclude, however, that subsections (2) and (3) of section 7-6-2111, MCA, require the county treasurer to break out the amounts received for the city's special improvement district assessments as part of his duty to render account to the city.

THEREFORE, IT IS MY OPINION:

> A county treasurer, when remitting taxes to a city, must break out the amount received from taxpayers as payment for the city's special improvement district assessments.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 49

COURTS - Selection of temporary substitute justices of peace;
COURTS, JUSTICE - Hours of business;
JUSTICES OF THE PEACE - Selection of temporary substitute justices;
MONTANA CODE ANNOTATED - Sections 3-10-102, 3-10-208, 3-10-231, 3-10-234;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 4 (1987), 40 Op. Att'y Gen. No. 26 at 100 (1983) (overruled in part).

HELD: 1. A justice of the peace has the authority to select his substitute during a temporary absence. If the justice is sick, disabled or absent and is unable to call a substitute, the county commissioners are authorized to call in a substitute. The justice, or when appropriate, the county commissioners, must look to the following substitution choices: (1) another justice, if available, (2) a city judge, or (3) a person from the list provided for in section 3-10-231(2), MCA. In the event a justice is on vacation or attending a training session, if there is no other justice in the county then the justice, and not the county commissioners, must look to the same substitution choices as those listed above.

2. A county is generally required to compensate a substitute justice of the peace. However, the substitute justice may elect to waive compensation.

3. The office hours of a justice court are set by the county commissioners, and during those hours the court is always open for the transaction of business, such as the filing of court documents with the clerk. However, a justice of the peace is not statutorily required to be present in justice court during every hour the justice court is open for business. Thus, a justice of the peace is not precluded from acting as a city judge during the office hours of the justice court. 40 Op. Att'y Gen. No. 26 at 100 (1983) is overruled as to holding number four, to the extent that it concludes that the board of county commissioners sets the hours of a justice of the peace.

December 18, 1989

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Avenue
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following questions:

1. Who has the authority to select a substitute for the justice of the peace and is there a prescribed process for that selection?

2. Is a county required to compensate a substitute justice of the peace?

3. May a justice of the peace act as a city judge during the hours that the justice court is open for business?

Section 3-10-231, MCA, provides for appointment of substitute justices of the peace. It states:

> (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, subdivision 1, 2, or 3, he shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside in his behalf.
>
> (2) Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in his place during a temporary absence when no other justice or city judge is available. The county commissioners shall administer the oath of office to each person on this list within the ensuing 30 days or as soon thereafter as possible.
>
> (3) Whenever a justice is sick, disabled, or absent, the justice may call in another justice, if there is one readily available, or a city judge or a person from the list

provided for in subsection (2) to hold court for the absent judge until his return. If the justice is unable to call in a substitute, the county commissioners shall call in another justice, a city judge, or a person from the list provided for in subsection (2).

(4) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the justice of the peace may designate another person in the same manner as if the justice were sick or absent.

(5) A justice of the peace of any county may hold the court of any other justice of the peace at his request.

Portions of this statute were construed in 40 Op. Att'y Gen. No. 26 at 100 (1983) but the statute has since been substantially amended by 1985 Montana Laws, chapter 482, section 1 and, in any event, that opinion is not helpful in answering your first question.

Section 3-10-231(3) and (4), MCA, distinguishes between two types of temporary absences--unplanned absences and preplanned absences. In the event of an unplanned absence, when a justice is sick, disabled or absent, the justice of the peace is authorized to select a substitute. If the justice is unable to call in a substitute, one may be called in by the county commissioners. § 3-10-231(3), MCA. The justice, or when appropriate, the county commissioners, may call in another justice, if there is one readily available, or a city judge or a person from the list of other qualified persons assembled by the justice of the peace pursuant to section 3-10-231(2), MCA. See 42 Op. Att'y Gen. No. 4 (1987).

The word "absent" in section 3-10-231(3), MCA, does not include vacation or attendance at a training session, since these preplanned temporary absences are specifically covered in section 3-10-231(4), MCA. When a justice is absent due to vacation or attendance at a training session, a justice of the same county shall be called in unless there is no other justice of the peace in the county. In that event the justice may select another justice, if there is one readily available, or a city judge or a person from the list provided for in

section 3-10-231(2), MCA. There is no provision for the county commissioners to appoint a substitute during this type of absence.

Therefore, I conclude that under section 3-10-231, MCA, a justice of the peace has the primary authority to select his substitutes during temporary absences. In the event the justice is sick, disabled, or absent and is unable to call in a substitute, one may be called in by the county commissioners. The justice or the county commissioners must look to the following substitution choices: (1) another justice if available, (2) a city judge, or (3) a qualified person from the list provided for in section 3-10-231(2), MCA. In the event the justice is on vacation or attending a training session, if there is no other justice in the county then the justice must look to the same substitution choices.

You have also asked if a county is required to compensate a substitute justice of the peace, and if a substitute justice may waive compensation. Section 3-10-234, MCA, provides:

> Whenever a justice of the peace or another person is called in to preside over the court of a justice under 3-10-231, the visiting justice or other person shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503. If the acting justice is not a justice of the peace receiving a salary, he shall also receive such compensation as is proper for the time involved. The cost of implementing this section is a proper charge against the county where the court is held.

The language of the statute concerning the county's obligation to compensate a substitute justice is unambiguous. The visiting justice or other person must be paid his or her actual and necessary travel expenses. If the acting justice is not a justice of the peace receiving a salary, he shall also receive such compensation as is proper for the time involved.

You have also asked whether a substitute justice can waive a right to compensation. The answer to this question is addressed in common law. Some courts have held that, when the compensation of a public officer is fixed by statute, the officer cannot waive compensation since such waiver is contrary to public policy. Glavey v. United States, 182 U.S. 595, 608 (1901); Allen v. City of Lawrence, 61 N.E.2d 133, 135-36 (Mass. 1945).

However, even if Montana were to follow that rule, it has been held to be inapplicable to "deputy officers or one who holds office at the pleasure of the appointing power and who may be removed at any time." Hodges v. Daviess County, 148 S.W.2d 697, 699 (Ky. Ct. App. 1941).

A substitute justice temporarily holds office at the pleasure of the justice of the peace or county commissioners who made the appointment, and may be removed at any time, thereby satisfying the Hodges exception. Therefore, I conclude that under section 3-10-234, MCA, although the county is required to offer compensation to a substitute justice of the peace, the substitute justice may elect to waive such compensation.

Your final question concerns whether an elected justice of the peace may act as a city judge during the hours prescribed as office hours for the justice's court.

You point out that in order to resolve this question, it must be determined whether the hours of a justice of the peace are prescribed. Section 3-10-102, MCA, provides:

> When courts open. A justice's court is always open for the transaction of business, except on legal holidays and nonjudicial days.

Prior to 1983, section 3-10-208, MCA, specifically mandated the county commissioners to designate hours of a justice of the peace:

> Office hours. In the resolution providing for the salary, the county commissioners shall designate the office hours for each justice. Office hours shall be commensurate with the salary provided. [Emphasis added.]

That section, which was amended by 1983 Montana Laws, chapter 492, section 1, now provides:

> Office hours. In the resolution providing for the salary, the county commissioners shall designate the office hours for each justice's court. Office hours shall be commensurate with the salary provided. [Emphasis added.]

In construing a statute, I must presume that the Legislature intended to make some change in the law by passing it. See Cantwell v. Geiger, 44 St. Rptr. 1574, 742 P.2d 468 (1982). Through the 1983 amendment, the Legislature clearly made a distinction between the office hours of a justice's court and the office hours of a justice. The 1983 amendment clarifies that the

county commissioners are to set the office hours of the justice's court, not the office hours of the justice. This interpretation partially overrules holding number four of 40 Op. Att'y Gen. No. 26 at 100 (1983) which held that, under section 3-10-208, MCA, "the office hours that must be kept by a justice of the peace are set by the county commissioners."

Accordingly, I conclude that the office hours of the justice court must be set by the county commissioners and that the justice's court must be open during those hours for the transaction of business, such as the filing of court documents with the clerk, every day except legal holidays and nonjudicial days. However, a justice of the peace is not statutorily required to be present during the designated office hours of the justice court. Thus, a justice of the peace is not precluded from acting as a city judge during the office hours of justice court.

THEREFORE, IT IS MY OPINION:

1. A justice of the peace has the authority to select his substitute during a temporary absence. If the justice is sick, disabled or absent and is unable to call a substitute, the county commissioners are authorized to call in a substitute. The justice, or when appropriate, the county commissioners, must look to the following substitution choices: (1) another justice, if available, (2) a city judge, or (3) a person from the list provided for in section 3-10-231(2), MCA. In the event a justice is on vacation or attending a training session, if there is no other justice in the county then the justice, and not the county commissioners, must look to the same substitution choices as those listed above.

2. A county is generally required to compensate a substitute justice of the peace. However, the substitute justice may elect to waive compensation.

3. The office hours of a justice court are set by the county commissioners, and during those hours the court is always open for the transaction of business, such as the filing of court documents with the clerk. However, a justice of the peace is not statutorily required to be present in justice court during every hour the justice court is open for business. Thus, a justice of the peace is not

precluded from acting as a city judge during the office hours of the justice court. 40 Op. Att'y Gen. No. 26 at 100 (1983) is overruled as to holding number four, to the extent that it concludes that the board of county commissioners sets the hours of a justice of the peace.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 50

COURTS - Necessary allegations in petition for temporary restraining order under section 40-4-121(3), MCA;
MONTANA CODE ANNOTATED - Sections 27-19-201(5), 40-4-121, 40-4-123, 45-5-206(1)(b);
MONTANA LAWS OF 1985 - Chapters 526, 700.

HELD: A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

December 22, 1989

Keith D. Haker
Custer County Attorney
1010 Main
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> Must there be physical abuse committed before a temporary restraining order may be issued by a justice court under section 40-4-121(3), MCA?

In 1985 the Legislature addressed the issue of domestic violence by enacting two separate pieces of legislation. Senate Bill 449 (1985 Mont. Laws, ch. 700) created and defined the criminal offense of domestic abuse, codified at section 45-5-206, MCA, and amended criminal procedure statutes concerning arrest and bail. House Bill 310 (1985 Mont. Laws, ch. 526) amended statutes in Titles 27 and 40 of the Montana Code Annotated so as to permit certain abused family and household members to obtain self-help temporary restraining orders and preliminary injunctions. See §§ 27-19-201, 27-19-315, 27-19-316, 40-4-121, MCA. House Bill 310 also provided for municipal and justice court jurisdiction to hear and issue the protective orders. In 1989 the Legislature extended this civil jurisdiction to city courts. § 40-4-123, MCA.

Your inquiry arises in part from an apparent ambiguity created by sections 27-19-201(5) and 40-4-121(3), MCA. Section 27-19-201(5), MCA, provides that an injunction order may be granted "when it appears the applicant has suffered or may suffer physical abuse under the provisions of [section] 40-4-121." However, section

40-4-121, MCA, provides in subsection (3)(a) that a person may seek injunctive relief by filing a verified petition "alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member." While the former statute appears to allow injunctive relief for potential victims of physical abuse which may occur in the future, the latter statute requires a petition for such relief to allege the prior occurrence of physical abuse, harm, or bodily injury.

In addition, your letter notes that a person may be convicted of the criminal offense of domestic abuse, as specified in section 45-5-206(1)(b), MCA, if he "purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member." Under this provision, actual physical abuse or bodily injury is not required to sustain a charge of domestic abuse. If the victim of such criminal domestic abuse is unable to allege actual physical abuse, harm, or bodily injury and is thereby precluded from obtaining a civil temporary restraining order to prevent further abuse, the statutes create an anomaly which arguably serves to frustrate the prophylactic purpose of the 1985 legislation.

Prior to 1981 a district court could enjoin a party in a marriage dissolution or legal separation proceeding from molesting or disturbing the peace of the other party. § 40-4-106, MCA (recodified in 1985 as § 40-4-121, MCA). Recognizing that state laws were not providing adequate protection to some spouse abuse victims, the 1981 Legislature extended the availability of district court injunctive relief to spouse abuse victims who had not filed a petition for dissolution of marriage or legal separation. 1981 Mont. Laws, ch. 180. This legislation added subsection (3) to former section 40-4-106, MCA, which is now section 40-4-121, MCA, and added subsection (5) to section 27-19-201, MCA. As discussed above, the 1985 Legislature enacted further changes in these laws to increase the availability and effectiveness of the protective orders. See "Montana's New Domestic Abuse Statutes: A New Response To An Old Problem," Women's Law Caucus, 47 Mont. L. Rev. 403, 414-18 (1986). Former spouses and cohabitants, as well as current spouses, may now obtain protective orders, which are enforceable by criminal misdemeanor sanctions. §§ 40-4-121(3)(b), 45-5-626, MCA. Municipal, justice, and city courts have concurrent jurisdiction with district courts to issue protective orders under section 40-4-123, MCA.

Initially, it is necessary to distinguish between injunctive relief available to parties in a district court proceeding for dissolution of marriage or legal

separation under subsection (2) of section 40-4-121, MCA, and injunctive relief available under subsection (3) of section 40-4-121, MCA, where a petition for dissolution or separation has not been filed. In the former instance, a motion brought by a spouse under subsection (2) does not have to allege physical abuse in order for the district court to issue a temporary injunction against the other spouse. In the latter instance, subsection (3) requires an allegation of physical abuse, harm, or bodily injury against the petitioner. Since section 27-19-201(5), MCA, authorizes injunctive relief in both instances, its language ("has suffered or may suffer physical abuse") is not inconsistent with the different requirements of subsections (2) and (3) of section 40-4-121, MCA.

The fundamental rule of statutory construction is that the intention of the Legislature controls. § 1-2-102, MCA. See Missoula County v. American Asphalt, 216 Mont. 423, 701 P.2d 990 (1985). The intention of the Legislature is first determined, if possible, from the plain meaning of the words used. Haker v. Southwestern Railway Co., 178 Mont. 364, 578 P.2d 724 (1978). If legislative intent cannot be so determined, other rules of statutory construction, including consideration of the statute's legislative history, may be applied to ascertain the intent. State ex rel. Normile v. Cooney, 100 Mont. 391, 47 P.2d 637 (1935); Thiel v. Taurus Drilling Ltd. 1980 II, 218 Mont. 201, 710 P.2d 33 (1985).

Subsection (3) of section 40-4-121, MCA, provides in relevant part:

> A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:
>
> (a) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member; and
>
> (b) requesting relief under Title 27, chapter 19, part 3.

The question is whether the Legislature intended to authorize a justice court to issue a temporary restraining order under this subsection where the person requesting relief has been threatened with physical abuse or has a reasonable apprehension of bodily injury but has not been physically abused, harmed, or injured.

The plain meaning of the words "alleging physical abuse, harm, or bodily injury" supports the view that threats or apprehension would not be a sufficient basis for a petition requesting injunctive relief under section 40-4-121(3), MCA. This view is further supported by the legislative history of House Bill 310, and I must conclude that the Legislature did not intend to provide for injunctive relief under this statute in the absence of physical abuse, harm, or bodily injury.

As introduced, House Bill 310 required the subsection (3) petition to allege "physical abuse against the petitioner, including attempting to cause or causing bodily injury or causing the petitioner to engage in involuntary sexual relations by threat or force." At the hearing before the House Judiciary Committee on February 5, 1985, Representative Kruegar noted that courts may be reluctant to issue temporary restraining orders in response to threats alone. Committee minutes, House Judiciary Committee, February 5, 1985. House Bill 310 was thereafter amended so that a subsection (3) petition could allege "physical abuse, harm, or bodily injury or the threat of physical abuse, harm, or bodily injury." However, the Senate Judiciary Committee voted to strike the amendment's reference to "threat of physical abuse, harm, or bodily injury," and the Senate passed the bill with the reference deleted. The House of Representatives subsequently concurred in the Senate version of House Bill 310, resulting in the present language in section 40-4-121(3)(a), MCA.

Generally, the rejection of an amendment indicates that the Legislature did not intend the bill to include the provisions embodied in the rejected amendment. 2A Sutherland Statutory Construction § 48.18 (4th ed. 1984). Cf. Matter of W.J.H., 226 Mont. 479, 736 P.2d 484 (1987). I am persuaded that the Legislature's rejection of the specific provision concerning threats of physical abuse, harm, or bodily injury indicates its intention that injunctive relief under section 40-4-121(3), MCA, should not be granted solely upon an allegation of such threats.

The Legislature did not choose to define the terms "physical abuse," "harm," and "bodily injury" for purposes of section 40-4-121(3), MCA. However, the definitions of "harm" and "bodily injury" found in section 45-2-101, MCA, appear to be applicable to the terms as they are used in Title 40. See § 1-2-107, MCA. The 1985 Legislature added the two latter terms to accompany the term "physical abuse," indicating an intention to expand the range of abusive conduct to which injunctive relief under section 40-4-121(3), MCA,

would be an appropriate judicial response. Finally, I note that in admitting a defendant to bail in a criminal domestic abuse proceeding, the judge may prescribe reasonable conditions in order to protect any person from bodily injury. In particular, the judge may order the defendant to avoid all contact with the alleged victim of the crime. § 46-9-501(b)(v), MCA.

THEREFORE, IT IS MY OPINION:

A petition for injunctive relief under section 40-4-121(3), MCA, must allege physical abuse, harm, or bodily injury.

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.

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