MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF ARCHITECTS

In the matter of the proposed general amendment, repeal and adoption of rules pertaining to architects	))))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO ARCHITECTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 10, 1990, the Board of Architects proposes to amend the above-stated rules.

2. The Board is proposing to amend ARM 8.6.405 Reciprocity, 8.6.406 Qualification Required for Branch Office, 8.6.407 Examinations, 8.6.409 Individual Seal, 8.6.410 Renewals, 8.6.412 Standards of Professional Conduct, 8.6.413 Fee Schedule, and 8.6.415 Architect Partnerships to File Statement with Board Office; proposing to repeal 8.6.401 Board Meetings, 8.6.402 Seal, 8.6.403 Governor's Report, 8.6.404 Financial Records and Other Records, 8.6.408, Grant and Issue Licenses, and 8.6.411 Duplicate License; and proposing to adopt a new rule pertaining to Public Participation.

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

"8.6.406 QUALIFICATIONS REQUIRED ~~OF ARCHITECTS LICENSED OUTSIDE~~ FOR MONTANA BRANCH OFFICE ~~(1) An architect licensed in a state other than Montana who has or is contemplating his first architectural commission in Montana must, before commencing that commission, be license by the board;~~

~~(2)~~ (1) No firm, corporation, partnership or individual may establish or maintain within this state, ~~an office or~~ branch office to engage in the practice of architecture unless such branch office ~~or office~~ is under the ~~responsible~~ control and direction of a Montana licensed resident architect ~~duly licensed with this board~~ who is in the branch office a majority of the time the office is open."

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-65-303, 37-65-305, MCA

REASON: Amendments to this rule are being proposed to delete language covered by statute and to clarify to what extent an out-of-state architectural firm's Montana branch office must be under the control of a licensed Montana resident architect.

"8.6.407 EXAMINATIONS (1) An written examination prescribed by the board must be taken, but only after the applicant has met the prerequisites and has been approved by the board for admission to the examination. Applicants for examination are required to file an application with the board. Application forms will be supplied by the board

office. A copy of the applicant's degree and the examination fee must accompany the completed application. Application for examination must be filed ~~by April 15 of each year~~ at least 60 days prior to the examination date.

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

Auth: Sec. 37-1-131, 37-65-204, 37-65-303, MCA; IMP, Sec. 37-65-303, MCA

REASON: A new computer-administered examination is now being used, in addition to the written examination. The rule should be expanded accordingly. With the computer examination now available, the licensing examination can be offered more than once a year. Therefore, the board is proposing a filing date of 60 days prior to the scheduled examination, instead of holding applicants to April 15th of each year.

"8.6.410 RENEWALS (1) will remain the same.

(2) The beginning of the fiscal year is July 1 and all licenses bear this date. The renewal fee shall be due beginning on July 1. However, a 1 month grace period thereafter is provided by statute. A late renewal fee will be imposed upon any license which has not been renewed by July 31. ~~The holder of an expired license may be required to make reapplication to the state or national board.~~ Both a renewal fee and late renewal fee will be imposed for each year a license is lapsed. A license that has lapsed for three successive years automatically terminates and may not be reinstated, and a new license must be obtained, and appropriate fees must be paid. This is in conformity with Section 37-1-141, MCA."

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-1-131, 37-65-306, MCA

REASON: The amendments are to clarify the reinstatement process and to clarify the status of lapsed licenses.

"8.6.412 STANDARDS FOR PROFESSIONAL CONDUCT (1) through (q) will remain the same.

(r) disobeying any statute in Chapter 65, Title 37, MCA or any rule or order of the board."

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-65-321, MCA

REASON: This additional conduct standard is being proposed to enhance the enforceability of the practice act and the board's rules and orders.

"8.6.413 FEE SCHEDULE

(1)	ARE examination and re-examination:		
(a)	Division A - Pre-Design	$ ~~36.00~~	33.00
(b)	Division B - Site Design - Written	~~78.00~~	17.00
(c)	Division B - Site Design - Graphics		55.00
~~(e)~~ (d)	Division C - Building Design	~~96.00~~	88.00
~~(d)~~ (e)	Division D/F - Structural Technology -- General and Long-Span	~~30.00~~	26.00

~~(e)~~ (f)	Division E - Structural Technology -- Lateral Forces	~~12.00~~	11.00
~~(f)~~ (g)	Division G - Mech/Plbg/Elec/Life Safety	~~36.00~~	33.00
~~(g)~~ (h)	Division H - Material and Methods	~~36.00~~	33.00
~~(h)~~ (i)	Division I - Construction Documents and Services	~~36.00~~	33.00
(2)	Reciprocity	100.00	
(3)	Renewal (if paid by July 31st)	~~45.00~~	40.00
(4)	Late renewal (if paid after July 31st)	85.00	
(5)	Original License Fee	20.00	
(6)	Documents, Duplicate License, Rosters	27.00	

(7) All fees are non-refundable."

Auth: Sec. 37-1-134, 37-65-204, 37-65-307, MCA; IMP, Sec. 37-1-134, 37-65-304, MCA

REASON: The fee reductions are being proposed to set current fees commensurate with program area costs as mandated by 37-1-134, MCA. A new fee is proposed to cover costs of a new licensing examination category.

4. The proposed repeals will read as follows:

8.6.401 BOARD MEETINGS Full text of the rule is located at page 8-207, Administrative Rules of Montana. The board is proposing to repeal this rule because it unduly repeats section 37-65-201, MCA, and is otherwise redundant and unnecessary.

Auth: Sec. 37-65-204; IMP, Sec. 37-65204, MCA

8.6.402 SEAL Full text of the rules is located at page 8-207, Administrative Rules of Montana. The board is proposing to repeal this rule because the board seal is not required by statute.

Auth: Sec. 37-65-204, MCA; IMP, Sec. 37-65-204, MCA

8.6.403 GOVERNOR'S REPORT Full text of the rule is located at page 8-207, Administrative Rules of Montana. The board is proposing to repeal this rule because it is superseded by Section 37-1-106, MCA.

Auth: Sec. 37-1-106, MCA; IMP, Sec. 37-1-106, MCA

8.6.404 FINANCIAL RECORDS AND OTHER RECORDS Full text of the rule is located at pages 8-207 and 8-208, Administrative Rules of Montana. The board is proposing to repeal this rule because it is superseded by Section 37-1-101, MCA.

Auth: Sec. 37-1-101, 37-65-204, MCA; IMP, Sec. 37-65-201, MCA

8.6.408 GRANT AND ISSUE LICENSES Full text of the rules is located at page 8-210, Administrative Rules of Montana. The board is proposing to repeal this rule because it is repetitive of Section 37-1-303, and 37-1-305, MCA.

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-65-303, MCA

8.6.411 DUPLICATE LICENSES Full text of the rules is located at page 8-210, Administrative Rules of Montana. The board is proposing to repeal this rule because it is repetitive of ARM 8.6.413.

Auth: Sec. 37-1-131, 37-65-204, 37-65-303, MCA; IMP, 37-65-303, MCA.

5. The proposed new rule will read as follows:

"I PUBLIC PARTICIPATION (1) The board of architects hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in Chapter 2 of this title."

Auth: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, MCA

REASON: This rule is mandated by Section 2-4-201, MCA.

6. The board proposes to correct the history notes of the following rules:

8.6.405 Reciprocity to comply with the renumbering of 37-1-103 to 37-1-131;

8.6.409 Individual Seal to comply with the renumbering of 37-1-103 to 37-1-131; and

8.6.415 Architect Partnerships to File Statement with Board Office to comply with the renumbering of 35-4-209 to 35-3-203.

6. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than March 8, 1990.

7. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Architects, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than March 8, 1990.

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

Administrative Register. Ten percent of those persons directly affected has been determined to be 77 based on the 772 licensees in Montana.

BOARD OF ARCHITECTS
F. WAYNE GUSTAFSON, CHAIRMAN

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 29, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the proposed adoption of new rules pertaining to applications, minimum requirements for certification, approval of training programs, recertification and fees of impairment evaluators	)))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES PERTAINING TO IMPAIRMENT EVALUATORS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 10, 1990, the Board of Chiropractors proposes to adopt new rules pertaining to Impairment Evaluators.

2. The proposed new rules will read as follows:

"I. APPLICATIONS FOR CERTIFICATION OF IMPAIRMENT EVALUATORS (1) Any person desiring to be certified as an evaluator to rate impairments of workers compensation claimants or insurers shall file an application with the board.

(2) Applicants must have been in active clinical practice for a minimum of three (3) years, with at least fifty (50) percent of the applicant's practice devoted to patient management.

(3) Applicants may qualify for the certification examination by:

(a) successfully completing a board-approved program for education and training of certified chiropractic impairment evaluators; or

(b) successfully completing an educational and training program relating to chiropractic orthopedics, impairment ratings or similar course work at a CCE status chiropractic college or any other college or university approved by the board.

(4) Diplomats of the American Chiropractic Board of Orthopedists (DACBO) will not be required to take the 12 hours of the chiropractic orthopedics section of the training program.

(5) Applicants must take and pass an examination prescribed and given by the board with a minimum passing grade of 75% of all questions asked.

(6) Applications shall be accompanied by official transcripts, diplomas or similar certificates evidencing successful completion of one of the types of education and training programs approved by the board. Successful completion is deemed to mean obtaining a raw score overall of 75% on a comprehensive examination covering the entire education and training program."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

"II. MINIMUM REQUIREMENTS FOR BOARD-APPROVED PROGRAMS TO QUALIFY FOR CERTIFICATION AS EVALUATORS (1) In order to qualify for board approval, programs for education and training of prospective chiropractic impairment evaluators must require completion of a minimum of 36 hours of classroom course work of the following amounts on the following subject areas:

(a) 12 hours of chiropractic orthopedics;

(b) 12 hours of educational material specifically prepared by a medical doctor who specializes in impairment rating; and

(c) 12 hours of instruction from plaintiffs' advocate attorneys, defendants' advocate attorneys and claims examiners experienced in handling of worker's compensation cases."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

"III. APPROVAL OF TRAINING PROGRAMS (1) Applications for approval of a training program shall be made by letter with supporting documents and must demonstrate to the satisfaction of the board that such programs fulfill the requirements of the board.

(2) The supporting documents must include a syllabus or program outline specifying the classroom hours for each segment of the program, a vitae of each instructor and the method to be employed in monitoring attendance.

(3) In evaluating a proposed training program, the board may investigate and make personal inspection, or delegate to one or more of its members or any other duly qualified person the authority to make such investigations and inspections for the board. Such investigations and inspections will be at the expense of the program sponsors.

(4) When a training program is approved, the board will issue a letter of approval for the training program.

(5) Approval of a program may be withdrawn when the board finds that the program fails to maintain the educational standards set forth in the original application."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

"IV. RECERTIFICATION - DENIAL - REVOCATION (1) A minimum of four (4) hours of specialized continuing education relevant to impairment evaluation every even numbered year must be demonstrated to qualify for recertification impairment evaluators. This requirement is in addition to the continuing education hours required for annual renewal of license to practice chiropractic in this state.

(2) Persistent deviation from generally accepted standards for impairment evaluation is grounds for denial of recertification or revocation of the impairment evaluator certificate."

Auth: Sec. 37-1-134, 37-12-201, MCA; IMP, Sec. 37-12-201, MCA

"V. FEES

(1)	Application fee for impairment evaluators	$125.00
(2)	Certificate fee for impairment evaluators	$ 75.00

(3) Recertification fee for impaired evaluators $ 50.00"

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-1-134, 37-12-201, MCA

REASON: These rules are being proposed to provide for qualifying and certifying chiropractors to perform impairment evaluations for worker's compensation claimants and insurers as provided by HB 33. They also provide for fees to finance the administration of the program.

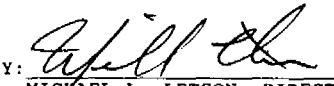
These rules are mandated by Chapter 203 of the laws of 1989, which requires the board of chiropractors to set standards for chiropractors to qualify as impairment evaluators for workers compensation claimants and insurers.

3. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Chiropractors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than March 8, 1990.

4. If a person who is directly affected by the proposed adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Chiropractors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than March 8, 1990.

5. If the Board receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 31 based on the 310 licensees in Montana.

BOARD OF CHIROPRACTORS
ROGER COMBS, D.C., PRESIDENT

BY: 

MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 29, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the proposed general revision and amendment of rules pertaining to license applications, educational standards for licensure, license examinations, temporary permits, renewals, unprofessional conduct standards, reinstatement of licenses, and disciplinary actions; repeal of a rule pertaining to recordation of license; and adoption of new rule pertaining to definitions	NOTICE OF PROPOSED AMENDMENT, REPEAL AND ADOPTION OF A RULE PERTAINING TO THE PRACTICE OF CHIROPRACTIC

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 10,1990, the Board of Chiropractors proposes to amend 8.12.601, 8.12.603, 8.12.604, 8.12.606, 8.12.607, 8.12.609, 8.12.612, to repeal 8.12.602 and to adopt a new rule I pertaining to the practice of chiropractic.

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

"8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS

(1) The admission to examination for licensure shall be based upon proof that the applicant has completed 2 years of college in addition to graduation from an approved chiropractic college that has status with the council on chiropractic education (CCE). As part of either the two years of college or the education program at the chiropractic college, each applicant must have had 120 classroom hours of instruction in physiotherapy.

(2) Official transcripts from all colleges and chiropractic college diploma shall accompany the application and be submitted directly to the office of the board.

(3) In addition, applicants must provide a certified copy of the national board scores, parts I and II including physiotherapy, to the board prior to examination.

(2) through (4) will remain the same but will be renumbered (4) through (6)."

Auth: Sec. 37-1-131, 37-1-134, 37-12-201, MCA; IMP, Sec. 37-1-131, 37-1-134, 37-12-201, 37-12-302, and 37-12-304, MCA

REASON: Proposed amendments to this rule are style and drafting in nature and are for the purposes of clarification.

"8.12.603 EXAMINATION (1) Examination for licensure shall be made by the board according to the method deemed necessary to test the qualifications of applicants. An oral interview and practical demonstration may be required in addition to the minimum written examination. Part III, clinical competency examination of the national board of chiropractic examiners ~~will~~ may be accepted in lieu of the board's written examination. Applicants who have not passed part III will be required to take and pass the complete written examination of the board.

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

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-304, MCA

REASON: Proposed amendments to this rule are style and drafting in nature and are for the purpose of clarification. The amendments will make clear that the board is not bound to accept the clinical competency exam of the national board, and that applicants who have not passed part III of that exam must take and pass all of the board's written exam.

"8.12.604 TEMPORARY PERMIT (1) All applicants for temporary permits must work under the direct supervision and presence of a licensed chiropractor in the state of Montana and must furnish documentation of this supervision and a completed application to the board.

(2) A temporary permit holder may not sign insurance claims, worker's compensation claims, medicare/medicaid claims, or birth or death certificates. Only licensed practitioners have this authority.

(3) A temporary permit does not allow the holder to have a separate office as a sole practitioner, or to practice the profession without supervision of a licensed chiropractor.

(4) A statement consenting to the above conditions shall be signed by both the supervising licensed chiropractor and the applicant, and filed with the board.

(5) Temporary permits will only be ~~issued~~ in effect until 10 days after the date of the next license examination. ~~and no~~ No more than two consecutive temporary permits may be issued ~~for~~ to an applicant under one application."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-303, MCA

REASON: This amendment is being proposed to clarify the permissible activities of temporary permit holders, the conditions under which holders of temporary permits may practice, and the responsibilities of chiropractors who supervise temporary permit holders.

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS (1) will remain the same.

(2) Continuing education courses recognized by the board pertaining to the practice of chiropractic include those sponsored by CCE approved chiropractic colleges. Other programs will be approved by the board on a per case basis.

~~(2)~~ (3) and (3)(a) will remain the same.

(b) Clock hours of continuing education cannot be

accumulated and carried over from one renewal year to the next renewal year. ~~Classroom time shall be monitored by board member(s) and/or a delegate.~~

(c) through (d)(ii) will remain the same.

(3) through (5) will remain the same but will be renumbered (4) through (6)."

Auth: Sec. 37-1-134, 37-12-201, and 37-12-307, MCA; IMP, Sec. 37-1-134, 37-12-307, MCA

REASON: This amendment is being proposed to clarify what continuing professional education courses are and will be, and to delete the requirement for monitoring continuing education courses, as the rule already requires evidence of attendance at programs.

"8.12.607 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-12-321(4), MCA, the board defines "conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public" as follows:

(1) through (11) will remain the same.

(12) Performing an adjustment of the coccyx through the vagina unless the following conditions are met:

(a) the coccyx cannot be adjusted rectally or the patient is offered and declines the option of the rectal technique;

(b) the coccyx adjustment is performed with the use of a disposable finger cot or rubber glove; and,

(c) a female attendant is present at all times the patient is examined and the coccyx adjustment is being performed.

(13) Having had a license to practice chiropractic or any related health care discipline in another state or foreign country disciplined or voluntarily surrendered for any of the above specified conduct."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-321, 37-12-411, MCA

REASON: Proposed subrule (12) is being proposed to address a new and developing practice concern in the profession. The technique is permitted but only under circumstances that are intended to protect both the practitioner and the patient and to implement Chapter 203 of the Laws of 1989. Proposed subrule (13) is being proposed because the increasing mobility of professionals places more of the public at risk from incompetent practice. The proposal will provide the board a mechanism to address conduct of professionals that takes place outside of Montana.

"8.12.609 REINSTATEMENT (1) will remain the same.

(2) Applications for reinstatement of licenses previously denied, revoked or suspended must include evidence of rehabilitation, or elimination or cure of the conditions for denial, revocation or suspension.

(3) Evaluation of applications for reinstatement of licenses denied under section 37-12-323, MCA, will be based upon, but not limited to:

(a) the severity of the act or omission which resulted in the denial of license;

(b) the conduct of the applicant subsequent to the denial of license;

(c) the lapse of the time since denial of license;

(d) compliance with any condition the board may have imposed as a prerequisite for reapplication;

(e) the degree of rehabilitation attained by the applicant, as evidence by statements sent directly to the board from qualified people who have professional knowledge of the application;

(f) assurance that the applicant can practice without risk to the public; and

(g) personal interview by the board, at their discretion."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-323, MCA

REASON: This amendment is being proposed to clarify and detail procedures and criteria for applications for reistatement of licenses, with protection of the public paramount. There has been an increasing incidence of sexual exploitation in this and other health care professions. The rule recognizes that some disciplined licensees can be rehabilitated to the extent that they can again serve the public.

"8.12.612 DISCIPLINARY ACTIONS (1) through (2)(h) will remain the same.

(i) imposition of a fine or fines not to exceed $500 per incident of violation;

(3) will remain the same.

(4) Failure to pay the fine and assessments for violation(s) may result in non-renewal of license.

Auth: Sec. 37-1-136, 37-12-202, MCA; IMP, Sec. 37-12-411, MCA

REASON: This rule is being proposed to implement Chapter 203 of the Laws of 1989.

3. ARM 8.12.602 is being proposed for repeal. Full text of the rule is located at page 8-357, Administrative Rules of Montana. The reason for the proposed repeal is that the board has no statutory authority for implementing this rule. The statute was repealed during the 1981 Legislature.

4. The proposed new rule will read as follows:

"I. DEFINITIONS (1) "Physiotherapy" as used in Section 37-12-104, MCA shall mean any service, when performed, or ordered to be performed, by any licensee, employing for therapeutic effects, physiological measures, activities, and devices for preventive and therapeutic purposes, physiological agents including, but not limited to, mechanical devices, heat, air, light, water, electricity, sound, exercises,

rehabilitative procedures, massage and mobilization, when performed for the purpose of diagnosis, evaluation, treatment and instruction of the human body to detect, assess, correct, alleviate, prevent, and limit physical disability, injury, body malfunction, pain, mental condition by the aforementioned agents, or any other procedure taught in chiropractic colleges for the purpose of preventing, correcting, or alleviating a physiological or mental disability or condition.

(2) "Diagnostic x-ray" as used in Section 37-12-104, MCA shall mean any recognized form of diagnostic imaging including, but not limited to, x-ray, cat scan and MRI."

Auth: Sec. 37-12-201, 37-1-136, MCA; IMP, Sec. 37-12-104, 37-12-201, MCA

REASON: This rule is being proposed at the request of the insurance industry for an interpretation to assist in reviews of chiropractic claims. This rule is advisory only but may be a correct interpretation of the law, Ch 637, L. 1983.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoptions in writing to the Board of Chiropractors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than March 8, 1990.

6. If a person who is directly affected by the proposed amendments, repeal and adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Chiropractors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than March 8, 1990.

7. If the Board receives requests for a public hearing on the proposed amendments, repeal and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeal and adoptions from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 31 based on the 310 licensees in Montana.

BOARD OF CHIROPRACTORS
ROGER COMBS, D.C., PRESIDENT

BY: _____
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 29, 1990.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.12.104 and 11.12.108 pertaining to the licensure of youth care facilities	)	NOTICE OF THE PROPOSED AMENDMENT OF RULES 11.12.104 AND 11.12.108 PERTAINING TO THE LICENSURE OF YOUTH CARE FACILITIES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 10, 1990, the Department of Family Services, proposes to amend Rules 11.12.104 and 11.12.108 pertaining to licensure of youth care facilities.

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

11.12.104 YOUTH CARE FACILITY, LICENSES

Subsections (1) through (6) remain the same.

(7) Any applicant who has received services for ~~documented~~ substantiated abuse or neglect of a child as defined in 11.5.602(1)(m) shall be denied a foster care license~~.~~, unless special approval is given by the regional administrator after careful review of extenuating circumstances which justify the issuance of a restricted license.

Subsection (8) remains the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA:
IMP: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA

11.12.108 YOUTH CARE FACILITY, LICENSE REVOCATION AND DENIAL Subsection (1)(a) through (f) remain the same.

(g) the YCF, its staff or anyone living in a YCF household may not pose any risk or threat to the safety or welfare of any youth placed in the YCF.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA;
IMP: Sec. 41-3-1103, 41-3-1142 and 53-4-111 MCA

3. Rationale: A goal of the Department of Family Services is to help families resolve problems and function in a healthy manner. The Department operates with the belief that people can and do change dysfunctional or negative behaviors. It is inconsistent with that philosophy to deny a service or privilege to someone for past problems which have been adequately rectified.

The proposed amendment of 11.12.104 will allow for discretion on the part of a regional administrator in a situation where a person has a history of substantiated abuse or

neglect, but has altered their life significantly enough and over a long enough period of time to justify the issuance of a restricted foster care license.

The proposed amendment to 11.12.108 allows the Department greater discretion in denying or revoking a license to a youth care facility or to a person who may pose a risk to the well-being of a child placed in his home or facility. The existing rules which allow for licensure denial are not broad enough to allow for such discretion.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request, along with any written comments he has, to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than March 9, 1990.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; 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.

Robert L. Phillips
Director, Department of Family Services

Certified to the Secretary of State 1/24, 1990.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the proposed amendment of Rules 11.7.402, 11.7.409 and 11.7.501 pertaining to the composition of and criteria for approving recommendations of youth placement committees and composition of foster care review committees	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 11.7.402, 11.7.409 AND 11.7.501 PERTAINING TO THE COMPOSITION OF AND CRITERIA FOR APPROVING RECOMMENDATIONS OF YOUTH PLACEMENT COMMITTEES AND COMPOSITION OF FOSTER CARE REVIEW COMMITTEES

TO: All Interested Persons

1. On February 28, 1990, at 10:00 a.m., a public hearing will be held in the conference room of the Department of Family Services, 48 N. Last Chance Gulch, Helena, MT 59604 to consider the proposed amendment to Rules 11.7.402, 11.7.409 and 11.7.501 pertaining to the composition of and criteria for approving recommendations of youth placement committees and the composition of foster care review committees.

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

11.7.402 COMPOSITION AND MEMBERSHIP REQUIREMENTS

Subsections (1) through (3) remain the same.

(4) Committee members shall consist of the following:

(a) a representative of the department;

(b) a representative of a county department of public welfare;

(c) a youth probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district; and

(f) where an Indian child is involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

(4 5) Committee members shall serve without compensation.

AUTH: Sec. 52-1-103, MCA
IMP: Sec. 41-5-525, MCA

11.7.409 CRITERIA FOR APPROVING RECOMMENDATIONS

Subsections (1)(a) through (f) remain the same.

(g) The region that will be financially responsible for the placement costs has adequate funding resources with which to pay for the placement without overspending the region's allocated foster care budget.

AUTH: Sec. 52-1-103, MCA
IMP: Sec. 41-5-527, MCA

11.7.501 FOSTER CARE REVIEW COMMITTEE Subsections (1) through (3)(e) remain the same.

(f) if the child under review is an Indian, an Indian person or a person knowledgeable about Indian cultural and family matters who is appointed for that review only.

AUTH: Sec. 41-3-1115, MCA
IMP: Sec. 41-3-1115, MCA

3. Rationale: The 1989 Legislature passed House Bill 305, effective October 1, 1989, amending Section 41-5-525, Youth Placements Committees -- Composition. The proposed amendment to Rule 11.7.402 reflects the statutory amendment to include an Indian person on the youth placement committee when an Indian child is involved. Likewise, section 41-3-1115 provides for the appointment of a person, preferably an Indian person, to be a member of any foster care review committee reviewing the placement of an Indian child. The proposed amendment reflects that statutory requirement.

The Department has proposed to amend Rule 11.7.409 to reflect the reality of the department's legislative budget appropriation and the department's inability to serve all youths who may qualify for residential treatment without overspending its budget. In addition to the other criteria listed for approval of a youth placement committee's recommendation for placement of a youth, the department must also consider each region's budget and ability to pay for any potential placement.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 N. Last Chance Gulch, P.O. Box 8005, Helena, MT 59604, no later than March 9, 1990.

5. The Office of Legal Affairs, Department of Family Services has been designated to preside over and conduct the hearing.

Director, Department of
Family Services

Certified to the Secretary of State 1/29, 1990.

BEFORE THE BOARD OF LAND COMMISSIONERS
AND DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the matter of the adoption of new Rules I through VII authorizing permitting and requiring reclamation of hard rock mills and operations that reprocess tailings and waste rock from previous operations	)))))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons

1. On February 28, 1990, at 7:00 p.m. a public hearing will be held at Student Union Bldg, Conference Room 202 through 206, Montana Tech, Butte, Montana, to consider 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 MILLS: DEFINITIONS

As used in this subchapter and the Act, unless the context clearly indicates otherwise, the following additional definitions apply:

(1) "Existing environment" means a description of the condition of the proposed project area prior to exploration or operation. The description shall provide but not be limited to a discussion of each of the following:

(a) geology;
(b) soils;
(c) vegetation;
(d) wildlife;
(e) hydrology (surface and groundwater);
(f) air quality and climate;
(g) aquatic biology;
(h) land use;
(i) recreation;
(j) cultural/historic resources;
(k) noise;
(l) transportation;
(m) aesthetics.

(2) "Expansion of a mill facility" means the increase in disturbed surface area, design capacity or addition of new structures at an existing mill facility.

(3) "Facility" means any building, impoundment, embankment, waste or tailings disposal site, or other man-made structure associated with a particular activity.

(4) "Mill" means any facility for ore processing. This term does not include smelting or refining facilities.

(5) "Plan" means that information submitted to the department pertaining to a proposed or ongoing milling related activity which utilized narratives, engineering designs, maps, cross-sections, or other documentation which adequately describes the activity.

(6) "Reclamation" means facilities removed and the regrading, contouring, and revegetation of disturbed land. For the purpose of these regulations, reclamation shall be deemed complete when the disturbed land is restored to a comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335, 82-4-336, 82-4-337, MCA.

RULE II MILLS: APPLICABILITY OF RULES TO MILLS

(1) Rules I through VI apply to all mills under permit on [the effective date of Rules I through VI], to all mills constructed after [the effective date of Rules I through VI], and to the expansion of any mill facility concluded after [the effective date of Rules I through VII].

(2) For mills under permit on [the effective date of Rules I through VI] existing bond must be upgraded at the time of the next mine permit amendment, unless an operator chooses to upgrade the mill permit information and bond prior to that time. Prior to upgrading information, the operator shall meet with the department to determine the appropriateness of the requirements in Rule IV to the specific situation. Any requirement determined not applicable shall be documented in the permit with the reasons for the determination.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-304, MCA

RULE III MILLS: OPERATING PERMIT APPLICATION

(1) Any person wishing to operate a mill must obtain an operating permit for each mill operation and associated facilities on a form prescribed by the department before construction or operation of the mill or associated facilities.

(2) Prior to receiving an operating permit, the applicant must:

(a) pay a $25.00 filing fee to the department;

(b) indicate the proposed date for commencement of milling and the minerals to be milled;

(c) provide a map to scale of the mill area and area to be disturbed. The map must locate and identify streams and proposed roads, railroads, conveyors, and utility lines in the immediate area;

(d) file a reclamation bond pursuant to section 82-4-338, MCA.

(e) file an operating plan; and

(f) file a reclamation plan.

(3) The department shall provide public notice of mill applications, consistent with 82-4-353, MCA.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335, MCA

RULE IV MILLS: OPERATING PLANS

(1) An application for an operating permit pursuant to Rule III must file an operating plan that contains each of the following:

(a) a description of the existing environment;

(b) a plan of operations that includes:

(i) all of the matters required by section 82-4-335 (3)(d)(e)(f)(g)(h)(i)(j)(k), MCA, excepting the mine map;

(ii) maps enhancing narratives; where appropriate;

(iii) a description of the design, construction, and operation of the mill, tailings, and waste rock disposal facilities;

(iv) a list of equipment and chemicals to be used in the operation by location and task;

(v) a description of all buildings and an estimation of maximum mill capacity;

(vi) a description of topsoil salvage and stockpiling activities;

(vii) if the mill is proposed to be operated in conjunction with a mine operated by applicant, personnel requirements by location and task for construction and operation phases. (Operations meeting the definition of "large scale mineral development" in 90-6-302, MCA, must also comply with the Hard Rock Impact Act, Title 90, Chapter 6, part 3, MCA;

(viii) a description of the chemical processes and the purpose and amount of water used in the operation and its source;

(ix) a description of the power needs and source should be provided;

(x) sewage treatment and facilities and solid waste disposal sites;

(xi) a description of the transportation network to be used or built during the construction and operation phases;

(xii) a description of the fire protection plan and toxic spill contingency plan;

(xiii) plans describing the design and operation of all diversions and impounding structures and sediment control. Descriptions shall be detailed enough to provide an accurate depiction of the safety and stability of such structures;

(xiv) a discussion of predicted noise levels by activities during construction and operational phases;

(xv) a discussion of the archaeological and cultural values in the area to be developed and how such values are to be given consideration;

(xvi) provisions for the prevention of wind erosion of all disturbed areas;

(xvii) a description of the provisions for protection of off site flora and fauna;

(xviii) plans for the monitoring of groundwater and surface water during the life of the project, together with a contingency plan in case of accidental discharge describing remedial action in cases requiring emergency action;

(xix) a plan for the protection of topsoil stockpiles from erosion and contamination; and

(xx) a listing of known sources and volumes of incoming ore.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335, MCA

RULE V MILLS: RECLAMATION PLANS

(1) An application for an operating permit pursuant to Rule III must contain a plan that provides for the reclamation of all the land to be disturbed by the proposed milling operation and associated activities. The plan must, at a minimum, include the following:

(a) all of the requirements of a reclamation plan set forth in section 82-4-303(13)(a) and (d) through (h), MCA, 82-4-336 and ARM 26.4.106;

(b) a regrading plan which leaves all disturbed areas in a stable configuration and which is in conformity with the proposed subsequent use of the land after reclamation. The department may require the use of cross-sections, topographic maps or detailed prose, or a combination of these, to ensure that the application adequately describes the proposed topography of the reclaimed land. All reclaimed slopes on materials potentially deleterious to the environment shall be graded at a 3h:1v or lesser slope;

(c) a description of the manner in which the soil materials will be redistributed from the stockpiles to the area to be reclaimed (e.g. truck/loader, scrapers), to provide for adequate revegetation;

(d) a description of the methods by which surface and groundwater will be restored or maintained to meet the criteria of Title 75, Chapter 6, as amended, or rules adopted pursuant to these laws, including a neutralization plan for any undesirable materials;

(e) a plan for the reestablishment of vegetation which is in conformity with the proposed subsequent use of the land after reclamation. Such revegetation plan must consider the following:

(i) The first objective in revegetation is to stabilize the area as quickly as possible after it has been disturbed. Plants that will give a quick, protective cover or those that will enrich the soil shall be given priority. Plants reestablished must be in keeping with the intended reclaimed use of the land.

(ii) Appropriate revegetation shall be accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices.

(iii) In the event that any of the above revegetation efforts are unsuccessful, the permittee must seek the advice

of the department and make a second attempt, incorporating such changes and additional procedures as may be expected to provide satisfactory revegetation;

(f) a schedule describing the manner and deadlines for the removal of facilities, including but not limited to the removal of buildings or related structures.

(2) The department may require additional measures necessary to ensure that the disturbed area is reclaimed in accordance with the act.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335 and 82-4-336, MCA.

RULE VI MILLS: CESSATION OR COMPLETION OF OPERATION:

(1) Milling operations are presumed completed or ceased and thus are subject to the reclamation time schedule outlined in the approved reclamation plan when the mill has ceased operations for a period of 2 years or more. A permittee may rebut this assumption by providing evidence satisfactory to the department, consistent with ARM 26.4.108(2) that the operations have not in fact been abandoned or completed.

(2) Reclamation plans must provide that all discharges from completed operations or operations in a state of temporary cessation will be consistent with provisions of ARM 26.4.109.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-341, MCA.

RULE VII: REPROCESSING OF WASTE ROCK AND TAILINGS

(1) The provisions of the act and this subchapter apply to any person who after [day before the effective date of this act] reprocesses tailings or waste rock resulting from previous mining operations. No land disturbed by a reprocessing operation before [the effective date of these rules] is subject to the act and this subchapter unless reprocessing or related activities are conducted on the area after [the day before the effective date of these rules], in which case the department shall require reclamation to the extent practicable and feasible.

(2) A person who institutes a new reprocessing operation after [the day before the effective date of these rules] who is not a small miner must obtain an operating permit before engaging reprocessing operations or disturbing land in anticipation of these operations.

(3) A person who wishes to continue a reprocessing operation that was conducted at any time during the 12 months immediately preceding the effective date of these rules must, in order to continue those operations no later than [6 months after the effective date of these rules] obtain an operating permit. Operations not conducted within the 12 months immediately preceding the effective date of this rule are considered new operations for the purposes of this rule.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-304, 82-4-335, MCA.

4. The proposed rules are necessary to implement Chapter 453, Laws of 1985, by providing procedures and standards for permitting and reclamation of offsite mills and waste and tailing reprocessing operations under the Metal Mine Reclamation Act. The rules set forth the application procedures and identify baseline, operating, and reclamation information, plans, and standards necessary for permit decision and the appropriate environmental analysis. Application of these procedures and standards is necessary to ensure reclamation of offsite mills and waste and tailings reprocessing operations in accordance with the Metal Mine Reclamation Act.

5. Interested persons may present their data, views, or arguments, orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to Sandi Olsen, Bureau Chief, Hard rock Bureau, Department of State Lands, Capitol Station, Helena, Montana 59620 no later than March 14, 1990. To ensure consideration, data, views, and comments must be postmarked no later than March 13, 1990.

6. Gary Amestoy, Administrator of the Reclamation Division has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Section 82-4-321, MCA, and the rules implement Sections 82-4-304, 82-4-335, 82-4-336, 82-4-337, and 82-4-341, MCA.

Dennis D. Casey, Commissioner

Certified to the Secretary of State January 29, 1990.

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

In the matter of the proposed adoption of a new rule regarding abandonment of monitoring wells.	NOTICE OF PROPOSED ADOPTION OF A NEW RULE REGARDING ABANDONMENT OF MONITORING WELLS UNDER SUB-CHAPTER 8 NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On March 10, 1990, the Board of Water Well Contractors proposes to adopt a new rule regarding the abandonment of monitoring wells.

2. The proposed rule will read as follows:

"I. ABANDONMENT (1) Monitoring wells, that have outlived their useful purpose shall be abandoned by one of the following methods:

(a) If the casing and screen are left in place, the casing and screen shall be grouted from the bottom up using a pump and hose or tremie pipe to conduct the grout to the bottom of the well or by filling the casing and screen with bentonite pellets or chips. Metal casings shall be cut off three feet below the ground surface and the last three feet backfilled with naturally occurring soils;

(b) If the casing and/or screen are removed, the hole shall be filled with grout or concrete from the bottom up, as the casing and/or screen is removed. The last three feet shall be filled with naturally occurring soils.

(c) The grout shall be bentonite clay grout, neat cement grout, or concrete. They may contain nonbiodegradeable fluidizing admixtures, provided they will not contaminate the ground water. Grouts which settle shall be topped to provide a continuous column of grout to within three feet of the surface; or

(d) other methods for abandonment with prior board approval.

(2) For flowing wells, the abandonment procedures outlined in ARM 36.21.671 shall apply."

Auth: 37-43-202, MCA Imp: 37-43-202, MCA

3. Section 37-43-202(4), MCA provides that the board of water well contractors will adopt minimum standards for the construction, use, and abandonment of monitoring wells. The standards must be designed to protect the states's ground water resource from degradation by contamination and loss of hydrostatic pressure. The board has previously adopted

construction standards for monitoring wells and had delayed the adoption of abandonment rules. There was some question as to how the monitoring well constructor would be affected by abandonment rules when he has completed the drilling of the well, turned the well over to either a consultant or the well owner, and had been gone from the site for several years. It was the opinion of the board that the constructor would no longer be considered responsible, provided the monitoring well was constructed according to the minimum standards. It was deemed important, however, to have minimum standards in place for abandonment, regardless of who completed the abandonment. The proposed rule is that which was agreed upon by the monitoring well advisory task force when the minimum standards for construction were discussed. Considerable time and effort was given by the members of the task force, as well as by the Board, and it has been determined that the above rule provides the best method for abandonment of monitoring wells.

4. Interested parties may present their data, views, and arguments concerning the proposed adoption in writing to the Board of Water Well Contractors, 1520 East Sixth Avenue, Helena, Montana 59620, no later than March 8, 1990.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with written comments he has to the Board of Water Well Contractors, 1520 East Sixth Avenue, Helena, Montana 59620 no later than March 8, 1990.

6. If the board 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 agency or subdivision; 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.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

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

Certified to the Secretary of State January 29, 1990.

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

In the Matter of Proposed Amendment of Rule 38.5.2202 and Adoption of a New Rule Regarding Investigation and Reports of Accidents	)))))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION OF RULES REGARDING FEDERAL PIPELINE SAFETY REGULATIONS INCLUDING DRUG-TESTING REQUIREMENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 12, 1990 the Department of Public Service Regulation proposes to amend rule 38.5.2202 incorporating by reference the amendments to the Federal Pipeline Safety Regulations, a new Federal regulation requiring drug-testing of certain pipeline employees, and to adopt a rule regarding the investigation and reports of intrastate pipeline accidents.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts ~~191 and 192~~ 191, 192 and 199. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts ~~191 and 192~~ 191, 192 and 199 may be obtained from the Department of Transportation, Materials Transportation Bureau, Office of Operations and Enforcement (Pipeline Safety), Western Region, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 2701 Prospect Avenue, Helena, Montana 59620. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

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

RULE I. INVESTIGATION AND REPORTS OF INCIDENTS OF INTRASTATE GAS PIPELINE OPERATORS (1) As used in this rule, the following definitions shall apply:

(a) "Gas," "operator," "pipeline" or "pipeline system" and "transportation of gas" are defined as set forth in 49 C.F.R. § 191.3.

(b) "Incident" means any of the following events:

(i) An event that involves a release of gas from a pipeline, and

(A) A death or personal injury requiring hospitalization; or

(B) Estimated property damage sustained by the operator or others, or both, of $5,000 or more.

(ii) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subparagraph (i).

(2) The commission, a staff member thereof, or some person appointed by it, may investigate and make inquiry into every incident occurring in the operation of any intrastate gas pipeline located in this state. The commission, in its discretion, may also investigate any other accident or event involving the operation of a pipeline.

(3) Upon the occurrence of any incident involving the operation of an intrastate gas pipeline located in this state, each pipeline owner or operator subject to commission safety jurisdiction shall file a written report with the commission, which shall include the time and place of the incident, the names of persons killed or injured, the names of owners of damaged property, and in concise form the nature, cause and circumstances of the incident. The written report must be filed within 20 days after the occurrence of the incident. In addition to the written report, any such incident should be reported to the commission by telephone as soon as possible after its occurrence. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

4. Rationale: Since 1969 the Public Service Commission has annually been certified by the Federal Department of Transportation to have regulatory jurisdiction over the safety standards and practices of all intrastate pipeline transportation within Montana, as allowed by Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended (49 USC § 1671 et seq.).

Under the Federal certification, the Commission receives Federal funding and is required to adopt the Federal safety standards established under the NGPSA applicable to the intrastate pipeline transportation under its jurisdiction.

Pursuant to § 69-3-207, MCA, the Commission has adopted by reference the Federal Pipeline Safety Regulations in ARM 38.5.2202 (formerly 38.3.1901). This rule was last amended on December 9, 1988. Since that date, the Federal regulations adopted pursuant to the NGPSA have been amended. Such amendments do not automatically become Montana law. § 2-4-307(3), MCA. The purpose of the proposed amendments to rule 38.5.2202 is to incorporate the latest additions to and amendments of the Federal Pipeline Safety Regulations, namely, Title 49 of the Code of Federal Regulations, Chapter 1, Subchapter D, Parts 191, 192 and 199. Parts 191 and 192 have been amended. Part 199 is new, having been adopted by the Federal Department of Transportation November 21, 1988 and amended December 18, 1989. Part 199 will require drug-testing (including random tests) of certain pipeline employees beginning April 20, 1990. (August 21, 1990 for operators with 50 or fewer employees.) In addition, Rule I will implement the standards for reporting and investigation of intrastate pipeline safety accidents as contained in the state certification form required by Sec. 5(a) of the NGPSA.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment and adoption in writing to Charles Evilsizer, Public Service Commission, 2701

Prospect Avenue, Helena, Montana 59620-2601 no later than March 12, 1990.

6. If a person who is directly affected by the proposed amendment and adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Charles Evilsizer, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than March 12, 1990.

7. If the agency receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be two pipeline owners or operators based upon the number in the state, or more than 25 members of the public.

8. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

CLYDE DARRIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JANUARY 29, 1990.

Reviewed By

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

In the matter of the adoption of Rules I, II, III, IV, V, VI, VII and VIII pertaining to skilled nursing and intermediate care services in institutions for mental diseases	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I, II, III, IV, V, VI, VII AND VIII PERTAINING TO SKILLED NURSING AND INTERMEDIATE CARE SERVICES IN INSTITUTIONS FOR MENTAL DISEASES

TO: All Interested Persons

1. On March 2, 1990, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I, II, III, IV, V, VI, VII and VIII pertaining to skilled nursing and intermediate care services in institutions for mental diseases.

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

RULE I PURPOSE (1) These rules are intended to provide the criteria for payment of nursing facility services to medicaid recipients age 65 or older who are residents of an institution for mental disease.

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

RULE II DEFINITIONS (1) The definitions contained in ARM 46.12.1202(2)(a) through (2)(e), (2)(k) through (2)(r) and (2)(u) through (2)(y) apply to these rules for institutions for mental diseases.

(2) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution with more than 16 beds which is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. An institution for the mentally retarded is not an institution for mental diseases.

(3) "Mental disease" means diseases listed as mental disorders in the ICD-9-CM (International Classification of Diseases, Ninth Edition), with the exception of mental retardation, senility and organic brain syndrome.

(4) "Nursing facility services" includes the term "long term care facility services" and also the terms "skilled nursing services" and "intermediate care services". Examples of nursing facility services and a listing of items provided by the facility which are defined as routine services and

reimbursed though the routine per diem rate are contained in ARM 46.12.1202(2)(a) through (2)(a)(viii).

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

RULE III GENERAL REQUIREMENTS AND LIMITATIONS FOR INSTITUTIONS FOR MENTAL DISEASE (1) An IMD must follow the rules set forth at ARM 46.12.1202(ac), 46.12.1203(1)(a) through (1)(d), 46.12.1203(1)(f), 46.12.1205(2), 46.12.1205(4) through (8), and 46.12.1207 through 46.12.1210.

(2) Payment is not available for services provided to any individual who is under age 65 and is in an institution for mental diseases.

(3) There must be a written agreement between the department, the state mental health authority (i.e. the Montana department of institutions) and the provider of services. The agreement must provide for:

(a) joint planning between the parties to the agreement;

(b) development of alternative methods of care;

(c) permission for immediate readmission to the institution when the recipient's need for readmission has been determined to be medically necessary;

(d) access by the department to the recipient, the recipient's records and the facility;

(e) the duty of the provider to record, report and exchange medical and social information about recipients; and

(f) other procedures necessary to carry out the agreement.

(4) The nursing facility must provide for recorded individual plans of treatment and care to ensure that institutional care maintains the recipient at, or restores him to, the greatest possible degree of health and independent functioning. The plans must include:

(a) a review of the recipient's medical, psychiatric, and social needs within 30 days after the date of admission;

(b) periodic review of the recipient's medical, psychiatric, and social needs;

(c) a determination every 90 days of the recipient's need for continued institutional care and for alternative care arrangements;

(d) appropriate medical treatment in the institution; and

(e) appropriate social services.

(5) Nursing facilities must meet three or more of the following factors to be considered institutions for mental diseases:

(a) the facility is licensed as a psychiatric facility for the care and treatment of individuals with mental diseases;

(b) the facility advertises or holds itself out as a facility for the care and treatment of individuals with mental diseases;

(c) the facility is accredited as a psychiatric facility by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO);

(d) a review of patient records indicates that the facility specializes in providing psychiatric/psychological care and treatment and more than fifty (50) percent of the staff has specialized psychiatric/psychological training, or more than fifty (50) percent of the patients are receiving psychopharmacological drugs;

(e) the facility is under the jurisdiction of the state's mental health authority (the Montana department of institutions);

(f) more than 50 percent of all the patients in the facility have mental diseases which require inpatient treatment according to the patients' medical records;

(g) more than fifty (50) percent of the patients in the facility has been transferred from a state mental institution for continuing treatment of their mental disorders;

(h) independent professional review teams report a preponderance of mental illness in the diagnoses of the patients in the facility;

(i) the average patient age is significantly lower than that of a typical nursing home; and

(j) part or all of the facility consists of locked wards.

(6) Skilled nursing facility services must be provided in accordance with 42 CFR 405 subpart K (1988 edition) and 42 CFR part 483 (1988 edition), and intermediate care facility services must be provided in accordance with 42 CFR 442 subpart F and 42 CFR part 483 (1988 edition). The department hereby adopts and incorporates herein by reference 42 CFR 405 subpart K (1988 edition), 42 CFR 442 subpart F (1988 edition) and 42 CFR part 483 (1988 edition), which define the participation requirements for providers, copies of which may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 N. Sanders, Helena, Montana 59604-4210.

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

RULE IV SCREENING AND UTILIZATION REVIEW REQUIREMENTS FOR MEDICAID RECIPIENTS (1) Authorized medicaid recipients are those residents who have been determined eligible for medicaid, are 65 years of age or older, have a diagnosis of mental disease as defined in rule II(3) and have a need for nursing facility services as determined by the department or its designee. The need for nursing facility services will be determined based upon the following criteria:

(a) the services of a skilled nursing facility (SNF) are needed when a person meets the criteria for skilled care as defined by the Medicare Intermediary Manual, transmittal no. 1365, (December 1987) section 3132, published by the United States department of health and human services. The department hereby adopts and incorporates herein by reference the Medicare Intermediary Manual, transmittal no. 1365 (December 1987), section 3132, copies of which may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 N. Sanders, Helena, MT 59604-4210; and

(b) the services of an intermediate care facility (ICF) are needed when a person does not qualify for skilled nursing facility care and is determined by the department or its designee to need care at a level higher than personal care.

(2) The department or its designee will make determinations prior to admission or prior to medicaid payment and will redetermine as often as deemed necessary.

(3) The department or its designee will make periodic inspections of care and services in institutions for mental diseases. These inspections of care will be performed in accordance with 42 CFR 456 subpart I (1988 edition). The department hereby adopts and incorporates herein by reference 42 CFR 456 subpart I (1988 edition), copies of which may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 N. Sanders, Helena, MT 59604-4210.

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

RULE V REIMBURSEMENT (1) Payment rates will be effective for rate years beginning July 1 of each year. The department will establish an interim rate by October 1 of each rate year. The interim rate will be based upon estimated allowable cost per day for the rate year as limited by the reimbursement rules that follow. The estimated allowable cost per day will be determined by dividing total estimated allowable costs for the rate year by total estimated bed days for the rate year.

(2) The interim payment rate will be limited by the department's estimate of the upper rate limit described in subsection (3).

(3) The final payment rate will be limited by an upper payment rate limit. The upper payment rate limit is computed by first calculating the total allowable cost per day for a base year. The base year cost per day is then indexed forward by the medicare market basket rate of increase from June 30 of the base year to June 30 of each subsequent rate year to determine the upper payment rate limit. The base year for a provider is the initial rate year for which an interim rate is set under these reimbursement rules. Subsequent base years will be redetermined on two year intervals, such that every other rate year establishes a new base year.

(4) The final payment rate for each rate year will be computed by dividing the total allowable costs incurred by the provider as determined in ARM 46.12.1207 by the total allowable bed days of service.

(5) The difference between the final payment rate and the interim payment rate will be settled through the overpayment and underpayment procedures set forth in ARM 46.12.1209.

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

RULE VI PAYMENT (1) The department pays providers the amounts determined under these rules on a monthly basis upon receipt of an appropriate billing which represents the number of days of service provided to authorized medicaid recipients times the payment rate minus the amount each medicaid recipient pays toward the cost of care.

(2) The payments made in accordance with rule V represent full payment for routine services for the days of service reported on a medicaid claim form. A provider shall not bill or collect any additional amount from medicaid recipients except as allowed in subsection (3). A provider shall not bill or collect any additional amount from the department except as follows:

(a) Ancillary medical supplies may be billed in accordance with ARM 46.12.1205(2)(a) through (c).

(b) Physical, occupational, and speech therapies may be billed additionally in accordance with ARM 46.12.1205(2)(d).

(c) Durable medical equipment may be billed in accordance with ARM 46.12.1205(2)(e).

(d) Prescribed medication may be billed in accordance with ARM 46.12.1205(2)(f).

(e) Transportation may be billed additionally in accordance with ARM 46.12.1205(2)(g).

(f) Any other medical services for medicaid recipients not billable under this subsection may be billed by the provider of those services according to applicable department rules.

(g) Providers may contract with any qualified person or agency to provide required services. However, except as allowed in this subsection, none of the contracted services may be billed to the department.

(h) Payment may be made for holding or reserving a bed while the medicaid recipient is temporarily absent from the facility in accordance with ARM 46.12.1205(5) and 46.12.1205(6).

(3) The following items or services are not considered to be routine items or services covered by the routine payment rate. These items or services may be charged to the medicaid recipient:

(a) vitamins and multivitamins;

(b) calcium supplements;

(c) nasal decongestants and antihistamines;
(d) special requests by a medicaid recipient for a specific item or brand that is different from that which the facility routinely stocks or provides as a requirement or condition of participation which is covered under the routine service payment rate (i.e. special lotion, powder, incontinence care supplies);
(e) cosmetics;
(f) tobacco products and accessories;
(g) personal dry cleaning;
(h) beauty shop services;
(i) television rental;
(j) less-than-effective drugs (exclusive of stock items); or
(k) over-the-counter drugs (exclusive of the following routine stock items:
(i) acetaminophen;
(ii) aspirin;
(iii) milk of magnesia;
(iv) mineral oil;
(v) suppositories for evacuation; or
(vi) maalox and mylanta.

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

RULE VII COST REPORTING (1) Providers shall submit annual cost reports in accordance with ARM 46.12.1208.

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

RULE VIII ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES (1) Providers shall be entitled to appeal decisions pertaining to their interim or final payment rates in accordance with ARM 46.12.1210.

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

3. The Social Security Act provides for medical assistance on behalf of individuals 65 years of age or older who are patients in institutions for mental diseases (IMD). Currently all providers of nursing facility services, other than those facilities for the mentally retarded, receive a fixed rate determined on a "prospective" basis. This rule amendment is necessary to change the reimbursement methodology for IMD services for persons with mental diseases cared for in institutions who require unique care and treatment. Therefore, a separate methodology of reimbursement is being established to make payments on a "cost based" system with retroactive adjustments rather than a "prospective" rate.

4. These rules will be applied retroactively to October 1, 1989.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than March 9, 1990.

6. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State January 29, 1990.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 20.7.102 which sets forth the prisoner application procedure for the supervised program.	NOTICE OF AMENDMENT OF RULE 20.7.102, Prisoner Application Procedure, General Statute release Requirement

TO: All Interested Persons

1. On November 9, 1989, the Department of Institutions published a Notice of a Proposed Amendment of Rule 20.7.102 on pages 1767 and 1768, 1989 Montana Administrative Register, Issue number 21.

2. The Department of Institutions amended the rule exactly as proposed.

3. No comments or testimony were received.

CURT CHISHOLM, Director
Department of Institutions

Certified to the Secretary of State January 26 1990.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of rules regulating gambling	)))	NOTICE OF ADOPTION OF RULES

TO: All Interested Persons

1. On November 9, 1989, the Department of Justice published notice of public hearing on new rules regulating gambling at page 1769 of the Montana Administrative Register, issue number 21.

2. A public hearing was held on December 11, 1989, and was attended by approximately 30 persons. Three persons presented formal comments. The hearing was tape recorded; a transcript of the tape recording has been included in the file on this matter. The department received written comments from twelve persons. In addition, counsel for the administrative code committee (ACC) submitted comments. The specific comments are discussed below in conjunction with the particular rule which was the subject of comment.

3. Based upon the comments received, the rules are being adopted as proposed with the changes given below.

RULE I (23.16.101) DEFINITIONS (1) through (7) are adopted as proposed.

(8) "Manufacturer of ~~illegal~~ gambling devices not legal in Montana" means a person who assembles ~~from raw materials or subparts~~ a completed or uncompleted piece of equipment intended for use as a gambling device which is not specifically authorized in Montana but is lawful in another jurisdiction.

(9) is adopted as proposed.

(10) "Person" means ~~both~~ either a natural ~~and~~ or an artificial persons, and includes all partnerships, corporations, associations, clubs, fraternal orders, religious organizations, or charitable organizations.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-112, MCA.

COMMENT AND RESPONSE: Counsel for the ACC noted that (8) repeated statutory language. The department adopts this change and corrects the grammar in (10).

RULE II (23.16.102) APPLICATION FOR GAMBLING LICENSE - LICENSE FEE (1) Every person working as a dealer, operator, manufacturer/distributor, or manufacturer of ~~illegal~~ gambling devices not legal in Montana as defined by Title 23, chapter 5, MCA, and by these rules must have a valid license issued by the department.

(2) is adopted as proposed.

(3) The application must contain a document authorizing the disclosure of ~~confidential~~ information which must be signed

and dated by the applicant whose signatures must be attested to before a notary public for the state of Montana. Forms 1, 2 and 3 are incorporated by reference and available from the department upon request.

(4) and (5) are adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

COMMENTS AND RESPONSES: Several people commented that the reference in (1) to a "manufacturer of illegal gambling devices" was poorly worded. This reference was reworded.

Several people also felt that (3) was too vague and exceeded the department's rulemaking authority. The department believes that this matter has been corrected through consultation with the MTA and by the inclusion of forms 1, 2 and 3.

RULE III (23.16.103) INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP. Sec. 23-5-115(3), MCA.

COMMENTS AND RESPONSES: Larry Akey, spokesman for the Gaming Industry Association (GIA), requested that the department delete the reference to fingerprints on the grounds that requiring fingerprints exceeds the department's rulemaking authority because fingerprints are not information. The department overrules the GIA on this point. Fingerprints are information that is why they may need to be provided. Fingerprints also protect gambling license applicants by eliminating confusion with persons who have identical names.

The ACC pointed out that the MCA section being implemented was incorrect; the department has corrected this.

RULE IV (23.16.104) PROCESSING OF GAMBLING LICENSE APPLICATION No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE V (23.16.107) GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT OR AUTHORIZATION (1) The department may deny initial issuance or renewal of a gambling license, permit or authorization or, if issued, suspend or revoke such ~~license~~ authorization when it can be demonstrated an applicant or holder of such license has:

(a) through (e) are adopted as proposed.

(f) ~~purposely or knowingly committed, attempted, or conspired~~ been convicted of committing, conspiring, or attempting to commit theft or embezzlement against a gambling licensee or gambling enterprise; or

(g) through (i) are adopted as proposed.

(j) had any action taken against a gambling license by any agency of the state of Montana or other jurisdiction, which resulted in a final order declaring a violation or a conviction

of any crime which is contrary to the declared gambling policy of the state of Montana; or

(k) is adopted as proposed~~.~~; or

(l) had a gambling license denied for other-than-technical defects in the application.

~~-----(2)--A-person-whose-gambling-license-application-has-been denied-for-other-than-technical-defects-in-the-application-may not-reapply-for-a-license-for-a-period-of-one-year-from-the-date of-denial.~~

~~(3)--A-person-whose-gambling-license-has-been-revoked-may not-reapply-for-a-license-for-a-period-of-one-year-from-the-date of-the-revocation.~~

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

COMMENTS AND RESPONSES: The GIA requests that the department set forth in rule the specific standards it intends to use when it denies a license. The grounds for this request are that when the legislature shifted the burden of proof in gambling licensing to the department proving unfitness, it intended that the department develop specific standards of unfitness. The GIA's proposal is rejected; it misunderstands Rule V and the administrative process. In addition, there is no evidence which supports the GIA's reading of legislative intent. In the event that the department intends to deny a particular license application, notice will be sent and full rights of administrative and judicial review will be afforded, pursuant to Rule VI. At that point, the department's application of the standards set forth in a particular rule may be contested, as exceeding statutory authority.

David L. Jackson, representing the Montana Tavern Association (MTA) proposed that (f) and (j) be amended to reflect actual convictions or final administrative orders. These changes were adopted.

RULE VI (23.16.108) RECOURSE IN CASES OF DENIAL OR NON-RENEWAL OF GAMBLING LICENSE - HEARING, JUDICIAL REVIEW No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE VII (23.16.109) RENEWAL OF GAMBLING LICENSE No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

RULE VIII (23.16.201) INSPECTION OF LICENSED PREMISES, RECORDS, AND DEVICES (1) Any licensed premise where gambling-related activity is conducted or any premise connected to the ~~operation of~~ premises where a licensed gambling-related activity is conducted shall at all times during normal business hours be open to inspection by the department or local law enforcement officials in order to determine compliance with the law of Montana and rules of the department.

(2) and (a) are adopted as proposed.

(b) inspect, including the dismantling and re-assembly of, all pieces of equipment and parts thereof, or devices of any nature, which are being used to conduct the licensed activity; and

(c) is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

COMMENTS AND RESPONSES: Both the GIA and the MTA proposed that the hours of inspection be limited and that re-assembly of equipment be required. The department adopted these proposals.

The MTA also proposed eliminating the "connected premises" language in (1). The department rejects this proposal on the grounds that inspection of connected premises is often necessary in order to determine compliance with the law.

RULE IX (23.16.202) CREDIT PLAY PROHIBITED (1) All playing of games of chance must be on a cash basis. No credit may be extended to any player. Consideration to play a game of chance must be paid in full, in cash, in advance of any play. No operator may grant a loan of any kind at any time to a player or permit a deferred payment including post-dated checks or engageing in any similar practice. The play of authorized card games which are normally scored using points shall not be considered credit gambling.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

COMMENTS AND RESPONSE: The clarification made by the final sentence was suggested by Valley County Attorney David Nielsen; the department adopts it.

RULE X (23.16.203) ADMINISTRATIVE PROCEDURE (1) Upon completion by the department of its investigation of any ~~proposed variant of a legal gambling activity or any suspected violation of Title 23, chapter 5, parts 1 through 6, MCA, or the rules of the department,~~ matter within its jurisdiction, the department shall notify the person involved of its intended action. If the person involved then desires a hearing, he must submit a written request to the department within 20 days.

(2) Upon receipt by the department of a written request for hearing, all proceedings ~~involving the proposed variant of a legal gambling activity or the alleged violation~~ shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedures.

(3) adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-115(3), MCA.

COMMENTS AND RESPONSE: These changes were proposed by the department in order to clarify the scope of administrative procedure and judicial review; they have been adopted.

RULE XI (23.16.401) APPLICATION FOR DEALER LICENSE It is

adopted as proposed, with the following addition:

(4) An application for a dealer license is incorporated by reference as Form 4 and can be obtained from the department.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308, MCA.

COMMENTS AND RESPONSE: David Nielsen, Valley County Attorney, commented that this rule appears to allow for a continuous series of successive temporary licenses. The department believes this possibility is adequately addressed by Rules XIV(1) and XV(1)(e). The department, after consultation with counsel for the ACC, incorporates Form 4.

RULE XII (23.16.402) DEALER LICENSE (1) is adopted as proposed.

(2) Every dealer license expires annually on the licensee's birthday, and in no case less than 12 months from the date of issuance. All applicants for renewal of card dealer licenses shall have a period of thirty (30) days following their birthdays within which to renew their licenses.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

COMMENTS AND RESPONSE: The final sentence in (2) was added at the suggestion of the Gaming Advisory Council.

Leroy Flesch and Stuart McQuade were concerned that there was too much information required on the front of a dealer license, resulting in exposure of female dealers to harassment. The department believes it has addressed these concerns by lessening the amount of information on the front of a dealer license and by dropping its requirements that these licenses be worn.

RULE XIII (23.16.406) TEMPORARY DEALER LICENSE No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XIV (23.16.403) PROCESSING OF DEALER LICENSE APPLICATION RENEWAL, OR REPLACEMENT (1) adopted as proposed.

(2) An application to renew a ~~gambling~~ dealer license must be received by the department prior to the expiration date of the license. An application not postmarked by the date of expiration will result in expiration of the ~~gambling~~ dealer license and will require the expired license holder to reapply for a new original license in the manner required by these rules.

(3) Replacement of a ~~gambling~~ dealer license is accomplished by following the new license procedure and including a $10 fee.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

COMMENTS AND RESPONSE: The MTA proposed that the department change "gambling" to "dealer" in (2) and (3) in the

interest of clarity and consistency. The department adopts those proposals.

RULE XV (23.16.407) CONFISCATION OF TEMPORARY DEALER LICENSE No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XVI (23.16.410) POSSESSION OF DEALER LICENSE No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XVII (23.16.411) DEALER LICENSE SPECIFIC TO THE PERSON NAMED THEREON No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-308(5), MCA.

RULE XVIII (23.16.501) DEFINITIONS No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176&177, MCA.

RULE XIX (23.16.502) APPLICATION FOR OPERATOR LICENSE (1) All applicants for operator licenses issued by the department must submit the following information on Form 5 which is incorporated by reference and available from the department upon request:

(a) name(s), addresses, telephone numbers, and social security numbers; history of gambling licensure with any federal, state, or local agency; civil and criminal record; and record of residence and employment of the business owners for the last ~~5~~ 10 years.

(b) through (e) are adopted as proposed.

(2) Operator licenses must be renewed annually by completing forms prescribed by the department.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176&177, MCA.

COMMENTS AND RESPONSE: For clarification purposes the department adds the reference to Form 5 in (1).

RULE XX (23.16.504) INVESTIGATION OF APPLICANTS, ADDITIONAL INFORMATION MAY BE REQUIRED (1) The department may require access to all of the applicant's financial records which pertain to the financing of the proposed operation, to evaluate statements and support documentation supplied with the background application form.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176&177, MCA.

COMMENTS AND RESPONSE: Both the GIA and the MTA felt the department's access to records was too broad under the proposed

rule. The department adopts the amendment submitted by the MTA.

RULE XXI (23.15.506) PROVISIONAL OPERATOR LICENSE It is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176&177, MCA.

COMMENTS AND RESPONSE: Counsel for the ACC commented that this rule is invalid, and should be deleted because the department was not given authority to issue provisional operator licenses. The logical result of counsel's reasoning is that no operator could be licensed until the department had made a final determination of the operator's qualifications. The department has determined that provisional operator licenses are "reasonably necessary to effectuate the purposes" of SB 431 (Section 2-4-305(6)(b), MCA). The department's reasoning is that the legislature envisioned several things which require the issuance of provisional operator licenses:

1) Thorough investigation of all applicants for licensure as gambling operators (Section 23-5-110(1), MCA); and

2) Continued, uninterrupted operation of authorized gambling activities while applicants for licensure were being investigated.

The granting of provisional operator licenses is necessary to the accomplishment of these goals.

RULE XXII (23.16.508) CHANGES IN OWNERSHIP REPORTING (1) through (3) are adopted as proposed.

(4) As defined in Rule 23.16.502, all new owners, officers, and directors are subject to the same background information requirements specified previously in this subsection. Applications are subject to license denial if the changes in ownership ~~do not meet with department approval~~ result in the applicant's failure to meet the statutory qualifications for licensure.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176&177, MCA.

COMMENTS AND RESPONSE: The GIA commented that the final phrase in (4) was too broad. The department adopts the substance of the GIA's proposed amendment.

RULE XXIII (23.16.1201) DEFINITIONS (1) is adopted as proposed.

(2) "Authority reference" means Official Poker Rulebook, copyright 1988, Las Vegas Hilton, except for sections E, F, and H and Scarne's Encyclopedia of Card Games, copyright 1983, by John Scarne, pages 18 through 276. These books will be used by the department as the authority on how to play authorized card games. The sections of the books cited as authority will not apply where there is a conflict with state law or department rule.

(3) through (20) are adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: Both the GIA and the MTA proposed altering this rule to allow card games played against the house. The department overrules the proposal. This matter is currently in litigation, the department's legal position is clear, and any court ruling will control these regulations.

Counsel for the ACC noted that the authority reference cited in Rules 23.16.1201(2) and 23.16.1202(1)(b) should refer to a specific edition of Scarne's Encyclopedia of Card Games. The department has complied.

Stuart McQuade proposed dropping the final sentence of (16) because it requires a raise in the betting format, and not all poker variations use such a format. The department overrules this proposal, because he misreads the rule. All that (16) requires is "one or more betting rounds," with the winner determined by: 1) making an unanswered raise, or 2) having the best hand.

RULE XXIV (23.16.1202) TYPES OF CARD GAMES AUTHORIZED (1) The following card games are authorized by law and must be played only in the manner set out for that game in the applicable authority reference:

(a) ~~general poker rules, practices, and~~ the poker games of Texas Hold'em, Draw Poker, Omaha, Seven Card Stud, and their variations as well as general poker rules and practices, according to the Official Poker Rulebook, Copyright 1988, Las Vegas Hilton, except for sections E, F, and H; and

(b) other poker variations, as well as the games of Bridge, Cribbage, Hearts, Panguingue, Pinochle, Pitch, Rummy, Solo, and Whist, according to Scarne's Encyclopedia of Games, copyright 1983, by John Scarne, pages 18 through 276.

(2) through (7) are adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: County Attorney Nielsen suggested that (1) be clarified. The department has attempted to do so.

Leroy Flesch proposed that the department authorize the poker variation "Squeeze." The department declines to authorize the game at this time, but it would encourage Mr. Flesch to propose the game for approval pursuant to (3).

RULE XXV (23.16.1205) RANKING OF POKER CARDS AND HANDS No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXVI (23.16.1206) POKER CARDS - PHYSICAL CHARACTERISTICS (1) The cards used in the game of poker must be one complete standard deck of 52 cards plus optional joker(s).

(2) and (3) are adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: County Attorney Nielsen suggested

this clarification; the department adopts it.

RULE XXVII (23.16.1209) POKER CHIPS - VALUE AND PHYSICAL CHARACTERISTICS This rule is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: Counsel for the ACC believed (1) and (2) to be contradictory in that the former allows the value of a chip to be shown either by color or by denomination sign, whereas the latter subsection mandates that the value of a chip be shown by color. On the contrary, the rules merely acknowledge that "big-time" poker games may have "personalized" multi-colored chips and "small-time" poker games may only afford "generic" mono-colored chips. Nevertheless, denominations of chips must have differing primary colors, to avoid player confusion.

RULE XXVIII (23.16.1210) WAGERS TO BE MADE WITH POKER CHIPS OR CASH ONLY (1) In games not scored with points, all wagers must be made with poker chips or cash.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: County Attorney Nielsen suggested the clarification at the beginning of this rule; the department adopts it.

Leroy Flesch proposed limiting wagers to poker chips only, mainly as a player protection. The department overrules this proposal. The department considered many arguments similar to those made by Mr. Flesch before proposing the rule. It was determined that allowing cash was necessary to insure the continued economic feasibility of many small, rural poker games.

RULE XXIX (23.16.1211) PERSONS NOT TO BRING THEIR OWN CARDS OR POKER CHIPS No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXX (23.16.1212 PROCEDURE FOR ACCEPTING CASH AT THE POKER TABLE No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXI (23.16.1216) PLAYER RESTRICTIONS (1) through (4) are adopted as proposed.

(5) Subsections (3) and (4) do not apply to the game of bridge when played according to the rules set forth in the authority reference.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: County Attorney Nielsen noted that

the unique nature of bridge play might be affected by (3) and (4). The department adopts (5) in response to these concerns.

RULE XXXII (23.16.1217) USE OF DEVICE PROHIBITED No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXIII (23.16.1218) SPECIAL POLICIES (1) Each operator may establish rules of conduct for the players and spectators on its licensed premise as long as the operator's rules do not conflict with state law ~~or administrative rule~~.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: The department deleted the final phrase of this rule at counsel for the ACC's suggestion.

RULE XXXIV (23.16.1224) DEALER RESTRICTIONS (1) In authorized card games using licensed dealers, ~~b~~licensed dealers shall have no financial interest, directly or indirectly, in the outcome of any game which they deal. This rule does not prevent licensed operators from also dealing their own games.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: The department inserted the initial qualification at the suggestion of County Attorney Nielsen.

The department inserted the final sentence at the suggestion of Mr. Flesch and the GIA. The department does not believe this changes the substance of the rule, because operators should not have an interest in the outcome of games.

RULE XXXV (23.16.1225) HOUSE PLAYERS No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXVI (23.16.1228) DECKS - SHUFFLE AND CUT OF THE CARDS The rule is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: Mr. McQuade proposed a substitute for (1) because he felt that the rule as proposed would allow an agitated player to disrupt the game. The department rejects the proposed change on the grounds that the proposal, calling for the dealer to confer with the operator who must observe the game and the players, would be much more cumbersome than the rule as originally proposed, which merely calls for changing the decks at the card table.

Mr. McQuade also proposed a substitute for (4) because he felt it would require halting the game to count cards. Mr. McQuade misreads the rule and his proposal is rejected. The department was aware of concerns about game disruption and it

deliberately worded the proposed rule to allow card counting prior to dealing in a game or during a lull in play.

RULE XXXVII (23.16.1229) ANTE, BLIND BET No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-312, MCA.

RULE XXXVIII (23.16.1231) RAKE (1) The rake may be a percentage of the pot or a set fee established by the house and must be clearly posted. The rake must remain in a designated area until the pot is awarded. The chip tray cannot be used as a designated rake area. After the pot is awarded, the rake must may then be placed in the chip tray, a segregated area, or drop box near the dealer.

(2) and (3) are adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-312, MCA.

COMMENTS AND RESPONSE: Mr. McQuade commented that he found (1) and (3) to be inconsistent in allowing for a set fee rake (1), and requiring that a rake be calculated as a percentage (3). The department rejects Mr. McQuade's suggestion on the ground that he misreads (3). It only requires that if a percentage rake is taken, it be taken after each round.

Mr. Flesch proposed the amendment to the final sentence of (1) in the interest of small-time operators who cannot afford drop boxes or extra chips. The department agrees and adopts the proposed amendment.

RULE XXXIX (23.16.1232) OPERATION OF THE GAMES The rule is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: Mr. McQuade proposed that (2) be dropped and that only the operator be allowed to determine whether or not a player had to buy back into a game he had left temporarily. The department rejects this proposal on the grounds that the rule is necessary to effectuate the statutory purpose of player protection.

RULE XL (23.16.1233) FOULED HANDS This rule is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: Mr. Flesch commented that this rule may give an advantage to the experienced player over the inexperienced or partially inebriated player. The department agrees that this is a possibility, but believes that dealers must have discretion in these cases. However, complaints will be investigated, and repeated complaints about a particular dealer may result in disciplinary action.

RULE XLI (23.16.1234) THE DEAL No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XLII (23.16.1237) BETTING (1) and (2) are adopted as proposed.

(3) A player must place his entire bet in front of the player at one time. Unless a player has failed to place the necessary amount of chips to call a bet or to signify a raise, the player may not place additional chips into the pot (no string bets). The dealer may allow a single apparent string bet, but must caution the player that such bets are not allowed.

(4) adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: Mr. McQuade suggested that determination of string bets be left totally in the discretion of the operator. The department rejects this suggestion believing that it has a duty to discourage string bets. However, the department does agree that the determination of a string bet is an issue that warrants the application of discretion on the part of the dealer. Hence the addition of the final sentence in (3).

RULE XLIII (23.16.1239) IMPROPER DEAL No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XLIV (23.16.1240) POSTING OF RULES (1)(a) through (1)(k) are adopted as proposed.

(1) Maximum number of players in each type of game.

(1)(m) and (1)(n) and (2) are adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-313, MCA.

COMMENTS AND RESPONSE: Mr. McQuade proposed elimination of (1)(l) and (2), on the grounds that they are burdensome. The department agrees, that (1) needs clarification, and (1) so adopts the amendment. However, Section 23-5-313, MCA, requires that rules governing the play of authorized card games be publicly posted. Mr. McQuade misreads (2). It applies only to house rules of general applicability, not state-wide rules on the play of games or rulings in specific cases.

RULE XLV (23.16.1101) CARD GAME TOURNAMENTS This rule is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

COMMENTS AND RESPONSE: By far the most comments received by the department concerned the card game tournament rule (XLV). The majority of these comments supported a workable card

tournament rule, although the GIA felt that such a rule exceeded statutory rulemaking authority. The department believes that this rule is within its rulemaking authority because the tournament format is necessary to many authorized card games, such as cribbage, and whist. As for comments on particular parts of this rule, the department finds the rule to be sound, although a period of adjustment and education of persons affected by the rule will be necessary and is now underway.

RULE XLVI (23.16.1301) PLAY OF SUCCESSIVE KENO GAMES No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: 23-5-412, MCA.

RULE XLVII (23.16.1701) DEFINITIONS (1) "Master square" means that portion of the sports pool card divided into ~~smaller-squares-or-spaces~~ representing the chances purchased by the participants and containing the name or initials of the participant in the sports pool.

(2) "Spaces" means one of the smaller squares into which the master square is divided, which represents an opportunity to participate in a sports pool, and which contains the name or initials of the participant in a sports pool who has purchased that space.

~~(2)~~(3) "Sports event" means a game, race, or athletic contest wherein the contestants are natural persons or animals, and upon which a sports pool is based ~~not-including-elementary-or-high-school-contests.~~

~~(3)~~(4) "Sports pool" means a gambling activity based on a sports event using a card with a master square which is subdivided into spaces, ~~with-the-names-or-initials-of-the-participants-in-the-pool-written-within-each-square-or-space,~~ for which ~~c~~consideration, in money, is paid ~~for-each-square-or-space~~ by the participant for the chance to win money or other item of value ~~on-any-sports-event-wherein-the-contestants-in-such-event-are-natural-persons-or-animals.~~

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

COMMENTS AND RESPONSE: Counsel for the ACC noted that (3) unnecessarily repeated statutory language. In response to this, as well as the department's belief that these definitions needed clarification, the department adopts the changes in this rule.

RULE XLVII (23.16.1702) SPORTS POOL CARD (1) The master square of the card must be divided into ~~smaller-squares~~ spaces arranged in horizontal rows and vertical columns.

(a) is adopted as proposed.

(b) The numbers for each horizontal row and vertical column must be randomly assigned after all ~~squares~~ spaces have been sold and prior to the beginning of the sports event.

(c) Each ~~square-or-space~~ must be represented by a number from both the horizontal row and vertical column.

(2) The card shall, in advance of any sale of any ~~chance~~ space, clearly indicate:

(a) is adopted as proposed.

(b) The total number of ~~chances~~ spaces that must be sold in order to fill in all the ~~squares-or-spaces~~.

(2)(c) through (4) are adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

COMMENTS AND RESPONSE: The department adopts these changes in order to match the new definitions in Rule XLVII.

RULE XLIX (23.16.1703) SALE OF ~~CHANCES~~SPACES (1) The total cost of a chance to participate in a sports pool shall not exceed five dollars ($5) per ~~chance~~ and must be paid in cash at the time the ~~square-or-chance-~~space is selected.

(2) If, at the time of the event, all ~~chances~~ spaces on the sports pool card are not sold, the persons who have paid for a chance to ~~play~~ participate shall be entitled to a full refund or must be allowed to transfer the ~~chance~~ space to another sports pool currently advertised on the same premise where they purchased the ~~chance~~ space on the uncompleted sports pool. If a participant cannot be located for a refund or transfer of the ~~chance~~ space to another sports pool card prior to the event, the full purchase price of the ~~chances~~ spaces purchased shall be retained by the premise for refund to the participant.

(3) The sports pool shall not be conducted if any ~~chance~~ space remains unsold at the time the sports event is commenced.

(4) adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

COMMENTS AND RESPONSE: The department adopts these changes in order to match the new definitions in Rule XLVII.

RULE L (23.16.1704) PRIZES No comment was received on this rule; it is adopted as proposed.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-503, MCA.

MARC RACICOT
Attorney General

Certified to the Secretary of State January 29, 1990.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULES REGULATING SHEEP AND THE ADOPTION OF NEW RULES REGULATING SHEEP, BISON, AND LLAMAS.	))))))))	NOTICE OF AMENDMENTS TO ARM 32.18.205 AND 32.2.401 requiring a sheep permit before removal of sheep from county or State and requiring fees and Amendments of ARM 32.3.201 and 32.3.218 and New Rules 32.3.224 regulating Bison and 32.3.225 regulating llamas.

TO: ALL INTERESTED PERSONS:

1. On October 26, 1989, the Board of Livestock published a notice of proposed amendment of ARM 32.3.201 and 32.3.218, and adoption of Rules I (32.3.224) and II (32.3.225) regulating sheep, bison and llamas at page 1660, Montana Administrative Register, issue number 20.

2. On November 22, 1989 the Board of Livestock published a notice of proposed amendment of ARM 32.18.205 and 32.2.401 regarding sheep permits at page 1894, Montana Administrative Register, issue number 22.

3. The Board has adopted these amendments and rules exactly as proposed.

4. No comments or testimony were received.

BOARD OF LIVESTOCK
NANCY ESPY, CHAIRMAN

BY: Lon Mitchell
LON MITCHELL, Staff Attorney
Department of Livestock

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of new rules to reject permit applications for consumptive uses and to modify permits for nonconsumptive uses in the Rock Creek Basin	)))))	NOTICE OF ADOPTION OF ARM 36.12.1012 DEFINITIONS ARM 36.12.1013 ROCK CREEK BASIN CLOSURE

To: All Interested Persons

1. On September 14, 1989, the Department of Natural Resources and Conservation published a notice of public hearing on the proposed new rules to reject permit applications in the Rock Creek basin at page 1334, 1989 Montana Administrative Register, Issue number 17. Notices were also published on September 21, 28, and October 5, 1989 in the Carbon County News and the Billings Gazette. Notices were mailed on September 25, 1989 to each individual water user in the Rock Creek Basin.

2. On November 8, 1989, at 7:00 p.m., the public hearing was held at the Elks Lodge, 114 North Broadway in Red Lodge, Montana. During the hearing and prescribed comment period the department received comments, oral and/or written, from the following persons: Rocky Fork Decreed Water Users, Gladys Zumbrun, Sec., Tovio Lantta, Pres.; Bill Stovall, Alvin Ellis III, Nick Cowger, Marlene Boggio, Joe Alberi, Richard Avent, Alvin Ellis Jr., Vincent and Margaret Ames, Tiniel Fiveland all of Red Lodge, Mt.; Joe Spivey, Oliver Wilson, and Tom Patterson Jr. all of Roberts, Mt.; Robert A. Teegarden and Gay V. Davidson of Billings, Mt.; Alvin Donohoe of Luther, Mt.; Carl Hanson of Joliet, Mt.; Mel McBeath and Richard Bondy of Helena, Mt.; and James Boroughs of Yellville, Az.

3. The rules are being adopted as proposed except for the following catchphrase: (new material underlined).

" ARM 36.12.1013 ROCK CREEK BASIN CLOSURE (1)... "

4. A summary of the comments received, and the agencies' responses are as follows.

GENERAL COMMENTS

COMMENT: Commentors suggested the closure would present an economic hardship on water users by requiring the construction of stockwater and storage reservoirs with release mechanisms to prevent water from being impounded during the closure period.

RESPONSE: An economic hardship is being imposed on existing water users especially if the continual development of water in this basin is allowed. Additional water commissioners would be required to enforce these new rights increasing the potential loss of crops due to the increased competition for water. The technical report shows the irrigators' demands for water exceed the available supply 80

percent of the time in this basin during the closure period. New reservoirs would not be precluded, if the applicant designs the system to divert water at times other than during the closure period. On-stream or off-stream reservoirs could be constructed with bypass devices or control structures to not impound water during the closure period. These requirements are a modern day standard presently being recommended on all new reservoirs. No modification of the rules was made.

COMMENT: The water users on Rock Creek store runoff from Red Lodge Creek and Cooney Reservoir. These users should operate Cooney in a safer manner to prevent downstream flooding below the dam.

RESPONSE: Complaints with the operation of Cooney Dam should be addressed to the Chief of the Engineering Bureau, 1520 E. 6th Ave., Helena, Montana 59620. A local water users board, the Rock Creek Water Users Association, actually operates and maintains Cooney Dam with the cooperation of the department in an advisory capacity. This comment has no real bearing on the basin closure rules, therefore, no modification of the rules was made.

RULE I(5) DEFINITIONS

COMMENT: Red Lodge Creek should be exempt from the closure because the upper drainage receives water from the East Rosebud (an inter-basin transfer) and has a decree independent from the mainstem decree on Rock Creek.

RESPONSE: The basin closure would not preclude any further development of the inter-basin transfer of East Rosebud water, if more of that water was to be made available to the Red Lodge Creek drainage. The water availability study by Holnbeck (April, 1988) encompassed the entire Rock Creek Basin, including all tributaries. The results were based on the availability of water at the mouth of the drainage which translates up and down the entire basin. The study further shows that 45 percent, of the average amount of water measured at the mouth, was measured at the Red Lodge Creek gage. The decrees on Red Lodge Creek and Rock Creek are used to enforce existing water rights by the respective commissioners on each source and the basin closure would assist them by precluding additional consumptive uses of water and not add to the enforcement problem. Therefore, no modification of the rule was made.

RULE I(7) DEFINITIONS

COMMENT: The basin closure will preclude the development of springs for stockwater in the basin.

RESPONSE: If a spring has been contributing to the flow of a stream within this basin, no additional water could be appropriated from the spring than historically used for that purpose(s). This closure would not preclude maintenance on existing springs, nor development of springs which have not historically contributed to the flow of a stream in this

basin. The documentation shows no excess water is available during the closure period for additional consumptive use of water within the basin. Therefore, no modification to the rule was made.

RULE II(1) BASIN CLOSURE

COMMENT: Commentors requested the closure period be expanded from June 1, to include May 1 through September 30.

RESPONSE: The water availability study performed on the Rock Creek basin by Stephen Holnbeck (April 1988) shows that there is no water available in excess of the streamflow that is equaled or exceeded 80 percent of the time during the months of June, July, August and September at the mouth of the basin. Testimony substantiated these through personal observations. A total of 2,047 acre-feet of water is available according to this same study 8 years out of 10 for the month of May. The rehabilitation of Cooney Dam in 1982 shows an additional 4,200 acre-feet of water storage was created and contracts for this water have been sold. Documentation from 1982 to 1988 shows 1,150 acre-feet of storage is impounded just during the month of May in Cooney Reservoir. This figure shows that 42 percent of the excess water is still available in May at the mouth 8 years out of 10. The technical report indicates that there is excess water available in May and therefore the documentation does not support closing the entire month of May as requested. Therefore, no modification to the closure period has been made.

COMMENT: Some commentors do not want to be prevented from filling their reservoirs when flood events occur during the closure period.

RESPONSE: The upper drainages in this basin frequently have no commissioners appointed by the local water users. Commissioners are normally appointed on the lower mainstem drainages where the competition for water increases as the demand increases. Enforcement would be a major problem in the upper reaches of the basin if new water users were allowed to divert anytime during the closure period. It would put an additional burden on lower basin commissioners to be required to perform site visits on these storage reservoirs and then it would be difficult to predict when to require users to shut off. This would also increase the commissioners expenses to police these structures which would be passed on to the existing water users. Testimony indicated enforcement and increased costs were two major factors why the petitioners and other existing water users wanted the basin closed without exceptions.

Testimony also revealed high water normally occurs in May and June and sometimes in late April. Leaving May open does give reservoir operators an opportunity to impound runoff water in late April and May. The closure would preclude impounding water in new reservoirs during the months of June through September, even if high runoff storms occur.

An answer to this dilemma may also lie with the Carbon County Conservation District which was allocated 22,676 acre-feet of water granted to them in December of 1978. The district could authorize the use of this reserved water within this basin located in Carbon County, as long as sufficient storage is planned for which the water is intended.

Since this window exists for storage rights for May diversions and with the Conservation District reserved water available, the facts and testimony do not warrant modifications, by allowing exceptions to fill storage reservoirs during the closure period from June 1 through September 30.

RULE II(4) BASIN CLOSURE

COMMENT: The basin closure will preclude all stockwater reservoirs in the basin.

RESPONSE: Any new applications that would divert or impound water for stock or any consumptive use during the closure period would be rejected. Any applications that would impound water in a storage facility only outside the closure period would be accepted. The water availability study on the petition to close the Rock Creek basin identified the irrigation demands relative to water availability in the entire drainage, Holnbeck (April, 1988). Facts show that from June through September of each year, irrigation demands exceed the available water supply 80 percent of the time near the mouth of the basin. Therefore, no modification to the rule was made.

5. No other written or oral comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BY: Karen Barclay
KAREN BARCLAY, DIRECTOR

Certified to the Secretary of State, January 29, 1990.

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

In the matter of the amendments of rules pertaining to issuance of oil and gas drilling permits, public notice requirements, change of ownership requirements and bond release.	NOTICE OF THE AMENDMENT OF RULES 36.22.307 ADOPTION OF FORMS, 36.22.601 NOTICE OF INTENTION AND PERMIT TO DRILL, 36.22.604 PERMIT ISSUANCE - EXPIRATION EXTENSION, 36.22.605 TRANSFER OF PERMITS, 36.22.1308 PLUGGING RESTORATION BOND.

TO: All Interested Persons.

1. On November 9, 1989, the Montana Board of Oil and Gas Conservation published a notice of proposed amendment to the above-stated rules at page 1792 of the 1989 Montana Administrative Register, issue number 21.

2. The board has amended the rules exactly as proposed with the following exceptions: (new matter underlined, deleted matter interlined.)

"36.22.601 NOTICE OF INTENTION AND PERMIT TO DRILL (1) amended as proposed.

(a) At its own expense, cause publication of notice in a format prescribed by the board in one issue of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the proposed well or hole is located; and

(b) File proof of such publication in the form of a copy of the page on which the ad appears showing the ad and the date of publication or an affidavit of the publisher.

(2) through (6)(c) amended as proposed.

(d) Be received by the board no later than ~~seven (7)~~ ten (10) days after the date of the publication of the notice. Where the notice is not published on the same day in the newspapers specified in paragraph (1)(a) of this rule, the deadline for receiving demands for hearing will be measured by the later publication date. Service of such demand may be made on the board personally, by mail, or by FAX transmission; and

(6)(e) through (7) amended as proposed."

"36.22.604 PERMIT ISSUANCE - EXPIRATION - EXTENSION (1) amended as proposed.

(2) If the ~~notice~~ application for permit does not comply in all respects with such rules, said ~~notice~~ application shall be disallowed, and the petroleum engineer or his authorized agent shall promptly notify the person of the reason or reasons for such disallowance."

3. The following comments were received on the proposed

rules and the board makes the following responses:

Rule 36.22.601(1)(a)

COMMENT: Several commenters requested that the notice be published in the Helena newspaper, as well as in the newspaper in the county where the well is to be drilled.
RESPONSE: The board has changed rule 36.22.601(1)(a) to require publication in one issue of a newspaper of general circulation in Helena, as well as a newspaper of general circulation in the county where the well or proposed hole is to be located. The board agreed that such publication would give wider distribution of the notice and alert interested parties, who might not otherwise receive notice of the proposed drilling permit.
COMMENT: Several commenters proposed that the notices be published for five (5) consecutive days in both the Helena newspaper and the newspaper of general circulation in the county where the well is to be drilled.
RESPONSE: The board rejected this proposal as it adds an unwarranted additional expense to the operators. Also, many local newspapers are published only once a week and to require publication in five (5) consecutive issues would unduly delay the permitting process.
COMMENT: Several commenters requested that the period of time for comments be increased from seven (7) days to ten (10) working days or fourteen (14) consecutive days.
RESPONSE: The board has increased the time for response to ten (10) calendar days. The board feels that this will allow adequate time for response.
COMMENT: One commenter asked the board to allow people who wished to be informed of drilling plans to have their name placed on a list that would be maintained by the board. The board would then be required to inform those persons on the list of all requests for drilling permits.
RESPONSE: The board feels that adopting this requirement would place an undue burden on the board's staff, in the light of the average number of drilling permit applications received. Since publication has been completed by the time the board receives the application, notifying interested persons by mail would probably not be possible within the time period for filing written demands for hearing.

Rule 36.22.601(1)(b)

DEPARTMENT CHANGE: The board has changed this section to allow proof of publication to be made in the form of a copy of the newspaper page on which the published notice appears or by an affidavit of publication. This was done for the convenience of the applicants, some of whom indicated they had difficulty in obtaining an affidavit of publication in a timely manner.

Rule 36.22.601(4)

COMMENT: The National Park Service and the Wilderness Society requested that the term "further environmental review" in this rule be further defined.
RESPONSE: The board has just adopted a Programmatic Environmental Statement. That statement, together with the Montana Environmental Policy Act and the rules implementing that act, which the board is in the processing of adopting, adequately define the need for "further environmental review".

Rule 36.22.604(2)

COMMENT: Several commenters suggested the term "the notice" in subparagraph (2) of this rule should be changed to "application", as was done in other sections of the same rule.
RESPONSE: The board agrees with this suggestion and has replaced the term "the notice" with the words "the application for permit".

Rule 36.22.1308

COMMENT: One federal government commenter requested clarification of this rule as to whether or not a new owner of a well is required to have a bond.
RESPONSE: The board believes that 36.22.1308 is clear, especially as to the responsibility of the transferee of an oil or gas well.

Dee Rickman

Dee Rickman, Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State, January 29, 1990

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules pertaining to Mail Ballot Elections.	NOTICE OF AMENDMENT OF ARM 44.9.103, 44.9.202, 44.9.301, 44.9.303 through 44.9.306, 44.9.309, 44.9.310, 44.9.312, 44.9.402, 44.9.403, 44.9.405 and REPEAL OF 44.9.308.

TO: All Interested Persons.

1. On December 21, 1989, the Secretary of State's Office published notice of proposed amendment and repeal of the above stated rules concerning mail ballot elections, at page 2168 of the 1989 Montana Administrative Register, issue number 24.

2. The office has repealed ARM 44.9.308 as proposed.

3. The office has amended ARM 44.9.103, 44.9.202, 44.9.203, 44.9.301, 44.9.305, 44.9.306, 44.9.309, 44.9.310, 44.9.312, 44.9.402, 44.9.403 and 44.9.405 as proposed. The office has amended ARM 44.9.303 and 44.9.304 with the following changes:

44.9.303 VOTING BY NONREGISTERED ELIGIBLE ELECTORS (1) through 2 (a) remain the same.

(b) completing and signing, for subsequent signature verification purposes, ~~a mailing address designation card as provided in ARM 44.9.304 below~~ an absentee request as provided in Title 13, chapter 13, part 2, MCA.

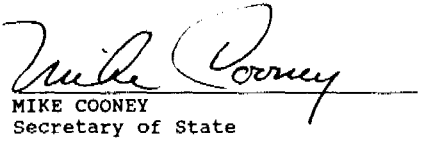
(3) through (3)(a) remain the same.

(b) enter the elector's name in the ~~poll book~~ register, on an addendum page provided for that purpose, and include all names so entered in their ~~poll book~~ register reconciliation. (AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-304, MCA.)

44.9.304 DESIGNATION OF MAILING ADDRESS OR ALTERNATIVE ADDRESS (1) remains the same.

(2) In these cases, and after complying with the requirements of law, the elector may designate the address to which his ballot is to be mailed by completing an ~~Address Designation Card, in a form prescribed by the secretary of state and provided for that purpose,~~ absentee request as provided in Title 13, chapter 13, part 2, MCA, until noon the day before ballots are scheduled to be mailed. (AUTH, Sec. 13-19-105, MCA; IMP, Sec. 13-19-303 and 13-19-304, MCA.)

4. The office received two comments in support of the proposed action. Betty Lund, Ravalli County Clerk and Recorder indicated her support for the changes. Sue Bartlett, Lewis and Clark County Clerk and Recorder indicated she supported the proposed amendments to the rules. She also recommended minor corrections to avoid internal inconsistencies in the rules. Her recommendations were adopted in the above identified changes. No further comments or testimony were received.



MIKE COONEY
Secretary of State

Dated this 29th day of January, 1990

VOLUME NO. 43 OPINION NO. 51

COURTS, JUSTICE - Residency requirements for justice of the peace called to act pursuant to section 3-10-231(2) or (3);
JUDGES - Residency requirements for justice of the peace called to act pursuant to section 3-10-231(2) or (3);
RESIDENCE - Residency requirements for justice of the peace called to act pursuant to section 3-10-231(2) or (3);
MONTANA CODE ANNOTATED - Sections 3-10-202, 3-10-204, 3-10-231;
MONTANA CONSTITUTION - Article VII, section 9(4);
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 49 (1989), 42 Op. Att'y Gen. No. 4 (1987).

HELD: An acting justice of the peace who is called to act pursuant to section 3-10-231(2) or (3), MCA, and who is otherwise qualified to serve under section 3-10-202, MCA, need not be a resident of the county where the court sits.

January 23, 1990

Robert L. Deschamps
Missoula County Attorney
Missoula County Courthouse
Missoula MT 59802

Dear Mr. Deschamps:

You have requested my opinion on the following question:

> Does an acting justice of the peace, called to act pursuant to section 3-10-231(2) or (3), MCA, have to be a resident of the county in which the court sits?

The statute in question, § 3-10-231, MCA, addresses circumstances in which an acting justice may be called in and by whom:

> (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.

Under this statute, the following people are expressly authorized to substitute as acting justices during periods of temporary absence of the resident justice of the peace:

(1) Other justices of the peace from the same county;

(2) Justices of the peace from outside the county;

(3) City judges;

(4) Qualified persons on the list compiled by the incumbent justice of the peace.

See 43 Op. Att'y Gen. No. 49 (1989). The subject of this opinion is whether acting justices must be

residents of the county in which the court sits in order to qualify to serve in that regard.

A general residency requirement for all judges is found in Article VII, section 9(4) of the Montana Constitution. That section requires a justice of the peace to reside during a term of office in the county in which he is elected or appointed. This requirement arguably does not apply to persons listed as acting justices since those persons are not "elected or appointed" and do not hold a "term of office." A statutory residency requirement is also found at section 3-10-204(1), MCA, which states that every justice of the peace must reside in the county in which the court is held. This statutory residency requirement is not qualified by the terms "elected or appointed" or "during a term of office," and could therefore arguably be said to apply to acting justices.

However, subsection (1) of section 3-10-204, MCA, must be read in conjunction with subsection (2), which imposes a one-year residency requirement "preceding ... election or appointment." I conclude that this provision is directed at ensuring that elected or appointed justices not only have been county residents for at least one year before assuming the bench, but also maintain such residency during their terms of office. When so construed, section 3-10-204, MCA, has no application to acting justices. I reach this conclusion in spite of the suggestion found in 42 Op. Att'y Gen. No. 4 (1987) that the residency requirements of section 3-10-204(2), MCA, apply to acting justices.

Section 3-10-231(2), MCA, itself requires only that acting justices be "qualified to hold court" during a temporary absence when no other justice or city judge is available. Qualifications for justices of the peace are set forth in section 3-10-202, MCA. A residency requirement is not included. The legislative history attendant to the adoption of the 1985 amendments to section 3-10-231, MCA (1985 Mont. Laws, ch. 482), authorizing a justice to designate acting justices, suggests that the designating justice is to be invested with substantive discretion in making this selection--discretion which would necessarily be diminished if a residency requirement were inferred. See Feb. 5, 1985, House Judiciary Committee Minutes at 2-3. In the absence of a constitutional or statutory requirement that an acting justice be a county resident, I conclude that no such requirement applies.

THEREFORE, IT IS MY OPINION:

An acting justice of the peace who is called to act pursuant to section 3-10-231(2) or (3), MCA, and who is otherwise qualified to serve under section 3-10-202, MCA, need not be a resident of the county where the court sits.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 43 OPINION NO. 52

ALCOHOLIC BEVERAGES - Application of 5 percent discount on retail price of liquor sold in unbroken case lots under section 16-2-201;
REVENUE, DEPARTMENT OF - Application of 5 percent discount on retail price of liquor sold in unbroken case lots under section 16-2-201;
TAXATION AND REVENUE - Application of 5 percent discount on retail price of liquor sold in unbroken case lots under section 16-2-201;
MONTANA CODE ANNOTATED - 1-2-101, 16-1-106(14), 16-1-401, 16-1-404, 16-2-201.

HELD: Section 16-2-201, MCA, authorizes the Department of Revenue to apply a 5 percent discount to the price of liquor sold in unbroken case lots; the terms of the statute require that the discount apply to the retail price, which does not include liquor excise or license taxes. However, taxes are, in turn, based on the discounted retail price of the liquor, which results in the same amount of excise and license tax revenues as if the discount had been applied to the retail price with the taxes included.

January 24, 1990

John W. Northey
Office of the Legislative Auditor
State of Montana
State Capitol
Helena MT 59620

Dear Mr. Northey:

You have requested my opinion concerning the following question:

> Does the 5 percent discount authorized by section 16-2-201, MCA, on the sale of liquor in unbroken case lots apply to the liquor license and excise taxes as well as to the liquor itself?

Your query arises from the current practice of the Department of Revenue in applying the discount for liquor sold in unbroken case lots. The Department applies the discount to the posted price of the liquor,

i.e., the retail price plus applicable taxes. This practice seems in conflict with the language of section 16-2-201, MCA, which provides for a "[r]eduction of 5% of the retail price of liquor" sold in unbroken case lots, but does not mention a discount on the applicable taxes.

There is no definition of "retail price" in the liquor statutes; however, it can be determined from certain other statutes that the retail price does not include the applicable liquor taxes. For example, the "posted price" of liquor is defined to include both the retail price of liquor and excise and license taxes. § 16-1-106(14), MCA. Moreover, in computing the amount of excise and license taxes on liquor sold and delivered in the state, the statutes provide for applying a specific percentage to the "retail selling price" of liquor. §§ 16-1-401, 16-1-404, MCA. Thus, the retail price of liquor is a price to which excise and license taxes have not yet been added.

With respect to the discount on unbroken case lots, the clear language of section 16-2-201, MCA, requires that it be applied to the "retail price." Based on the above-cited statutory provisions, I conclude that excise and license taxes should not be considered when calculating the 5 percent discount.

However, having concluded that the 5 percent discount applies to the retail price rather than the posted price of liquor sold in unbroken case lots, it must be noted that the amount of excise and license tax revenue from the sale of such liquor would nevertheless remain the same as that currently collected by the Department of Revenue. This is so because the liquor excise and license taxes are applied to the discounted retail price, as is explained below.

The taxing statutes provide that the rate of taxation on liquor should be based upon the "retail selling price" of liquor. §§ 16-1-401, 16-1-404, MCA. The statutes do not define "retail selling price" and the question thus arises as to whether the phrase means the discounted retail price or the nondiscounted retail price for the sale of unbroken case lots.

The legislative history of the discount statute, § 16-2-201, MCA, is helpful in answering this question. The discount was enacted as Senate Bill 164 (chapter 334) in 1975. The fiscal note prepared for consideration of the bill contains the following statement:

> The liquor excise tax ... remains at 16% ... and the liquor license tax ... remains at 5% .... These taxes are levied against the retail sales price of liquor so that if the retail price were discounted 5% on case lots there would be a consequent loss in tax revenue to state and local government units.

The above-quoted statement indicates that the excise and license taxes were intended to be applied to the discounted retail price, rather than to the nondiscounted retail price. The 1975 fiscal note also included estimates for several tax years, and the estimates clearly reflect that the taxes were to be applied to the discounted retail price. In addition, minutes from the meetings of the House and Senate Business and Industry Committees in 1975 reflect the anticipation of a loss in revenue due to the discount. Such a loss would not have been anticipated had it been intended that the taxes be applied to the nondiscounted retail price. See Minutes of the Senate Business and Industry Committee, January 29, 1975, and of the House Business and Industry Committee, March 10, 1975.

THEREFORE, IT IS MY OPINION:

> Section 16-2-201, MCA, authorizes the Department of Revenue to apply a 5 percent discount to the price of liquor sold in unbroken case lots; the terms of the statute require that the discount apply to the retail price, which does not include liquor excise or license taxes. However, taxes are, in turn, based on the discounted retail price of the liquor, which results in the same amount of excise and license tax revenues as if the discount had been applied to the retail price with the taxes included.

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.

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