OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1991 ISSUE NO. 23
DECEMBER 12, 1991
PAGES 2323-2515

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to ANSI standards and registration of tramways	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.63.501 ADOPTION OF THE ANSI STANDARD AND 8.63.504 REGISTRATION OF NEW, RELOCATED OR MAJOR MODIFICATIONS OF TRAMWAYS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 11, 1992, the Board of Passenger Tramway Safety proposes to amend the above-stated rules.

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

"8.63.501 ADOPTION OF THE ANSI STANDARD (1) The board of passenger tramway safety hereby adopts and incorporates by reference the "American National Standard for Passenger Tramways - Aerial Tramways and Lifts, Surface Lifts, and Tows - Safety Requirements" (referred to herein as ANSI Standard) promulgated by the American national standards institute, incorporated on July 16, 1982 (publication number ANSI B77.1-1982) amended December 2, 1985 (ANSI B77.1a-1986), amended March 14, 1988 (ANSI B77.1b-1988), amended March 26, 1990 (ANSI B77.1-1990), to the extent that said standard does not conflict with Montana statutory laws or these regulations. The ANSI standard establishes safety requirements for the passenger use of cables or ropes in passenger transportation systems, including reversible aerial tramways, detachable and fixed grip aerial lifts, surface lifts, and tows. Copies of the ANSI standard text may be obtained from the Department of Commerce, Professional and Occupational Licensing Bureau, Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, upon request at cost.

(2) will remain the same."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-2-701, 23-2-721, MCA

REASON: ANSI has adopted a new code, approved March 26, 1990, and the Board wishes to update its rule in order to stay current.

"8.63.504 REGISTRATION OF NEW, RELOCATED OR MAJOR MODIFICATIONS OF TRAMWAYS (1) through (5) will remain the same.

(6) The owner will retain a certified inspection engineer to inspect and supervise a comprehensive acceptance testing of all aspects of the new tramway. ~~In no case shall the certified tramway inspection engineer conducting the acceptance testing be the same person or persons as the design~~

~~engineer or the manufacturer.~~ The engineer's report of inspection and testing shall specifically note any items which fail to comply with the standards of these rules and the applicable ANSI standard and shall be transmitted by him directly to the board. Two copies shall be delivered to the owner.

(7) and (8) will remain the same."

Auth: Sec. 23-3-721, MCA; IMP, Sec. 23-2-701, 23-2-722, 23-2-723, MCA

REASON: Since Montana has very few licensed engineers who are licensed as tramway engineers, it puts a hardship on the owners to find additional engineers to be there with the design engineer and the certified tramway inspection engineer. This amendment will remove that restriction.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Passenger Tramway Safety, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than January 9, 1992.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Passenger Tramway Safety, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than January 9, 1992.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent 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.

BOARD OF PASSENGER TRAMWAY SAFETY
TIMOTHY M. PRATHER, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rules relating to pupil transportation	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES RELATING TO PUPIL TRANSPORTATION

To: All interested persons

1. On January 8, 1992, at 9:00 a.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the amendment of rules pertaining to pupil transportation.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules are located at pages 10-71 through 10-85, ARM.

10.7.103 TRANSPORTATION REIMBURSEMENT ELIGIBILITY CRITERIA (1) Introduction~~:~~. ~~Sec.~~ Sections 20-10-121 through 20-10-147, MCA establish~~es~~ the authority for boards of trustees to furnish publicly financed school transportation, specifies a rate schedule for individual, isolated and bus transportation, and provides for reimbursements to districts by the county and the state for transportation provided in accordance with the rate schedule and other criteria.

(2) County reimbursement for elementary and high school transportation is paid from ~~the Basic County levy for elementary schools; for high school transportation, from a separate~~ a non-voted countywide transportation levy.

(3) State reimbursement is paid from ~~a state appropriation~~ the state equalization aid account and/or a state general fund appropriation.

(4) same as current rule.

(AUTH: 20-3-106, MCA; IMP: 20-10-121, 20-10-145 and 20-10-146, MCA)

10.7.104 CLAIM PROCEDURE (1) - (1)(b) same as current rule. (2) Second Semester:

(a) Before May ~~15~~ 10, the board of trustees provides the county superintendent with two complete copies of the second semester transportation claim, using forms provided by the superintendent of public instruction. The district claims must be signed by the chairman of the board of trustees.

(b) By ~~June 1~~ May 24, the county superintendent reviews each district's claim for completeness and accuracy, and submits to the superintendent of public instruction a copy of each district's second semester transportation claim.

(AUTH: 20-3-106, MCA; IMP: 20-10-145, MCA)

10.7.105 PUPIL TRANSPORTATION CONTRACT (1) - (2) same as current rule.

(3) School districts thus are required to have

transportation contracts signed by the time the preliminary budget is adopted~~, and may budget only for publicly financed transportation supported by contracts, plus the legally permitted contingency item~~.

(4) Four copies of the contract form are needed: one for the individual or contractor ~~furnishing~~ providing the service, one for the district clerk, one for the county superintendent and one for the superintendent of public instruction.

(5) - (6) same as current rule.

(AUTH: 20-3-106, MCA; IMP: 20-10-143, MCA)

10.7.106 CONTRACTS WITH INDIVIDUAL FAMILIES (1) Section 20-10-124, MCA, provides for contracts between individual families and school districts for purposes of fulfilling the district's obligation to furnish transportation for an eligible transportee.

(2) A school district may enter into a contract for the provision of individual transportation only if the child being transported is an eligible transportee of the district.

(a) an eligible transportee, as defined in section 20-10-101, MCA, "is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school."

(3) Whenever any district or county is determined to be responsible for paying tuition for any pupil in accordance with sections 20-5-301, 20-5-302 or 20-5-311, MCA, the district paying tuition may provide transportation to the school district of attendance.

(4) If a tuition agreement does not exist between the district of residence and the district of attendance, the parent or guardian shall provide transportation at his own expense.

(5) When entering into a contract with the district, the parent or guardian shall sign an affidavit attesting to the place of residence of his child or children.

(6)~~(1)~~ The forms for contracts between individual families and school districts ~~are of two kinds--a white form for elementary school pupils and a pink form for high school pupils~~ is designated Form TR-4. ~~A family with both elementary and high school pupils will complete transportation contracts for both, using both the white and pink forms.~~ The same contract form is used for both elementary and high school pupils and provides for contracts at the individual rate or for the increased individual rate.

(7)~~(2) The form for use by individual families is designated Form T-4. The same contract forms are used regardless whether the family with whom the contract is made is eligible for the individual rate or for the increased individual rate.~~

~~(3)~~ The contract (in quadruplicate) must be completed in its entirety, signed by the parent or guardian, ~~notarized by a notary public,~~ signed by the chairman of the board of trustees and by the district clerk, on or before the fourth Monday in June preceding the school year for which the transportation is

being provided. The signed contract is the authorization of the board of trustees to budget for that transportation expenditure necessary to meet the obligation imposed on the district by the contract.

~~(8)(4)~~ same as current subsection (4).

~~(9)(5)~~ same as current subsection (5).

~~(10)(6)~~ same as current subsection (6).

~~(11)(7)~~ same as current subsection (7).

~~(12)(8)~~ As soon as possible, and by mid-October, the superintendent of public instruction provides approved contract rates~~, transmitting one copy~~ to the county superintendent~~, and one copy to~~ and the district officials~~, the latter inform the family receiving the transportation payments of the approved rates~~ of the district providing the contract.

~~(13)(9)~~ same as current subsection (9).

~~(14)(10)~~ same as current subsection (10).

(AUTH: 20-3-106, MCA; IMP: 20-10-111, 20-10-112, MCA)

10.7.107 CONTINGENCY TRANSPORTATION (1) Whenever, during the course of a school year, the district becomes obligated to provide transportation for pupils, the board of trustees immediately must:

(a) provide bus service for the eligible transportee; or

(b) enter into a contract with the family, and transmit four copies of the contract to the county superintendent, who transmits one copy immediately to the superintendent of public instruction.

(2) The cost of such additional transportation is met by the contingency item in the transportation budget or non-operating budget. The amount budgeted as contingency is reimbursable by the state and county as an on-schedule cost.~~, or if~~

(3) If there is no contingency item (or the appropriation therein is already obligated for other pupils in the district), the district shall institute~~s emergency~~ budget amendment proceedings to acquire the budget authorization necessary to provide transportation for such families.

(4) The budget amendment resolution must state:

(a) the facts constituting the need for the budget amendment;

(b) the district funds affected by the budget amendment;

(c) the estimated amount of money required for the budget amendment for each affected fund; and

(d) the anticipated sources of financing for the expenditures authorized by the budget amendment.

(5) The amount of the budget amendment for the transportation fund shall not exceed the sum of:

(a) the on-schedule costs associated with the transportation of the eligible transportee(s) in excess of the amount budgeted as contingency for the current school fiscal year; and

(b) the over-schedule costs to be incurred by the district as the result of the contingency transportation.

(6) The ~~cost of the transportation payments to such~~

~~families is~~ on-schedule costs associated with the contingency transportation, in excess of the contingency amount, are reimbursable by the state and county only upon proof of district budget authorization, county transportation committee approval of individual contracts and new or altered bus routes, and state approval of ~~the contracts for~~ such transportation.

(a) The state shall pay its share of these on-schedule costs as provided in ARM 10.7.103(3).

(b) The county shall pay its share of these on-schedule costs as provided in ARM 10.7.103(2).

(i) The county shall include, in the levy requirement for the ensuing year, any unpaid amount of the county's obligation for contingency transportation.

(7) The over-schedule costs of the contingency transportation shall be paid by the district.

(a) The district costs shall be funded by:

(i) the district's transportation reserves;

(ii) budget transfers from other line items in the transportation fund as provided in 20-9-208, MCA, if available; and

(iii) any levy assessed against the taxpayers of the district for purposes of funding the budget amendment.

(AUTH: 20-3-106, MCA; IMP: 20-10-124, 20-10-143, MCA)

10.7.108 BUS CONTRACTS (1) Contracts between districts and bus contractors are signed, in quadruplicate, prior to the adoption of the budget by the trustees. Such contracts may run for a period of more than one year but not exceeding five years. Whenever a new contract is completed, one copy is retained by the bus contractor, one copy by the district clerk and the other two copies are transmitted to the county superintendent, who keeps one and transmits one to the superintendent of public instruction ~~when the budget is transmitted by September 1~~.

(AUTH: 20-3-106, MCA; IMP: 20-10-124, 20-10-143, MCA)

10.7.109 BUS TRANSPORTATION REIMBURSEMENT-**SCHOOL DISTRICT APPLICATION FOR REGISTRATION OF SCHOOL BUSES AND STATE REIMBURSEMENT** (1) ~~School district application for registration of school buses and state reimbursement.~~ The form used for this application, designated form TR-1, is completed in triplicate by the board of trustees for each approved bus route in the district. The trustees transmit all three copies of each application to the county superintendent by October 1. No later than October 15, the county superintendent transmits one copy of each application to the superintendent of public instruction for approval. State approval is a prerequisite to reimbursement. A copy of the approved bus rates is sent to the county superintendent and one copy is sent to the district officials.

(AUTH: 20-3-106, MCA: IMP: 20-10-112, MCA)

10.7.110 STANDARDS FOR SCHOOL BUSES (1) Section 20-10-141, MCA, establishes a schedule of bus transportation expenditures reimbursable from state funds and specifies that reimbursable bus transportation shall be in "...any vehicle...which complies

with the bus standards established by the board of public education as verified by the Montana ~~highway patrol's~~ department of justice's semiannual inspection of school buses and the superintendent of public instruction."

(2) - (4) same as current rule.

(AUTH: 20-3-106, MCA; IMP: 20-10-111, 20-10-112, MCA)

10.7.111 QUALIFICATION OF BUS DRIVERS (1) School bus drivers must be fully qualified in order for a district to receive state reimbursement for the bus. Qualifications for bus drivers are prescribed by section 20-10-103, MCA, and by the board of public education. These require that the driver:

~~(i)~~(a) have five years of licensed driving experience;

(b) is not less than 18 years of age;

~~(ii)~~ (c) be of good moral character;

~~(iii) hold the proper chauffeur's license;~~

(d) hold a driver's license with a commercial vehicle operator's endorsement;

~~(iv)~~(e) have filed with the board of trustees a satisfactory report of a physical examination, signed by a licensed physician in the state of Montana, on a form provided by the superintendent of public instruction or the department of transportation (depending on whether the driver is applying for a Type 1 or Type 2 endorsement);

~~(v)~~(f) hold a valid ~~standard~~ basic first-aid certificate;

~~(vi)~~ (g) hold a valid certificate as evidence of meeting the above qualifications.

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

(4) In the event a district (or contractor) is obligated to employ a driver as a replacement for a driver employed at the beginning of the school year, or must employ an additional driver, a period of two months will be permitted for the new driver to acquire the first-aid certificate. If after two months following the date of first employment of the additional or replacement driver, the first-aid requirement has not been met, the bus operated by the driver will not qualify for state reimbursement for that portion of the year that the driver is not qualified, including the two-month grace period.

(5) - (7) same as current rule.

(8) The qualifications of all bus drivers are reviewed at the time the state audit of transportation claims is made, as the qualifications of the bus driver are one of the criteria for eligibility for reimbursement.

(a) Drivers without a current certificate with the office of public instruction at the time the state reimbursement is paid, with the exception of subsections (3) and (4), will not be reimbursed for the route.

(b) The office of public instruction will verify that all qualifications have been renewed upon expiration. If any license, certificate, or examination was expired for any period of time, the office of public instruction will withhold funding for the number of days the driver was not qualified.

(AUTH: 20-3-106, MCA; IMP: 20-10-112, MCA)

10.7.113 "TWO CONTRACT AMOUNT" REGULATION (1) same as current rule.

(a) If two (2) or more eligible transportees are transported by a parent or guardian to two (2) or more schools located within three (3) miles of one another, and if such schools are operated by different school districts, the total amount of the reimbursement, calculated using the distance to the furthest school, shall be divided equally between the districts.

(i) The reimbursement paid to each district may be less than 25 cents, but the combined payment for the contract shall not be less than 25 cents per day.

(b) same as current rule.

(AUTH: 20-3-106, MCA; IMP: 20-10-142, MCA)

10.7.114 SCHEDULE FOR TRANSPORTATION PAYMENTS

(1) - (1)(a) same as current rule.

(b) Section 20-10-142, MCA, authorizes the board of trustees and the county transportation committee, subject to written approval by the superintendent of public instruction, to alter or increase the payments to a family if, because of isolation, the schedule is inadequate. This "increased" payment (also called "isolated" transportation) is 50% of the authorized amount. All isolated ("increased") transportation must be approved by the county transportation committee prior to approval by the superintendent of public instruction. ~~A guide for determining the degree of isolation and the allowable increase of the individual schedule rate follows.~~

(c) In cases where the family must move and maintain two households or where the family must board the pupil near the school, the family may be eligible for the room and board rate of ~~$4.00~~ 5.31 per day (~~$80.00~~ 106.20 per month) for the first child and ~~$2.00~~ 3.19 for each additional child. (Sec. 20-10-142, MCA). All ~~isolated ("increased") transportation~~ contracts for room and board reimbursement must be approved by the county transportation committee prior to approval by the superintendent of public instruction. A guide for determining the degree of isolation and the allowable increase of the individual schedule rate follows.

(i) If there is more than one eligible transportee of the same household, and the eligible transportees attend schools operated by more than one school district, the rate of $5.31 per day shall be applied to the transportee enrolled at the highest grade level for purposes of determining the distribution of reimbursement to each school district. The remaining amount of the reimbursement shall be allocated proportionately to each school district based on the number of additional children in the household enrolled in each district.

(AUTH: 20-3-106, MCA; IMP: 20-10-142, MCA)

10.7.115 SCHEDULE FOR BUS TRANSPORTATION (1) ~~The schedule of maximum expenses for bus transportation reimbursable from state funds is found in Sec. 20-10-141 MCA. The maximum rate per bus mile for vehicles having a rated capacity up to and~~

~~including 50 pupils is 50 cents; and for vehicles having a capacity of over 50 pupils the maximum rate is determined by adding to the basic 50 cent rate two cents for each pupil riding in excess of 50.~~ The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees that board a school bus on an approved route is not less than one-half of its rated capacity:

(a) 85 cents in fiscal year 1992 and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 45 children; and

(b) when the rated capacity is more than 45 children, an additional 2.13 cents per bus mile for each additional child in the rated capacity in excess of 45 shall be added to a base of 85 cents.

(2) same as current rule.

(3) When the number of eligible transportees boarding a school bus on an approved route is less than one-half of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply that number, determined in subsection (3)(a), by two; and

(c) use the adjusted rated capacity determined in subsection (3)(b) as the rated capacity of the bus to determine the rate per bus mile traveled.

(4) Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school.

(a) Reimbursement for nonbus mileage may not exceed 50% of the maximum reimbursement determined under subsection (1)(a).

(AUTH: 20-3-106, MCA; IMP: 20-10-141, 20-10-142, MCA)

10.7.117 SCHOOL TRANSPORTATION CALENDAR (1) - (1)(e) same as current rule.

(f) Before May ~~15~~ 10--board of trustees transmits the district transportation claims (2 copies) to county superintendent.

(g) ~~June 1~~ May 24--transmittal deadline for second semester transportation claims (1 copy of each district claim) from county superintendent to superintendent of public instruction.

(h) - (w) same as current rule.

(x) Whenever required, after December 31--~~emergency~~ budget amendment proceedings are instituted to provide budget authorization for any transportation which the district is obliged to furnish for pupils who become eligible after budget time, and for which obligation the contingency item is inadequate.

(AUTH: 20-3-106, MCA; IMP: 20-10-112, 20-10-145, MCA)

10.7.118 SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER (1) Form TR-1, Combined School District Application for Registration of School Bus and State Reimbursement:

(a) - (e) same as current rule.

(2) Form TR-2, Additional Pupil List:

(a) Additional pupil list for Form TR-1;

(b) - (d) same as current rule.

(e) County superintendent uses form to verify accuracy of information submitted on TR-1.

(3) ~~T-3, Montana Highway Patrol School Bus Reinspection (used in connection with Form T-10);~~

~~(a) Forms supplied by the superintendent of public instruction;~~

~~(b) Copies of forms supplied upon request;~~

~~(c) Forms used only when a bus did not pass first inspection by the highway patrol.~~ Form TR-4, Elementary and High School Transportation Contract:

(a) Forms supplied by the superintendent of public instruction;

(b) Provided only for contracts entered into by a district and an eligible transportee of the district.

(c) Copies of forms mailed to county superintendents by April 15 of each year;

(d)~~(c)~~ same as current subsection (c).

(e)~~(d)~~ same as current subsection (d).

(f)~~(e)~~ same as current subsection (e).

(g)~~(f)~~ same as current subsection (f).

(4) Form TR-5, School District Claim for State Reimbursement for Individual and Isolated Transportation:

(a) - (b)(i) same as current rule.

(ii) Second semester by May 15;

(c) - (c)(i) same as current rule.

(ii) Second semester~~--immediately after the close of school~~ by May 10;

(d) - (d)(i) same as current rule.

(ii) Second semester~~--immediately after the close of school (By June 20)~~ by May 24.

(e) same as current rule.

(5) Form TR-6, School District Claim for Reimbursement for School Bus Transportation:

(a) - (b)(i) same as current rule.

(ii) Second semester by May 15;

(c) - (c)(i) same as current rule.

(ii) Second semester~~--immediately after the close of school or June 1, whichever comes first~~ by May 10;

(d) - (d)(i) same as current rule.

(ii) Second semester ~~immediately after the close of school (by June 10)~~ by May 24;

(e) same as current rule.

~~(7) Form T-7b, School District Annual Report of Costs of School Bus Route;~~

~~(a) Forms supplied by the superintendent of public instruction;~~

~~(b) Copies mailed to district officials by May 15;~~

~~(c) Forms completed by district officials and due in county superintendent's office by July 10.~~ (6) Form TR-8, School Bus Accident Report to the superintendent of public instruction:

(a) - (c) same as current rule.

~~(8)~~(7) Form TR-9, Physical Examination Report for School

Bus Drivers:

(a) - (c) same as current rule.

(d) School bus drivers may choose to use the physical examination form approved by the department of transportation:

(i) The physical examination form approved by the department of transportation must be used by bus drivers wishing to obtain a Type 1 endorsement.

~~(9)~~(8) Form ~~T-10~~ TR-13, Montana Highway Patrol School Bus Inspection (and reinspection):

(a) Forms supplied by the superintendent of public instruction;

(b) ~~Copies of forms supplied to Montana highway patrol~~ Forms supplied upon request;

(c) Form also used when a bus did not pass first inspection by the highway patrol.

~~(c)~~(d) Completed forms after inspection/reinspection transmitted by Montana highway patrol to:

(i) - (iv) same as current rule.

~~(10)~~(9) Form TR-35, Montana School Bus Driver Certificate:

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

(AUTH: 20-3-106, MCA; IMP: 20-10-112, 20-10-145, MCA)

3. The amendments are necessary as the rules are not current as written.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment and adoption of rules relating to special accounting practices	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES RELATING TO SPECIAL ACCOUNTING PRACTICES

To: All interested persons

1. On January 8, 1992, at 1:00 p.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the amendment and adoption of rules pertaining to special accounting practices.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules are located at pages 10-107 through 10-112 and 10-117 through 10-120, ARM.

10.10.301 FORMULA FOR CALCULATING REGULAR EDUCATION TUITION (1) The following formulas shall be used by school districts to calculate maximum tuition charges for regular education as of March 15 of each school year. Sources for data used in the formula shall be the trustees annual financial ~~report~~ summary for the previous fiscal year, ~~and~~ the pupil data reports used for the ~~current~~ previous fiscal year, and the school accreditation fall report of student enrollment from the previous fiscal year.

~~(a) The calculation of tuition at kindergarten, elementary and high school levels shall not exceed the actual costs incurred.~~

~~(b)~~(2) ~~(EFFECTIVE FROM ADOPTION THROUGH JUNE 30, 1991)~~ The formula for calculating elementary tuition shall be as follows:

	In County	Out of County
A) Total Fund 101 Expenditures (last FY)	_____	_____
B) Total Fund 114 Expenditures (last FY)	XXXXXXX	_____
C) Total Fund 150 Expenditures (last FY)	_____	_____
D) Total (line A + B + C)	_____	_____
E) ~~ANB~~ Enrollment (~~current FY budget~~ last FY)	_____	_____
F) Line D divided by line E	_____	_____
G) County Equalization Revenue (last FY) (Revenue Code 101-2110)	_____	_____
H) State Equalization Revenue (last FY) (Revenue Code 101-3110 and 101-3111)	_____	_____
I) ~~State Permissive~~ Guaranteed Tax Base for General Fund [Statewide mill value per elementary ANB (last FY) * ANB] * number of General Fund Permissive mills levied (last FY) _____ * _____ =	_____	_____
J) Guaranteed Tax Base Revenue for Retirement Fund [Statewide mill value per elementary ANB (last FY) * ANB] * number of Retirement Fund mills levied (last FY)	XXXXXXX	_____
K) Total (Line G + H + I + J)	_____	_____

	In County	Out of County
L) ANB (last FY)		
~~K)~~ M) Line ~~J~~ K divided by line ~~E~~ L		
~~L)~~ N) Line F minus line ~~K~~ M		

~~(b) (EFFECTIVE JULY 1, 1991*) The formula for calculating elementary tuition shall be as follows:~~

	~~In County~~	~~Out of County~~
~~A) Total Fund 101 Expenditures (last FY)~~		
~~B) Total Fund 114 Expenditures (last FY)~~	~~XXXXXXX~~	
~~C) Total Fund 150 Expenditures (last FY)~~		
~~D) Total (line A + B + C)~~		
~~E) ANB (current FY budget)~~		
~~F) Line D divided by line E~~		
~~G) County Equalization Revenue (last FY)~~		
~~(Revenue Code 101-2110)~~		
~~H) State Equalization Revenue (last FY)~~		
~~(Revenue Code 101-3110)~~		
~~I) Guaranteed Tax Base Aid (last FY)~~		
~~(Revenue Code 101-3120)~~		
~~J) Total (Line G + H + I)~~		
~~K) Line J divided by line E~~		
~~L) Line F minus line K~~		

~~[*Although the new tuition calculation identified in section 20-5-305, MCA is effective July 1, 1990, final state assistance for he guaranteed tax base subsidy will not be known until the following fiscal year.]~~

~~(c)~~ (3) ~~(EFFECTIVE FROM ADOPTION THROUGH JUNE 30, 1991)~~ The formula for calculating high school tuition, shall be as follows:

	In County	Out of County
A) Total Fund 201 Expenditures (last FY)		
B) Total Fund 214 Expenditures (last FY)	XXXXXXX	
C) Total Fund 250 Expenditures (last FY)		
D) Total (line A + B + C)		
E) ~~ANB~~ Enrollment (~~current FY budget~~ last fiscal year)		
F) Line D divided by line E		
G) County Equalization Revenue (last FY) (Revenue Code 201-2110)		
H) State Equalization Revenue (last FY) (Revenue Code 201-3110 and 201-3111)		
I) ~~State Permissive~~ Guaranteed Tax Base for General Fund [Statewide mill value per high school ANB (last FY) * ANB] * number of General Fund Permissive mills levied (last FY)		
* =		
J) Guaranteed Tax Base Revenue for Retirement Fund [Statewide mill value per high school ANB (last FY) * ANB] * number of Retirement Fund mills levied (last FY)	XXXXXXX	
K) Total (Line G + H + I + J)		
L) ANB (last FY)		
~~K)~~ M) Line ~~J~~ K divided by line ~~E~~ L		

~~L)~~ N) Line F minus line ~~K~~ M

~~(c) (EFFECTIVE JULY 1, 1991*) The formula for calculating high school tuition shall be as follows:~~

	~~In County~~	~~Out of County~~
~~A) Total Fund 201 Expenditures (last FY)~~		
~~B) Total Fund 214 Expenditures (last FY)~~	XXXXXXX	
~~C) Total Fund 250 Expenditures (last FY)~~		
~~D) Total (line A + B + C)~~		
~~E) ANB (current FY budget)~~		
~~F) Line D divided by line E~~		
~~G) County Equalization Revenue (last FY)~~		
~~(Revenue Code 101-2110)~~		
~~H) State Equalization Revenue (last FY)~~		
~~(Revenue Code 201-3110)~~		
~~I) Guaranteed Tax Base Aid (last FY)~~		
~~(Revenue Code 201-3120)~~		
~~J) Total (Line G + H + I)~~		
~~K) Line J divided by line E~~		
~~L) Line F minus line K~~		

~~[*Although the new tuition calculation identified in section 20-5-305~~12~~, MCA is effective July 1, 1990, final state assistance for he guaranteed tax base subsidy will not be known until the following fiscal year.]~~

(4) The formula for calculating elementary and high school tuition for K-12 districts in the second year after formation of a K-12 district and thereafter, shall be as follows:

	In County	Out of County
A) Total Fund 201 expenditures (last FY)		
B) Total Fund 214 expenditures (last FY)	XXXXXXX	
C) Total Fund 250 expenditures (last FY)		
D) Total (line A + B + C)		
E) Percent established in 10.30.406(1)(b)(i)		
(i) elementary ____%		
(ii) high school ____%		
F) Total		
(i) elem line D) times E)(i)		
(ii) high school line D) times E)(ii)		
G) Enrollment (last FY)		
(i) elementary (K through 8)		
(ii) high school (9 through 12)		
H) Elementary line F)(i) divided by G)(i)		
I) High School line F)(ii) divided by G)(ii)		
J) Foundation Program revenue (last FY)		
(i) elementary level		
(ii) high school level		
K) GTB for General Fund		
(i) [statewide mill value per elementary ANB (last FY) * elementary ANB] * number of GF permissive mills levied for elementary permissive (last FY)		

(ii) [statewide mill value per high school ANB (last FY) * high school ANB] * number of GF permissive mills levied for high school permissive (last FY) _____

L) GTB for Retirement Fund [statewide mill value per high school ANB (last FY) * district ANB * number of Retirement Fund mills levied (last FY)]

(i) line L times elementary ANB XXXXXXX

(ii) line L times high school ANB XXXXXXX

M) Total

(i) elem line J)(i) + K)(i) + L)(i) _____

(ii) HS line J)(ii) + K)(ii) + L)(ii) _____

N) ANB (last FY)

(i) elementary _____

(ii) high school _____

O) Elementary line M)(i) divided by N)(i) _____

P) H School line M)(ii) divided by M)(ii) _____

Q) Elementary maximum tuition rate line H) minus line O) _____

R) High school maximum tuition rate line I) minus line P) _____

(5) The calculations used to determine the maximum elementary or high school tuition rate, pursuant to subsections (3) and (4), shall be provided by the trustees as part of the tuition reports to the county superintendents, provided pursuant to sections 20-5-306 and 20-5-312, MCA. The county superintendent shall provide a copy of the calculations to the superintendent of each county in which the reported pupils reside. In turn, each county superintendent shall provide a copy of the calculations to each district in his county which owes tuition amounts to other districts, and to each parent who owes tuition payments to a district.

(6) The calculations in subsections (2) and (3) are the maximum regular education tuition charge. Pursuant to section 20-5-306, MCA, the trustees may waive any or all of the calculated tuition amount, provided that any waiver of tuition is applied equally to all students.

(AUTH: 20-5-305, 20-5-312, MCA; IMP: 20-5-305, 20-5-312, 20-6-702, MCA)

10.10.302 PAYMENT AND CLOSING OF PRIOR YEAR ACCRUED EXPENDITURES AND ENCUMBRANCES (1) In order to comply with sections 20-9-121, 20-9-206, 20-9-212, and 20-9-222, MCA, for budgetary control purposes, the county treasurer shall add the total of accrued expenditures and encumbrances reported by the district for ~~in~~ the prior year's ~~Trustee's Annual Financial Report~~ to the current year's budget for each fund.

(2) A list showing the detail and total amount of accrued expenditures and encumbrances reported by fund shall be provided by the district to the county treasurer ~~no later than August 1st~~. A copy of the list and supporting documentation shall be retained by the district for audit purposes. If the list cannot be provided to the county treasurer by July 10, the county

treasurer will report "Information Not Available" on the county treasurer's statement of cash balances and bond information required by section 20-9-121, MCA.

(3) same as current rule.

(4) All accrued expenditures and encumbrances ~~reported on the~~ , except contracts for construction, for the prior year~~'s trustees' annual financial report~~ must be closed by the district before June 30th of the current year.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-102, 20-9-201, 20-9-209, MCA)

10.10.309 DISTRIBUTION **AND REAPPROPRIATION** OF COUNTY-WIDE ~~RETIREMENT~~FUNDS (1) same as current rule.

(2) The cash balances in the elementary and high school county-wide ~~retirement fund at fiscal year end must be zero if distributions to school districts are less than 100% of the total net district requirements for the current or prior years.~~ equalization funds must be distributed based on the calculation provided in section 20-9-347, MCA. The cash balance in the county transportation fund must be distributed as provided in section 20-10-146, MCA.

(3) When distributing county equalization money for a given year, the county superintendent must ensure that no district receives equalization payments in excess of that year's foundation schedule amount for the district as provided in sections 20-9-318 and 20-9-319, MCA.

(4) Counties which anticipate funding 100% of their foundation program with the basic elementary or high school county equalization levies shall remit surplus county equalization funds to the state treasurer as required by section 20-9-331 and 20-9-333, MCA.

(5) Counties which, during the current year, collect county equalization revenues that were budgeted to fund a prior year's foundation program, must distribute those revenues to districts, funding up to 100% of the districts' foundation program for that prior year.

(a) Once the foundation program for a given year has been funded 100%, any additional collections of county equalization revenues for that year may be used to fund the next subsequent year's foundation program.

(b) Once the foundation programs for all subsequent years have been funded 100%, additional collections must be reappropriated to reduce state equalization payments to the county in the following fiscal year.

~~(3)~~(6) The cash balance in the elementary and high school county-wide retirement and transportation funds at fiscal year end must be reappropriated ~~to reduce the levies~~ in the following fiscal year once distributions to school districts for the current and prior years are 100% of the total net district requirements ~~for the current or prior years~~ and the reserve permitted by section 20-10-146, MCA, has been provided for.

(AUTH: 20-9-102, MCA; IMP: 20-9-213, MCA)

10.10.501 COUNTY TREASURER'S FINANCIAL REPORTS (1) As

provided by section 20-9-212, MCA, the county treasurer's monthly report shall include an itemized report for each fund maintained by the school district showing the paid warrants, registered warrants, amounts and types of revenue received, and the cash balance.

(a) The county treasurer should consider including copies of A101 receipts and other supporting documentation with the monthly report or sending this information to each school district as received.

(b) The county treasurer's June report must include all moneys collected on behalf of school districts through June 30.

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

(4) Before closing the accounts for each fiscal year, each school district shall reconcile, ending cash, investments, taxes receivable balances, accrued interest receivable, unpaid outstanding bonds, and matured interest payable reported by the county treasurer with the district records for all funds. Significant cash differences shall be explained in the annual financial reports submitted to the superintendent of public instruction. Adjustments to the school district records shall be made prior to closing the accounts. Adjustments to the county treasurer's records shall be made as necessary in the current fiscal year or next fiscal year.

(5) As provided by section 7-6-2801, MCA, the county treasurer shall provide an itemized report for each fund maintained by the county superintendent showing the distributions ordered by the county superintendent, amounts and types of revenue received, the cash balance, investments, and taxes receivable balances.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-121, 20-9-212, 20-9-442, MCA)

10.10.504 FUNDING ADJUSTMENTS FOR PRIOR/CURRENT YEAR REPORTING ERRORS (1) The office of public instruction conducts several checks on the accuracy of data reported by trustees, county treasurers, county superintendents of schools and school districts. If errors are found in data reported as a result of these checks, or if an error is brought to the office of public instruction's attention by the district, county or another outside party, the office of public instruction will require an amended report or budget to be submitted and will make any necessary adjustment to the district's prior year and/or current year state equalization aid payments. ~~ADJUSTMENTS TO GUARANTEED TAX BASE AID PAYMENTS DUE TO PRIOR/CURRENT YEAR REPORTING ERRORS ARE DISCUSSED IN CHAPTER 45.~~

(2) - (4) remains the same.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-344, MCA)

3. The proposed rules for adoption follow.

RULE I DEFINITIONS (1) For purposes of determining tuition rates the following definitions shall apply:

(a) "ANB value per mill" means the 'statewide mill value per elementary ANB' or the 'statewide mill value per high school

ANB' as defined in section 20-9-366(4), MCA.

(b) "Enrollment" means the October 1 enrollment of the district reported to the office of public instruction on the Montana school accreditation school fall report.

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

RULE II UNOBLIGATED SPECIAL EDUCATION AND TUITION MONIES IN THE MISCELLANEOUS PROGRAMS FUND (1) If, for any given year, special education monies deposited in the miscellaneous programs fund under section 20-9-321, MCA, remain unobligated at year end, the monies shall be transferred to the general fund prior to closing of the accounts for that fiscal year.

(2) If, for any given year, tuition monies deposited in the miscellaneous programs fund under section 20-9-507, MCA, remain unobligated at year end, the monies shall be transferred to the general fund prior to the closing of the accounts for that fiscal year.

(AUTH: 20-9-102, MCA; IMP: 20-9-321, 20-9-507; MCA)

RULE III BUS DEPRECIATION RESERVE FUND (1) Section 20-10-147, MCA, allows school districts to each year budget in a bus depreciation reserve fund an amount that does not exceed 20% of the original cost of a bus or a two-way radio. Section 20-10-147, MCA, was amended effective July 1, 1991 to state that the amount budgeted may not, over time, exceed 150% of the original cost of the bus or radio.

(2) The depreciation on a bus that prior to July 1, 1991 was depreciated 100% or less, may be increased to 150% of its original cost, provided the bus is being used on a regular basis for school purposes. Buses not used after July 1, 1991 because, for example, they are in poor condition, may not be depreciated beyond 100% of their original cost.

(3) Annual depreciation may not exceed 20% of the bus or radio's original cost.

(4) The cost of new parts added after the original purchase of a bus or radio may not be depreciated.

(AUTH: 20-9-102, MCA; IMP: 20-9-147, MCA)

4. Rule changes are needed to clarify the district's responsibility to provide the county treasurer certain information and to recognize that the county treasurer's ability to in turn provide certain information to the Office of Public Instruction is dependent on school district compliance with statute and rule. Adopted rules are necessary to provide a procedure by which school districts can account at year end for unexpended special education and tuition monies that, under recently enacted legislation, are to be accounted for in the miscellaneous programs fund for one year only. ARM 10.10.312 is needed to provide a procedure for applying recent legislation to buses purchased prior to its enactment and to clarify that the law applies only to the original cost of a bus or radio, and not to added parts. ARM 10.10.309 is amended to ensure consistent treatment by counties of prior year county equalization monies collected in the current year. Changes in the reporting rules

are necessary to require the county treasurer to provide reports on all funds, including both school district and county-wide funds that affect a school district's ability to comply with statutory accounting and reporting requirements.

5. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment and adoption of rules relating to average number belonging (ANB)	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES RELATING TO AVERAGE NUMBER BELONGING

To: All interested persons

1. On January 8, 1992, at 9:00 a.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the amendment and adoption of rules pertaining to average number belonging.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules is located at pages 10-301 through 10-306, ARM.

10.20.101 DEFINITIONS For purposes of calculating ANB, the following definitions shall apply:

(1) - (2) same as current rule.

(3) "budget unit" means the unit for which the ANB of a district is aggregated for all regularly enrolled, full-time students and includes the following funding groups:

(a) same as current rule.

(b) any school located more than 3 miles on the shortest passable road from another school of the district and more than 3 miles beyond the incorporated limits of a city or town, if a city or town is located in the district, ~~or from another school of the district~~ will calculate ANB as a budget unit separate from the other schools of the district,

(i) schools that are located more than 3 miles beyond the incorporated limits of a city or town but within 3 miles of each other will have their ANB calculated together as a single budget unit separate from the other schools of the district.

(c) schools that are located in a district that does not include an incorporated city or town and are within 3 miles of each other will be considered a single budget unit.

~~(c)~~(d) those students in the 7th and 8th grade who are enrolled in programs which were approved and accredited by the board of public education will be considered high school pupils for ANB purposes.

(4) - (13) same as current rule.

(AUTH: 20-9-102, 20-9-369, 20-9-346, MCA; IMP: 20-9-313, 20-9-314, MCA)

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) same as current rule.

(2) The superintendent of public instruction shall determine the appropriate budget unit for the ANB calculation and the foundation program for the district.

(a) Districts with separate budget units in school year 1990-91 that will be required to aggregate ANB with another

district budget unit in accordance with section 20-9-311, MCA, and 10.20.101(3) will receive phased-down foundation program reductions for school fiscal years 1992 through 1996 based on the following annual calculations:

(i) for school fiscal year 1992: one-fifth of the foundation program difference between the amount calculated using the aggregation of ANB required by 20-9-311 (3) and the amount calculated using the separate budget units as established in 1990-91.

(ii) for school fiscal year 1993: two-fifths of the foundation program difference between the amount calculated using the aggregation of ANB required by 20-9-311 (3) and the amount calculated using the separate budget units as established in 1990-91.

(iii) for school fiscal year 1994: three-fifths of the foundation program difference between the amount calculated using the aggregation of ANB required by 20-9-311 (3) and the amount calculated using the separate budget units as established in 1990-91.

(iv) for school fiscal year 1995: four-fifths of the foundation program difference between the amount calculated using the aggregation of ANB required by 20-9-311 (3) and the amount calculated using the separate budget units as established in 1990-91.

(v) for school fiscal year 1996: 100% of the reduction in foundation program difference between the amount calculated using the aggregation of ANB required by section 20-9-311(3) and the amount calculated using the separate budget units as established in 1990-91.

(b) The ANB generated by a budget unit that is subsequently closed, shall be added to the ANB of another budget unit of the district in the first two years after the closing of a budget unit, if students are enrolled in the other budget unit.

(3) If the school district budget report indicates calculation of foundation program for a separate budget unit because of location more than 3 miles on the shortest passable road beyond the incorporated limits of a city, town, or another school of the district, but the school does not meet the criteria for a separate budget unit as set out in ARM 10.20.101(3), the superintendent of public instruction shall aggregate the regularly enrolled, full-time pupils with the appropriate budget unit.

(4) - (7) same as current rule.

(8) A maximum of one-half ANB for pupil-instruction days will be allowed for each kindergarten pupil in an approved five-year-old schooling program.

(a) The ANB will be reported by semester and computed in accordance with any variance which was granted as provided in section 20-3-302, MCA, if the approved variance does not exceed a total of 90 kindergarten pupil-instruction days in one school year.

(b) If the approved variance exceeds a total of 90 kindergarten pupil-instruction days in one school year, the district shall not report for the purposes, any kindergarten

attendance or absence that exceeds a total of 90 pupil-instruction days. If the variance exceeds a total of 90 kindergarten pupil instruction days in the first semester, the district shall report only the first 90 pupil-instruction days for kindergarten students. Kindergarten attendance and absences for pupil-instruction days in excess of 90 for the school year shall be reported separately and will not be counted for ANB purposes.

(9) - (19) same as current rule.

(20) For purposes of determining the foundation program of a district, ANB will be calculated using the following method:

(a) the total aggregate days present and absent for the second and the first semesters reported by the school district to the office of public instruction, pursuant to section 20-9-311, MCA, will be added together and then divided by 180 to determine an attendance ANB;

(aggregate days present for 2 semesters for PI days)
+ (aggregate days absent for 2 semesters for PI days)
= (total aggregate days present and absent for PI days)
divided by 180 = (attendance ANB)

(b) additional approved ANB, as determined in 10.20.103, will be added to calculate the average ANB for PI days;

(attendance ANB)
+ (additional approved ANB)
= (average ANB for PI days)

(c) the average ANB for PI days, calculated in (20)(b), will be multiplied by the approved number of PIR days to determine the calculated aggregate PIR days;

(average ANB for PI days) X (number of PIR days) =
(calculated aggregate PIR days)

(d) the calculated aggregate PIR days from (20)(c) will be added to the total aggregate days present and absent for PI days (4)(a) and divided by 180 to determine the PIR-PI days ANB;

(calculated aggregate PIR days)
+ (total aggregate days present and absent for PI days)
(aggregate PIR and PI days) divided by 180 =
(PIR-PI days ANB)

(e) additional approved ANB (20)(b) will be added to the PIR-PI days ANB to obtain the ANB calculation for foundation program payments.

(PIR and PI days ANB)
+ (additional approved ANB)
(ANB calculation for foundation program payments)

(f) Regardless of the number of calculated ANB, district's foundation program payments will be terminated if no students are enrolled.

(AUTH: 20-9-102, 20-9-369, 20-9-346, MCA; IMP: 20-9-313, 20-9-314, MCA)

3. The proposed rule for adoption follows.

RULE I UNUSUAL ENROLLMENT INCREASE - FOUNDATION PROGRAM

PAYMENT (1) School district trustees may apply to the superintendent of public instruction for increased payment from the state public school equalization aid account for unusual elementary or high school enrollment increases that exceed 6% of the enrollment in the fiscal year prior to the year for which the increase is requested.

(a) Eligibility to receive state public school equalization aid for unusual elementary or high school enrollment increases will be computed using the following calculations pursuant to 20-9-314:

(i) If a final budget amendment resulting from increased enrollment has been adopted pursuant to section 20-9-161 through 20-9-166, MCA, the calculations are as follows:

(A) enrollment as submitted on budget amendment _____
(B) enrollment (Oct 1) for FY preceding year in (A) _____
(C) ANB for funding current fiscal year _____
(D) ANB for FY preceding year in (C) _____
(E) enrollment increase (A - B) _____
(F) 6% of preceding FY enrollment (B * .06) _____
(G) increased ANB for unusual enrollment increase (E - F) _____

(ii) If the unusual enrollment increase has been approved by the superintendent pursuant to section 20-9-313(4), MCA, the calculations are as follows:

(A) enrollment (Oct 1) for current fiscal year _____
(B) estimated enrollment (Oct 1) for ensuing year _____
(C) ANB for current year _____
(D) ANB for ensuing year _____
(E) enrollment increase (B - A) _____
(F) 6% of current enrollment (A * .06) _____
(G) increased ANB for unusual enrollment increase (E - F) _____

(AUTH: 20-3-106, MCA; IMP: 20-9-166, MCA)

4. The 52nd Legislature, in HB 462 and SB 17, revised the method of determining ANB for funding programs. Revision of the rules is necessary to conform to this legislation.

5. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment and repeal of rules relating to guaranteed tax base (GTB)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND REPEAL OF RULES RELATING TO GUARANTEED TAX BASE (GTB)

To: All interested persons

1. On January 8, 1992, at 1:00 p.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the amendment and repeal of rules pertaining to guaranteed tax base.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules is located at pages 10-313 through 10-320, ARM.

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

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

(b) same as current rule.

(c) "Statewide mill value per elementary ANB" ~~for permissive mill levy GTB calculations~~ is the total of the taxable valuation of all elementary districts in the state as reported to the Department of Revenue, based on information delivered to the county clerk and recorder as required in 15-10-305, MCA, for the tax year prior to the year in which the GTB calculation is being made, ~~plus the taxable value of the nontax revenue of all the elementary districts in the state~~ divided by 1,000, divided by the total of the statewide elementary ANB used to determine the foundation schedule funding for ~~of all the elementary districts in the state~~ the school year prior to the school year for which the calculation is being made.

(d) "Statewide mill value per high school ANB ~~for permissive mill levy GTB calculations~~" is the total of the taxable valuation of all high school districts in the state as reported to the Department of Revenue, based on information delivered to the county clerk and recorder as required in 15-10-305, MCA, for the tax year prior to the year in which the GTB calculation is being made, ~~plus the taxable value of the nontax revenue of all the high school districts in the state~~ divided by 1,000, divided by the total of the statewide high school ANB used to determine the foundation schedule funding for ~~of all the high school districts in the state~~ the school year prior to the school year for which the calculation is being made.

(e) ~~"Statewide mill value per elementary ANB for retirement levy GTB calculations" is the total of the taxable valuation of all counties in the state plus the taxable value of the nontax~~

~~revenue of all elementary retirement funds in the state divided by 1,000 divided by the total elementary ANB of the state.~~

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

~~(g)~~ "Statewide mill values per ANB" in (c) ~~through (f)~~ and (d) are expressed by the mathematical formula:

~~{{taxable valuation + taxable value of nontax revenue}/1000}/ANB=~~For FY92, the statewide mill value per ANB = FY91 statewide taxable valuation/1000/total statewide elementary or high school ANB as used to determine foundation schedule funding for FY91.

(f)~~(h)~~ "OPI" is the office of public instruction.

(g)~~(i)~~ "DOR" is the department of revenue.

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

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

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

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

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

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

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

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

~~(vi) coal gross proceeds tax (section 15-23-701, MCA). In calculating a district mill value per ANB for FY 1991, the following revenues deposited during the period June 1, 1989 through May 31, 1990 into the district's comprehensive insurance fund must also be included in the "nontax revenue included in the guaranteed tax base (GTB) calculation": light vehicle and motorcycle fees (sections 61-3-504 and 61-3-357, MCA); recreational vehicle fees, including motor homes (61-3-522, MCA), travel trailers (61-3-523, MCA), campers (61-3-523, MCA), off-road vehicles (23-2-803, MCA), snowmobiles (23-2-615, MCA), boats (23-2-517, MCA), and airplanes (67-3-205, MCA); and personal property tax reimbursement (15-1-111, MCA).~~

~~(b) "Mills" are the mills as certified by the county clerk and recorder levied for support of the elementary or high school~~

~~district's general fund in the August preceding the calendar year in which the GTB calculation is made. For the FY91 GTB calculation, the mills levied in August 1989 for support of the elementary or high school district comprehensive insurance fund must be included with the mills levied for the general fund. In the GTB calculation, mills are expressed as in mill form. For example, 20.58 mills is expressed as 20.58.~~

~~(c)~~ "Taxable valuation" is the value of all the taxable property in the elementary or high school district as reported to the DOR based on information delivered to the county clerk and recorder as required in section 15-10-305, MCA ~~certified in accordance with sections 15-8-706 and 15-10-202, MCA,~~ for the tax year prior to the year in which the GTB calculation is being made.

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

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

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

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

(e)~~(h)~~ "District mill value per ANB" in (c) and (d), is expressed by the mathematical formula: ~~((taxable value + taxable value of nontax revenue)/1,000)/ANB=~~ district mill value per ANB = district taxable valuation/1000/ANB used to determine the district's foundation schedule funding (i.e., for FY92, the district mill value per ANB = FY91 district taxable valuation/1000/ANB used to determine the foundation schedule funding for FY91.

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

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

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

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

~~(iii) personal property tax reimbursement (section 15-1-111, MCA);~~
~~(iv) local government severance tax (section 15-36-101, MCA);~~
~~(v) coal gross proceeds tax (section 15-23-701, MCA); and~~
~~(vi) forest reserve funds (section 17-3-213, MCA).~~

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

~~(c)~~ "Taxable valuation" is the value of all the taxable property in the county as reported to the Department of Revenue based on information delivered to the county clerk and recorder as required in section 15-10-305, MCA ~~certified in accordance with sections 15-8-706 and 15-10-202, MCA,~~ for the tax year prior to the year in which the GTB calculation is being made.

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

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

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

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

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

(f)~~(i)~~ "County mill value per ANB" in (d) and (e), is expressed by the mathematical formula:
~~{[taxable value + taxable value of nontax revenue]/1000}/ANB =~~ county mill value per ANB = county taxable valuation/1000/total elementary or high school ANB used to determine foundation schedule funding (i.e., for FY92, the county mill value per ANB = FY91 county taxable valuation/1000/total of the elementary or high school ANB in the county used to determine foundation schedule funding for FY91.

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

10.21.103 CALCULATION OF MILL VALUES PER ANB AND GTB AID PAYMENTS

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

(2) On or before March 1 ~~June 15~~ of each year, OPI will send notice to each school district and county of its preliminary mill value per ANB and the preliminary statewide mill value per ANB. The notice to each district or county will show the DOR's determination of taxable value for that district or county, ~~the nontax revenue used in the GTB calculation, the mills,~~ and the ANB used to calculate the mill value per ANB for that district or county.

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

(a) if the alleged error involves ANB data or calculation of GTB mill values, the official shall contact OPI in writing by ~~July 1~~ April 15, detailing the alleged error and providing the necessary information to make corrections. Upon receipt of written notification and the required information, OPI will review the calculation and make corrections, if warranted. Any notification of error received after April 15 ~~July 1~~ will not be taken into account in establishing the final statewide, district, and county mill values per ANB;

(b) ~~if the alleged error involves nontax revenue, the official shall contact the county treasurer in the county in writing by July 1, detailing the alleged error and requesting correction be made. A copy of the letter to the county treasurer must be mailed to OPI. The county treasurer shall send notice to OPI by July 3 of any necessary change in nontax revenue data. OPI will make any changes received by July 3 in accordance with ARM 10.21.102(4); or~~

~~(c)~~ if the alleged error involves taxable valuation, the official shall contact the county assessor of his county in writing by April 1 ~~June 25~~, detailing the alleged error and requesting correction be made. Copies of the letter to the county assessor must be mailed to OPI and the Property Assessment Division, Department of Revenue, Steamboat Block Building, Helena Avenue, Helena, MT 59601. DOR will make any necessary change and notify OPI of the change, in writing, prior to April 15 ~~include the revised taxable valuation in the final determination of taxable valuations for each district and county sent to OPI by July 1 of each year, in accordance with section 20-9-369, MCA~~. Any changes received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB.

(4) OPI shall calculate final statewide, county, and district mill values per ANB by May 1 ~~July 15~~ of each year.

(5) On or before May 1 ~~July 15~~ of each year, OPI will send notification to each district and each county of its final mill value per ANB and the statewide mill values per ANB.

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

(a) have a mill value per ANB lower than the applicable statewide mill value per ANB, as defined in ARM 10.21.101(1)(c) ~~through (f)~~ and (d); and

(b) same as current rule.

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

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

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

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

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

~~(10)~~(9) Net retirement levy requirements for joint districts and districts that are members of full service ~~special~~ education cooperative agreements are calculated in accordance with section 20-9-501, MCA. GTB aid available to the retirement funds of the counties in which these districts are located is calculated based on the county mill value per elementary or high school ANB for each county involved and the retirement mills levied in that county.

~~(11)~~(8) Within 60 days after receiving the certified copy of permissive levy; ~~emergency~~ budget amendment mill levy meeting the requirements of subsection (7); or retirement mill levy as required in ~~ARM 10.21.102(8)~~ subsection (10), OPI will calculate the amount of GTB aid each eligible district and county will receive ~~based on the final district, county, and statewide mill values per ANB and the certified permissive and retirement mill levies~~.

(a) The amount of GTB aid a district or county will receive will be based on the final district, county, and statewide mill values per ANB, the elementary or high school ANB certified for the school year for which the GTB calculation is being made, and the certified permissive and retirement mill levies.

(b) The formula for determining the amount of subsidy a district will receive in support of the general fund is expressed as: subsidy = (statewide mill value per ANB - district mill value per ANB) x ANB x general fund permissive mills levied (i.e., for FY92 = (Statewide mill value per elementary or high school ANB - District mill value per ANB) x certified district FY92 ANB x certified district FY92 general fund permissive mills levied. The product of this calculation

will be rounded to the nearest whole dollar to determine the amount of the subsidy payment.

(c) The formula for determining the amount of subsidy a county will receive in support of the elementary or high school retirement fund is expressed as: subsidy = (statewide mill value per ANB - county mill value per ANB) x ANB x elementary or high school retirement fund mills (i.e., for FY92 = (Statewide mill value per elementary or high school ANB - county mill value per elementary or high school ANB) x the total of the certified elementary or high school FY92 ANB x certified county FY92 elementary or high school retirement fund mills levied.

(AUTH: 20-6-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

10.21.104 DISTRIBUTION AND REVERSION OF GTB AID (1) The following rule is effective for GTB reversion calculations relative to school fiscal years 1990-1991 and subsequent years.

(~~1~~2) OPI will distribute GTB aid to districts and counties that meet the requirements of section 20-9-367, MCA, and ARM 10.21.103(6) in the manner provided by section 20-9-344(6), MCA ~~on the following schedule: 40% of the total GTB aid for the fiscal year within 60 days after receipt of the copy of certified mills as required in ARM 10.21.102(8), at least 7% of the total each month thereafter, with the balance paid during the last month of the fiscal year~~.

(~~2~~3) same as current subsection (2).

(~~3~~4) In accordance with section 20-9-368(4), MCA, districts will revert guaranteed tax base aid in proportion to the permissive amount budgeted in the general fund but not expended. Counties will revert guaranteed tax base aid for retirement expenditures in proportion to the total district amounts budgeted but not expended by the districts.

(a) For purposes of calculating the general fund GTB reversion, "permissive amount budgeted" includes the foundation program amount as defined in ARM 10.22.101(1)(b), and the permissive amount as defined in ARM 10.23.101(1).

(b) Formula to calculate amount of GTB reversion:

General Fund Reversion	Retirement Reversion
A) foundation program amount	A) total retirement budget
B) permissive amount	B) total ret. expenditures
C) total permissive budget (A + B)	C) percent expended (B / A)
D) total GF expenditures	D) percent of GTB reverted (1 - C)
E) percent permissive expended (D / C)	E) total ret. GTB subsidy
F) percent of GTB reverted (1 - E)	F) total ret. GTB reversion (D x E)
G) total GF GTB subsidy	
H) total GF GTB reversion (F x G)	

(c) OPI will adjust expenditures/transfers out for disbursements illegally made from the general fund or retirement fund.

(5) To ensure that GTB aid reversions are being made in accordance with section 20-9-368, MCA, OPI will calculate the

amount of the reversion from data contained in reports districts and counties are required to submit to OPI. OPI will deduct the amount of the reversion from the equalization and GTB aid payments made to the district or county during the next fiscal year.

(6) In the instance where a ~~district or~~ county must revert GTB aid but will not receive equalization or GTB aid in the next fiscal year and no cash is immediately available to ~~districts or counties~~ the county for direct reversion, the GTB reversion liability shall ~~carry forward until paid~~ be added to the next year's levy. In December, the county shall remit the GTB reversion liability to the state treasurer with the county collection report prior to making the regular distribution to the schools.

~~Formula to calculate amount of GTB reversion:~~

~~[(total amount budgeted - total actual expended) x (GTB subsidy/total amount budgeted)]~~

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

3. The proposed rule for repeal follows. Full text of the rule is located at pages 10-316 and 10-317, ARM.

10.21.102 DATA USED IN GTB CALCULATIONS

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

4. Revisions are necessary because HB 580 (L. 1991) 1) removed non-tax revenue from the calculation of district, county and statewide mill values; and 2) changed the dates for calculation of mill levies.

5. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment and adoption of rules relating to spending and reserve limits	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES RELATING TO SPENDING AND RESERVE LIMITS

To: All interested persons

1. On January 8, 1992, at 9:00 a.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the amendment and adoption of rules pertaining to spending and reserve limits.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules is located at pages 10-325 through 10-328, ARM.

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

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

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

(b)~~(c)~~ "General fund budget," as defined in section 20-9-301, MCA, includes the amount of any ~~emergency~~ budget amendments for the general fund adopted during the fiscal year, in accordance with 20-9-161 through 20-9-165, MCA, and approved under 20-9-147, MCA.

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

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

~~(f) (Effective through June 30, 1990) "Foundation program entitlement" is the total foundation program amount the district is entitled to receive from the foundation program schedules, as provided in sections 20-9-316 through 20-9-320, MCA, plus 80% of special education allowable costs, as provided in 20-9-321, MCA.~~

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

(c) "Base-building expenditures" refers to school district expenditures of an on-going nature that have been approved by the superintendent of public instruction for inclusion in the district's general fund budget limitation in 20-9-315, MCA.

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

~~(e)(i)~~ "Superintendent" is the superintendent of public instruction.

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

10.22.102 SPENDING LIMITS (1) - (1)(b) same as current rule.

(2) For purposes of determining the spending limit:

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

~~(b)~~ For school districts participating in a full service cooperative for special education programs ~~cooperatives~~, "foundation program amount" shall include a portion of the payments received by the full service ~~a special education~~ cooperative in support of special education programs. This apportionment will be weighted based on each participating district's student enrollment and special education child count. By ~~May~~ March 1 of each year, OPI will notify each school district participating in a cooperative of its apportioned payments for use in setting its spending limits for the ensuing school fiscal year.

~~(b)(c)~~ Districts receiving Public Law 81-874 funds may exceed the spending limits in (1) by the amount of Public Law 81-874 funds the district anticipates receiving during the ensuing school fiscal year ~~are not included in calculating the spending limit~~.

(3) - (4) same as current rule.

(5) If the superintendent does not receive the revised budget within 35 days after initial notice to the district, he shall give written notice of the violation to the board of public education and the county attorney of the county in which the district is located. ~~The board of public education may, pursuant to section 20-9-344, MCA, order the office of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from the district.~~

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

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

(2) ~~(Temporary - effective through June 30, 1990) Except as provided in section 2-9-111, MCA, the trustees shall combine~~

~~the fiscal year 1990 end-of-the-year balance in the comprehensive insurance fund and the comprehensive insurance reserve fund with the fiscal year 1990 end-of-the-year balance of the general fund. This combined balance shall be used in determining the amounts available for reserves and as cash reappropriated for fiscal year 1991.~~

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

(a) - (c) same as current rule.

(3)~~(4)~~ same as current subsection (4).

(a) Formula:

state equalization aid/foundation program entitlement = % of ~~state~~ equalization aid received from the state

(i) for purposes of calculating the percentage of state equalization received, state equalization aid includes revenue received by a district from the state to equalize revenue raised at the county level in support of the foundation program schedules plus special education allowable cost payments.

(4)~~(5)~~ The limits in subsection (2)~~(3)~~ do not apply when the amount earmarked as ~~cash~~ operating reserve is:

(a) $10,000 or less; or

(b) ~~cash~~ fund balance reappropriated meeting the requirements of ARM 10.22.104~~(4)~~(5).

(5)~~(6)~~ The amount earmarked as reserves can exceed the limitations of subsection (2) by a combination of one or more of the following ~~the greater of~~:

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

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

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

(d) the unused balance of any amount received in delinquent taxes from a prior school fiscal year; or

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

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

(7)~~(8)~~ same as current subsection (8).

(8)~~(9)~~ If the superintendent does not receive the revised budget within 35 days after initial notice to the district, written notice of the violation shall be given to the board of public education and the county attorney of the county in which the district is located. ~~The board of public education may, pursuant to section 20-9-344, MCA, order the office of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from the district.~~

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

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

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

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

(a) - (b) same as current rule.

(4) Subsection (3) of this section does not apply if the amount designated as unreserved fund balance reappropriated is less than or equal to the amount established as excess reserves in the prior year as provided in ARM 10.22.103(5).

(a) If the trustees of a district elect to use excess reserves to reduce property taxes in the ensuing school fiscal year, the revenue may be used to reduce the permissive and/or voted amount.

(5)~~(4)~~ If a district has ~~cash~~ unreserved fund balance reappropriated remaining after fully funding the general fund budget amount in excess of the foundation program, its trustees shall notify the superintendent by August ~~September~~ 1. The ~~cash~~ amount ~~reappropriated~~ remaining must be accounted for in a separate reserve ~~fund~~ account and ~~designated as cash~~ reappropriated to be used for property tax relief in the subsequent school fiscal year. The balance in this separate reserve account may, when combined with the balance in the ~~cash~~ operating reserve account, exceed the reserve limit established in ARM 10.22.103(3).

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

3. The proposed rules for adoption follow.

RULE I OVEREXPENDED BUDGETS (1) Section 20-9-133, MCA, limits the trustees, all officers and employees of a district from making expenditures or incurring liabilities that will cause budgeted funds, as identified in section 20-9-201(1)(a), MCA, to be overexpended. The exception is for the debt service fund for the reasons listed in section 20-9-133(3), MCA.

(2) Section 20-9-222, MCA, mandates the county treasurer not honor warrants issued that will cause the overexpenditure of a fund's budget authority.

(3) Expenditures made, liabilities incurred or warrants issued in excess of any final budget shall not be liability of the district and no district money shall be used to pay the same as per section 20-9-133, MCA.

(4) Section 20-3-332, MCA, states that if the trustees of a district fail or refuse to be responsible for the proper administration and utilization of all district moneys, it shall constitute grounds for removal from office. Trustees consenting to illegal use of district monies can be jointly and individually liable to the district for any losses the district has

realized.

(5) When the superintendent of public instruction becomes aware that a district has overexpended a fund's budget, the superintendent shall notify the district's board of trustees and request an explanation for the overexpenditure.

(a) The trustees shall respond in writing within 30 calendar days of receiving the superintendent's notification and shall include in their response a description of the changes and/or controls that have, or will be, put in place at the district to prevent a reoccurrence of the situation that created the budget overdraft.

(6) Upon receiving the trustees' response, the superintendent will determine whether further action is warranted and, if so, will notify the County Attorney for the county that the district is located in and will also notify the Board of Public Education.

(AUTH: 20-9-102, MCA; IMP: 20-3-332, 20-9-133, 20-9-315, MCA)

RULE II PETITION TO INCREASE A DISTRICT'S GENERAL FUND BASE FOR THE PURPOSE OF CALCULATING THE GENERAL FUND BUDGET LIMITATION (1) In accordance with section 20-9-147, MCA, the trustees of a district may petition the superintendent of public instruction for approval to add certain expenses to the district's general fund budget for the purpose of calculating the general fund budget limitation in section 20-9-315, MCA, for the ensuing school fiscal year.

(2) District expenditures approved as base-building expenditures in the general fund budget for the ensuing year must be funded in the current year from any of the following sources:

(a) a budget amendment authorized under the provisions of sections 20-9-161 through 20-9-163, MCA;

(b) metal mines tax reserve fund authorized in section 20-9-231, MCA;

(c) state funds for special education expended in the miscellaneous programs fund;

(d) state funds for special education services paid directly to a full service cooperative; and

(e) tuition receipts deposited in the miscellaneous program fund.

(3) The petition to the superintendent of public instruction for approval of base-building expenditures must demonstrate in writing the actual expenditures requested to be included in the general fund budget that are on-going from the current school fiscal year to the ensuing school fiscal year. In the case of expenditures that are anticipated but not yet incurred, the petition shall include actual expenditures to-date and anticipated expenditures for the remainder of the school fiscal year.

(4) The superintendent of public instruction will approve, for inclusion in the general fund budget, expenditures of an on-going nature for the operation and maintenance of the school district that meet the criteria listed in ARM 10.22.106(2) and that are to be funded in the general fund budget in the ensuing

school year. Expenditures of a one-time nature that do not continue from the current school fiscal year to the ensuing school fiscal year will not be approved for base-building.

(5) The superintendent of public instruction will consider requests for approval of base-building expenditures after March 1 for the ensuing school fiscal year and shall respond to such requests within 20 working days from the date of receipt of the request. Petitions to add expenditures to the general fund budget for the ensuing school year must be received by the superintendent of public instruction by April 30.

(6) Upon receipt of the trustees financial summary, the office of public instruction shall compare the actual expenditures of the district in the most recently completed school fiscal year to those that were anticipated at the time the base-building expenditures were approved for inclusion in the general fund budget. If there is a five-percent discrepancy between the anticipated base-building expenditures and the actual expenditures, the superintendent of public instruction may revise the expenditures approved as base-building based on the actual expenditures. If the level of base-building expenditures is revised downward to the extent that the district general fund budget exceeds the limitation in section 20-9-315, MCA, the superintendent of public instruction shall request a revised general fund budget from the district trustees in accordance with ARM 10.22.102(3) through (5).
(AUTH: 20-9-102, MCA; IMP: 20-9-147, MCA)

4. Revisions in the rules are necessary to delete rules which have expired; to define base-building expenditures; to institute the newly-authorized full-service cooperatives; to revise spending and reserve limitations in compliance with SB 17 (L. 1991); and to clarify how the percentage of state equalization aid will be calculated for the purpose of computing district reserve limitations. Rule I is needed to clarify how the Office of Public Instruction will proceed when made aware of an overexpended school district budget. Although the law clearly prohibits a district from overexpending a fund's budget, it does not state what OPI's responsibilities are when a district fails to comply. Rule II clarifies that expenditures approved as "base-building" expenditures must be of an on-going nature and must be funded in the general fund budget in the ensuing school year. The rule establishes a timeframe for the application and approval process for base-building expenditures.

5. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rules relating to permissive and voted amounts, and school levies	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES RELATING TO PERMISSIVE AND VOTED AMOUNTS, AND LEVIES

To: All interested persons

1. On January 8, 1992, at 1:00 p.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the amendment of rules pertaining to permissive and voted amounts, and school levies.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules is located at pages 10-335 through 10-340, ARM.

10.23.101 DEFINITIONS (1) "Permissive amount" is the general fund budget amount that is in excess of the foundation program amount and less than ~~135~~35% of the current year's foundation program plus 35% of the district's prorated cooperative allocation.

(2) - (4) same as current rule.

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

(6) ~~"Foundation program" includes amounts in support of general education programs as provided in the schedules in sections 20-9-316 through 20-9-320, MCA, and payments in support of special education programs under 20-9-321, MCA. For school districts participating in special education cooperatives, "foundation program" includes a portion of the payments received by special education cooperatives in support of special education programs. This apportionment will be weighted based on each participating district's student enrollment and special education child count. By May 1 of each year, OPI will notify each school district participating in a cooperative of its apportioned payments for use in calculating its permissive amount for the ensuring school year.~~ "District taxable valuation" is the value of all the taxable property in the elementary or high school district certified in accordance with sections 15-8-706 and 15-10-202, MCA, for the current tax year.

(7) "County taxable valuation" is the value of all the taxable property in the county as certified in accordance with

sections 15-8-706 and 15-10-202, MCA, for the current tax year.

(8)~~(7)~~ same as current subsection (7).

(9)~~(8)~~ same as current subsection (8).

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

10.23.102 PERMISSIVE AMOUNT AND PERMISSIVE LEVY (1) In accordance with section 20-9-145, MCA, the trustees in each district may adopt a general fund budget containing a permissive amount. The permissive amount may not exceed 35% of the district's foundation program amount as defined in ARM 10.22.101(1)(a) for the year in which the budget is adopted.

(a) For school districts participating in full service cooperatives for special education programs, "foundation program" includes a portion of the payments received by the full service cooperatives in support of special education programs. This apportionment will be weighted based on each participating district's student enrollment and special education child count. By March 1 of each year, OPI will notify each school district participating in a cooperative of its apportioned payments for use in calculating its permissive amount for the ensuing school year.

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

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

(a) for districts eligible for GTB aid, the sum of:

(i) the district's taxable valuation as defined in ARM ~~10.21.101(2)(e)~~ 10.23.101(7) divided by 1000 plus

(ii) the difference between the statewide mill value per ANB as defined in ARM 10.21.101(1)(c) or (d) and the district mill value per ANB as defined in ARM 10.21.101(2)~~(f)~~(c) or ~~(g)~~(d) multiplied by the district's ANB ~~as defined in ARM 10.21.101(2)(e)~~ that is being used to calculate the districts foundation schedule payment for the school year for which the GTB funding is being sought.

Formula:

For FY92 net levy requirement/{[district taxable value/1000] + [(statewide mill value per ANB - district mill value per ANB) X FY92 ANB]}

(b) for districts that are not eligible for GTB aid, the district's taxable valuation divided by 1000, as defined in ARM ~~10.21.101(2)(e)~~ 10.23.101(7).

Formula:

net levy requirement/(district taxable value/1000) = permissive mills

(5) Except as provided in subsection (6) of this section and ARM 10.22.104(4), all districts, including those eligible for GTB aid and those not eligible for GTB aid, must use total "other revenue" as defined in ARM 10.23.101(5) to fund the permissive amount.

(6) same as current rule.

(7) Permissive mills are imposed by resolution of the trustees and may not be submitted to the electorate for approval. Trustees must send a copy of the resolution imposing the permissive amount to the county superintendent with the

~~preliminary~~ final budget, filed in accordance with section 20-9-113, MCA. The trustees' resolution imposing the permissive amount must state:

(a) - (b) same as current rule.

(8) - (8)(b) same as current rule.

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

10.23.103 VOTED AMOUNT AND VOTED LEVY (1) same as current rule.

(2) The voted amount is funded by:

(a) other revenue (except that listed in ARM 10.22.103~~(6)~~(5) and 10.23~~2~~.104~~(4)~~(5)) that has not been used to fund the permissive amount; and

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

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

(3) The amount of the voted net levy requirement is calculated by subtracting from the voted amount any other revenue (except that listed in ARM 10.22.103~~(6)~~(5) and 10.23~~2~~.104~~(4)~~(5)) that has not been used to fund the permissive amount. This net levy requirement is then divided by the district's taxable valuation, as defined in ARM ~~10.21.101(2)(e)~~ 10.23.101(7), divided by 1000, to determine the voted mills needed to help finance the voted amount.

(4) same as current rule.

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

10.23.104 RETIREMENT LEVIES (1) Net county retirement levy requirement for elementary and high school retirement funds is defined in ARM 10.23.101~~(8)~~(10).

(2) To determine the retirement mills needed, the net county retirement levy requirement for each fund is divided by:

(a) the sum of the county's taxable valuation as defined in ARM ~~10.21.101(2)(e)~~ 10.23.101(8) divided by 1000 plus

(b) the state subsidy per mill for elementary and high school retirement funds provided to each county by the office of public instruction. The state subsidy per mill shall be calculated as follows:

(i) the difference between the statewide mill value per ANB as defined in ARM 10.21.101(1)~~(e)~~(c) or ~~(f)~~(d) and the county mill value per ANB as defined in ARM 10.21.101(3)~~(g)~~(d) or ~~(h)~~(e) multiplied by the ~~district's~~ sum of all the county's elementary or high school ANB ~~as defined in ARM 10.21.101 (2)(e)~~ that is being used to calculate the districts' foundation schedule payment for the school year for which the GTB funding is being sought.

(3) - (4)(b) same as current rule.

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

10.23.107 BASIC EQUALIZATION LEVY SHORTFALL (1) - (2) same as current rule.

(3) In each county eligible for an apportionment of state equalization aid, the county superintendent must notify OPI by ~~February 10~~ July 31 of ~~each~~ the following fiscal year if~~, in his~~

~~judgement,~~ the revenues received for the previous fiscal year from the sources listed in sections 20-9-331(2) or 20-9-333 (2), MCA, ~~during the current fiscal year will be~~ were insufficient to fund the percentage determined in section 20-9-347(1)(b), MCA. In the notification to OPI the county superintendent must state the ~~estimated~~ amount of ~~and reasons for~~ the shortfall for each school district.

(a) The shortfall calculated in July of the current fiscal year (e.g., July 19X4) to determine whether a county experienced a shortfall in county equalization revenue during the previous fiscal year (i.e., fiscal year 19X3), should include all distributions of penalties and interest during fiscal year 19X3. However, the shortfall calculation for 19X3 should not include distributions of delinquent/protested taxes levied prior to 19X3 (i.e., 19X2, 19X1, 19X0... taxes), unless the foundation programs for those tax years have already been funded 100%. See Administrative Rules of Montana 10.10.309.

(4) After reviewing the notification and concurring with the ~~estimate~~ amount of the shortfall, OPI will increase the state equalization aid to all the districts in the county in the amount necessary to fully fund the percentage. This additional state equalization aid must be deposited ~~in the county elementary and high school equalization funds and distributed by the county superintendent to districts using the county equalization distribution percentages in effect for the year the shortfall occurred~~ to each school district's general fund by the county treasurer.

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

(6) ~~Within 30 days after the end of each fiscal year, each county superintendent who notified OPI of an estimated shortfall must provided a report to OPI of the amount of revenue received from the sources listed in section 20-9-331 (2), MCA, and the amount , if any, of county equalization money remitted to the state treasurer in accordance with subsection (4).~~ The office of public instruction will not fund the shortfall in a previous year's county equalization revenues if the county superintendent fails to notify the office of public instruction of the

shortfall by November 30 of the following fiscal year; if the county superintendent understates his county's shortfall and fails to notify the office of public instruction of the error by November 30 of the following fiscal year; or if the amount of shortfall reported for all districts in the county totals less than $25.

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

3. The amendments are necessary to simplify accounting for the equalization shortfall payment by allowing the payment to be based on actual data, rather than estimates; by allowing the late revenues to be reappropriated when collected, rather than remitted to the state; and by limiting the application period.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules relating to K-12 districts	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES RELATING TO K-12 DISTRICTS

To: All interested persons

1. On January 8, 1992, at 1:00 p.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the adoption of rules pertaining to K-12 school districts.

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

RULE I DEFINITIONS (1) For purposes of formation of K-12 school districts the following definitions apply:

(a) "Attachment" means the combining of functions of a public elementary and a public high school district with the same boundaries.

(b) "Dissolution" means the discontinuation of a K-12 district, restoring the functions of the individual elementary and high school districts.

(c) "Eligible voters" are the voters who are eligible to vote in elections in both the elementary district and the high school district with the same boundaries, pursuant to the provisions of section 20-20-301, MCA.

(d) "Inactive elementary district" means the elementary district that has combined with a high school district having the same boundaries for purposes of program, budgeting, and reporting, but retaining its legal structure for taxing and specific revenue purposes.

(e) "K-12 school district" means a high school district which has an elementary district attached through the provisions of section 20-6-101, MCA, and provides educational services for both elementary and high school programs.

(AUTH: 20-3-106, MCA; IMP: 20-6-701, MCA)

RULE II CREATION OF K-12 DISTRICTS (1) A request to the county superintendent or, if the districts involved are joint districts, to the county superintendent of the located district to order an election to consider the attachment of an elementary district and a high school district with the same boundaries, may be introduced by:

(a) a single resolution by the joint board of trustees of an elementary and high school district with the same boundaries;

(b) resolutions by both the boards of trustees of the elementary district and of the high school district with the same boundaries, if the boards are not joint; or

(c) a single petition by 20% of the voters entitled to vote as determined in section 20-20-301, MCA, in both the elementary

and high school district elections.

(2) Each resolution and petition must include the legal name of each of the districts, a statement that the two districts share the same boundaries, a statement of the combining of the bonded indebtedness of the districts through the assumption by the high school district of the bonded indebtedness of the elementary district upon attachment, and the effective fiscal year of the attachment.

(3) Each resolution and petition must be filed in time to allow the trustees to hold an election in conjunction with a regular school election, and prepare the budgets and hold mill levy elections within the legal statutory timeframes. In most instances the latest date for filing would be early February.

(4) A single proposition will be placed on the ballot for consideration by the electors who are eligible to vote in both the elementary and high school district elections. The proposition will be considered approved if the conditions of this section and Title 20, chapter 20, MCA, have been met; and if the canvass of the vote determines a majority of the electors casting ballots favor the proposition.

(AUTH: 20-3-106, MCA; IMP: 20-6-701, MCA)

RULE III TRANSITION TO K-12 DISTRICTS (1) When an attachment order has been communicated to the board of county commissioners pursuant to section 20-6-701, MCA:

(a) The board of county commissioners and the board of trustees of the elementary district will proceed to prepare all instruments necessary to convey title to the real and personal property of the elementary district to the high school district, so that these instruments may be executed and effective as of July 1 of the effective fiscal year of the attachment;

(b) The officials of the elementary district trustees shall entrust the district official records to the high school district trustees on July 1 of the effective fiscal year of the attachment of the districts;

(c) The county treasurer, in accordance with procedures established by the department of commerce and the office of public instruction, shall transfer all elementary district fund balances, to the high school district fund accounts to be effective as of July 1 of the effective fiscal year of the attachment of the districts. The K-12 school district will assume the cash and liabilities of the attached elementary district, and will maintain a single budgeted or nonbudgeted fund for each of the authorized funds of the district for the costs of operating all grades and programs of the district, pursuant to accounting and reporting procedures prescribed by the office of public instruction.

(2) The board of trustees of the high school district will become the trustees of the K-12 district as of July 1 of the effective fiscal year of the attachment resolution.

(3) End-of-year elementary district fiscal and non-fiscal reporting will be completed as required for the elementary district for the school year prior to the effective fiscal year of formation of a K-12 district. If the end-of-year elementary

reporting is due after the effective date of the formation of the K-12 district, the reports shall be completed and filed by the officials of the newly formed K-12 district.

(4) The elementary and high school district officials shall prepare a single budget per fund for the K-12 district for the effective year of formation of the K-12 district, and for each year thereafter, using the forms and procedures established by the office of public instruction.

(a) The school district general fund budget limitations established by section 20-9-315, MCA, shall be determined for K-12 districts in the following manner:

(i) The 104% budget limitation shall be applied to the combined total of the elementary and high school budgets and approved base-building petitions from the fiscal year prior to the effective fiscal year of the attachment of the districts. For each year thereafter, the 104% shall be applied to the prior year K-12 district budget and approved base-building petitions. The limitation shall be determined using the following calculation:

	Elementary	H School	K-12 Total
(A) Prior year approved budget			
(B) Approved base-building petition amounts			
(C) Total limit base (A)+(B)			
(D) 104% budget limit [1.04 * total (C)]			

(ii) The 135% limitation for the K-12 district shall be determined as the total of the calculations of 135% of the foundation program amounts attributed separately to the elementary and high school programs of the K-12 district. This method shall be used annually for K-12 budget limitations and shall be determined using the following calculation:

	Elementary	H School	K-12 Total
(A) Foundation program payments			
(1) foundation schedules			
(2) allowable special ed			
(3) Total (1) + (2)			
(B) 1.35 times (A)(3)			
(C) Prorated special ed payment to Coops			
(D) 0.35 times (C)			
(E) Permissive budget limit Total (B) + (D)			
(F) Total K-12 Permissive limit Sum of Elementary and H School (E)			

(b) For the purpose of determining guaranteed tax base aid, the permissive levy amount for a K-12 district will be prorated between elementary and high school programs using the ratio of elementary foundation schedule and special education amounts to the high school foundation schedule and special education amounts.

(i) The ratio for prorating the permissive levy will be

determined in the following manner:

		Elementary	H School	K-12 Total
(A)	Foundation program payments			
	(1) foundation schedules			
	(2) allowable special ed			
(B)	Prorated spec ed payment to Coops			
(C)	Total foundation and special ed amounts			
(D)	Percent of total Elem and H School (C) totals divided by K-12 total	%	%	100%
(E)	Permissive Levy Amount			
(F)	Prorated Permissive Levy Amount (E) times % established in (D)			

(ii) The eligibility for guaranteed tax base aid will be determined for the elementary prorated portion and for the high school prorated portion using the procedures established for elementary and high school districts set out in ARM 10.21.102, and the office of public instruction budget forms. The K-12 district will be eligible to receive the sum of the amounts of guaranteed tax base aid determined for both the elementary and high school prorated portions, or for a single portion if eligibility is determined only for the elementary or the high school portion of the permissive amount.

(c) In the year prior to the effective date of formation of the K-12 district, the trustees will continue to submit general fund levies separately for the elementary and high school districts, pursuant to section 20-9-353, MCA. After the effective date of the approved K-12 district proposition, the trustees of the K-12 district will submit a single proposition to the voters for the amount of the K-12 general fund budget that must be submitted to the electorate.

(5) For the initial year of the K-12 district, eligibility for program funding, established by the office of public instruction in the year prior to the formation of the K-12 districts, will be transferred to the K-12 district. Characteristics of the districts (i.e., enrollment, expenditures, low-income data, needs assessment) may be calculated based on the combined districts' characteristics if the funding would be adversely affected when calculated separately, and if allowed by program requirements. Following the initial year of the K-12 district, funding eligibility will be determined for K-12 programs as a single district, or per specific program requirements.

(6) All certified employees of the elementary and high school district who have the right of tenure under Montana law will continue to have tenure in the K-12 district, and all non-certified employees of the elementary district must be given preference in hiring for any K-12 district position for which the employee has substantially equal qualifications, pursuant to section 20-6-711, MCA.

(AUTH: 20-3-106, MCA; IMP: 20-6-703, 20-6-711, MCA)

RULE IV K-12 DISTRICT EQUALIZATION FUNDING (1) State equalization funding for the K-12 district will be determined in the following manner:

(a) the foundation program schedule payments will be distributed to the K-12 district based on calculations pursuant to sections 20-9-312 and 20-9-316 through 20-9-320, MCA, determined by grade level program for budget units of the district.

(b) the special education funding will be distributed to the K-12 district based on section 20-9-321, MCA, as a total of the allowable cost payments for the special education elementary and high school programs of the K-12 district.

(c) for purposes of determining budget limits and eligibility for GTB aid, state special education payments provided to cooperatives will be prorated to the K-12 districts based on separate elementary and high school program calculations as set out in ARM 10.22.102.

(2) The basic county tax for the elementary foundation program and the basic special tax for the high school foundation program will continue to be assessed based on the elementary district and the high school district taxation structure.

(3) The county superintendent will distribute county equalization funds to K-12 districts from the basic special tax for high schools account.

(AUTH: 20-3-106, MCA; IMP: 20-6-702, MCA)

RULE V K-12 DISTRICT ISSUANCE OF BONDS (1) A K-12 district may become indebted by the issuance of bonds, including all outstanding bonds and registered warrants assumed at the time of formation of the K-12 district, up to 90% of the taxable value of the property subject to taxation, pursuant to section 20-9-406, MCA. The bonded indebtedness may not exceed 45% of the taxable value for elementary program purposes and 45% for high school purposes.

(a) In addition to the requirements in section 20-9-422, MCA, a K-12 district resolution for election to authorize the issuance of bonds must indicate the portion of the bond obligation which will be considered an obligation for the elementary program and the portion which will be considered an obligation for the high school program.

(b) In order to determine the total percent of bonded indebtedness attributed to either the elementary (prekindergarten through grade 8) program or the high school (grades 9 through 12) program, the board of trustees shall do the following calculation:

bonded indebtedness	elementary program	high school program	total
(i) amount remaining from individual district indebtedness incurred prior to formation of K-12 district	_____	_____	_____

(ii) amount remaining from indebtedness incurred as a K-12 district, times the percent of obligation for each program as indicated on adopted bond resolution in (a)			
(iii) total (i) + (ii)			
(iv) taxable value of district			
(v) percent of indebtedness (iii) divided by (iv)	____%	____%	____%

(AUTH: 20-3-106, MCA; IMP: 20-9-406, MCA)

RULE VI EXCEPTIONS TO HIGH SCHOOL PROVISIONS (1) The K-12 school district is subject to the provisions of law for high school districts except for those situations set out in Title 20, Chapter 6, MCA, and this Title.

(a) The retirement fund of a K-12 district will be a high school retirement fund, and the eligibility for guaranteed tax base aid will be determined based on the high school mill value per ANB. The guaranteed tax base aid payment for the high school retirement fund will be awarded to a county with a K-12 district using the number of high school ANB in the county plus the elementary ANB of any K-12 district in the county times the statewide subsidy per mill per ANB as calculated by the office of public instruction. The guaranteed tax base aid payment for the elementary retirement fund will be awarded to a county with a K-12 district using the number of elementary ANB from elementary districts in the county, but not including the elementary ANB from any K-12 districts in the county. However, the calculations for the statewide and the county mill value per ANB will utilize the elementary ANB of the K-12 district for the statewide and county elementary calculation and the high school ANB of the K-12 district for the statewide and county high school calculation.

(b) Tuition calculations will be determined separately for high school and elementary pupils using the formulas established in ARM 10.10.302. The expenditures for the general fund, the retirement fund, and debt service fund will be determined based on the following:

(i) the ratio of the elementary general fund and the high school general fund expenditures to the total of the two expenditure amounts in the fiscal year prior to formation of the K-12 district, will be applied to the K-12 general fund expenditure amount each year to determine the portion attributed to elementary and to high school programs to be used for tuition calculations.

		Elementary	H School	K-12 Total
(A)	general fund expenditures for year prior to K-12 formation	_____	_____	_____
(B)	Ratio to total Elem and H School (A) divided by K-12 total	_____%	_____%	100%

(ii) the elementary and high school percent calculated in (i)(B) will be applied to the total K-12 figure determined for tuition in ARM 10.10.302 in the second year after formation of a K-12 district.

(iii) Tuition will be budgeted in a single K-12 district fund and payment financed as set out in section 20-5-307, MCA, for the elementary tuition amounts and section 20-5-312, MCA, for high school tuition amounts.

(c) Unusual enrollment increase eligibility, pursuant to section 20-9-314, MCA, will be determined separately for elementary enrollment and for high school enrollment, and not based on total K-12 district enrollment.

(AUTH: 20-3-106, MCA; IMP: 20-6-702, MCA)

RULE VII DISSOLUTION OF K-12 DISTRICTS (1) The process to dissolve the K-12 school district must be conducted pursuant to section 20-6-712, MCA, and using the process set out in RULE II (1) through (4) but substituting dissolution for attachment.

(2) The prorated percentages established in RULE VI (1)(b)(i)(B) will be used to determine:

(a) the 104% general fund budget limitations for the districts in the year following dissolution of a K-12 district by applying the prorated percentages to the K-12 district budget of the year preceding dissolution,

(b) the portion of the funds and obligations of the K-12 district to be prorated to the elementary and high school districts, with the exception of the bonded indebtedness which is set out in (3).

(3) The elementary district will assume the remaining bonded indebtedness of the K-12 district attributed to the elementary program and the high school district will assume the portion attributed to the high school program from the obligations incurred by the K-12 district and from those remaining from prior to the formation of the K-12 district.

(AUTH: 20-3-106, MCA; IMP: 20-6-712, MCA)

3. The 52nd Legislature mandated in the statement of intent of House Bill No. 335 that the Superintendent of Public Instruction promulgate rules for K-12 school districts established by that legislation.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules relating to foundation payments	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES RELATING TO FOUNDATION PAYMENTS

To: All interested persons

1. On January 8, 1992, at 9:00 a.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the adoption of rules pertaining to foundation payments.

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

RULE I APPLICATION FOR INCREASED STATE FOUNDATION AID

(1) The trustees of a district may apply to the superintendent of public instruction for an increased payment for the foundation program when the district experiences an enrollment increase of 6 percent or greater.

(2) When a district anticipates an unusual enrollment increase for the ensuing school fiscal year, the trustees may apply to the superintendent of public instruction for an increase in the district foundation program amount in accordance with the provisions of section 20-9-314, MCA.

(3) Any entitlement increases paid by the state to the district under section 20-9-314, MCA must be reviewed by the office of public instruction at the end of the school fiscal year for which the payments are provided. If the actual enrollment increase as calculated using the October 1 enrollment count is less than the average number belonging used for the foundation program and entitlement calculations, the superintendent shall revise the calculations using the actual enrollment increase. All payments received by the district in excess of the revised entitlement are overpayments subject to the refund provisions of section 20-9-344(3), MCA.

(4) A district with an unanticipated unusual enrollment increase after the beginning of the school fiscal year may apply to the superintendent of public instruction for an increase in the district foundation program amount if:

(a) the current enrollment exceeds the enrollment on October 1 of the most recently completed school fiscal year by more than 6 percent; and

(b) the district has adopted a budget amendment for the unusual enrollment increase.

(5) Requests for an increase in the district foundation program amount under the provisions of subsection (4) must be received by the superintendent of public instruction no later than May 1 of the school fiscal year to which the enrollment increase applies.

(AUTH: 20-9-314 and 20-9-166, MCA; IMP: 20-9-314 and 20-9-166, MCA)

RULE II PROCEDURE FOR COMPUTING ADDITIONAL STATE FOUNDATION AID (1) For districts that anticipate an unusual enrollment increase in the ensuing school year and apply for additional foundation program aid under section 20-9-314, MCA, the superintendent of public instruction shall calculate the additional district entitlement in the following manner:

(a) Determine the district's increased average number belonging for the unusual enrollment increase in accordance with ARM 10.20.104(1)(a)(ii).

(b) Determine the enrollment increase in each budget unit by subtracting the number of pupils enrolled in each budget unit on October 1 of the current school fiscal year from the number of pupils estimated to be enrolled in each budget unit in the ensuing school fiscal year.

(c) Compute the share of the enrollment increase attributable to each budget unit by dividing the enrollment increase in each budget unit by the district's anticipated enrollment increase.

(d) Compute the additional ANB for each budget unit by multiplying the share of the enrollment increase attributable to each budget unit by the increase in the district ANB calculated in ARM 10.20.104(1)(a)(ii). Round the ANB calculation for each budget unit to the nearest whole number. For each budget unit, add the result to the ANB used to compute the foundation program amount for the budget unit for the ensuing school year.

(e) Recalculate the district foundation program amount using the ANB counts as adjusted for each budget unit.

(f) Calculate the foundation program increase for the district by subtracting the foundation program amount which the district is scheduled to receive for the ensuing school fiscal year from the foundation program amount determined in subsection (e).

(g) Calculate the additional state equalization aid for the district by multiplying the amount determined in subsection (f) by the basic county equalization level and subtracting the result from the amount determined in (f).

(2) For districts with an unanticipated enrollment increase that apply for additional foundation program aid under section 20-9-166, MCA, the superintendent of public instruction shall calculate the amount of additional district entitlement in the following manner:

(a) Determine the district's increased average number belonging for the unusual enrollment increase calculated in accordance with ARM 10.20.104(1)(a)(i).

(b) Determine the enrollment increase in each budget unit by subtracting the number of pupils enrolled in each budget unit on October 1 of the most recently completed school fiscal year from the number of pupils currently enrolled in each budget unit.

(c) Compute the share of the enrollment increase attributable to each budget unit by dividing the enrollment increase in each budget unit by the district's enrollment increase.

(d) Compute the adjusted ANB for each budget unit by

multiplying the share of the enrollment increase attributable to each budget unit by the increase in the district ANB calculated in accordance with ARM 10.20.104(1)(a)(i). Round the ANB calculation for each budget unit to the nearest whole number. For each budget unit, add the result to the budget unit's ANB used to compute the foundation program amount for the current school year.

(e) Recalculate the district foundation program amount using the adjusted ANB counts for each budget unit.

(f) Calculate the foundation program increase for the district by subtracting the foundation program amount for which the district is presently receiving funding from the foundation program amount determined in subsection (e).

(g) Calculate the additional state assistance for the district by multiplying the amount determined in subsection (f) by the basic county equalization level and subtracting the result from the amount determined in subsection (f).

(3) For districts requesting additional state foundation aid after January 31 for the current school fiscal year, additional state financial assistance will be provided to eligible districts at one-half the amount calculated in subsection (2)(g).

(AUTH: 20-9-166 and 20-9-314, MCA; IMP: 20-9-166 and 20-9-314, MCA)

RULE III FOUNDATION PROGRAM SCHEDULES FOR ADDITIONAL STAFF

(1) A district will be eligible to receive foundation program funding in one of the three elementary school funding categories which provide additional equalization aid funding for additional staff, if the district meets the following criteria:

(a) For section 20-9-318(3), MCA:

(i) the district ANB to be used for calculation of foundation program funding is 14 through 17 and meets the statutory criteria in section 20-9-322, MCA,

(ii) the anticipated school district enrollment for the fiscal year for which the funding will be received is at least as great as the minimum ANB for the category, and

(iii) the district employs a minimum of one instructional aide.

(b) For section 20-9-318(5), MCA:

(i) the district ANB to be used for calculation of foundation program funding is 18 through 25,

(ii) the anticipated school district enrollment for the fiscal year for which the funding will be received is at least as great as the minimum ANB for the category, and

(iii) the district employs a minimum of two teachers.

(c) For section 20-9-316(6)(a), MCA:

(i) the district ANB to be used for calculation of foundation program funding is 41 through 50,

(ii) the anticipated school district enrollment for the fiscal year for which the funding will be received is at least as great as the minimum ANB for the category, and

(iii) the district employs a minimum of three teachers.

(AUTH: 20-3-106, MCA; IMP: 20-9-318, 20-9-322, MCA)

3. Section 20-9-166, MCA, instructs the Superintendent of Public Instruction to adopt rules for the application by school trustees for increased state foundation aid.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

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

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of rules relating to budget amendments	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES RELATING TO BUDGET AMENDMENTS

To: All interested persons

1. On January 8, 1992, at 9:00 a.m., in Room 302, Workers' Comp. Bldg., 5 So. Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the adoption of rules pertaining to budget amendments.

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

RULE I AUTHORIZATION FOR BUDGET AMENDMENT ADOPTION

(1) Section 20-9-161, MCA authorizes the trustees of a school district to amend an adopted budget of the district for the reasons provided in section 20-9-161(1) through (6), MCA.

(2) A budget amendment for an unusual enrollment increase may not be adopted until after October 1, but must be adopted within the fiscal year to which the unusual enrollment increase applies.

(3) A budget amendment for any reason other than an unusual enrollment increase may be adopted at any time after the final budget is adopted and before June 30 of the school fiscal year.

(4) The trustees of a school district may adopt a budget amendment without petitioning the superintendent of public instruction if the budget amendment is for the reasons provided in section 20-9-161(1) through (4), MCA, and does not cause the district general fund budget to exceed the limitations in section 20-9-315, MCA. The district trustees must comply with the statutes concerning the process for adoption of a budget amendment resolution and the public notice requirements.

(5) The trustees of a school district must petition the superintendent of public instruction for approval to adopt a budget amendment for the reasons provided in sections 20-9-161(5) and 20-9-161(6), MCA, or if adoption of the budget amendment causes the district general fund budget to exceed the budget limitation in section 20-9-315, MCA.

(6) Budget amendment petitions must be received by the superintendent of public instruction by May 31 of the school fiscal year to which the budget amendment applies. The superintendent of public instruction will consider budget amendment petitions after May 31 only under exceptional circumstances that could not be foreseen by the district trustees as of May 31. (AUTH: 20-9-162, MCA; IMP: 20-9-161 and 20-9-162, MCA)

RULE II PETITION TO SUPERINTENDENT OF PUBLIC INSTRUCTION

(1) The petition to the superintendent of public instruction for approval to adopt a budget amendment must set forth in writing:

(a) the reason(s) for the budget amendment, cited from the reasons listed in section 20-9-161, MCA;

(b) the district funds affected by the budget amendment;

(c) the estimated amount of money required for the budget amendment for each affected fund;

(d) the anticipated sources of financing for the expenditures authorized by the budget amendment;

(e) in the case of a budget amendment for an enrollment increase, any enrollment increases for which a budget amendment was adopted in the most recently completed school fiscal year; and

(f) any other information required by the superintendent of public instruction.

(2) If the budget amendment petition is sent to the superintendent of public instruction after the final budget is adopted and prior to September 1, the petition must include a copy of the district's final budget as adopted for the current school fiscal year.

(3) The petition must be signed by the majority of the trustees of the school district.

(4) If the petition is approved by the superintendent of public instruction, the trustees may adopt a resolution for a budget amendment and proceed with the steps required for the adoption of a budget amendment.

(AUTH: 20-9-163, MCA; IMP: 20-9-163, MCA)

RULE III RESOLUTION FOR A BUDGET AMENDMENT (1) The trustees of a district may adopt a resolution proclaiming the budget amendment by a majority vote.

(2) The budget amendment resolution must state:

(a) the facts constituting the need for the budget amendment;

(b) the district funds affected by the budget amendment;

(c) the estimated amount of money required for the budget amendment for each affected fund;

(d) the anticipated sources of financing for the expenditures authorized by the budget amendment; and

(e) the time and place the board will meet for the purpose of considering and adopting a budget amendment for the current year.

(AUTH: 20-9-163, MCA; IMP: 20-9-163, MCA)

RULE IV BUDGET AMENDMENT LIMITATION (1) When the budget amendment is for increased enrollment, the amount of the budget amendment for all funds is limited in the following manner:

(a) Sum the final budgets for the current school fiscal year for all funds affected by the enrollment increase. Subtract any amounts appropriated for capital outlay and any amounts appropriated for addition to the operating reserve.

(b) Divide the number of pupils enrolled in the district on October 1 of the most recently completed school year into the amount determined in (a). The resulting per-pupil cost is the maximum permissible per-pupil expenditure for the budget amendment.

(c) Determine the enrollment increase for the current year by subtracting the number of pupils currently enrolled from the number of pupils enrolled on October 1 of the most recently completed school year.

(d) Multiply the cost per pupil determined in (b) by the enrollment increase determined in (c). The result is the maximum budget amendment for amendments resulting from enrollment increases.

(2) For budget amendments other than those due to enrollment increases, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment. The budget amendment must include an expenditure detail.

(AUTH: 20-9-165, MCA; IMP: 20-9-165, MCA)

RULE V BUDGET AMENDMENT PREPARATION AND ADOPTION

(1) A majority of the trustees present at the meeting to consider a budget amendment may adopt a budget amendment, setting forth fully the facts constituting the need for the budget amendment.

(2) The trustees may amend the budget for any fund that was included on the final budget of the district for the current school year. The expenditures related to the budget amendment must be accounted for separately using a project reporter number assigned by the office of public instruction.

(3) Whenever the trustees adopt a budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment.

(4) The adopted budget amendment must be signed by the chairman of the trustees and the clerk of the district. Copies must be sent to the county superintendent, the county treasurer, and the superintendent of public instruction. The adopted budget amendment resolution submitted to the office of public instruction must be accompanied by an expenditure detail showing budgeted expenditures by program, function, and object for each fund affected by the budget amendment.

(5) Upon receipt of the budget amendment resolution, the office of public instruction will assign a project reporter number to the budget amendment to be used for accounting purposes.

(AUTH: 20-9-165, MCA; IMP: 20-9-165, MCA)

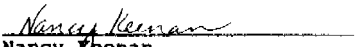
3. The Superintendent of Public Instruction is responsible for approving or denying budget amendment requests made under section 20-9-163, MCA. These rules specify the process for consideration of budget amendment requests.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 17, 1992.

5. An official of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and

conduct the hearing.

Beda J. Lovitt
Rule Reviewer



Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 2, 1991.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES PERTAINING TO RECENCY OF CREDIT, REPEAL OF ARM 10.57.208 AND AMENDMENT OF ARM 10.57.401, 10.57.402 AND 10.57.403

TO: All Interested Persons

1. On January 16, 1992 at 9:00 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the State Compensation Mutual Insurance Fund Building at 5 S. Last Chance Gulch, Helena, Montana 59620, in the matter of the repeal of ARM rule 10.57.208 Reinstatement, the proposed amendment to ARM rules 10.57.401 Class 1 Professional Teaching Certificates, 10.57.402 Class 2 Standard Teaching Certificate, 10.57.403 Class 3 Administrative Certificate and the proposed adoption of a new rule pertaining to Recency of Credit.

2. The rule as proposed to be repealed is as follows 10.57.208 REINSTATEMENT and can be found on pages 10-838 and 10-838.1.

3. The rules as proposed new and amended provides as follows:

"I. RECENCY OF CREDIT (1) An applicant for initial certification whose degree is more than 5 but less than 15 years old must have the following credits earned within the 5 year period preceding the effective date of the certificate:

(a)	Class 1 professional certificate	6 qtr credits
	Effective in 1995	12 qtr credits
(b)	Class 2 standard certificate	12 qtr credits
(c)	Class 3 administrative certificate	6 qtr credits
	Effective in 1992	12 qtr credits

(2) An applicant for initial certification or reinstatement whose degree is over 15 years old must obtain the credits listed in (1) and the following additional credits based on teaching experience:

No teaching or equivalent experience since the original training.	+ 6 additional qtr credits
1-4 years teaching or equivalent experience.	+ 4 additional qtr credits
5-10 years teaching or equivalent experience.	+ 2 additional qtr credits
Over 10 years teaching or equivalent experience.	+ 0 additional credits

(3) Applicants may utilize the provisional certificate to earn the recent credits if all other academic requirements are met.
(4) Credits for reinstatement of a teaching or administrative certificate must supplement, strengthen and update the teacher's or administrator's basic preparation. Such credits should be those that:

(a) Would be approved by an accredited college as part of a teacher preparation program, or;

(b) The college would allow on a new area of endorsement, or;

(c) Include new developments in education which were not part of the teacher's original preparation (i.e. computer assisted instruction, mainstreaming, gifted and talented), or;

(d) Be a result of an approved equivalency program as per ARM 10.57.206, or;

(e) Provide instruction in a language other than English".

AUTH: Sec. 20-4-102, 20-4-103
IMP: Sec. 20-4-102, 20-4-103, 20-4-106

10.57.401 CLASS 1 PROFESSIONAL TEACHING CERTIFICATE (1) through (4) remain the same.

(5) Reinstatement: Lapsed certificates cannot be renewed but the holder may apply for reinstatement provided requirements are met which are in force at the time reinstatement is requested. A minimum of 6 quarter (4 semester) credits or the equivalent must be earned within the 5-year period preceding the effective date of the certificate, or one year of experience with a master's degree. Effective in 1995, 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate. ~~(See ARM 20.57.208 for reinstatement of certificates allowed to lapse 15 years or more.)~~

(6) Recency of credits: (a) Applicants for initial certification whose degree is over 5 years old and who have not accumulated at least 6 credits (effective in 1995, 12 quarter credits) in the past 5 years must meet the requirements listed in the proposed new rule subsection (1).

(b) Applicants for initial certification or reinstatement whose degree is over 15 years old must meet the requirements listed in the new rule "I" subsection (1) and (2).

(6) and (7) will remain the same but be renumbered (7) and (8).

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-106, 20-4-108

10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE (1) through (3) remain the same.

(4) Reinstatement: Lapsed certificates cannot be renewed but the holder may apply for reinstatement provided requirements are met which are in force at the time reinstatement is requested. A minimimum of 12 quarter (8

semester) credits or the equivalent must be earned within the 5-year period preceding the effective date of the certificate. ~~(See ARM 10.57.208 for reinstatement of certificates allowed to lapse 15 years or more.)~~

(5) Recency of credits: (a) Applicants for initial certification whose degree is over 5 years old and who have not accumulated at least 12 quarter credits in the past 5 years must meet the requirements listed in the proposed new rule subsection (1).

(b) Applicants for initial certification or reinstatement whose degree is over 15 years old must meet the requirements listed in the new rule "I" subsection (1) and (2).

(5) through (10) will remain the same but be renumbered (6) through (11).

AUTH: Sec. 20-4-102, 20-2-121(1)
IMP: Sec. 20-4-102, 20-4-103, 20-4-106 and 20-4-108

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) through (3) remain the same.

(4) Reinstatement: Lapsed certificates cannot be renewed but the holder may apply for reinstatement provided requirements are met which are in force at the time reinstatement is requested. A minimum of 6 quarter (4 semester) credits or the equivalent must be earned within the 5-year period preceding the effective date of the certificate. Effective in 1992, 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate. ~~Requirements must be met that are in force at the time of reinstatement. See ARM 10.47.208 for reinstatement of certificates allowed to lapse 15 years or more.~~

(5) Recency of credits: (a) Applicants for an initial certification whose degree is over 5 years old and who have not accumulated at least 6 quarter credits (effective in 1992, 12 quarter credits) in the past 5 years must meet the requirements listed in the proposed new rule subsection (1).

(b) Applicants for initial certification or reinstatement whose degree is over 15 years old must meet the requirements listed in the new rule "I" subsections (1) and (2).

(5) through (9)(b) will remains the same but renumbered (6) through (10)(b).

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-106, 20-4-108

4. The board is proposing the amendments to this rule because for many years the Office of Public Instruction has required that all teachers obtaining initial certification have recent credits under five years old. This requirement also applied to those who allowed their certificates to expire, thereby requiring reinstatement. This requirement for recent credit was contained in 10.57.208 Reinstatement and in subsections on reinstatement under 10.57.401, 10.57.402 and 10.57.403 but was not specifically stated for initial certification. This proposal will place in the rule those policies under which OPI, and the Certification Division

in particular, have operated in absence of an ARM regulation that substantiates and authorizes that particular procedure.

5. Interested parties may submit their data, views or argments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than January 20, 1992.

6. Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.

Bill Thomas

BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: Wayne G Buchanan

Certified to the Secretary of State, December 2, 1991

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

In the matter of the amendment of ARM 16.6.116 concerning fees for copies of vital statistics records and research	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.6.116 (Records and Statistics)

To: All Interested Persons

1. On January 9, 1992, at 10:00 a.m. in Room C209, side 2 of the Cogswell Building, 1400 Broadway, Helena, Montana, the Department of Health and Environmental Sciences will hold a public hearing to consider amending ARM 16.6.116, which sets a fee for certified copies of birth, death, or fetal death certificates issued by the department, as well as a fee for research performed by the department.

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

16.6.116 FEES FOR COPIES AND RESEARCH (1) The fee is $5 $10 for each certified copy of a birth, death, or fetal death certificate issued by the Bureau of Records and Statistics.

(2) Remains the same.

AUTH: Sec. 50-15-111, MCA; IMP: Sec. 50-15-111, MCA

3. The proposed amendment of ARM 16.6.116 to increase the fee for issuance of a certified copy of a vital statistics record is necessary in order to allow the Records and Statistics Bureau to generate the funds needed to deal with its current workload, given the cutback in its general fund support approved by the 1991 Legislature and recent additional general fund cutbacks ordered by the Governor.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be received by Ellie Parker, Legal Unit, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than January 14, 1992.

5. Ellie Parker, at the above address, has been designated to preside over and conduct the hearing.

Dennis Iverson
DENNIS IVERSON, Director

Certified to the Secretary of State December 2, 1991.

Reviewed by:

Eleanor J. Parker
Eleanor Parker, DHES Attorney

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

IN THE MATTER OF THE ADOPTION OF NEW RULES AND THE AMENDMENT OF RULES PERTAINING TO THE ISSUANCE OF OIL AND GAS DRILLING PERMITS, DRILLING PROCEDURES, HORIZONTAL WELLS, DRILLING AND PRODUCTION WASTE DISPOSAL PRACTICES, THE FILING OF REPORTS, LOGS, AND OTHER INFORMATION, BLOW-OUT PREVENTION AND SAFETY REQUIREMENTS, SPILL NOTIFICATION REQUIREMENTS, HYDROGEN SULFIDE GAS REPORTING REQUIREMENTS, AND OTHER ENVIRONMENTAL REQUIREMENTS.	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES, AMENDMENTS TO RULES 36.22.302, 36.22.307, 36.22.602, 36.22.1001, 36.22.1002, 36.22.1005, 36.22.1012, 36.22.1013, 36.22.1103, 36.22.1204, 36.22.1207, 36.22.1226, 36.22.1227, 36.22.1241, AND 36.22.1242, AND THE REPEAL OF RULE 36.22.1204.

TO: All Interested Persons:

1. On January 30, 1992, at 9:00 a.m a public hearing will be held in the Billings Petroleum Club, Sheraton Hotel, Billings, Montana, to consider new rules, amendments to rules 36.22.302, 36.22.307, 36.22.602, 36.22.1001, 36.22.1002, 36.22.1005, 36.22.1012, 36.22.1013, 36.22.1103, 36.22.1204, 36.22.1207, 36.22.1226, 36.22.1227, 36.22.1241, and 36.22.1242, and the repeal of rule 36.22.1204.

2. The proposed new rules, proposed amendments to rules, and the proposed repeal of a rule add to, replace, or subtract from present rules found in the Administrative Rules of Montana beginning on page 36-404.

3. The proposed new rules, rules as proposed to be amended, and proposed repealed rule provide as follows:

36.22.302 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) remains the same.

(2) "Aquifer" means a stratum or zone of rock which is sufficiently permeable to conduct ground water and to yield economically significant quantities of water.

(2) through (20) will remain the same but will be renumbered (3) through (21)

(22) "Degrade" means that as a result of any source discharging pollutants to groundwater or surface water, the concentration, outside of applicable mixing zones as defined in ARM 16.20.1001 and ARM 16.20.1010, of a pollutant for which maximum contaminant levels are established in subsection (4) of ARM 16.20.1003 has become worse, or that the concentration of other pollutants, outside of mixing zones, has become worse and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.

(23) "Drilling fluid" means any fluid used in the drilling of an oil or gas well to remove, hold, and carry cuttings to the

surface; to cool or lubricate a drill bit; to line the bore hole; to control subsurface pressures; to support the weight of the drill pipe or casing; to protect formations; or to transmit hydraulic horsepower to the drill bit.

(21) will remain the same but will be renumbered (24).

(25) "Earthen pit" means any indentation in the ground that is used in oil or gas exploration or production activities including, but not limited to, reserve pits, skimming pits, settling pits, produced water pits, percolation pits, evaporation pits, emergency pits, and workover pits.

(26) "Fence" means a barrier constructed of posts and wire or other materials.

(27) "Flow line":

(a) means a pipeline used to transfer crude oil, gas, and produced water from the wellhead to production treatment, separation, or storage facilities;

(b) also means a pipeline used to transfer produced water from a production facility to an injection or disposal well;

(c) does not mean a transmission pipeline.

(22) will remain the same but will be renumbered (28).

(29) "Fresh water" means water containing less than 10,000 parts per million (ppm) total dissolved solids (TDS).

(30) "Freshwater-based drilling fluid" means any drilling fluid other than a salt-based drilling fluid or oil-based drilling fluid.

~~(23)~~ (31) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in ~~subsection (7)~~ of 82-11-101, MCA. (Section 82-11-101~~(6)~~, MCA.)

(24) through (26) remain the same but will be renumbered (32) through (34).

~~(27)~~ (35) "Gas well" means:

(a) a well that produces natural gas only;

(b) ~~any well capable of producing commercial quantities and also producing oil from the same common source of supply but not in commercial quantities~~ any well capable of producing at least 10,000 standard cubic feet of gas per stock tank barrel of oil per day for any calendar month; and

(c) any well classified as a gas well by the board for any reason.

(36) "Hazardous substance" means any substance defined as a hazardous or deleterious substance in 75-10-701, MCA.

(37) "Hazardous waste" means any waste defined as a hazardous waste in ARM 16.44.303.

(38) "Horizontal drainhole" means that portion of a wellbore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply that exceeds 100 feet.

(39) "Horizontal drainhole end point" means the terminus of a horizontal drainhole.

(40) "Horizontal well" means:

(a) a well with one or more horizontal drainholes; and

(b) any other well classified by the board as a horizontal well.

(28) and (29) will remain the same but will be renumbered (41) and (42).

(43) "Irrigated cropland" means any land that is customarily supplied with water by artificial means for growing plants.

(30) will remain the same but will be renumbered (44).

(45) "Merchantable oil" means any oil that can be sold or traded on a commercial basis. Oil sludge, tank bottoms and waste oil are not merchantable oils.

(46) "Net" means an open-meshed, twisted, knotted, or woven material used to completely cover a pit, pond, tank, or other oil or gas exploration or production facility.

~~(31)~~ (47) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity ~~which~~ that are produced at the wellhead in liquid form by ordinary production methods and ~~which~~ that are not the result of condensation of gas before or after it leaves the reservoir. (Section 82-11-101~~(7)~~(10), MCA.)

(32) will remain the same but will be renumbered (48).

(49) "Oil-based drilling fluid" means any drilling fluid containing oil or petroleum additives in amounts of 5 percent or greater by volume.

(50) "Oil sludge" means a viscous, unmerchantable oil that contains mud or other impurities.

(33) and (34) will remain the same but will be renumbered (51) and (52).

~~(35)~~ (53) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces ~~therefrom~~ from a pool ~~either for himself or others or~~ for himself and others, and the term includes all persons holding ~~such~~ that authority by or through him. (Section 82-11-101~~(7)~~, MCA.)

(54) "Perennial watercourse" means a lake, stream, river, or other body of water that flows or retains water continuously throughout the year.

(36) will remain the same but will be renumbered (55).

~~(37)~~ (56) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision ~~thereof~~ of the state. (Section 82-11-101~~(9)~~(12), MCA.)

(38) through (40) will remain the same but will be renumbered (57) through (58).

(59) "Produced fluid" means any fluid, including oil, gas, and water, originating from subsurface geologic sources.

(60) "Production facility" means any facility or site constructed or used for the purpose of producing, treating, or separating produced fluid, including but not limited to, oil, gas, injection, or disposal wells, pumping units, flow lines, gas flares, treaters, separators, gun barrels, storage tanks, production pits and ponds, skimmer pits, and evaporation pits or ponds. A transmission pipeline is not a production facility.

(41) through (43) will remain the same but will be renumbered (61) through (63).

(64) "Saltwater-based drilling fluid" means any drilling fluid containing sodium chloride in concentrations of more than 10,000 parts per million (ppm), or lime (calcium oxide or calcium carbonate) in concentrations of more than 40,000 ppm, or gypsum (calcium sulfate) in concentrations of more than 50,000 ppm.

(65) "Screen" means an open-meshed, twisted, knotted, or woven material that is firmly attached to a fence.

(66) "Service company" means any person, other than an operator or a drilling contractor, that provides goods or services associated with oil or gas exploration and production operations.

(67) "Solid waste" means any waste defined as a solid waste under 75-10-103, MCA.

(44) will remain the same but will be renumbered (68).

(69) "Standard conditions of temperature and pressure" means 14.73 pounds per square inch absolute and 60 degrees Fahrenheit.

(45) will remain the same but will be renumbered (70).

(71) "Stripper gas well" means a gas well that produces an average of 60 thousand standard cubic feet (MCF) or less of gas per day for a calendar month.

~~(46)~~ (72) "Stripper oil well" means an oil well ~~which~~ that ~~is not capable of producing~~ produces less than an average of ~~25~~ 10 barrels of oil per day for a calendar month.

(73) "Tank bottoms" means the unmerchantable oil, basic sediment, and water in oil production storage tanks, separators, and other production facilities and receptacles.

(74) "Transmission pipeline" means a pipeline used to gather and transfer marketable crude oil or natural gas from production treatment, separation, and storage facilities. A flow line is not a transmission pipeline.

(47) and (48) will remain the same but will be renumbered (75) and (76).

~~(49)~~ (77) "Waste": ~~means~~

(a) means physical waste, as the term is generally understood in the oil and gas industry;

(b) means the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) means the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner ~~which~~ that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or ~~which~~ that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and~~,~~

(d) means the inefficient storing of oil or gas~~,~~; but

(e) does not mean ~~,~~ the production of oil or gas from any pool or by any well to the full extent that such well or pool can be produced in accordance with methods designated to result in maximum ultimate recovery, as determined by the board~~.,~~ ~~is not waste within the meaning of this definition.~~) (Section 82-11-101~~(12)~~(18), MCA.)

(78) "Waste oil" means discarded or unmerchantable oil.

(50) will remain the same but will be renumbered (79).

~~(51)~~ (80) "Well, wildcat or exploratory":

(a) means any well drilled for oil or gas outside of a delineated field; ~~or~~

(b) means a well drilled to a stratum other than one then productive within a delineated field~~.~~; but

(c) ~~It~~ does not mean a stratigraphic well or core hole.

AUTH: Sec. 82-11-111 MCA IMP: Sec. 82-11-101 through 82-11-201, MCA

36.22.307 ADOPTION OF FORMS The forms hereinafter listed are hereby adopted and made a part of these rules for all purposes, and the same ~~shall~~ must be used as herein directed in giving notice and in making reports and requests ~~of~~ to the board. Copies of printed forms will be supplied by the board upon request. Address requests for forms to: Board of Oil and Gas Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301.

(1) through (25) remain the same.

(26) Form No. 22 Application for Permit (Drill, Deepen, or Re-Enter)

(27) Form No. 23 Application for Permit (Earthen Pit or Pond)

AUTH: Sec. 82-11-111, MCA IMP: Sec. 2-4-201 and 82-11-101 through 82-11-164, MCA

36.22.602 ~~SURVEY PLAT WITH~~ NOTICE OF INTENTION TO DRILL AND APPLICATION FOR PERMIT TO DRILL (1) A notice of intention and application for permit to drill ~~shall be accompanied by~~ must include a survey plat certified by a registered surveyor and showing the location of the proposed well with reference to the nearest lines of an established public survey.

(2) An operator may not deviate from the board approved permit to drill and conditions thereon without approval of the board administrator. The board administrator may impose further permit modifications or conditions at any time should the factual situation warrant such modifications or conditions.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-122, MCA

Rule I HORIZONTAL WELLS (1) Unless otherwise modified herein, the requirements of ARM 36.22.702 shall apply to horizontal wells.

(2) For the purpose of determining the size of drilling units and the permissible location of horizontal wells, "projected depth" as used in ARM 36.22.702 means the projected true vertical depth of the deepest horizontal drainhole.

(3) A horizontal well must meet the location requirements of ARM 36.22.702 if the point where the well bore first penetrates the common source of supply, the horizontal drainhole end point, and every part of the well bore lying between these points meet the minimum distance requirements from the drilling unit boundaries that would apply to a vertical well of the same projected depth, regardless of the surface location proposed.

(4) The operator of a horizontal well may designate an optional drilling unit, which must consist of two contiguous drilling units of the size and shape otherwise authorized for a vertical well of the same projected depth. The operator must receive administrative approval of the optional drilling unit before starting to drill the horizontal drainhole. Minimum distance requirements from drilling unit boundaries that would apply to the contiguous drilling units apply to the optional drilling unit, except that such requirements do not apply to the common boundary of the contiguous units. Any operator designating an optional drilling unit under this section must apply for proper well spacing to be determined by the board after notice and public hearing.

(5) Within 30 days after completion of a horizontal well, the operator must file with the board a complete and accurate directional survey showing the location, direction, and length of each horizontal drainhole and demonstrating that all drainholes are at locations permitted by this rule or by a board location exception order.

(6) In those cases where a horizontal well is drilled following an initial vertical penetration of the target horizon, or the horizontal well includes more than one horizontal drainhole, the completion report submitted under ARM 36.22.1011 must adequately describe each well path.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-124 and Sec. 82-11-201, MCA

36.22.1001 ROTARY DRILLING PROCEDURE Unless altered, modified, or changed by the board for particular common sources of supply, ~~upon notice and hearing before the board,~~ the following rules ~~on "drilling procedure" shall~~ apply to drilling wells ~~drilled~~ with rotary tools~~:~~.

(1) Suitable and safe surface casing ~~shall~~ must be used in all wells. ~~In all wells drilled in areas where pressure and formations are unknown,~~ Sufficient surface casing ~~shall~~ must be run to reach a depth below all ~~potable~~ fresh water located at levels reasonably accessible for agricultural and domestic use. Surface casing ~~shall~~ must be set in or through an impervious formation and ~~shall~~ must be cemented by the pump-and-plug or displacement method with sufficient cement to circulate to the top of the well. If it becomes necessary to run a production string, such string ~~shall~~ must be cemented by the pump-and-plug method or any other ~~recognized~~ method approved by the board administrator and ~~shall~~ must be properly tested by the pressure method before cement plugs are drilled.

(2) of this rule will remain the same.

(3) ~~In all proven areas, the use of blow-out prevention equipment shall be in accordance with established practice in the area.~~ Blowout prevention equipment must be installed and maintained on all wells in accordance with the requirements of ARM 36.22.1014.

~~(4) In unproven areas, all drilling wells shall be equipped with a mastergate or its equivalent and an adequate blow-out preventer, together with choke and kill line or lines~~

~~of the proper size and working pressures. The entire control equipment shall be in good working condition at all times.~~

~~(5)~~ (4) ~~Only~~ Freshwater-based drilling fluid ~~may be used~~ or air must be used when drilling the surface hole prior to setting surface casing and when drilling through freshwater aquifers anywhere within the state of Montana.

AUTH: Sec. 82-11-111, MCA IMP, 82-11-123 and Sec. 82-11-124, MCA

36.22.1002 CABLE DRILLING PROCEDURE (1) Before commencing to drill a well, the operator must construct proper and adequate slush pits ~~shall be constructed~~ according to the plan in the application for permit to drill approved by the board ~~for the reception of mud of sufficient quality and quantity so that such mud may be available if the hole is plugged~~.

(2) If cable tools are used, sufficient casing ~~shall~~ must be set to protect all ~~potable~~ fresh water located at levels reasonably accessible for agricultural and domestic use, and, before drilling below the casing point proceeds, such casing ~~shall~~ must be tested by bailing to ensure a shutoff.

(3) Natural gas ~~which~~ that may be encountered in a substantial quantity in any section of a cable-tool-drilled hole above the ultimate objective ~~shall~~ must be shut off with reasonable diligence ~~either by mudding or by casing or other approved method~~ and confined to its original source. Any gas escaping from the well during drilling operations ~~shall~~ must be conducted ~~to~~ a safe distance from the well site. ~~This shall not prohibit the use of natural gas produced from bradenhead for lease operations.~~

(4) A casing program adopted for cable-tool-drilled wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other horizons, ~~and~~ to prevent migration of oil or gas from one horizon to another, and to prevent migration of oil, salt water, or other contaminants into freshwater aquifers.

(5) ~~Only~~ Freshwater-based drilling fluid ~~may be used~~ must be used when drilling the surface hole prior to setting surface casing and when drilling through freshwater aquifers anywhere within the state of Montana.

AUTH: Sec. 82-11-111, MCA IMP: 82-11-123 and Sec. 82-11-124, MCA

36.22.1005 ~~SOLID~~ DRILLING WASTE DISPOSAL AND SURFACE RESTORATION (1) The operator of a drilling well ~~shall~~ must contain and dispose of all solid waste and produced fluids that ~~accumulates~~ accumulate during drilling operations so as not to degrade surface water, groundwater, or cause harm to soils. Said waste and fluids ~~shall either be removed from the well site or buried at the well site to a minimum depth of 3 feet below the restored surface of the land~~ must be disposed of in accordance with all applicable local, state and federal laws and regulations.

(2) When a salt-based or oil-based drilling fluid is used to drill a well located within a floodplain, as defined by ARM 36.15.101, or in irrigated cropland, drilling waste and produced fluids that accumulate during drilling operations must be disposed of off-site in a manner allowed by local, state, and federal laws and regulations.

~~(2)~~ (3) The operator of a drilling well ~~shall~~ must construct, close, and restore ~~his~~ any reserve pits in a manner ~~adequate to~~ that will prevent ~~undue~~ harm to the soil ~~or natural water in the area~~ and will not degrade surface waters or groundwater. When a salt-based or oil-based drilling fluid ~~mud system~~ is used ~~as the drilling medium~~, the reserve pit ~~shall~~ must be ~~sealed when necessary to prevent seepage~~ lined with a synthetic liner approved by the board administrator.

(4) Within 10 days after the cessation of drilling or completion operations, all hydrocarbons must be removed from earthen pits used in association with drilling or completion operations or such pits must be fenced, screened, or netted. Such pits that contain water with more than 15,000 parts per million total dissolved solids or salt-based drilling fluids must be fenced within 90 days after the cessation of drilling and completion operations.

(5) Earthen pits used in association with drilling and completion operations must not be used for the disposal of any additional fluids or materials after the cessation of drilling and completion operations.

(6) All earthen pits used in association with drilling and completion operations must be closed and the surface restored according to board specifications within one year after the cessation of drilling operations. Upon written application by the operator, an exception to the one-year pit closure requirement may be granted in writing by the board administrator upon a showing that:

(a) access to and use of the pit will be restricted to use by the operator;

(b) no dumping or disposal of waste or fluids in the pit will occur; and

(c) delayed closure of the pit will not present a risk of contamination to soils or water or a hazard to animals or persons.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123 and Sec. 82-11-124, MCA

36.22.1012 SAMPLES OF CORES AND CUTTINGS (1) Any owner or operator drilling or deepening a well for oil or gas ~~shall~~ must deliver prepaid to the board at the office stipulated on the approved permit to drill a complete and representative sample of the core chips and a dry, washed set of cuttings within a period of six months after the completion or abandonment of such well.

(2) A complete and representative sample of cores, chips and a dry, washed set of cuttings from a stratigraphic well ~~shall~~ must be delivered prepaid to the board at the office stipulated on the approved permit to drill within 3 years of the

completion of the stratigraphic well.

(3) remains the same.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-125, MCA

36.22.1013 FILING OF COMPLETION REPORTS, WELL LOGS, ANALYSES, REPORTS, AND SURVEYS (1) The owner or operator must run an electrical, radioactivity, or similar petrophysical log or combination of logs sufficient to determine formation tops from total depth to the base of the surface casing unless waived by the board administrator.

~~(1)~~ (2) Within 30 days after the completion, reworking, or abandonment of any well drilled to known productive horizons within a delineated field, the operator or owner ~~shall~~ must transmit to the board ~~3~~ three copies of Form No. 4, 4 four copies of Form No. 2, and ~~2~~ two ~~original~~ copies of all well logs; drill stem test survey reports; sample and core description logs, analyses, and reports, water analyses; and all other logs, surveys, and reports run or made.

~~(2)~~ (3) In the case of a wildcat or exploratory well, the owner or operator ~~shall~~ must transmit to the board within 6 months after completion or abandonment ~~3~~ three copies of Form No. 4, 4 four copies of Form No. 2, and ~~2~~ two ~~original~~ copies of all logs, surveys, reports, and analyses run or made as described in subsection ~~(1)~~ (2). In the case of a stratigraphic well, said information ~~shall~~ must be sent to the board within ~~3~~ three years from the date of completion.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123, MCA

Rule II BLOWOUT PREVENTION AND WELL CONTROL EQUIPMENT

(1) Unless otherwise provided for by the permit to drill issued under ARM 36.22.601 and ARM 36.22.602, or by board order issued after public notice and hearing, the owner must provide blowout preventers and well control equipment on all wells in accordance with the following rules.

(a) For wells in areas of abnormal or unknown formation pressures, proper blowout preventers must consist of hydraulically-operated single or double ram-type preventers with at least one pipe ram and one blind ram, and an annular-type preventer. Additional equipment must include upper and lower kelly cocks; mud pit level indicators with alarms and/or flow sensors and alarms; and choke manifolds, kill lines, and other well control equipment sufficient to handle all pressure kicks. Accumulators must maintain a pressure capacity reserve at all times to provide for the operation of the hydraulic preventers and valves with no outside source of pressure.

(b) For development wells and in all areas of known formation pressures, blowout prevention and well control equipment must be installed.

(c) The owner must maintain all blowout prevention and well control equipment in good working order.

(2) Drilling spools for blowout preventer stacks must have a working pressure rating equal to the rated working pressure of the attached blowout preventer and must meet the following minimum specifications:

(a) for working pressures rated at 3,000 or 5,000 pounds per square inch (psi), flanged, studded, or clamped side outlets of no less than 2 inches nominal diameter.

(b) for working pressures rated at 10,000 and 15,000 psi, one 2-inch side outlet and one 3-inch side outlet.

(3) The rated working pressure of all blowout preventers and well control equipment must equal or exceed the maximum anticipated pressure to be contained at the surface.

(4) Wellhead outlets must not be used for choke or kill lines in areas of abnormal or unknown formation pressures. Such outlets may be employed for auxiliary or back-up connections to be used only if the primary control system fails.

(5) The owner or operator must test blowout prevention and well control equipment according to the following standards.

(a) Ram-type blowout preventers and well control equipment, including casing, must receive initial pressure testing to the least of the manufacturer's full working pressure rating of the equipment, 50 percent of the minimum internal yield pressure of any casing subject to test, or one psi per foot of the last casing string depth. Annular-type blowout preventers must receive initial pressure testing in conformance with the manufacturer's published recommendations.

(b) If, for any reason, a pressure seal is disassembled, the owner or operator must test the full working pressure of that seal before resuming drilling operations. However, if the affected seal is an integral part of the blowout preventer stack, the owner or operator may obtain permission from a board representative to proceed without testing the seal.

(c) In addition to the initial pressure tests, the owner or operator must check ram- and annular-type preventers for physical operation each trip.

(d) All blowout preventer components, with the exception of annular preventers, must be tested monthly to the least of 50 percent of the manufacturer's rated pressure, the maximum anticipated pressure to be contained at the surface, one psi per foot of the last casing string depth, or 70 percent of the minimum internal yield pressure of any casing subject to test.

(e) The owner or operator must note all tests of blowout preventer and well control equipment on the driller's log, which must be made available to the board upon request. The board may require the operator or the drilling contractor to provide a signed and sworn affidavit attesting to the sufficiency of the blowout prevention equipment and any testing of such equipment.

(6) The owner or operator must submit a schematic diagram of the proposed blowout prevention and well control equipment with the application for permit to drill.

(7) In areas where hydrogen sulfide or sour gas may be encountered, the following additional equipment and precautions are required:

(a) a blowout preventer closing unit located in a safe place easily accessible to rig personnel.

(b) a remote auxiliary choke control panel to operate the choke manifold set up at a safe distance upwind from the rig floor.

(c) a remote kill line sufficient to permit use of an auxiliary high-pressure pump.

(d) the placement of the drilling fluid inlet line to the degasser close to the drilling fluid discharge line from the mud/gas separator.

(e) provisions to flare toxic gases with an adequate degasser, discharge lines, check valves, a vertical flare stack, and a gas ignition system.

(f) provisions for personnel training; personnel protective equipment including sensors, alarms, and breathing equipment; warning signs; and wind direction flags to safeguard against injury or death.

AUTH: Sec. 82-11-111, MCA IMP: 82-11-121, 82-11-123 and Sec. 82-11-124, MCA

36.22.1103 NOTIFICATION AND REPORT OF ~~FIRE, BREAKS, LEAKS, OR BLOWOUTS~~ EMERGENCIES AND UNDESIRABLE INCIDENTS (1) ~~All persons controlling or operating any oil or gas wells or pipelines, or receiving tanks, storage tanks, or receiving and storage receptacles into which crude oil or is produced, received, or stored or through which oil is piped or transported shall promptly notify the board by letter giving full details concerning all fires which occur at such oil or gas wells or tanks or receptacles on their property, and all such persons shall promptly report all tanks and receptacles struck by lightning and any other fire which destroys oil or gas and shall promptly report any breaks or leaks in or from tanks or from tanks or receptacles and pipelines from which oil or gas is escaping or has escaped.~~ The owner or operator of a facility must give immediate notice by telephone to an authorized representative of the board and a written report to the board administrator within five working days of any of the following emergencies:

(a) the spill, leak, or release of more than 50 barrels of oil or water containing more than 15,000 parts per million (ppm) total dissolved solids (TDS);

(b) the spill, leak, or release of any amount of oil or of water containing more than 15,000 ppm TDS that enters surface water or groundwater;

(c) the spill, leak, or release of any amount of produced water that degrades surface water or groundwater;

(d) the release of any amount of gas with concentrations of 100 or more ppm hydrogen sulfide that is not immediately controlled;

(e) any fire; and

(f) any blowout.

(2) ~~In all such reports of fires, breaks, leaks, spills or escapes or other accidents of this nature, the location of the well, tank, receptacle, or line break shall be given by Section, Township, Range, and property so that the exact location thereof can be readily located on the ground. Such report shall likewise specify what steps have been taken or are in progress to remedy the situation reported and shall estimate the quantity of oil, or gas lost, destroyed or permitted to escape.~~ The

owner or operator must file a written report with the board administrator within five working days after any of the following:

(a) the spill, leak, or release of ten (10) or more barrels of oil or water containing more than 15,000 ppm TDS that is not completely contained within tank firewalls; and

(b) the escape or release of over 3,000 MCF of gas.

(3) ~~In case any tank or receptacle is permitted to run over, the escape thus occurring shall be reported as in the case of a leak. The report hereby required as to losses shall be necessary only in the case an oil loss exceeds 50 barrels in the aggregate and a gas loss exceeds 3,000 MCF in the aggregate.~~ The written and telephone reports referred to in parts (1) and (2) of this rule must include the following information:

(a) the location of the facility involved in sufficient detail that the site of the emergency can be readily located on the ground;

(b) an estimation of the quantity of oil, water, or gas lost, destroyed, or permitted to escape;

(c) steps that have been or will be taken to remedy the situation and the time schedule for each; and

(d) any injuries or property damage.

(4) The owner or operator must file with the board administrator any supplemental report that may be required by the board in connection with any individual emergency or undesirable incident.

(5) The reporting required by this rule is in addition to all other reporting required by other applicable local, state, and federal laws and regulations.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-121 and 82-11-123, MCA

Rule III CONTROL AND CLEANUP (1) The owner or operator must promptly control and clean up any leak, spill, escape, or discharge, regardless of the amount of oil, produced water, water containing more than 15,000 ppm TDS, or gas involved.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123, MCA

Rule IV SOLID WASTE (1) Solid waste associated with oil and gas exploration or production activities must be disposed of according to all applicable local, state, and federal laws and regulations.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123, MCA

36.22.1204 SEPARATORS REQUIRED is proposed to be repealed and can be found at page 36-495 of the Administrative Rules of Montana.

AUTH: Sec. 82-11-124, MCA IMP: Sec. 82-11-123 and Sec. 82-11-124, MCA

36.22.1207 EARTHEN ~~RESERVOIRS~~ PITS AND OPEN ~~RECEPTACLES~~ VESSELS ~~PROHIBITED~~ (1) Waste oil, oil sludge, tank bottoms, merchantable oil, petroleum products, hazardous wastes, or hazardous or deleterious substances ~~shall~~ must not be stored,

disposed of, or retained in earthen storage ~~reservoirs~~ pits or in open ~~receptacles~~ vessels.

(2) An owner or operator may make use of an unlined earthen pit to retain oil or water temporarily in the event of an emergency. The oil, water, and contaminants must be removed from the emergency pit and promptly disposed of in a manner that will not degrade surface water or groundwater or cause harm to soils. An owner or operator must apply for and obtain a permit under ARM 36.22.1227 to construct or operate a permanent emergency pit. Repeated use of an earthen pit or pits to contain oil or water spills from an improperly or inadequately designed or maintained production facility does not constitute an "emergency" for purposes of this rule.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123 and Sec. 82-11-124, MCA

Rule V FENCING, SCREENING, AND NETTING OF PITS (1) Open storage vessels, earthen pits, or ponds that contain oil must be fenced, screened, and netted.

(2) Open receptacles, earthen pits, or ponds that contain produced water with more than 15,000 parts per million total dissolved solids must be fenced.

(3) This rule does not apply to earthen pits used solely for the purpose of drilling, completing, recompleting, or plugging a well.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123 and Sec. 82-11-124, MCA

Rule VI HYDROGEN SULFIDE GAS (1) The owner or operator of an oil or gas well drilled after the effective date of this rule that produces more than 20 MCF of gas per day containing more than 20 parts per million hydrogen sulfide must submit a hydrogen sulfide gas report to the board with Form 4 within 30 days after the completion of the well.

(2) The owner or operator of an oil or gas well drilled and completed prior to the effective date of this rule that produces more than 20 MCF of gas per day containing more than 20 parts per million hydrogen sulfide must submit a hydrogen sulfide gas report with Form 2 within 12 months after the effective date of this rule.

(3) When more than one well produces casinghead gas into a common production facility, the hydrogen sulfide gas report required by subsections (1) and (2) of this rule may be submitted for the facility in lieu of the submission of a report for each well that produces into the facility.

(4) The hydrogen sulfide gas report required under this rule must include the following information:

(a) the name and location of the well;

(b) the name and address of the operator or owner of the well;

(c) the name(s) and depth(s) of the hydrogen-sulfide-producing geologic formation(s); and

(d) a gas analysis that indicates the percent concentration of methane, hydrogen sulfide, carbon dioxide,

ethane, butane/pentanes, and other constituents.

(5) The owner or operator of a production facility with the potential of accumulating hydrogen sulfide gas in concentrations of 100 parts per million or more must prevent unauthorized access to the facility and must install a wind sock and hydrogen sulfide warning signs at such facility.

AUTH: Sec. 82-11-111, MCA IMP, Sec. 82-11-123 and Sec. 82-11-124, MCA

36.22.1226 DISPOSAL OF SALT-OR-BRACKISH WATER ~~No person shall dispose of salt or brackish water except in the manner provided in either ARM 36.22.1227 or ARM 36.22.1228.~~ (1) Produced water containing 15,000 parts per million (ppm) or less total dissolved solids (TDS) may be retained and disposed of in any manner allowed by law that does not degrade surface waters or groundwater or cause harm to soils.

(2) Produced water containing more than 15,000 ppm TDS must be disposed:

(a) by injection into an approved Class II injection well; or,

(b) into board-approved lined or unlined earthen pits if the operator can show on permit application Form 23 that the volume of water to be disposed of per pit will not exceed five (5) barrels per day on a monthly basis and the produced water will not degrade any existing surface water or groundwater source or cause harm to soils.

(3) Produced water containing more than 15,000 ppm TDS may be temporarily retained in storage tanks or board-approved, lined earthen pits or ponds prior to injection. The earthen pits or ponds must be constructed and maintained in accordance with ARM 36.22.1227.

(4) Discharges of produced water must be in compliance with all applicable local, state, and federal water quality laws and regulations.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123 and Sec. 82-11-124, MCA

36.22.1227 DISPOSAL IN EARTHEN PITS AND PONDS ~~(1) Salt or brackish water may be disposed of by evaporation when impounded in excavated earthen pits which may only be used for such purpose when the pit is underlaid by tight soil such as heavy clay or hardpan.~~

~~(2) Where the soil under the pit is porous and closely underlaid by a gravel or sand stratum, impounding of salt or brackish water in such earthen pits is hereby prohibited.~~

~~(3) The Board shall have authority to condemn any pit which does not properly impound such water.~~

~~(4) At no time shall salt or brackish water impounded in earthen pits be allowed to escape over adjacent lands or into streams.~~ (1) No person shall construct or use an earthen pit or pond in association with a production facility without first obtaining a permit from the board. Such earthen pits or ponds that exist prior to the effective date of this rule must be permitted or closed and restored according to board

specifications within 12 months after the effective date of this rule.

(2) Earthen pits or ponds that receive produced water containing more than 15,000 parts per million (ppm) total dissolved solids (TDS) in volumes greater than five (5) barrels per day on a monthly basis must:

(a) be constructed in cut material or at least 50 percent below original ground level;

(b) be lined with an impermeable synthetic liner, or, if the bottom of the pit or pond is underlain by porous, permeable, sharp, or jagged material, the pit or pond must be lined with at least 3 inches of compacted bentonite prior to setting the impermeable synthetic liner;

(c) be constructed above the high water table;

(d) not be located in a floodplain as defined by ARM 36.15.101, or in irrigated cropland;

(e) be bermed or diked and have at least 3 feet of freeboard at all times between the surface of the water and the top of the banks, berms, or dikes of the pit or pond;

(f) be fenced, screened, and netted in accordance with ARM 36.22.1222; and

(g) not be used for disposal of hazardous wastes or hazardous or deleterious substances.

(3) The board administrator may impose more restrictive earthen pit or pond construction or operation requirements as may be necessary to prevent degradation of water or harm to soils.

(4) Sections (2)(a) through (2)(f) of this rule do not apply to emergency pits as allowed by ARM 36.22.1207, nor does this rule apply to temporary earthen pits, including reserve pits, approved by the board under a valid permit to drill unless such pits remain open and unrestored for more than 12 months after the cessation of drilling or completion operations. AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123 and Sec. 82-11-124, MCA

36.22.1241 SERVICE COMPANY REPORTS (1) When a service company other than a drilling contractor cements, chemically treats, fractures, perforates, acidizes, plugs, or performs any act designed to change the productivity of ~~the~~ a well or reservoir, the service company shall furnish the board at its district office reports concerning such work within 30 days after its completion.

(2) When such operations as set forth in subsection (1) are performed on wildcat or exploratory wells, service company reports need not be submitted to the board for a period of 6 months following completion of the well, and in such instances the responsibility of submitting such reports shall be that of the operator of the well, except that all service company reports covering all cementing operations other than squeezing must be submitted to the board at its district office within 30 days after the work is performed.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-124, MCA

36.22.1242 REPORTS BY PRODUCERS - TAX REPORT - TAX RATE

(1) Each operator or producer ~~or owner~~ of an oil or gas well shall file or cause to be filed with the board on or before the last day of each month succeeding the month in which the producing or taking occurs a report on Form No. 6 containing all information required by said form.

~~(2) Each producer of oil and each producer of gas shall not later than the last day of each of the calendar months of February, May, August and November of each and every calendar year with the board a copy of the privilege and license tax assessment report from filed with the department of revenue.~~

(3) will remain the same but will be renumbered (2).

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-123, 82-11-131, and 82-11-133, MCA

4. The reason for the amendment of ARM 36.22.302 is to define new words used in the new or amended rules.

The reason for the amendment of ARM 36.22.307 is to revise a form and to add a new form to reflect the requirements of the proposed new rules.

The reasons for the amendments to ARM 36.22.602, 36.22.1001, 36.22.1002, 36.22.1005, 36.22.1103, 36.22.1207, 36.22.1226, and 36.22.1227, and new Rules II, III, IV, V, and VI, are to comply with the Montana Environmental Policy Act, Sections 75-1-101 et seq., MCA, and to implement environmental protection measures recommended in the Montana Board of Oil and Gas Conservation's December 1989 Final Programmatic Environmental Impact Statement.

The reason for new Rule I is to establish operational guidelines for drilling practices presented by new horizontal well technologies.

The reasons for the amendments to ARM 36.22.1012, 36.22.1013, and 36.22.1241 are to ensure the timely receipt by the board of sufficient information necessary to promote the development of Montana's oil and gas resources, to conserve oil and gas, and to protect correlative rights.

The reason for the amendment of ARM 36.22.1242 is to conform to changes made by the Montana Legislature in tax and tax reporting requirements.

The reason for repealing ARM 36.22.1204 is that the rule is obsolete.

5. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Timothy C. Fox, 2535 St. Johns Avenue, Billings, Montana 59102, by no later than January 23, 1992.

6. Warren H. Ross, Chairman of the Montana Board of Oil and Gas Conservation, has been designated to preside over and conduct the hearing.

Donald D. MacIntyre
Chief Legal Counsel

Dee Rickman, Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State, December 2, 1991.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to SB 226 providing for annual retirement benefit adjustments for Montana residents.	)))))	NOTICE OF THE ADOPTION OF RULES RELATING TO THE RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD

TO: All Interested Persons.

1. On October 17, 1991, the Public Employees' Retirement Board published notice of a public hearing on the proposed adoption of the above rules concerning Montana's retirement systems in the Montana Administrative Register, issue number 19, starting at page 1888 and inclusive of page 1890.

2. At 9:30 am on November 7, 1991 a Public Hearing was conducted pursuant to the October 17, 1991 notice. No oral testimony or written comments were received at this hearing.

3. Written testimony was received from the Public Employees' Retirement Division attesting to the need for the rules as proposed. No other written or oral comments were received by the division.

4. The agency has adopted the rules as proposed.

5. The new rules which have been adopted will be numbered as follows:

RULE I	ARM	2.43.612
RULE II	ARM	2.43.613
RULE III	ARM	2.43.614

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Robert L. Batista, President
Public Employees'
Retirement Board

Certified to the Secretary of State on December 2, 1991.

BEFORE THE STATE COMPENSATION MUTUAL INSURANCE FUND
OF THE STATE OF MONTANA

In the Matter of the Adoption of emergency Rules I through XVII relating to the organization of the State Fund, public participation, board meetings and the establishment of premium rates.	)))))))	NOTICE OF ADOPTION OF EMERGENCY RULES I THROUGH XVII RELATING TO THE ORGANIZATION OF THE STATE FUND, PUBLIC PARTICIPATION BOARD MEETINGS AND THE ESTABLISHMENT OF PREMIUM RATES

TO: All Interested Persons:

1. Section 39-71-2316(3), MCA authorizes the state fund to adopt, amend and repeal rules relating to the conduct of its business. Section 39-71-2315 gives the Board of Directors of the State Compensation Mutual Insurance Fund full power and authority and jurisdiction over the state fund. Section 39-71-2311 and 2316(6), MCA, require the state fund to be neither more nor less than self supporting. "Premium rates must be set at least annually at levels sufficient to insure the adequate funding of the insurance program, including the cost of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect", 39-71-2311, MCA. On November 28, 1991 an opinion was issued in Montana's First Judicial District Court, Lewis & Clark County Cause No. CDV-91-1042, Montana Health Care Association, a Montana nonprofit corporation; Discovery Care Centre, a Montana corporation; and Valley Health Care Center, a Minnesota corporation vs. Montana Board of Directors of the State Compensation Mutual Insurance Fund; Montana Department of Administration; Patrick Sweeney, Executive Director of the State Compensation Mutual Insurance Fund; and State Compensation Mutual Insurance Fund. This decision stated, "that rules relating to the conduct of the state fund should be adopted by the Board or under procedures authorized by the Board." Rules had previously been adopted by the state fund under the authority of its president. The state fund in Section 39-71-2316 may only adopt and change premium rates for classifications using a process, procedure, formulas and factors set forth in the rules adopted under the Montana Administrative Procedure Act. This decision leaves the state fund without any valid rules in place for prospective rate changes. The state fund faces possible insolvency in the current fiscal year if rates are not increased on an interim basis which would violate Sec. 39-71-2311 and 39-71-2316(6), MCA. Potential insolvency poses a serious and unacceptable risk of devastating financial harm to injured workers entitled to receive workers' compensation benefits from the state fund.

The Board finds that the risk of insolvency and the resulting impairment of the state fund's ability to pay workers' compensation benefits to injured workers, as is required by law, is an imminent peril to the public health, safety and welfare. Since the Board cannot consider interim rate increases without having the necessary rulemaking framework first in place, the lack of that necessary administrative framework is an imminent peril to the public health, safety and welfare.

2. The emergency rules are effective as of the date they are certified to the Secretary of State because of the state fund's findings contained in paragraph 1.

3. The state fund will take appropriate measures to make the emergency rules known to persons who may be affected.

4. A standard rulemaking procedure will be undertaken with a full public hearing prior to the expiration of these emergency rules.

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

RULE I. ORGANIZATIONAL RULE (1) Organization of the State Compensation Mutual Insurance Fund:

(a) History. The State Compensation Mutual Insurance Fund (state fund) was implemented under the provisions of 39-71-2313, MCA (1989) on January 1, 1990. Its functions and responsibilities are set forth in Title 39, chapter 71, part 23, MCA.

(b) Departments. The state fund consists of the following departments:

(i) Underwriting department;
(ii) Benefits department;
(iii) Legal department;
(iv) Administrative and finance department; and
(v) Management Information Services department.

(c) Board of Directors. The board of directors, appointed by the governor, is responsible for the management and control of the state fund.

(d) President. The president, appointed by the board of directors, has general responsibility for the operations of the state fund.

(e) Executive Vice-President. The executive vice-president has the responsibility of assisting the president in the implementation of policy and procedures under the direction of the president.

(f) Executive Staff. The executive staff performs general administrative functions for the president and vice-president of the state fund. Its activities include, but are not limited to, personnel, special projects, and support.

(2) Functions of Department.

(a) Underwriting Department. The underwriting department has the responsibility of underwriting and administering policies of workers' compensation insurance. Its activities include marketing, issuance, and cancellation of policies; safety; audits; and employer services regarding policies of insurance.

(b) Benefits Department. The benefits department has the responsibility for all aspects of administering and adjusting claims for benefits.

(c) Legal Department. The legal department is responsible for providing legal services to the state fund.

(d) Administrative and Finance Department. The administrative and finance department has the responsibility of performing accounting and related services, providing administrative support, and assisting in compliance with state budgetary laws and procedures.

(e) Management Information Services Department. The management information services department has the responsibility for collection, analysis and dissemination of data, and responsibility for programming and hardware administration.

(3) Information or submissions. General inquiries regarding the state fund may be addressed to the executive vice-president. Specific inquiries regarding the functions of each department may be addressed to the vice-president who heads the particular department. The address of the state fund is 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 2-4-201 MCA

RULE II. POLICIES AND OBJECTIVES IN PROVIDING CITIZEN PARTICIPATION IN THE OPERATION OF THE STATE COMPENSATION MUTUAL INSURANCE FUND (1) Participation of the public is to be provided for, encouraged, and assisted to the fullest extent practicable consistent with other requirements of state law and the rights and requirements of individual privacy. The major objectives of such participation include responsiveness of governmental actions to public concerns and priorities, and improved public understanding of official programs and actions. Prior to the adoption, amendment or repeal of rule or policy the state fund shall, where the decision is of significant public interest, give adequate notice that the decision is to be made and provide a means for public participation in the making of the decision.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 2-3-103, MCA

RULE III. GUIDELINES FOR DETERMINATION OF SIGNIFICANT PUBLIC INTEREST (1) The following will be deemed of a significant public interest to require notice and the

availability of an opportunity for public participation in the decision-making process:

(a) the adoption, amendment or repeal of an administrative rule which sets forth the process, procedure, formula and factors for adopting or changing premium rates for classifications or other administrative rule making pursuant to Title 2, chapter 4, MCA.

(b) premium rate adjustments.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 2-3-103, MCA

RULE IV. GUIDELINES FOR STATE FUND PROGRAMS (1) The state fund shall maintain a current list of interested persons and organizations including any who in writing request inclusion on such list for prior notification of items of significant public interest.

(2) The state fund files, other than personnel files and those files required by law or requirements of personal privacy to remain confidential, are open to public inspection in accordance with established state fund policy. These files are located at the state fund office in Helena. Copies of specific documents are available within a reasonable time for a copying charge plus employee time upon a written request.

(3) One person appointed by the President shall be designated as contact person with the public on a proposed decision or action of significant public interest as enumerated in Rule III. This person should be a state fund employee familiar with the proposed decision or action.

(4) General inquires regarding the state fund may be addressed to the president. Specific inquires regarding the functions of each department or for requests for information may be addressed to the vice-president who heads the particular department. The address of the state fund is 5 South Last Chance Gulch, Helena, Montana 59601.

(5) The listing of specific measures in this section shall not preclude additional techniques for obtaining, encouraging or assisting public participation.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 2-3-103, MCA

RULE V. NOTICE AND MEANS FOR PUBLIC PARTICIPATION (1) One or more of the following steps, as applicable, shall be taken to assist public participation in decision-making or items of significant public interest as enumerated in Rule III:

(a) a proceeding or hearing shall be held in compliance with the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA;

(b) notice shall be mailed to those persons on the list of interested persons in Rule IV above;

(c) a news release, legal advertisement, or other method of publication shall be given to news media which shall include the proposed action, and the date, time and place of the meeting where oral data, views or arguments may be submitted, or the name and address where written data, views or arguments may be submitted concerning the proposed action.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 2-3-103, MCA

RULE VI. AWARDING CONTRACTS (1) Opportunity for citizen involvement in the awarding of contracts shall be provided by observing the laws regarding the awarding of contracts by public agencies. Thus public notice is through the invitation to bid or requests for proposals.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 2-3-103, MCA

RULE VII. OPEN MEETINGS (1) All meetings of the state fund board of directors are open to the public, subject to the provisions of Title 2, chapter 3, part 2, MCA. The date, time, and place of a meeting of the board of directors may be obtained by contacting the state fund, 5 South Last Chance Gulch, Helena, Montana 59601 or by calling (406) 444-6518. Persons interested in receiving written notice of the meeting and a copy of the agenda should write the President of the State Compensation Mutual Insurance Fund at the above address.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 2-3-103 MCA

RULE VIII. METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) Risks insured by the state fund must be divided by the state fund into classifications. An individual classification must group together risks, so that each classification reflects exposures common to those employers in the classification.

(2) An employer covered by a state fund policy must be assigned a classification according to the type of exposure to risk within the employer's business. The classification generally includes all the various types of labor of the business. If a single classification is not sufficient to describe the risk, more than one classification may be assigned to the employer.

(3) The state fund shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual issued July 1, 1991. That section of the manual is hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Underwriting Department of the state fund, 5 South Last Chance

Gulch, Helena, Montana 59601.

AUTH: Secs. 39-71-1215 and 39-71-2316 MCA
IMP: Secs. 39-71-2311 and 39-71-2316 MCA

RULE IX. CALCULATION OF EXPERIENCE RATES (1) For each classification, the state fund shall calculate an experience rate based upon the experience of the class. The experience rate must be based on a review of the total incurred losses and total payroll in the classification during up to 10 full fiscal years immediately preceding the date of review, adjusted by an expense ratio. "Fiscal year" means the year beginning July 1.

(2) The experience rate for a classification must assume an expense ratio that takes into account operational and administrative costs.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Secs. 39-71-2311 and 39-71-2316 MCA

RULE X. CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and losses in a particular classification are not sufficient to provide a meaningful and credible statistical basis for estimating an equitable distribution of costs, the state fund actuary shall determine a credibility weighted rate for each classification.

(2) The credibility weighted rate is assigned to a classification in order to modify the experience rate. It is based on the actuary's determination of the reliability and predictability of the classification statistical data. In determining the credibility weighted rates, the state fund actuary shall consider the experience rate, existing manual rate, payroll, premium, and losses.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Secs. 39-71-2311 and 39-71-2316 MCA

RULE XI. DETERMINATION OF AGGREGATE REVENUE REQUIREMENTS (1) In order to determine the premium rate to be charged to an insured covered by the state fund for the following fiscal year, the state fund shall actuarially determine the projected revenue requirements for the year. The projected total revenue must be sufficient to cover:

(a) the value of claims, as determined by actuarial analysis, expected to be incurred as a direct result of covered accidents during the following fiscal year;

(b) operational and administrative expenses, claims adjustment expense related to covered claims, and other expenses required to operate the state fund for the fiscal year; and

(c) an amount sufficient to maintain appropriate contingency reserves and policy holder surplus.

(2) In determining the projected revenue requirements for the following state fund fiscal year, the state fund actuary shall consider:

(a) the present financial condition of the state fund;

(b) trends in the number of accidents incurred during the immediately preceding period of up to 12 years;

(c) trends in the cost of accidents incurred during the immediately preceding period of up to 12 years;

(d) the estimate of investment and other income accruing to the state fund for the following fiscal year;

(e) recent court decisions that may affect the liability of the state fund;

(f) legislative changes in the statutory benefit scheme;

(g) factors relating to maintenance of the policy base of the state fund;

(h) the anticipated changes in covered payroll during the year for which the premium rates will be in effect; and

(i) other factors the state fund considers relevant in establishing an accurate projection of revenue requirements.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Secs. 39-71-2311 and 39-71-2316 MCA

RULE XII. PREMIUM RATESETTING (1) Except as provided in subsections (2) through (5), to establish a premium rate for a classification for the following fiscal year, the state fund shall apply a factor to each credibility weighted rate in an amount sufficient to ensure that the aggregate of the premium for all classifications provides an amount sufficient to meet the actuarially determined aggregate revenue projections.

(2) The state fund shall evaluate an individual classification to determine whether the process for setting the premium rate results in an equitable rate based on an analysis of the losses and the premium amount and, if the rate is not equitable, may adjust it so that it is equitable. Payrolls have been determined not to be sufficiently verifiable for the horse racing industry and a fee basis shall be used. The fee shall be based on the aggregate revenue requirements of this classification and allocated among the projected number of industry participants.

(3) The state fund may set a classification's rate at a percentage of the National Council on Compensation Insurance (NCCI) rate based on a factor recommended by the state fund actuary of not more than 80% of the NCCI rate or not less than 50% of the NCCI rate or at the rate of an equivalent class code recommended by NCCI or the state fund actuary. These situations include, but are not limited to:

(a) an industry or occupation new to Montana or the state fund;

(b) an industry or occupation without state fund experience;

(c) an industry or occupation which has changed to the extent that a new classification code is applicable;

(d) an industry or occupation with significant changes in class code definition or application such that a portion of the experience of that classification code would be moved into two or more classification codes. A significant change may be determined by the impact on the experience of the class codes by review of the percent of payroll and liabilities affected, numbers of policyholders, the similarities or differences in experience and premium of those moving into or out of a class code and the feasibility of developing experience based rates.

(4) The state fund, subject to the approval of the state fund board of directors, may limit the percentage amount of premium rate increases or decreases if the limitation is applied to all classifications and the state fund is maintained on an actuarially sound basis. In establishing a limitation, the state fund may consider such factors as market share, catastrophic or unusual losses, rate stabilization, and economic impact on the state fund.

(5) The state fund may, with concurrence of the state fund board of directors, implement interim premium rate changes. The interim adjustment of the premium rates for classifications may be either experience based for the remainder of the fiscal year as set forth in Rule IX through Rule XII (1) or the same percentage increase or decrease may be applied to each classification's rate. If the interim rate adjustment is experience based, the immediately preceeding fiscal year may be excluded in the review of total incurred losses and total payroll as per Rule IX. In an interim rate adjustment the Board may also use the exact experience utilized to set the rate for the fiscal year as in Rule IX.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Secs. 39-71-2311 and 39-71-2316 MCA

RULE XIII. EXPERIENCE MODIFICATION FACTOR (1) An insured, whose premium level qualifies, must be assigned an experience modification factor that reflects the insured's actual experience in comparison to the expected experience. "Experience modification factor" means a factor derived from an evaluation of payroll and accident experience in previous policy periods that is based on the formula of a national rating organization.

(2) The state fund shall use the methods used by the workers' compensation rating organization to identify a qualified insured and determine the insured's experience modification factor in order to reward an insured with a good safety record and penalize an insured with a poor safety record.

(3) The state fund may use only experience incurred within the state in determining an experience modification factor.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Secs. 39-71-2311 and 39-71-2316 MCA

RULE XIV. VARIABLE PRICING WITHIN A CLASSIFICATION

(1) Effective July 1, 1991, the state fund shall implement variable pricing categories within individual classifications based upon actuarially determined aggregate revenue requirements, annual premium threshold and the insured's most recent policy effective date, loss ratio and qualification for experience modification. An analysis shall be conducted annually, and will result in placement of insured's into a pricing category for the next fiscal year.

(2) The annual analysis will include a determination of each insured's most recent policy effective date; earned premium for the most recent complete fiscal year; combined loss ratio, including any prior associated policies, of up to three of the most recent complete fiscal years; and qualification for experience modification in the next fiscal year. The annual analysis will also include a variable pricing stabilization review.

(3) Variable pricing stabilization review means an annual analysis of total earned premium, state fund administrative and operating expenses, adequate reserve requirements and other relevant factors, to establish a premium threshold and loss ratio thresholds so as to reward employers with a good safety record and penalize employers with a poor safety record. Any adjustment in the preferred category shall be offset by an adjustment in the equitable category so as to assist the state fund to be neither more nor less than self-supporting.

(4) Insured's will be placed in one of the following three pricing categories established under this rule:

(a) For placement in the preferred category with the lowest premium rate, all of the following must apply:

(i) The insured's most recent policy effective date is prior to the beginning of most recent complete fiscal year;

(ii) The insured's premium in the most recent complete fiscal year is more than the threshold determined by a variable pricing stabilization review;

(iii) The insured's combined loss ratio for up to three of the most recent complete fiscal years places the insured in the lowest rated variable pricing category as determined by a variable pricing stabilization review; and,

(iv) The insured is not qualified for experience modification in the next fiscal year.

(b) For placement in the select category with the middle premium rate, any one of the following must apply:

(i) The insured's most recent policy effective date is subsequent to the beginning of the most recent complete fiscal year; or,

(ii) The insured's premium in the most recent complete

fiscal year is less than the threshold determined by a variable pricing stabilization review; or,

(iii) The insured will qualify for experience modification in the next fiscal year; or,

(iv) The insured's most recent policy effective date is prior to the beginning of the most recent complete fiscal year; and all of the following apply:

(A) The insured's premium in the most recent complete fiscal year is more than the threshold determined by a variable pricing stabilization review;

(B) The insured's combined loss ratio for up to three of the most recent complete fiscal years is average as determined by a variable pricing stabilization review; and,

(C) The insured is not qualified for experience modification in the next fiscal year.

(c) For placement in the equitable category with the highest premium rate, all of the following must apply:

(i) The insured's most recent policy effective date is prior to the beginning of the most recent complete fiscal year;

(ii) The insured's premium in the most recent complete fiscal year is more than the threshold determined by a variable pricing stabilization review;

(iii) The insured's combined loss ratio for up to three of the most recent complete fiscal years places the insured in the highest rated variable pricing category as determined by a variable pricing stabilization review; and,

(iv) The insured is not qualified for experience modification in the next fiscal year;

(5) Notwithstanding paragraphs (1) through (4), the state fund may at any time place an insured in a pricing category with a higher premium rate based upon consideration of other relevant factors including, but not limited to:

(a) Timeliness of the insured's payroll reporting and premium payment history;

(b) An insured's prior policy was cancelled for non-submission of payroll reports, non-payment of premium, failure to pay increased deposit when required, failure to cooperate in an audit or material misrepresentation;

(c) The prior insolvency of the insured or any of the insured's principals;

(d) Determination that the insured is an increased risk pursuant to a state fund evaluation;

(e) The insured qualifies for the safety incentive or loss prevention program but refuses or fails to adequately implement or maintain a loss control program;

(f) The work is primarily performed at locations other than the insured's principal job site or place of business and the insured does not have control over the job site or place of business;

(g) The insured has a history of preventable losses;

(h) The insured or any of its principals have a prior

history with any insurer where the most recent experience modification reflects a factor of greater than 1.00.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-2311 and 39-71-2316 MCA

RULE XV. MEDICAL DEDUCTIBLE (1) The state fund offers an annual medical deductible plan in increments of $500, $1,000, $1,500, $2,000 and $2,500 per claim. This plan allows qualified employers to reimburse the state fund for a selected deductible amount of the medical costs of each claim in exchange for a premium discount.

(2) To qualify for the plan, an employer must:

(a) file an endorsement form, provided by the state fund; and

(b) have annual premium which equals or exceeds the chosen deductible amount; and

(c) demonstrate the ability to promptly pay the deductible amounts by not having a poor premium payment history with the state fund.

(3) The state fund is responsible for initial payment of medical benefits; then bills the employer for reimbursement up to the chosen deductible amount. The state fund may cancel the employer's policy for failure to reimburse the state fund for expended medical deductible amounts.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-434, 39-71-2311 and 39-71-2316 MCA

RULE XVI. VOLUME DISCOUNT (1) The state fund may provide to insureds covered by the state fund a fiscal year percentage reduction of premium, based on premium volume.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Secs. 39-71-2311 and 39-71-2316 MCA

RULE XVII. MINIMUM YEARLY PREMIUM (1) As permitted by 39-71-2316, MCA, the state fund, subject to the approval of the state fund board of directors, may charge a minimum yearly premium in order to cover its administrative costs for coverage of a small employer.

(2) In calculating a minimum yearly premium, the state fund shall identify the direct and indirect costs associated with the administration of all insurance policy contracts. The costs then must be divided by the number of employers insured by the state fund. Each employer insured by the state fund must be assessed and pay no less than the minimum yearly premium.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-2311 and 39-71-2316 MCA

6. The rationale for this emergency adoption is set forth in paragraph 1.

7. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Nancy Butler, General Counsel, State Fund Legal Department, 5 South Last Chance Gulch, Helena, Montana 59601.

Rule Reviewer

Chairman of the Board

Rule Reviewer

Certified to the Secretary of State December 3, 1991.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, adoption and repeal of rules pertaining to the practice of dentistry) NOTICE OF AMENDMENT, ADOPTION AND REPEAL OF RULES PERTAINING TO THE PRACTICE OF DENTISTRY

TO: All Interested Persons:

1. On June 27, 1991, the Board of Dentistry published a notice of public hearing at page 943, 1991 Montana Administrative Register, issue number 12. The public hearing was held on August 8, 1991, at 1:30 p.m., in the Rimini Room, Park Plaza, Helena, Montana.

2. The Board has amended ARM 8.16.401, 8.16.408, 8.16.607, 8.16.706, 8.16.720, and 8.16.806 and adopted new rules I (8.16.510), II (8.16.511), III (8.16.512), IV (8.16.513), V (8.16.514), VI (8.16.515) and VII (8.16.516) exactly as proposed.

The Board did not adopt the proposed amendments to 8.16.701.

The Board repealed ARM 8.16.403, 8.16.407, 8.16.501, 8.16.502, 8.16.503, 8.16.504, 8.16.505, 8.16.506, 8.16.507, 8.16.508 and 8.16.509, 8.16.603, 8.16.704, 8.16.710, 8.16.711, 8.16.712, 8.16.713, 8.16.714 through 8.16.718 and 8.16.721.

The Board has amended ARM 8.16.402, 8.16.602, 8.16.605, 8.16.707, 8.16.708, 8.16.709, and 8.16.722 as proposed but with the changes shown below. The Board did not repeal ARM 8.16.802 and 8.16.803 but amended those rules as shown below.

"8.16.402 DENTISTS EXAMINATIONS (1) through (7)(f) will remain the same as proposed.

(g) copies of all current ~~and former~~ licenses held in other states or territories."

Auth: Sec. 37-1-131, 37-4-205, 37-4-301, MCA; IMP, Sec. 37-4-301

"8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS AND DENTAL AUXILIARIES (1) Allowable functions for the dental hygienist practicing under the ~~direct~~ supervision of a licensed dentist shall include all reversible dental procedures in which the hygienist was instructed and qualified to perform in an accredited school of dental hygiene, except placing and carving restorations.

(2) through (c) will remain the same as proposed.

(d) ~~if certified by the board of dentistry, administer local anesthetic agents.~~ ADMINISTRATION OF LOCAL ANESTHESIA UNDER THE DIRECT SUPERVISION OF A LICENSED DENTIST, FOR WHICH A BOARD-ISSUED PERMIT WILL BE REQUIRED.

(3) through (10) will remain the same as proposed.

~~(11) A dental hygienist shall be exempted from the direct supervision requirements when the hygienist provides instruction in oral hygiene in a public or private institution, under a board of health, or in a public clinic as authorized by the board, pursuant to section 37-4-405(1), MCA.~~

~~Hygienists authorized to instruct on oral hygiene in this fashion shall meet and confer with the dentist responsible for the facility and review cases as the need dictates. The hygienist is further responsible for complying with any directions or instructions issued by the dentist.~~"

Auth: Sec. 37-1-131, 37-4-205, 37-4-408, MCA; IMP, Sec. 37-4-401, 37-4-405, 37-4-408, MCA

"8.16.605 DENTAL HYGIENIST EXAMINATION (1) through (6)(b) will remain the same as proposed.

(c) certificate of graduation from ~~a board approved~~ AN ACCREDITED dental hygiene school;

(d) and (e) will remain the same as proposed.

(f) copies of current ~~and former~~ licenses held in other states or territories;

(g) and (h) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-4-205, 37-4-402, 37-4-403, MCA; IMP, Sec. 37-4-402, 37-4-403, 37-4-404, MCA

"8.16.707 RESTRICTION ON USE OF AUXILIARY PERSONNEL AND DENTAL HYGIENISTS (1) Dentists shall refrain from ~~assigning~~ DELEGATING to dental auxiliaries AND DENTAL HYGIENISTS any duties or responsibilities regarding patient care that cannot be delegated to DENTAL HYGIENISTS UNDER SECTION 37-4-401, MCA, AND TO auxiliaries under section ~~37-4-401, et seq.,~~ 37-4-408, MCA, and these rules. ~~In addition, the dentists shall prescribe and supervise the work of all auxiliaries operating under his supervision.~~"

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, 37-4-405, 37-4-408, MCA

"8.16.708 JUSTIFIABLE CRITICISM AND EXPERT TESTIMONY (1) ~~Dentists~~ LICENSEES shall report to the board ~~or to a peer review network~~ instances of gross mistreatment ~~by other dentists~~ AND EVIDENCE OF CONTINUAL FAULTY TREATMENT BY OTHER LICENSEES. If ~~there is~~ THE BOARD DETERMINES THAT evidence of ~~such treatment~~ MISTREATMENT EXISTS, the patient should be informed of his OR HER present oral health status. ~~Dentists~~ LICENSEES shall not comment disparagingly about the services of other ~~dentists~~ LICENSEES; however, if they have reasonable cause to believe their concerns are well founded, they should address them to the board ~~or to peer review~~. ~~Dentists~~ LICENSEES may provide expert testimony in a judicial or administrative action so long as they are not paid a contingent fee."

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

"8.16.709 REBATE AND SPLIT FEES (1) ~~Dentists~~ LICENSEES shall ~~not accept or tender "rebates" or "split fees"~~ refrain from accepting or tendering "rebates" or "split fees", which are commissions paid to others for referral of business."

Auth: Sec. 37-4-205, 37-4-321, MCA; IMP, Sec. 37-4-321, MCA

"8.16.722 UNPROFESSIONAL CONDUCT (1) through (1)(v) will remain the same as proposed.

(w) failing to supervise and monitor the actions of all dental auxiliaries in regard to patient care;.

(x) engaging in false or misleading advertising as defined by ARM ~~8.16.501~~ 8.16.513 et seq.; ~~and~~

(y) will remain the same as proposed."

Auth: Sec. 37-4-205, 37-4-321, 37-4-405, 37-4-408, MCA; IMP, Sec. 37-4-321, 37-4-405, 37-4-408, 37-4-511, MCA

"8.16.802 LICENSE ON PROBATION (1) through (1)(b) will remain the same.

(c) ~~violations of the~~ UNprofessional ~~code of~~ conduct, which did not cause serious harm to the patient/client or others, but which ~~are~~ IS not acceptable practice; and/or

(d) assuming duties and responsibilities within the practice of dentistry or dental hygiene without adequate training ~~or when competency has not been maintained~~."

Auth: 37-1-136, 37-4-321, MCA; IMP, Sec. 37-1-136, 37-4-321, MCA

"8.16.803 REPRIMAND OR CENSURE OF A LICENSEE (1) will remain the same.

(a) lesser ~~infractions~~ VIOLATIONS of the unprofessional conduct ~~code~~ REGULATIONS; and/or

(b) will remain the same."

Auth: Sec. 37-1-136, 37-4-321, MCA; IMP, Sec. 37-4-321, 37-4-323

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

8.16.402 DENTISTS EXAMINATIONS

COMMENT: The Administrative Code Committee stated that the rationale employed for the rule merely explained the rule and did not denote those factors which make the amendment necessary.

RESPONSE: The statutes permit the Board to decide which supporting documents are required to supplement an application and the Board has decided that copies of current licenses held in other jurisdictions are appropriate documents to seek.

COMMENT: Representatives of the Montana Dental Hygienists' Association opposed language in the proposed addition to the rule that would require applicants to provide copies of licenses formerly held in other states or jurisdictions. They stated that section 37-4-301(4)(h), MCA, grants the Board the authority to seek copies of current, but not former, licenses held in other states or territories.

RESPONSE: The Board amended proposed subsection (g) to delete from that subsection the language "and former".

8.16.408 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE

COMMENT: The Administrative Code Committee commented that the rationale suggested by the Board for amendment of this rule may be insufficient in that pursuant to 37-4-307(3), MCA, the Board is not exceeding its rulemaking authority by setting certain restrictions for re-entry into the profession.

RESPONSE: The Board appreciates the comments of the Administrative Code Committee and would supplement the rationale proffered in the rule notice by suggesting that the matters being deleted from ARM 8.16.408 are not necessary to determine continued competence.

8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS AND DENTAL AUXILIARIES

COMMENT: The Administrative Code Committee commented that subsection (2), which would become subsection (1) under the proposed rule, references direct supervision of dental hygienists, which the Administrative Code Committee noted were in conflict with 37-4-401 and 405, MCA, as amended by Senate Bill 90 (Chapter 66, Session Laws of Montana, 1991). Similar comments were received from members of the Dental Hygiene Association.

RESPONSE: The Board acknowledges such comments and decided to delete the word "direct" from that subsection.

COMMENT: A member of the Montana Dental Hygienists' Association spoke in favor of the amendment to current subsection (5)(o).

RESPONSE: The Board acknowledges the comment and adopts the amendment to the rules as proposed.

COMMENT: A member of Montana Dental Hygienists' Association recommended that proposed new subsection (2)(d) be revised to read "(d) administration of local anesthesia under the direct supervision of a licensed dentist. Board issued permit required."

RESPONSE: The Board accepts the comment and revises the proposed rule amendment to accommodate the recommended change, but made slight wording changes to improve semantics.

COMMENT: A member of the Montana Dental Hygienists' Association suggested that proposed subsection (11) is contrary to sections 37-4-401 and 37-4-405, MCA, as amended by Senate Bill 90, (Chapter 66, Session Laws of Montana, 1991) in that it speaks to the dental hygienists working under the direct supervision of a dentist.

RESPONSE: The Board acknowledged the comment and voted to delete subsection (11) from the adoption of amendments to ARM 8.16.602.

8.16.605 DENTAL HYGIENIST EXAMINATION

COMMENT: Members of the Montana Dental Hygienists' Association spoke as proponents of this rule but with slight amendments. One suggestion was that the language in (6)(c) be revised from requiring a certificate from a "board-approved dental hygiene school" to certificate of graduation "from an accredited dental hygiene school." The other suggested revision was contained in the new language of subsection (f), which would require copies of former and current licenses in other states. This person suggested that the Board was without authority to seek copies of former licenses.

RESPONSE: The Board acknowledged receipt of both comments and revised the language of 8.16.605(6)(c) and (f) as suggested.

COMMENT: A member of the Dental Hygienists' Association complained that current subsection (6)(b) and (6)(e), which require two affidavits of good moral character and a recent photograph of the applicant are subjective in nature and are discriminatory.

RESPONSE: The Board considers the picture necessary to confirm the identity of the applicant at examinations and the statute allows the Board to require two letters of good moral character. The Board, therefore, decided not to take any action with regard to those comments.

8.16.701 SERVICE TO THE PUBLIC AND QUALITY OF CARE

COMMENT: The Administrative Code Committee questioned the use of 37-4-321, MCA, as an authority section and the rationale offered in the rule notice that the amendment was being proposed to delete opinion language from the rule. The Administrative Code Committee believes the amendment as noticed constitutes just as much of an opinion as the current rule.

RESPONSE: The Board acknowledged receipt of the comment and voted to delete this rule amendment from the notice of adoption.

8.16.707 RESTRICTION ON USE OF AUXILIARY PERSONNEL

COMMENT: Comment was received from the Administrative Code Committee as well as members of the Montana Dental Hygienists' Association that there is an insufficient statement of reasonable necessity for this rule amendment; it cites the wrong authority section; and the term "prescribe" is overly broad and indicates that a written prescription will be needed. They also questioned the definition of the term "auxiliary".

RESPONSE: The Board voted to retitle this regulation from "Restriction on Use of Auxiliary Personnel" to "Restriction on Use of Auxiliary Personnel and Dental Hygienists". The Board also voted to change the word "assigning" in the first sentence to the word "delegating" and included dental hygienists specifically in the rule and adopted by reference the prohibitions contained in the various codes. The Board would note that this amendment is necessary to bring the regulations into compliance with section 37-4-408, MCA, as amended by SB 90 in the 1991 Legislature.

8.16.708 JUSTIFIABLE CRITICISM AND EXPERT TESTIMONY

COMMENT: The Administrative Code Committee objects to the rationale to the amendment because it does not believe that the current rule is stated in the form of an opinion of the Board.

RESPONSE: The Board acknowledges receipt of the comment and believes that this rule is necessary to insure that licensees report to the Board any knowledge they may have of gross mistreatment thereby protecting the public health and safety.

COMMENT: A representative of the Montana Dental Hygienists' Association opposed the proposed amendment of ARM 8.16.708 because of its reference to a peer review network. It was that person's contention that it is the Board's responsibility to impose the required discipline and that it has no authority to delegate its responsibility to a third party, and suggested a change to the proposed amendment. Another concern raised by members of the Montana Dental Hygienists' Association was that a peer review system would not provide the public with the access to records of deliberations and discipline that the public would have under a Board review. A last concern was whether a peer review network would have any legal protection.

RESPONSE: The Board acknowledged receipt of the comments and revised the proposed amendment in light of those comments.

COMMENT: Written comment was received from the Montana Dental Hygienists' Association seeking to address the peer review network suggested in the proposed amendment to ARM 8.16.708. They proposed that ARM 8.16.404 be amended to strike the word "peer review" from the sentence that states "the board will serve as a peer review committee for the purpose of investigating the actions of licensees on a continual basis."

RESPONSE: ARM 8.16.404 was not noticed in the rulemaking proposal and is not legitimately subject to amendment. The Board is, therefore, prohibited from making such an amendment without notice to other parties and an opportunity for those parties to comment.

8.16.709 REBATE AND SPLIT FEES

COMMENT: The Administrative Code Committee questioned the statement of reasonable necessity because it did not agree with the Board's rationale that the current rule is in the form of an opinion.

RESPONSE: The Board acknowledges receipt of the comment and states that it feels the rule is easier to comprehend when it is framed in the affirmative and when it provides a definition of prohibited acts. Furthermore, the Board has amended the rule as previously noticed to make it consistent with the revision to ARM 8.16.708. The rule, after final amendment, reads: "Licensees shall refrain from accepting or tendering 'rebates' or 'split fees', which are commissions paid to others for referral of business."

8.16.722 UNPROFESSIONAL CONDUCT

COMMENT: The Administrative Code Committee suggested that the Board reconsider the punctuation at the end of the two new subsections (w) and (x). These were noticed to end in a semicolon.

RESPONSE: The Board voted to strike the semicolon at the conclusion of (w) and the semicolon and the word "and" at the conclusion of subsection (x). In their place the Board voted to insert periods.

COMMENT: Comments were received from members of the Montana Dental Hygienists' Association that section 37-4-408, MCA, should be included as an implementing section for subsection (w).

RESPONSE: The Board voted to include 37-4-408, MCA, as an authority and implementing section.

COMMENT: The Montana Dental Hygienists' Association by written correspondence noted proposed subsection (x) refers to ARM 8.16.501, which they note was noticed for repeal in the same rule proposal.

RESPONSE: ARM 8.16.501 is being repealed but will be replaced by new rule ARM 8.16.513. Therefore (x) should be amended to reference new rule ARM 8.16.513 and not ARM 8.16.501.

COMMENT: A member of the Montana Dental Hygienists' Association commented that section 37-4-511, MCA, should be included as an implementation section for subsection (y) since it deals with limitation of anesthesia or administration of anesthetics.

RESPONSE: The Board agreed with the comment and voted to include section 37-4-511, MCA, as an implementing section.

COMMENT: Comment was also received from a member of the Montana Dental Hygienists' Association who believed that the three proposed new subsections were redundant and not necessary.

RESPONSE: The Board feels it is important to add (w) to further regulate assistants and to add (x) and (y) to identify by reference that those forms of conduct could lead to charges of unprofessional conduct.

REPEAL OF 8.16.403 PUBLICATION OF ROSTERS, NOTICES AND ORDERS

COMMENT: The Administrative Code Committee questioned the rationale of this rule stating they did not feel that it was repetitive of ARM 8.16.405.

RESPONSE: The Board acknowledges receipt of the comment, however, voted to repeal the rule contending that copies of notices, orders, etc. are public documents and, as a general rule, are provided at no cost. However, requests for more cumbersome documentation, such as rosters of licensees, would appear to be covered by the fees charged in ARM 8.15.405.

REPEAL OF 8.16.603 BOARD MEETINGS

COMMENT: The Administrative Code Committee questioned the use of 37-4-202, MCA, rather than 37-4-205, MCA, as an authority section.

RESPONSE: The Board concurs and notes that 37-4-205, MCA, is the appropriate authorizing section.

REPEAL OF 8.16.704 COMMUNITY SERVICE

COMMENT: The Administrative Code Committee claimed the rationale for repeal of the rule was insufficient because the rule is not necessarily repetitive of ARM 8.16.722.

RESPONSE: The Board feels that ARM 8.16.704 is so vague and nebulous that it serves no real enforcement purposes and would never be strong enough to be used as a charge in a license discipline proceeding and furthermore its subjective nature does not provide the licensee with enough information to tell him what community services he should be performing. The Board therefore voted to repeal the rule.

REPEAL OF 8.16.715 PROFESSIONAL ANNOUNCEMENT, 8.16.716 ADVERTISING, 8.16.717 NAME OF PRACTICE and 8.16.718 ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE

COMMENT: The Administrative Code Committee noted that in the text of the notice of proposed repeal the Board had cited 36-4-502, MCA, as a section with which these rules conflicted.

RESPONSE: The Board notes the miscitation and states that the correct citation in the text should have read 37-4-502, MCA.

8.16.802 LICENSE ON PROBATION and 8.16.803 REPRIMAND OR CENSURE OF A LICENSEE

COMMENT: A member of the Montana Dental Hygienists' Association commented that these rules should remain in place to provide a gauge for the severity of sanctions that could be imposed for certain instances of unprofessional conduct.

RESPONSE: The Board accepted the comment and noted certain revisions to the rules. ARM 8.16.802 (1)(c) and (d) will now read "(1) A licensee may be put on probation for: (c) unprofessional conduct, which did not cause serious harm to the patient/client or others, but which is not acceptable practice; and/or (d) assuming duties and responsibilities within the practice of dentistry or dental hygiene without adequate training." As regards to 8.16.803 the Board voted to retain 8.16.803 with the revision to subsection (1)(a) so that it now reads "The Board may elect to reprimand or censure a licensee for: (a) lesser violations of the unprofessional conduct regulations; and/or".

COMMENT: The Administrative Code Committee noted that new rules one through seven cited 37-4-322, MCA, as an implementing section and suggested that 37-4-205, MCA, be substituted as the implementing section.

RESPONSE: The Board accepted the comment and directed that 37-4-205, MCA, be used as an implementing section.

NEW RULE II (8.16.511) DEFINITIONS

COMMENT: A representative of the Montana Dental Association supported new rule II (8.16.511) but suggested that the definition of advertisement be revised to limit it to any paid communication.

RESPONSE: The Board noted the comment but believes it needs the leeway to consider all sorts of communication to determine if they are intended to serve as promotional or advertising material whether they are paid for or not. The Board rejected the comment.

BOARD OF DENTISTRY
WAYNE L. HANSEN, DMD, PRESIDENT

BY: Anne M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 2, 1991.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to the practice of denturitry	)))	NOTICE OF AMENDMENT REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF DENTURITRY

TO: All Interested Persons:

1. On June 27, 1991, the Board of Dentistry published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the practice of denturitry at page 937, 1991 Montana Administrative Register, issue 12. The hearing was held on August 8, 1991, at 10:30 a.m., in the Rimini Room of the Park Plaza in Helena, Montana.

2. The Board has amended 8.17.403, and adopted new rule II (8.17.810) exactly as proposed. The Board repealed 8.17.101, 8.17.201, 8.17.202, 8.17.401, 8.17.402, 8.17.701, 8.17.703, and 8.17.804 through 8.17.806 as proposed. The Board did not adopt the proposed amendment of ARM 8.17.808; did not repeal ARM 8.17.802 as proposed; and did not repeal 8.17.807 but will amend it as follows. The Board has amended ARM 8.17.404, 8.17.702, 8.17.801, and 8.17.803 with the following changes; and adopted new rule I (8.17.809) as proposed but with a notation that it will include the statement that it is an advisory rule only.

"8.17.404 EXAMINATIONS (1) and (2) will remain the same as proposed.

(3) The chief examiner shall be ~~either a dentist or~~ THE denturist currently serving on the board of dentistry.

(4) and (5) will remain the same as proposed."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-305, MCA

"8.17.702 RENEWAL - CONTINUING EDUCATION (1) will remain the same as proposed.

(2) will remain the same as proposed.

(3) A signed written report of attendance must be sent to the office of the board ~~upon completion of the continuing education course~~ AT THE TIME THE LICENSEE RENEWS HIS LICENSE reflecting the title of the course or seminar, dates of attendance, number of clock hours, licensee's name and address, and signature of instructor or monitor of the continuing education program.

(4) through (6) will remain the same as proposed.

(7) If the licensee pays the renewal fee, plus a ~~reasonable late fee set by the board~~ DELINQUENT FEE AS SET FORTH IN ARM 8.17.501(8), prior to the time set for revocation, the license may not be revoked.

(8) through (8)(b) will remain the same as proposed.

(c) renewal fees are paid for each year they were unpaid, plus a ~~late penalty fee~~ DELINQUENT FEE AS ESTABLISHED IN ARM 8.17.501(8) ~~for each year~~;

(d) and (e) will remain the same as proposed."

Auth: Sec. 37-1-141, 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

"8.17.801 UNPROFESSIONAL CONDUCT (1) through (g) will remain the same as proposed.

(h) failing to exercise appropriate supervision over interns who are authorized to practice only under the supervision of a licensed denturist ~~or board certified prosthodontist~~;

(i) through (n) will remain the same as proposed.

(o) having been convicted of violating a federal or state statute ~~or rule regulating the possession, distribution, or use of a controlled substance scheduled in Title 50, chapter 32, MCA~~ DEALING WITH POSSESSION, USE OR DISTRIBUTION OF NARCOTICS;

(p) through (r) will remain the same as proposed.

~~(s) engaging in conduct unbecoming to the person of the licensee, when such conduct involved the use of any device, drug, medication, or material when such use is detrimental to the best interests of the public;~~

(t) through (v) will remain the same but will be renumbered (s) through (u).

~~(w)~~ (v) conspiring to misrepresent, or willfully misrepresenting, ~~dental conditions~~ DENTURE SERVICES to increase or decrease a settlement award, verdict or judgment;

~~(x)~~ (w) suspension or revocation of the denturist's license to practice denturitry by competent authority in any state, federal, or foreign jurisdiction; ~~and~~

(y) will remain the same but will be renumbered (x)."

Auth: Sec. 37-1-136, 37-29-201, 37-29-311, MCA; IMP, Sec. 37-1-136, 37-29-311, 37-29-402, 37-29-403, MCA

"8.17.803 GROUNDS FOR DENIAL OF A LICENSE (1) through (4) will remain the same as proposed.

(5) A course of conduct which would be grounds for discipline under section 37-29-311, MCA~~, or~~.

~~(6) Failure to comply with license renewal requirements.~~"

Auth: Sec. 37-1-137, 37-29-201, MCA; IMP, Sec. 37-29-201, 37-29-311, MCA

"8.17.807 RECEIPT OF COMPLAINT - BOARD ACTION ~~(1) The complaint received by the board will be documented. Receipt of the formal complaint will be acknowledged to the complainant.~~

~~(2) If no formal complaint is received within 30 days of the original complaint, the complaint may be dismissed by the board.~~

~~(3) A copy of the complaint will be provided to the licensee with request to respond to the complaint within 30 days of notification.~~

(4) through (7) will remain the same but will be renumbered (1) through (4).

~~(8)~~ (5) As a result of its investigation, the board may determine that no violation of the law and rules has occurred.

If so, the case will be closed and the complainant AND THE LICENSEE will be so notified.

~~(9)~~ (6) The board may determine that a violation of the law and rules appears to have occurred and take appropriate disciplinary action against the licensee, PURSUANT TO THE SANCTIONS ALLOWED BY TITLE 37, CHAPTER 29, MCA, AND THE RULES OF THE BOARD. Any such action shall proceed in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

~~(10) Dismissal of the charges leads to case closure. Sustaining of charges will result in the imposition of the penalties and sanctions as expressed in Title 37, chapter 29, MCA, or rules of the board upon the person in violation. The complainant and licensee will be notified of a dismissal.~~"

Auth: Sec. 37-1-136, 37-29-201, MCA; IMP, Sec. 37-1-136, 37-29-201, 37-29-311, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

8.17.403 APPLICATIONS

COMMENT: The Montana Administrative Code Committee stated that the rationale for the amendment contained a restatement of the rule itself and suggested a further rationale be included. It also questioned the use of section 37-29-305, MCA, as an implementing section.

RESPONSE: This rule amendment is intended to update the regulations by providing the correct name of the Board and the current address of the Board office. The Board concurs that the implementing section should be revised and substitutes 37-29-304, MCA, as an implementing section. The correct implementing cite will appear on replacement pages.

8.17.404 EXAMINATION

COMMENT: The Administrative Code Committee suggests that the use of 37-29-301, MCA, as an authority section is inappropriate and has stated that the rationale for this amendment does not contain adequate explanation of this amendment.

RESPONSE: The Board notes as a further rationale for this proposed amendment that these proposals establish examination standards for the administration of the denturist clinical and written examinations and will remove section 37-29-301, MCA, from the authority cites.

COMMENT: Representatives of the Montana Denturist Association spoke in opposition to deleting the subsection of the rule that would allow the Board to sanction a regional examination for licensure candidates contending that the enabling statutes provide that regional examinations are recognized as a means to become licensed as a denturist so long as the Board of

Regents recognizes the regional examination. They argued that the regional examination provision should remain in place in case a regional examination is developed at a later date.

RESPONSE: The Board notes no statutory language in Title 37, chapter 29, which would authorize or permit a regional examination for denturitry candidates. This is in contrast to specific language found in Tile 37, chapter 4 which allows regional examinations of candidates for dental and dental hygiene licenses. The only mention of the Board of Regents in Title 37, chapter 29, is found in 37-29-303(2)(a) wherein it states the Board of Regents may approve a course of study at an educational institution, but not that it may sanction a regional examination. Furthermore, sections 37-29-201(2), 37-29-305, MCA, impose upon the Board of Dentistry the duty of administering the examinations.

COMMENT: Representatives of the Montana Denturist Association spoke in opposition to the language in proposed subsection (3) of the rule stating that the chief examiner shall be either a dentist or denturist currently serving on the Board. They contended that the chief examiner should be either the denturist member of the Board or a licensed denturist designated by him. They contended that subsection (2) and (3) of the proposed rule be changed so that grading is done by the denturist conducting the examination and the chief examiner shall be the denturist member serving on the Board or another denturist designated by him.

RESPONSE: The Board moved to amend its rule proposal so as to state that the chief examiner shall be the denturist currently serving on the Board of Dentistry. Furthermore, the Board noted section 37-29-305, MCA, requires the Board to conduct the examinations for licensure and the Board felt it would be an abuse of delegated power to confer that function onto a denturist not currently serving on the Board.

COMMENT: Representatives of the Montana Denturist Association opposed the use of dentists in examinations for denturists, or at least requested that any dentist involved in denturist examination hold dual licensure as a denturist/dentist.

RESPONSE: Because there is only one denturist serving on the Board of Dentistry and because the Board believes that it has no power to appoint a designee to administer and grade the denturist examinations other than those persons serving on the board, it would be unwise and impractical to ban from examination of denturitry candidates those dentists serving on the Board of Dentistry.

8.17.702 RENEWAL - CONTINUING EDUCATION

COMMENT: Representatives of the Montana Denturist Association questioned the proposed deletion of subsection (3), which currently provides that continuing education seminars or workshops sponsored by the Montana Denturist Association, the

American Academy of Denturitry or other state regulatory agencies need not be preapproved by the Montana Board of Dentistry. They argued that this subsection should not be deleted because these organizations are well suited towards arranging the continuing education needs of denturists.

RESPONSE: The Board proposed this amendment to make the rule consistent with section 37-29-306, MCA, as amended by House Bill 413 (Chapter 245 of the Montana Session Laws, 1991) wherein it was stated that the Board may approve in one action all the courses presented by a particular organization if the Board is satisfied that the courses presented by that organization meet the requirements of the statute.

COMMENT: Representatives of the Montana Denturist Association suggested language in the current subsection (5) which was not contained in the notice of proposed rule making be modified to state that verification of attendance at continuing education seminars be submitted during the renewal period rather than upon completion of each course. They stated that it would be more efficient if all continuing education verifications were filed at one given time.

RESPONSE: The Board decided to amend current subsection (5), which will be renumbered subsection (3) upon adoption of this rule amendment, so as to require that verification of continuing education courses be submitted during the renewal period. The Board also reasoned that with a minimal number of licensees reporting continuing education, it is considered not a major detriment to collect verification of attendance at one time during the year.

COMMENT: Representatives of the Montana Denturist Association questioned the use of the term "may not" be revoked as used in subsection (7) and they suggested that the term be amended to "shall not" be revoked so that it would be consistent with language used in proposed subsection (6), which states that in case of default of payment of the annual renewal fee, "the board shall give the licensee thirty days notice of its proposed revocation action."

RESPONSE: The Board concurred with legal interpretation that in statutory construction and Montana legislative usage, the words "may not" are equivalent to a mandate and have the effect of stating a prohibition. Furthermore, such language is consistent with the statutory language contained in the dentist and dental hygienist codes.

COMMENT: Representatives of the Montana Denturist Association commented that it was inconsistent for the Board to delete current subsection (10), which allows for the issuance of an inactive license, when dentistry regulations do provide for the issuance of inactive licenses to dentists.

RESPONSE: The Board noted that section 37-29-306, MCA, which deals with the licensing of denturists, does not specifically

authorize the granting of inactive licenses to denturists, which directly contrasts with sections 37-4-307 and 37-4-406, MCA, which specifically allow inactive licenses for dentists and dental hygienists.

COMMENT: The Administrative Code Committee cited the use of 37-1-411, MCA, as an authority section and noted that no such section exists.

RESPONSE: The Board voted to substitute the correct section 37-1-141, MCA, for the typographic error of 37-1-411, MCA.

COMMENT: The Administrative Code Committee commented that new subsections (7) & (8)(c) should be revised to strike the terms "reasonable late fee set by the Board" from subsection (7) and "late penalty fee" from subsection (8)(c).

RESPONSE: The Board voted to strike in subsection (7) the language "reasonable late fee set by the Board" and in subsection (8)(c) "late penalty fee". Further, the Board chose to incorporate by reference the penalty fee included in 8.17.501(8).

8.17.801 UNPROFESSIONAL CONDUCT

COMMENT: A Helena dentist favored the proposed rules; however, he inquired as to whether the Board, in its attempt to correct the spelling of the word prosthodontist, meant to insert a corrected spelling of the word prosthodontist or meant to include all dentists in this rule.

RESPONSE: The Board acknowledges receipt of the comments and voted to strike "or board certified prosthodontist".

COMMENT: The same dentist provided materials from the Federal Trade Commission dealing with advertising. Subsection (1)(c) of this proposed rule deals with the use of advertising materials that contain misstatements, falsehoods, misrepresentations, as representing unprofessional conduct by a licensed denturist.

RESPONSE: The Board acknowledges receipt of these materials and has placed them on file in the Board office.

COMMENT: Representatives of the Montana Denturist Association spoke in opposition to the inclusion of subsection (o) which, as proposed, would have subjected a denturist to possible license discipline for having been convicted of violating federal or state statutes or rules regulating the possession, distribution or use of a controlled substance scheduled in Tile 50, chapter 32, MCA. Representatives of the Montana Denturist Association noted that they are not qualified to obtain a DEA registration and are not permitted to prescribe or administer controlled substances contained in Title 50, chapter 32, MCA.

RESPONSE: The Board concurred that a denturist is not qualified to hold a DEA registration and concluded that this language is therefore not appropriate. It therefore amended this proposed rule to make it unprofessional conduct for "having been convicted of violating a federal or state statute dealing with possession, use, or distribution of narcotics."

COMMENT: Representatives of the Montana Denturist Association expressed concerns about subsection (p) which dealt with the use of the term "failure to cooperate" and the representative asked what constitutes a failure to cooperate. A second concern related to whether subsection (p), which allows sanctions against a license for failure to cooperate with an investigation, was in conflict with subsection (t), which allows sanctions against a licensee for willfully permitting unauthorized disclosure from a patient's record.

RESPONSE: The Board adopted subsection (p) and notes that a failure to cooperate would constitute a total disregard for a letter of inquiry from the Board regarding a complaint. The Board notes that licensees are granted thirty days after receipt of notice of complaint in which to file a response to the Board, but notes that extensions are routinely given beyond the thirty days when requested by the licensee. Furthermore, the Board sees no conflict between subsection (p) and (t) since records can be demanded of a denturist without the patient's authorization, based upon the Uniform Health Care Act.

COMMENT: The Administrative Code Committee stated concerns with vagueness in subsection (s) which was proposed to allow for disciplinary actions against a denturist for engaging in conduct unbecoming to the person of the licensee, when such conduct involves the use of any device, drug, medication, or material when such use is detrimental to the best interests of the public.

RESPONSE: The Board voted to delete proposed (s) from the adoption notice.

COMMENT: Representatives of the Montana Denturist Association noted that proposed subsection (w) stated that a denturist could be sanctioned for conspiring to misrepresent, or misrepresenting, dental conditions so as to increase or decrease a settlement award verdict or judgement. These representatives asked if denturists would now be allowed to comment on dental conditions and testify as witness etc.

RESPONSE: The Board voted to clarify the proposed rule by deleting the words "dental conditions" and inserting the words "denture services" in an effort to demonstrate that the Board feels that denturists are qualified only to speak to workmanship involved with dentures and not to discuss the viability of living tissue.

COMMENT: Representatives of the Montana Denturist Association questioned the use of the term prosthesis and argued that the prohibition set forth in (y) directly contradicts 37-29-102(2), MCA, which states it is the practice of denturitry to insert partial or full dentures.
RESPONSE: The Board voted to adopt subsection (y) as proposed and noted that dental implants are not inherently removable by the patient and that the placement of a prosthesis on or over a dental implant can lead to occlusal trauma. The Board therefore believes that it is within the realm of the practice of dentistry, and not denturitry, to fit a prosthesis on or over a dental implant.

8.17.803 GROUNDS FOR DENIAL OF A LICENSE

COMMENT: Representatives of the Montana Denturist Association, opposed inclusion of the proposed subsection (6) which would provide that "failure to comply with license renewal requirements" would be grounds for denial of a license.

RESPONSE: The Board voted to delete subsection (6) from the proposal since it is redundant of provisions already contained in subsection (1).

8.17.808 PRIOR REFERRAL FOR PARTIAL DENTURES

COMMENT: Representatives of the Montana Denturist Association commented that the amendments are in conflict with the enabling statutes for the practice of denturitry. A main concern is whether the denturist is to decide whether a referral to a dentist is necessary. Also the denturists believe it is unnecessary to refer patients requiring a reline to a dentist. It was suggested that the Board consider requesting an Attorney General's Opinion to determine if it is necessary that all such partial denture patients be referred to a dentist.

RESPONSE: The Board voted to not adopt its proposed amendments to rule 8.17.808.

REPEALS

COMMENT: The Administrative Code Committee noted that the Board's rationale for repeal of 8.17.101, 201 and 202 stated in the rule making proposal was that these five rules were repetitious of 37-4-202, MCA, as well as ARM 8.16.101, 201 and 202. The Administrative Code Committee noted that while the Board spoke of five rules only three rules were enumerated, and asked for clarification.

RESPONSE: The Board noted that rules 8.17.401 and 402 by virtue of Chapter 524 of the Laws of 1987 are redundant and repetitious of 37-4-202, MCA, and ARM 8.16.101, 201, 202, 401 and 402 should have been specifically enumerated in the rationale contained in the proposed rule notice.

8.17.802 INSPECTIONS - SANITARY STANDARDS

COMMENT: Representatives of the Montana Denturist Association spoke in opposition to the repeal of rule 8.17.802 on the basis that the rule currently provides a time limit within which any deficiencies noted in an inspection can be corrected and furthermore that if there are chronic and repeated problems noted in the inspection they would be grounds for revocation or suspension of the license.

RESPONSE: The Board considered that 37-29-311(2), MCA, allows the Board or its agents, at the Board's discretion, to conduct inspections to determine compliance with 37-29-401, MCA, and the Board therefore voted to retain ARM 8.17.802.

8.17.806 COMPLAINT PROCEDURE - INVESTIGATION

COMMENT: Representatives of the Montana Denturist Association opposed repeal of ARM 8.17.806, because it specifically states what constitutes a complaint and what the Board's operating procedures are regarding such a complaint.

RESPONSE: The Board voted to repeal the rule stating that procedures are already provided for in the Montana Administrative Procedure Act.

8.17.807 RECEIPT OF COMPLAINT - BOARD ACTION

COMMENT: Representatives of the Montana Denturist Association opposed repeal of ARM 8.17.807 stating that it is a procedural device allowing denturists to have their responses to complaints considered by the Board without a contested case proceeding.

RESPONSE: The Board considered the comments and chose to retain rule ARM 8.17.807 with deletion of subsections (1), (2), (3) and (10) and amending language in subsection (8) so that it reads "as a result of its investigation, the board may determine that no violation of the law and rules has occurred. If so, the case will be closed and the complainant AND THE LICENSEE will be so notified." Furthermore, the Board voted to amend subsection (9) so that it reads "the Board may determine that a violation of the law and rules appears to have occurred and take appropriate disciplinary action against the licensee, PURSUANT TO THE SANCTIONS ALLOWED BY TITLE 37, CHAPTER 29, MCA, AND THE RULES OF THE BOARD. Any such action shall proceed in accordance with Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

COMMENT: Comment was received from the Administrative Code Committee stating that the rationale for repeal of rules 8.17.404 (sic) through 8.17.807 was inadequate for merely citing redundancy with the Montana Administrative Procedure Act.

RESPONSE: The Board would note that a typographic error appears in the Administrative Code Committee's comment since ARM 8.17.404 is a rule that is noticed for amendment and not for repeal the correct citation for this comment is ARM 8.17.804 through 8.17.807. The Board believes that the substantive concerns of the rules being repealed and the safeguards afforded licensees are covered by the notice and contested case provisions of the Administrative Procedure Act contained in Title 2, chapter 4, of the Montana Code Annotated. The sanctions authorized in ARM 8.17.804 are further redundant since they are specifically provided for in 37-29-311, MCA.

NEW RULE I (8.17.809)

COMMENTS: Comments were received from a Helena dentist favoring proposed new rule I which stated that denturists are not qualified to insert immediate dentures since the law prohibits them from conducting surgery and other invasive procedures. Representatives of the Montana Denturists Association offered both oral testimony and written testimony in opposition to this proposed rule. Specifically they opposed the Board's definition of the term "initial denture" to mean any denture constructed or placed within four weeks of the final extraction of teeth. Representatives of the Montana Denturist Association contended that current law prohibits denturists from inserting the first set of dentures and therefore that this proposed rule only muddles and confuses the regulations upon the profession. Representatives of the Montana Denturist Association also requested that the Board hold a contested case proceeding under the proposed rule to receive comment and empirical data for further examination and inquiry.

RESPONSE: The Board acknowledges receipt of such oral testimony. The Board feels the rule as proposed is a valid exercise of its authority to issue interpretative rules under 2-4-308, MCA; to clarify that this is an interpretive rule promulgated by the Board of Dentistry the Board would amend the proposed rule to insert a history section at the conclusion of the rule stating (HISTORY: THIS RULE IS ADVISORY ONLY BUT MAY BE A CORRECT INTERPRETATION OF THE LAW, SECTION 37-1-131, 37-29-201, MCA;) The Board noted that pursuant to contested case matters under 2-4-102(4), MCA, contested cases are specifically enumerated, but not restricted to, ratemaking, price fixing and licensing. The definition does not specifically apply to rule making and the Board felt it was in a position to make such a determination regarding the propriety of a four week period without a contested case hearing. The interpretative statement will be added in replacement pages.

NEW RULE II (8.17.810)

COMMENT: Representatives of the Montana Denturist Association again requested that a contested case proceeding be held to

analyze the data supporting this proposed rule and the need for the proposed rule.

RESPONSE: The Board again noted that section 2-4-102(4), MCA, does not specifically define a contested case as regarding a rule making procedure. The Board felt there was no need for further inquiry or analysis to determine the need for the proposed rule.

COMMENT: One representative of the Montana Denturist Association stated that the average dentist is unable to properly design removable partial dentures.

RESPONSE: The Board disagreed that an average dentist is unable to properly design and fit a removable partial denture. The Board voted to adopt the rule as proposed.

BOARD OF DENTISTRY
WAYNE L. HANSEN, DMD, PRESIDENT

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 2, 1991.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to specialty areas of nursing, substantive rules, disciplinary actions, board organization, approval of schools, standards for Montana schools of professional nursing, standards for Montana schools of practical nursing, fees, nurse specialist prescriptive authority and nurses' assistance program	) NOTICE OF AMENDMENT, REPEAL) AND ADOPTION OF RULES) PERTAINING TO SPECIALTY) AREAS OF NURSING, SUBSTAN-) TIVE RULES, DISCIPLINARY) ACTIONS, BOARD ORGANIZA-) TION, APPROVAL OF SCHOOLS,) STANDARDS FOR MONTANA) SCHOOLS OF PROFESSIONAL) NURSING, STANDARDS FOR) MONTANA SCHOOLS OF PRACTICAL) NURSING, FEES, NURSE) SPECIALIST PRESCRIPTIVE) AUTHORITY AND NURSES') ASSISTANCE PROGRAM

TO: All Interested Persons:

1. On September 26, 1991, the Board of Nursing published a notice of public hearing on the proposed amendment, repeal and adoption of the above-stated rules at page 1791, 1991 Montana Administrative Register, issue number 18. The hearing was held on October 18, 1991, at 9:00 a.m., in the Department of Social and Rehabilitation Services Auditorium in Helena, Montana.

2. The Board of Medical Examiners jointly considered new rules 8.32.1501 through 8.32.1510 with the Board of Nursing and each Board moved to adopt them as indicated herein.

3. The board has amended ARM 8.32.302, 8.32.303, 8.32.306, 8.32.402, 8.32.403 - 8.32.405, 8.32.408, 8.32.410, 8.32.415, 8.32.501, 8.32.502, 8.32.504, 8.32.506, 8.32.601, 8.32.603, 8.32.605, 8.32.606, 8.32.801, 8.32.802, 8.32.803, 8.32.901, 8.32.1001, and 8.32.1007 exactly as proposed.

ARM 8.32.407, 8.32.503 and 8.32.607 were repealed exactly as proposed.

New rules I (8.32.804), II (8.32.805), III (8.32.806), IV (8.32.807), V (8.32.425), VII (8.32.1502), VIII (8.32.1503), IX (8.32.1504), X (8.32.1505), XV (8.32.1510) pertaining to prescriptive authority were adopted exactly as proposed.

New rules XVI (8.32.1601), XVII (8.32.1602), XVIII (8.32.1603), XIX (8.32.1604), XX (8.32.1605), XXI (8.32.1606), XXII (8.32.1607), XXIII (8.32.1608), XXIV (8.32.1609), XXV (8.32.1610), and XXVII (8.32.1612) pertaining to the nurses' assistance program were adopted exactly as proposed.

4. The board has amended ARM 8.32.301, 8.32.304, 8.32.305, 8.32.411, 8.32.909 and adopted new rules VI (8.32.1501), XI (8.32.1506), XII (8.32.1507), XIII (8.32.1508), XIV (8.32.1509), and XXVI (8.32.1611) as proposed but with the following changes:

"8.32.301 NURSE PRACTITIONER PRACTICE (1) through (1)(c) will remain the same as proposed.

(d) work within NURSE PRACTITIONER established protocols, and recognize when to refer clients to a physician or other health care provider;

(e) and (f) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.304 SPECIALTY NURSING TITLE (1) through (1)(d) will remain the same as proposed.

(2) Nurse specialists who are recognized in the state of Montana may only practice as a specialist in the area of practice in which they have national certification ACCORDING TO THE STANDARDS SET BY THE CERTIFYING BODIES INCLUDING, BUT NOT LIMITED TO, THE AMERICAN NURSES ASSOCIATION, NATIONAL BOARD OF PEDIATRIC NURSE PRACTITIONERS AND ASSOCIATES, NURSES ASSOCIATION OF AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, AMERICAN ASSOCIATION OF NURSE ANESTHETISTS, AMERICAN COLLEGE OF NURSE-MIDWIVES, AND ASSOCIATION OF GERONTOLOGICAL NURSES."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.305 EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO SPECIALTY AREAS OF NURSING (1) and (1)(a) will remain the same.

(b) For ORIGINAL recognition after June 30, 1995, a master's degree from an accredited nursing education program, AS DEFINED IN SUBSECTION (1)(a), which prepares the nurse for ~~a~~ THE specialty ~~role~~ RECOGNITION APPLIED FOR; and individual certification from a board approved certifying body. NURSE SPECIALISTS WHO COMPLETED AN ACCREDITED NURSE SPECIALIST PROGRAM AND OBTAINED NATIONAL CERTIFICATION PRIOR TO JUNE 30, 1995, MAY BE RECOGNIZED IN MONTANA."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.411 RENEWALS (1) In November of each year, the board of nursing shall mail an application for renewal of license to all persons currently licensed. The licensee must fill out the application and return it to the board BEFORE ~~December 15~~ JANUARY 1, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1 and expiring December 31.

(2) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, 37-8-431, MCA

"8.32.909 FACULTY (1) through (5)(a) will remain the same as proposed.

(i) Preceptors may be used in "capstone" or summary courses taken during the last quarter/semester of the nursing education program when such preceptors serve primarily as role models for students. In these instances, the usual 10:1 student to master's prepared faculty member ratio ~~may~~ DOES not apply.

(ii) will remain the same as proposed.

(iii) Preceptors may be used to extend master's prepared faculty members in elective nursing courses. In these instances, the usual 10:1 student to master's prepared faculty member ratio ~~may~~ DOES not apply.

(6) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, 37-8-301, 37-8-302, MCA

"VI (8.32.1501) PRESCRIPTIVE AUTHORITY FOR NURSE SPECIALISTS (1) through (3) will remain the same as proposed.

(4)(a) The board of nursing will provide the boards of pharmacy AND MEDICAL EXAMINERS with an annual list of nurse specialists with prescribing authority and their titles.

(b) The board of nursing will promptly forward to the boards of pharmacy AND MEDICAL EXAMINERS the names and titles of nurse specialists added to or deleted from the annual list.

(c) The boards of pharmacy AND MEDICAL EXAMINERS will be notified in a timely manner when the prescriptive authority of a nurse specialist is terminated, suspended, or reinstated."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XI (8.32.1506) SPECIAL LIMITATIONS RELATED TO THE PRESCRIBING OF CONTROLLED SUBSTANCES (1) and (2) will remain the same as proposed.

(3) A prescription for schedule II drugs will not exceed the quantity necessary for ~~forty-eight (48)~~ SEVENTY-TWO (72) hours.

(4) and (5) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XII (8.32.1507) METHOD OF REFERRAL (1) A nurse specialist with prescriptive authority will have a referral process to ~~Montana~~ licensed physicians and a method for documentation of referral in the client records. Said referral method must be approved by the board of nursing prior to issuance of prescriptive authority.

(2) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XIII (8.32.1508) QUALITY ASSURANCE OF NURSE SPECIALIST PRACTICE (1) through (2)(c) will remain the same as proposed.

(d) written evaluation of review with steps for corrective action if indicated and follow-up~~.~~;

(e) SUBMISSION OF DUPLICATE PRESCRIPTIONS FOR THE SCHEDULED DRUGS TO THE BOARD OF NURSING.

(3) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XIV (8.32.1509) TERMINATION OF PRESCRIPTIVE AUTHORITY (1) The board of nursing may ~~terminate~~ IMPOSE DISCIPLINE UP TO AND INCLUDING TERMINATION OF a nurse specialist's prescriptive authority when one or more of the following criteria apply:

(a) through (e) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"XXVI (8.32.1611) CONSULTANT REQUIREMENTS (1) and (1)(a) will remain the same as proposed.

(b) ~~a certified~~ A NATIONAL OR STATE LEVEL CERTIFICATION APPROPRIATE FOR chemical dependency ~~counselor in Montana~~ COUNSELING;

(c) will remain the same.

(d) two years previous experience ~~in~~ RELATED TO monitoring AND TREATMENT PROGRAM FOR chemically dependent ~~nurses~~ HEALTH CARE PROFESSIONALS;

(e) and (f) will remain the same as proposed.

(g) knowledge and experience in a ~~12 step~~ RECOGNIZED program for chemical dependency."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

4. The Board of Nursing has thoroughly considered all comments received. The comments on new rules VI through XVI (8.32.1501 through 8.32.1510) were jointly considered and responses developed by the Board of Nursing and Board of Medical Examiners. Those comments and the Boards' responses thereto are as follows:

COMMENTS ON ARM 8.32.305
EDUCATION REQUIREMENTS FOR SPECIALTY NURSING

COMMENT 1: A nurse practitioner commented that the American Nurses Association has adopted master's level preparation for nurse specialists but other certifying bodies have not done so. The Board should coordinate adoption of this requirement with availability of certified educational programs.

RESPONSE: Such programs are not available in Montana and are not expected to be in the near future, but are available in other states.

COMMENT 2: Rule 8.32.305(b) should indicate that a master's degree must be received in a specific area of specialty nursing.

RESPONSE: The Board concurred. The rule will be amended to so indicate.

COMMENT 3: A certified registered nurse anesthetist (CRNA) commented that the education requirements for CRNAs should be based on national standards set forth by the American Association of Nurse Anesthetists which is the certifying, accrediting and testing body for CRNAs. The AANA has set 1998 as the date for entry into a master's degree program for CRNAs.

RESPONSE: The proposed date of July 1, 1998, for entry into a master's degree program will unduly delay implementation of the master's requirement. The rule will be amended to allow nurse specialists who completed an accredited nurse specialist program and who obtained national certification prior to June 30, 1995, to be recognized in Montana.

COMMENT 4: The State Family Planning Council stated that the adoption of a master's degree requirement for special certification by 1995 exceeds the requirements of national certifying bodies and should be delayed until July 1, 1998.
RESPONSE: The American Nurses Association, the largest certifying body for nurse specialists, has established January 1, 1992, as the date for adoption of a master's degree requirement for specialty certification. The 1995 date proposed is a compromise and should not be further delayed.

COMMENT 5: Adoption of a master's degree requirement for nurse anesthetists would exacerbate the current shortage of practitioners.
RESPONSE: A master's degree is necessary to provide appropriate education in the specialty field of nurse anesthesia for the benefit of the public health and safety.

COMMENT 6: A hospital administrator commented that a master's degree requirement for nurse specialists would make fewer available with higher income expectations resulting in higher health care costs to the consumer.
RESPONSE: The comment is noted but no statistics were provided.

COMMENT 7: The Montana Organization of Nurse Executives stated that there is not training for nurse anesthetists in Montana. Recruitment from outside of Montana will be very difficult if the Montana licensure requirement exceeds national standards.
RESPONSE: The Montana Board of Nursing is setting the master's requirement to meet the increasing complexity of specialty nursing in conformance with national standards. Although the certifying body for nurse anesthetists has set 1998 as the year a master's degree will be required for certification, the Montana rule sets July 1, 1995, for all nurse specialists for the purpose of uniformity and fairness.

COMMENT 8: The Montana Nurses Association commented that the rule should clarify the "grandfathering" of current nurse specialists who do not have a master's degree who moved to Montana after the implementation date.
RESPONSE: The rule is being amended as indicated in response to comment number 3.

COMMENTS ON NEW RULES VI THROUGH XVI REGARDING PRESCRIPTIVE AUTHORITY FOR NURSE SPECIALISTS

COMMENT 1: A physician in a rural area indicated that recruitment of additional physicians has been fruitless but use of nurse practitioners with prescriptive authority is a positive step toward improving rural health care.
RESPONSE: The boards noted the comment.

COMMENT 2: A physician in a "medically underserved" rural area indicated that prescriptive authority for nurse practitioners would be an invaluable benefit to rural

residents and would assist in the recruitment of nurse practitioners and physicians.

RESPONSE: The boards noted the comment.

COMMENT 3: A nurse practitioner said that lack of prescriptive privilege is a major impediment to nurse practitioners in delivering care to their patients. Thirty-seven states now have a prescriptive privilege for nurse specialists.

RESPONSE: The boards noted the comment.

COMMENT 4: A nurse practitioner suggested that new rule XI be amended to allow prescription for Schedule II drugs to be extended for 72 hours to cover weekend and three-day holiday periods and that there be no duration on prescription of Schedule II and III drugs for terminally ill patients.

RESPONSE: The Board concurred and the rule will be amended to allow a prescription to be written for Schedule II drugs to cover a period of up to 72 hours. It is not necessary to remove the limit on prescriptions for terminally ill patients. Rule XI does not preclude writing another prescription based on assessment of need.

COMMENT 5: The director of a university student health service commented that nurse practitioners are an invaluable component in providing affordable quality health care to students and would be even more valuable with prescriptive privileges.

RESPONSE: The boards noted the comment.

COMMENT 6: The Montana Medical Association commented: (a) New Rule IX should require a description of the scope of practice of the nurse specialist in the application. (b) New rule VI should indicate that the prescriptive authority will be limited to the training skill and experience of the nurse specialist. (c) Instead of requiring a nurse specialist to define their own physician referral process the rule should define one or more referral processes which would be considered acceptable.

RESPONSE: (a) The amendment of ARM 8.32.304 delineates the scope of practice according to the standards of the nurse specialists' certifying body.

(b) This limitation is imposed by the amendment of ARM 8.32.304.

(c) The rule allows a nurse latitude to define their own reasonable referral process which may vary according to the circumstances of the nurse specialist. Definition of standard referral processes is unnecessary at this time.

COMMENT 7: The Montana Nurses Association stated that it supports the rules which will provide increased access to health care for Montanans, and provide sufficient safeguard for the protection and benefit of the public.

RESPONSE: The boards noted this comment.

COMMENT 8: A nurse anesthetist, on behalf of the Montana Association of Nurse Anesthetists, stated that the ordering, selecting and administering of drugs is intrinsic to nurse anesthesia practice. The CRNA does not actually write a "prescription" for a patient and should not be required to obtain prescriptive authority to continue in practice.

RESPONSE: The rules are not intended to change the practice of nurse anesthetists in their practice of administering drugs under standing orders or established hospital protocols. However, prescriptive authority is required for those nurse anesthetists who order, select and administer drugs without the supervision of a physician.

COMMENT 9: Senator Franklin stated that it was the intent of the Montana Legislature that the Board of Nursing control nursing practice including prescriptive authority for nurse specialists.

RESPONSE: The boards noted the comment.

COMMENT 10: A physician commented that the rules provide an acceptable level of safety for the consumer and will be manageable by the provider.

RESPONSE: The boards noted this comment.

COMMENT 11: A nurse practitioner states that there are sufficient formal and informal links between physicians and nurse practitioners to insure safe prescribing practices. Medicare and Medicaid rules and some private insurers require collaboration and referral of nurse practitioners with physicians.

RESPONSE: The boards noted this comment.

COMMENT 12: Residents of a rural area who have used the services of a nurse practitioner indicated that the use of nurse practitioners with prescriptive authority would enhance the health care available in rural areas.

RESPONSE: The boards noted this comment.

COMMENT 13: A physician stated that nurse practitioners should have prescriptive authority to do an effective job and provide access to health care at a cheaper cost.

RESPONSE: The boards noted this comment.

COMMENT 14: The availability of prescriptive authority may increase the numbers of nurse specialists available to provide primary health care in underserved areas of the state.

RESPONSE: The boards noted this comment.

COMMENT 15: An administrator of a small rural hospital and nursing home indicated his concern over the loss of two physicians and indicates the importance of recruitment of nurse practitioners with prescriptive authority to medically underserved areas.

RESPONSE: The boards noted this comment.

COMMENT 16: An Indian Health Service nurse commented that new rule XII should be amended to allow nurse specialists practicing in a federal facility to make referrals to federally employed physicians.

RESPONSE: The boards concurred and the rule will be amended to allow referral to any licensed physician.

COMMENT 17: Rule 8.32.301(1)(d) and new rule XII should be clarified to indicate the source of "established protocols" and "pre-established criteria."

RESPONSE: ARM 8.32.301 and 8.32.304 as amended will clarify that a nurse specialist works within protocols of the specialty set according to standards of the specialist's certifying body.

COMMENT 18: The quality assurance method established through new rule XIII should require review and evaluation by someone other than the individual nurse specialist.

RESPONSE: New Rule XIII gives the nurse specialist guidance for developing a quality assurance method according to the standards of the specialist's certifying body. Peer review is one of several quality assurance methods which may be used.

COMMENT 19: The Board of Nursing should develop a monitoring process to review appropriateness of prescription, cost-effectiveness and that the nurse specialists function within their established scope of practice.

RESPONSE: The prescriptive authority committee will review application, referral, documentation, quality assurance, complaints and other matters, and will recommend action to the Board of Nursing. Scope of practice and quality assurance are also regulated by the standards of the certifying body. This is a sufficient process for monitoring.

COMMENT 20: A physician commented that new rule XIII should be amended to require active monitoring of the prescribing by nurse specialists in accordance with a working agreement similar to that used for physician assistants.

RESPONSE: The nurse specialist, as an independent primary health care provider, does not need to work under the supervision of a physician. Sufficient safeguards are provided for in the referral and quality assurance processes. The rule will be amended to require the submission of duplicate prescriptions for scheduled drugs to the Board of Nursing.

COMMENT 21: A physician commented that the rules should delineate the spectrum of prescribing to each area of nurse specialization. The Board should compile a list of the classes or categories of drugs available to each area of specialty nursing.

RESPONSE: Scope of practice and prescribing are limited by the standards of the certifying bodies under ARM 8.32.304. The use of a formulary is unnecessary.

COMMENT 22: A nurse practitioner indicated that nurse practitioners are independent health care providers who are capable of prescribing in a manner consistent with their training skill and experience according to nurse practitioners' protocols. The active involvement of a physician is not required in the practice of nurse practitioners.

RESPONSE: The boards noted this comment.

COMMENT 23: A nurse practitioner suggested that a nurse specialist appointed by the Board of Nursing should be one of the registered nurses participating in the prescriptive authority committee.

RESPONSE: The committee is composed of members of the Boards of Nursing, Pharmacy and Medical Examiners. Outside parties are not included because they cannot be covered by the state tort claims act and cannot receive reimbursement for expenses. A nurse specialist is not currently on the Board of Nursing. However, Rule VIII authorizes use of consultants which may include nurse specialists.

COMMENT 24: The Board of Medical Examiners requested that new Rule VI(4) be amended so the BME is also notified of nurses' prescriptive authority granted, suspended, terminated or reinstated.

RESPONSE: The boards concurred and the rule will be so amended.

COMMENT 25: The Montana Academy of Physician Assistants commented:

(a) The rules should be revised to require ongoing physician review of nurse specialist prescriptive practice by regular chart review, direct physician contact or other suitable means.

(b) The majority of members of the prescriptive authority committee are not qualified themselves to prescribe. They suggest that the committee be composed of two nurse specialists at least one of whom would be a member of the Board of Nursing, one physician from the Board of Medical Examiners, one physician who is experienced in supervising or collaborating with a nurse specialist and one pharmacist from the Board of Pharmacy.

(c) The members of the Board of Nursing are not qualified to regulate the prescriptive practice of nurse specialists. They suggest that the rules be revised to require that for any application, complaint or other issue that the Board of Nursing elects to reject the prescriptive authority committee's recommendation, the Board of Medical Examiners be called upon to review the matter and both boards act jointly to resolve the issue.

(d) The rules should be amended to require nurse specialists to send duplicate prescriptions for all controlled substances prescribed to the Board of Nursing for regular review by the prescriptive authority committee.

(e) The rules should define a "reasonably broad scope of prescriptive practice" for each of the nurse specialist

categories of nurse midwives, nurse anesthetists and nurse practitioners.

(f) New rule XIV unduly restricts the Board of Nursing's action on violations of prescriptive authority to termination of the authority. The rule should be amended to allow a broader scope of disciplinary options.

RESPONSE: (a) Same as responses to comments 18 and 20.

(b) See response to comment 23. Sufficient expertise is provided for in the committee as established by new rule VIII and by use of consultants.

(c) By statute, the regulation of prescriptive authority is within the jurisdiction of the Board of Nursing so it would not be proper to defer to or act jointly with the Board of Medical Examiners. The prescriptive authority committee has been set up to share expertise.

(d) New rule XIII is being amended to require submission of duplicate prescriptions to the Board of Nursing for review as appropriate.

(e) Scope of practice of a nurse specialist is defined by ARM 8.32.304 as amended.

(f) The rule will be amended to allow the Board of Nursing to "impose discipline up to and including termination of ... prescriptive authority."

COMMENT 26: A nurse practitioner commented that the suggestion of physician assistants requiring medical supervision of all nurse prescriptive practice is unnecessary. The Board of Medical Examiners in working on several drafts of the rules was comfortable with the Board of Nursing supervising the prescriptive practice of nurse specialists.

RESPONSE: The boards noted this comment.

COMMENTS ON NEW RULES XVI THROUGH XXVII REGARDING NURSES ASSISTANCE PROGRAM

COMMENT 1: The Montana Nurses Association supports the proposed nurses assistance program which will provide the critical assistance needed to help nurses recover and resume a productive career in nursing.

RESPONSE: The Board noted this comment.

COMMENT 2: A consultant on impaired nurses stated that the program provides for patient safety; integration of the chemically dependent nurse into the workplace in a safe, effective manner; and provides for accountability.

RESPONSE: The Board noted this comment.

COMMENT 3: (a) New rule XXVI(b) should indicate that the counselor has "a national or state level certification appropriate for chemical dependency counseling."

(b) Subsection (d) should indicate that the consultant's experience is "related to monitoring and treatment programs for chemically dependent health care professionals."

(c) Subsection (g) should indicate knowledge and experience in a "recognized" program for chemical dependency rather than specifically a "twelve-step" program.

RESPONSE: The Board concurred and the rule will be amended. These changes should allow a greater pool of qualified applicants.

COMMENTS ON OTHER RULES

COMMENT 1: A nurse practitioner suggested that ARM 8.32.301(1)(d) should be amended to indicate that the nurse practitioner will work within "nurse practitioner" established protocols. This would clarify that the nurse practitioner is responsible for protocol generation and maintenance.

RESPONSE: The Board concurred and the rule will be amended to explicitly state what is already implicitly in the rule.

COMMENT 2: ARM 8.32.411 is being amended to advance submission of renewal applications to December 15. It should require submission even earlier to allow timely processing.

RESPONSE: Due to a comment from a staff attorney of the Administrative Code Committee, the deadline will not be changed from January 1.

COMMENT 3: ARM 8.32.909(5)(a)(i) and (iii) should indicate that the 10 to 1 student to faculty ratio "does not apply."

RESPONSE: The Board concurred and the rule will be so amended to clarify that the 10:1 ratio does not apply.

COMMENT 4: A staff attorney of the Administrative Code Committee commented that section 37-8-431, MCA, specifies that renewal applications must be returned before January 1, so ARM 8.32.411 cannot advance date to December 15.

RESPONSE: The purpose of the proposed amendment was to give the Board time to process applications before the renewal deadline. The amendment in subsection (1) will be stricken in order to conform with the statute.

BOARD OF NURSING
E. L. CAMPO, RN, BSN, PRESIDENT

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 2, 1991.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and repeal of rules generally regarding nursing home administrators	)))	NOTICE OF AMENDMENT AND REPEAL OF RULES PERTAINING TO NURSING HOME ADMINISTRATORS

TO: All Interested Persons:

1. On September 12, 1991, the Board of Nursing Home Administrators published a notice of public hearing to consider the proposed amendment and repeal of rules pertaining to nursing home administrators at page 1619, 1991 Montana Administrative Register, issue number 17.

2. The Board has amended ARM 8.34.410, 8.34.414, 8.34.417 and 8.34.419 and repealed ARM 8.34.401, 8.34.403, 8.34.404, 8.34.409, 8.34.418, 8.34.420 and 8.34.422 exactly as proposed. ARM 8.34.418 was inadvertently placed under number 3 in the original notice for repeal. This rule was amended not repealed.

The Board has amended ARM 8.34.406, 8.34.416 and 8.34.418 as proposed but with the following changes:

"8.34.406 ~~STANDARDS FOR NURSING HOME ADMINISTRATORS~~ DISCIPLINARY ACTION (1) will remain the same as proposed.

(2) ~~Pursuant to section 37-9-203(1), MCA, the board establishes t~~The following ~~standards for persons licensed and serving as nursing home administrators, violation of which will~~ ACTS MAY subject the licensee to disciplinary action:

(a) willful and/or repeated violation of any board statutes or rule or the statutes or rules of any federal state, county or city agency having licensing and regulation of nursing homes or administrators;

(b) through (e) will remain the same as proposed.

(f) diversion or appropriation of drugs or medications prescribed for ~~patients~~ RESIDENTS in the nursing home;

(g) failure to ~~terminate~~ TAKE APPROPRIATE ACTION ON an employee who diverts drugs or medications prescribed for ~~patients~~ RESIDENTS ~~of the nursing home to his/her own personal use~~;

(h) through (j) will remain the same as proposed.

(k) knowingly failing to exercise true regard for the safety, health and welfare ~~and like~~ of the ~~patient or~~ resident;

(l) willfully permitting unauthorized disclosure of information relative to the ~~patients' or~~ residents' records;

(m) through (o) will remain the same as proposed.

(p) failing to maintain or provide accounting of or for ~~patient's or~~ residents' property or assets during ~~confinement~~ THEIR STAY in the nursing home. However, the administrator shall be responsible only for that property with which he has been specifically entrusted by the resident, or that property over which the administrator has reasonable means of exercising security;

(q) allowing harassment or abuse of ~~patients or~~ residents by employees;

(r) and (s) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-9-203, 37-9-311, MCA; IMP, Sec. 37-9-203, 37-9-311, MCA

"8.34.416 CONTINUING EDUCATION (1) through (3)(b) will remain the same as proposed.

(4) ~~Only~~ NO MORE THAN 25 hours of college courses may be submitted for continuing education in any three year period WITHOUT PRIOR APPROVAL OF THE BOARD. These courses shall be approved in advance by the continuing education committee and should contribute to the professional competence of the participant. The remaining continuing education hours submitted during that three year period must pertain to nursing home administration."

Auth: Sec. 37-1-131, 37-9-203, MCA; IMP, Sec. 37-9-305, MCA

"8.34.418 FEE SCHEDULE (1) and (1)(a) will remain the same as proposed.

(b) examination and license for the ~~May~~ APRIL examination $100.00

(c) examination and license for the ~~November~~ OCTOBER 120.00

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

Auth: Sec. 37-1-131, 37-1-134, 37-9-304, MCA; IMP, Sec. 37-9-304, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

COMMENT: The term "patient" should be replaced with the term "resident" throughout the rules to conform to current practice.

RESPONSE: The Board agrees and the rules will be so amended.

COMMENT: ARM 8.34.406(2) is unclear in stating that it establishes standards for licensees whereas it actually sets forth the acts which may subject the licensee to disciplinary action.

RESPONSE: Acts which violate standards of professional conduct may form the basis for disciplinary action. The Board will amend this subsection to clarify that the designated acts may subject a licensee to disciplinary action.

COMMENT: It is unnecessary to designate in ARM 8.34.406(2) those acts which are violations of other state and federal laws and regulations.

RESPONSE: Violation of state or federal statutes or rules is referred to in ARM 8.34.406(2)(a). The designation of specific acts which may form the basis for disciplinary action

is necessary in order to give licensees appropriate notice of what conduct is prohibited.

COMMENT: The Board should clarify procedures and sanctions available in disciplinary actions.

RESPONSE: ARM 8.34.406(1) indicates that the Board may suspend, revoke or take other appropriate action against a licensee. All lesser forms of discipline are implied in the ultimate authority to revoke a license. The procedures for disciplinary action are found in section 37-9-311, MCA, and the Administrative Procedure Act.

COMMENT: ARM 8.34.406(2) indicates that commission of the acts indicated "will" subject the licensee to disciplinary action, prevents the Board from exercising its discretion.

RESPONSE: The Board is amending "will" to "may" to indicate that it will exercise its discretion in these matters.

COMMENT: ARM 8.34.406(2)(a) should indicate that the violations of statutes or rules regarding nursing homes or administrators "by the administrator" would be a violation rather than the acts of nursing home staff.

RESPONSE: The Board is primarily concerned with the regulation of nursing home administrators. Willful or repeated violations by staff may be an indication of professional violations by the administrator. The Board will exercise its discretion in appropriately determining responsibility.

COMMENT: ARM 8.34.406(2)(g) indicates that it is a violation to fail to terminate an employee who diverts drugs which conflicts with other legal requirements that an impaired employee be rehabilitated and continued in employment.

RESPONSE: The Board agrees and will amend the rule to indicate that it is a violation to fail to "take appropriate action" on an employee who diverts drugs.

COMMENT: ARM 8.34.406(2)(k) does not adequately define the violation of failing to exercise "true regard for the safety, health and welfare" of the resident.

RESPONSE: The rule does provide sufficient notice in the professional context of what acts may be a violation.

COMMENT: ARM 8.34.406(2)(n) is vague.

RESPONSE: The rule does provide adequate notice in the professional context of acts which may be a violation.

COMMENT: ARM 8.34.406(2)(o) regarding failure to correct deficiencies or maintain corrective measures may be redundant to actions of other agencies regulating nursing homes.

RESPONSE: Although the jurisdictions of various agencies may appear to overlap, each exists for its own legal purpose. An agency with responsibility for correcting deficiencies in the nursing home itself, generally does not have authority to regulate the professional conduct of the administrator which is a matter within the jurisdiction of the board.

COMMENT: ARM 8.34.406(2)(p) refers to the term "confinement" which is inappropriate since residents are free to leave as they choose.

RESPONSE: The term will be amended to indicate the duration of the resident's "stay."

COMMENT: ARM 8.34.406(2)(q) is vague and does not specify what constitutes "allowing harassment or abuse of residents." The Montana Elder Abuse Act should be incorporated by reference.

RESPONSE: The terminology of the rule gives adequate notice of what act is a violation. The Elder Abuse Act may be referred to in an individual case to substantiate the offense.

COMMENT: ARM 8.34.416(4) indicating that only 25 hours of college courses may be submitted for continuing education in a three year period inappropriately distinguishes college course hours from other course hours.

RESPONSE: The proposed rule was intended to encourage participation in programs which develop professional competence as well as and academic abilities. The rule will be amended to indicate that no more than 25 hours of college courses may be submitted in a three year period "without prior approval of the board" so that some discretion may be exercised.

BOARD OF NURSING HOME ADMINISTRATORS
MOLLY L. MUNRO, CHAIRPERSON

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 2, 1991.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
a rule pertaining to fees) 8.42.403 FEES

To: All Interested Persons:

1. On September 26, 1991, the Board of Physical Therapy Examiners published a notice of proposed amendment of the above-stated rule at page 1817, 1991 Montana Administrative Register, issue number 18.

2. The Board amended the rule exactly as proposed.

3. One comment was received from the Montana Chapter of the APTA commending the Board on lowering the fees. The board noted the comment.

4. No other comments or testimony were received.

BOARD OF PHYSICAL THERAPY
EXAMINERS
JOYCE DOUGAN, CHAIRPERSON

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 2, 1991.

BEFORE THE BUSINESS DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of new rules pertaining to definitions and certification of Microbusiness Development Corporations	))))	NOTICE OF ADOPTION OF NEW RULES PERTAINING TO THE MICROBUSINESS FINANCE PROGRAM

TO: All Interested Persons:

1. On October 17, 1991, the Business Development Division published a notice of public hearing on the proposed adoption of new rules pertaining to the Microbusiness Finance Program, at page 1898, Issue No. 19. The hearing was held on November 8, 1991, at 10:00 a.m., in the upstairs conference room of the Department of Commerce building.

2. The Division proposed new definitions under new rule I. The Division adopted these definitions exactly as proposed but they will appear as new subsections (7) through (20) under existing ARM 8.99.401 and not as a new rule.

The Division adopted new rule II (8.99.404) as proposed but with the following changes:

"8.99.404 CERTIFICATION OF MICROBUSINESS DEVELOPMENT CORPORATIONS (1) through (4)(f) will remain the same as proposed.

(g) Evidence of sufficient operating income including at least, but not limited to, financial reports for previous two years for an existing organization, and two-year full financial projections for all applicants. IN THE CASE OF A NEW ORGANIZATION, EVIDENCE SHALL INCLUDE PRINCIPALS AND BOARD MEMBERS WITH SUCCESSFUL EXPERIENCE IN MANAGING SIMILAR AMOUNT OF FUNDING IN A NONPROFIT CORPORATION.

(h) through (5)(c) will remain the same as proposed.

(d) In regions with proposals for certification from more than one organization, THE DEPARTMENT WILL CONVENE AND CHAIR A REGIONAL EVALUATION COMMITTEE. NOMINATIONS FOR MEMBERSHIP TO THE COMMITTEE WILL BE SOLICITED FROM GROUPS INCLUDING, BUT NOT LIMITED TO, PROPOSERS FROM THAT REGION, ~~a regional evaluation committee will select one proposal to be forwarded to the department for certification review. The committee will be called together by proposers in that region with assistance from the department. The committee will consist of representatives from at least, but not limited to,~~ local governments, certified community lead organizations, financial institutions, ~~business incubators,~~ business assistance groups, women, and representatives of low-income and minority populations. THE COMMITTEE WILL ATTEMPT, THROUGH NEGOTIATION, TO ARRIVE AT A CONSENSUS PROPOSAL FROM THE REGION. IF, HOWEVER, IN THE OPINION OF THE CHAIR AND A MAJORITY OF THE COMMITTEE A CONSENSUS CANNOT BE REACHED IN A TIMELY FASHION, THEN THE COMMITTEE WILL EVALUATE THE COMPETING PROPOSALS OR ANY MODIFIED PROPOSALS THAT HAVE EMERGED FROM NEGOTIATION, USING THE EVALUATION FORM AND METHOD PRESCRIBED IN SUBSECTION (5)(b) ABOVE, AND WILL SELECT BY MEANS OF THAT

EVALUATION A SINGLE PROPOSAL TO BE FORWARDED TO THE DEPARTMENT FOR CERTIFICATION REVIEW. ~~If a region with multiple proposals is unable to make a selection decision within one year from the deadline of the first request for certification proposals, the department will review all proposals and determine which one, if any, of the proposing organizations will be funded in that region.~~

(6) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-408, MCA

3. The Division has thoroughly considered all comments and testimony received. Those comments and the Division's responses thereto are as follows:

COMMENT: A member of the Central Montana Resource Conservation and Development Area commented that the proposed rule requires that board members of MBDCs have successful experience in similar non-profit corporations; however, the only Montana corporations that operate revolving loan funds targeted to micro-enterprise, are Capital Opportunities and WEDGo. The rule should be revised so as not to limit appropriate experience to a background in these two corporations.

RESPONSE: The Division concurred. The rule will be amended to provide that in the case of a new organization evidence shall include principals and board members with successful experience in managing similar amounts of funding in non-profit corporations.

COMMENT: The Executive Director of the Human Resource Council had two comments:

(a) When there is more than one applicant in a service region, the proposed rules could allow as much as a year to go by before a decision is made to select one applicant for review by the Division. The Division should become more involved earlier in the selection process to prevent this lengthy delay.

(b) There should be an alternative to a single organization being designated the Microbusiness Development Corporation in a region -- alternatives such as full partnerships among more than one organization, to allow more equal participation by minority and rural interests.

RESPONSE: The Division concurred in the first comment.

(a) The rules are amended to provide a procedure for convening a regional selection committee and choosing among completed certification proposals. The rules are amended to provide greater involvement of the Department of Commerce to insure timely action.

(b) It is the intent of the law that minorities and rural interests be equitably served. However, the language of the law explicitly states that the Division may certify and fund only one Microbusiness Development Corporation in a service region, and that an MBDC is "a nonprofit corporation organized and existing under the laws of the state." Clearly,

the law contemplates a single legal entity being certified and funded as an MBDC.

BUSINESS DEVELOPMENT DIVISION

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 2, 1991.

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

In the matter of the adoption of new rules I through XXVII dealing with licensing for specialty residential mental health service	))))	NOTICE OF ADOPTION OF NEW RULES I THROUGH XXVII

(Licensing & Certification)

To: All Interested Persons

1. On June 27, 1991, the department published notice at page 956 of the Montana Administrative Register, Issue No. 12, of the proposed adoption of the above captioned rules which establish licensure standards for a new class of health care facility offering mental health services to those afflicted with addictive disorders.

2. After consideration of the comments received on the proposed rules, the department has adopted the rules as proposed with the following changes (new material is underlined, deleted material is interlined):

RULE I (16.32.401) SPECIALTY MENTAL HEALTH FACILITY--APPLICATION OF OTHER RULES Same as proposed.

RULE II (16.32.402) SPECIALTY MENTAL HEALTH FACILITY--DEFINITIONS (1) As used in [Rules I through XXVI], the following definitions apply:

(a) "Specialty mental health facility" means a health care facility that provides specialty mental health services in a residential setting to patients with mental health conditions associated with ~~addiction~~ eating disorders, pathological gambling, and sexual disorders and may include a specialty unit attached to another type of licensed health care facility.

(b) "Addiction" ~~means~~ includes habituation, and means a psychological dependence upon a substance or behavior for the purpose of achieving euphoria or temporary relief from painful stimuli, whether or not the stimuli are internal or external in origin, and which is associated with an eating disorder, pathological gambling, or a sexual disorder.

RULE III (16.32.403) SPECIALTY MENTAL HEALTH FACILITY--REQUIRED TREATMENT SERVICES (1) A specialty mental health facility must:

(a) Provide an indivldually planned regime of 24-hour ~~professionally directed~~ evaluation, care, and treatment for each patient with mental health conditions associated with the addiction that ~~it serves~~ the regimen is designed to treat, prepared and delivered by mental health professionals, pursuant to a defined set of written policies and procedures;

(b) Have permanent facilities that include, at least, inpatient beds;

(c) Utilize a multi-disciplinary mental health staff appropriate and sufficient to care for patients whose

emotional/behavioral problems are severe enough to require ~~residential~~ specialty mental health treatment services as determined through individual psychiatric evaluations and detailed admission criteria; and

(d) Provide 24-hour staff observation to ~~residents~~ patients, and have medical and /or mental health monitoring and treatment available to them by qualified professionals on a 24-hour basis;

(2) If medical monitoring and treatment is necessary for a patient on a continuous basis, then that individual must be transferred to an appropriate inpatient facility immediately.

RULE IV (16.32.404) SPECIALTY MENTAL HEALTH FACILITY--PROHIBITIONS

(1) A specialty mental health facility may not admit as a patient any person who:

(a)-(d) Same as proposed.

(e) requires a medication regime;

(i) to orient him or her to reality; ~~or~~ ;

(ii) for stabilization or any other purpose related to behavior modification;

(iii) for a mental health condition unrelated to an eating disorder, pathological gambling, or sexual dysfunction; or

(iv) that would otherwise suggest that the person is in need of inpatient psychiatric treatment on such medications;

(f) requires intensive supervision or specialized therapeutic interaction where medical or psychiatric attention or monitoring and treatment is necessary on a continuous basis as determined through a medical or psychiatric evaluation;

(g) requires a treatment that focuses on management of a psychiatric condition that may endanger the person, facility, staff, or others, as determined through a psychiatric evaluation prior to admission;

(h) requires electro-convulsive therapy;

(i) requires a locked environment; or

(j) requires treatment for a mental health condition other than one associated with an addiction ~~related to eating disorders, gambling, or sexual behavior~~.

(2) For purposes of this rule, a person is ambulatory if he or she is capable of self-mobility, either with or without mechanical assistance; if mechanical assistance is necessary, a person is considered ambulatory only if he or she can, without help from another person, utilize the mechanical assistance, exit and enter the facility, or access all common areas in the facility.

RULE V (16.32.405) SPECIALTY MENTAL HEALTH FACILITY--ORGANIZATIONAL STRUCTURE; GOVERNING BODY Same as proposed.

RULE VI (16.32.406) SPECIALTY MENTAL HEALTH FACILITY--MEDICAL AND PROFESSIONAL STAFF (1) A specialty mental health facility must:

(a) Same as proposed.

(b) Employ or contract with the numbers of qualified

mental health professional and support staff necessary to adequately evaluate patients and to sufficiently participate in each individual treatment plan to its completion; thoroughly document such participation; formulate written, individualized, and comprehensive treatment plans; provide active treatment measures; and engage in discharge planning.

(c)-(d) Same as proposed.

(e) Ensure that a staff psychiatrist does the following:

(i) Provides medical direction for the facility's residential mental health care activities and consultation for, and medical supervision of, mental health professional and non-physician health care staff; ~~and~~

(ii) Reviews and signs the records of each patient admitted ~~by a physician or non-physician health care staff no later than 24 hours after admittance to the facility~~; and

(iii) is directly involved with the mental health treatment of each admitted patient as determined in each individual treatment plan and documents that direct involvement.

RULE VII (16.32.407) SPECIALTY MENTAL HEALTH FACILITY--NURSING SERVICES (1) A specialty mental health facility must provide 24-hour nursing services and meet the following standards:

(a)-(b) Same as proposed.

(c) The nursing service must have a procedure to ensure that all nursing personnel have valid and current Montana nursing licenses.

(d) Same as proposed.

(e) Upon admission of a patient to the facility, a registered nurse must assign the nursing care of that patient to other nursing personnel in accordance with the patient's needs as determined by the admitting psychiatrist and the specialized qualifications and competence of the nursing staff ~~available~~.

(f) All drugs and biologicals must be administered by, or under the supervision of, nursing or other qualified medical personnel in accordance with federal and state law and rules, including applicable licensing requirements, and in accordance with medical staff policies and procedures which have been approved by the governing body.

(g)-(i) Remains the same.

RULE VIII (16.32.408) SPECIALTY MENTAL HEALTH FACILITY--ADMINISTRATOR (1) A specialty mental health facility must have an administrator who has formal training and/or experience, preferably in the administration of a mental health facility, which demonstrates an ability to perform the functions and duties required by these licensure rules.

(2) Same as proposed.

RULE IX (16.32.409) SPECIALTY MENTAL HEALTH FACILITY--PHARMACEUTICAL SERVICES Same as proposed.

RULE X (16.32.410) SPECIALTY MENTAL HEALTH FACILITY--

TREATMENT TEAM (1) A specialty mental health facility must have a multi-disciplinary treatment team supervised and directed by the admitting psychiatrist, and consisting of adequate numbers of individuals licensed, registered, or certified in the ~~professional~~ mental health disciplines appropriate to the condition of each patient.

(2) The treatment team for each patient must meet at least weekly with the supervising psychiatrist and document the progress of each patient according to each patient's individual treatment plan.

RULE XI (16.32.411) SPECIALTY MENTAL HEALTH FACILITY--ADMISSION PROCEDURES (1) A specialty mental health facility must develop, maintain, and implement admission procedures designed to ensure that no client is admitted prior to the facility's documented determination of its ability to meet the needs of the client based on ~~an~~ a documented appraisal of the client's individual service needs.

(2) The facility must assign a ~~licensed~~ psychiatrist licensed in Montana to admit all patients according to a defined set of admission criteria based upon the Diagnostic and Statistical Manual III-R (DSM III-R) of the American Psychiatric Association and may admit only those patients whose mental health conditions are associated with addictions related to eating disorders (codes 307.10, 307.50, 307.51, 307.52, and 307.53 in the DSM III-R), pathological gambling (code 312.31 in the DSM III-R), or sexual ~~behavior~~ disorders (codes 302.40, 302.81, 302.89, 302.20, 302.83, 302.84, 302.30, 302.82, 302.90, 302.71, 302.79, and 302.72 in the DSM III-R).

(3) Whenever a patient is admitted to the facility by a physician other than a psychiatrist, the facility must assure that the physician consults with the facility psychiatrist, by phone or otherwise, within 12 hours after admission, ~~and~~ that a written notation of that consultation and the psychiatrist approval of the admission for a mental health condition or suspected mental health condition is made and kept in the patient's records, and that a psychiatric evaluation is conducted in accordance with the standards in subsection (4) below prior to admission.

(4) Each patient must receive a psychiatric evaluation that must be completed ~~within 60 hours of~~ by a psychiatrist licensed in Montana prior to admission unless subsection (5) below applies; include a medical history; contain a record of mental status; note the onset of illness and the circumstances leading to admission; describe attitudes and behavior; estimate intellectual functioning, and orientation; and include an inventory of the patient's assets in descriptive rather than interpretive fashion.

(5) If an individual seeks admission or is referred to the facility outside of the hours of 6:00 am to 7:00 pm, Monday through Friday, or during national holidays, then the facility may allow that person temporary occupancy under the direction of a Montana licensed physician or Montana licensed psychiatrist until the psychiatric evaluation can be conducted

during the facility's next regularly scheduled business day.

(6) If an individual is referred to the facility by a licensed psychiatrist or licensed physician who is not affiliated with the facility, the psychiatric evaluation must still be completed by the facility's staff psychiatrist within the time frame otherwise prescribed for such an evaluation. If a psychiatric evaluation has been conducted by a Montana-licensed psychiatrist not affiliated with the facility, the staff psychiatrist must review and approve the evaluation and note such review and approval in the patient's records.

~~(5)~~(7) When indicated, a complete neurological examination must be conducted within 72 hours of admission.

~~(6)~~(8) A licensed physician must conduct a physical examination of each patient within 24 hours after or 7 days prior to that patient's admission.

~~(7)~~(9) The department hereby incorporates by reference codes 302.20, 302.30, 302.40, 302.71, 302.72, 302.79, 302.81, 302.82, 302.83, 302.84, 302.89, 302.90, 307.10, 307.50, 307.51, 307.52, 307.53, and 312.31 of the DSM III-R of the American Psychiatric Association, which ~~contains~~ contain descriptions of various diagnoses of mental disorders associated with eating disorders, pathological gambling, and sexual disorders. A copy of ~~each~~ the manual may be obtained from the American Psychiatric Association, 1700 18th Street NW, Washington, D.C. 20009.

RULE XII (16.32.412) SPECIALTY MENTAL HEALTH FACILITY--~~CLINICAL~~ TREATMENT PROGRAM (1) Each patient must have an individual comprehensive treatment plan that must be based on an inventory of the patient's strengths and disabilities or mental impairment as defined by the mental health professionals on the multi-disciplinary treatment team and approved by the evaluating or staff psychiatrist.

(2) An initial treatment plan for each patient must be formulated, written and interpreted to the staff by the staff psychiatrist as a part of the admission process.

(3) A comprehensive treatment plan for each patient must be formulated no later than three full working days after admission by a multi-disciplined treatment team and the staff psychiatrist, and placed in the patient's records immediately following approval by the evaluating or staff psychiatrist. The staff psychiatrist and multi-disciplinary professional staff must also participate in the preparation of any major revisions of the comprehensive plan.

(4) The comprehensive treatment plan must:

(a) be based on the patient's psychiatric evaluation;

(b) include clinical consideration of the patient's physical, developmental, psychological, age appropriate, family, educational, social, and recreational needs;

(c) specify the reason for admission and specific treatment goals, stated in measurable terms, including a projected timeframe for completed treatment; treatment modalities to be used; staff who are responsible for coordinating and carrying out the treatment; and expected length of stay and appropriate aftercare planning.

(5) The facility must supply, to each individual being admitted and his or her family, significant other, or referral source, a description, in writing or publication form, of the treatment modalities it provides, including content, methods, equipment, and personnel involved. Each treatment program must conform to the stated purpose and objectives of the facility.

~~(2)~~(6) A multi-disciplinary treatment team must provide:

(a) daily clinical services to each patient to assess and treat the person's individual needs, services including appropriate medical, psychological, and health education services; ~~and~~

(b) individual, family and group psychological counseling; and

(c) access to family members or spouses as part of the treatment plan of each patient when such involvement can be beneficial.

(7) Upon admission of each patient, implementation of a discharge planning program must begin which will ensure that:

(a) discharge planning is documented in the individual treatment plan for each patient; and

(b) each patient, along with the necessary medical and other treatment information, is transferred or referred to appropriate facilities, agencies, or outpatient services, as needed, for continued, follow-up, or ancillary care.

RULE XIII (16.32.413) SPECIALTY MENTAL HEALTH FACILITY--STAFF DEVELOPMENT (1) Same as proposed.

(2) Staff development programs must be outlined in the facility's policies and procedures, with annual updates.

RULE XIV (16.32.414) SPECIALTY MENTAL HEALTH FACILITY--FOOD AND ~~DIETETIC~~ NUTRITION SERVICES (1) A specialty mental health facility must have ~~dietary~~ nutrition services that are directed and staffed by adequate personnel and meet the following standards:

(a) The facility must assign an employee or contract with a consultant who is qualified by experience and training as a food service supervisor to direct the food and ~~dietetic~~ nutrition service and to be responsible for the daily management of the ~~dietary~~ nutrition service.

(b) The facility must utilize a ~~qualified dietitian~~ nutritionist licensed in Montana, on a full-time, part-time, or consultant basis.

(c) Same as proposed.

(d) Nutritional needs must be met in accordance with recognized dietary and nutrition practices and, at a minimum, the recommended daily dietary allowances established by the Food and Nutritional Board of the National Research Council, National Academy of Sciences, ~~8th~~ 10th edition, ~~1974~~ 1989.

(2) The department hereby incorporates by reference the recommended daily dietary allowances established by the Food and Nutritional Board of the National Research Council, National Academy of Sciences, ~~8th~~ 10th edition, ~~1974~~ 1989, which set minimum nutrition requirements for human beings. A copy of the

above dietary allowances may be obtained from the department's Licensing, ~~and~~ Certification, & Construction Bureau, Cogswell Bldg., Helena, Montana 59620 [444-~~5401~~2037].

RULE XV (16.32.415) SPECIALTY MENTAL HEALTH FACILITY--OUTPATIENT SERVICES (1) If the specialty mental health facility provides outpatient services, each outpatient must be examined by a ~~practitioner~~ psychiatrist licensed in Montana and the services must meet the standards contained in ARM 16.32.355.

(2) The department hereby incorporates by reference ARM 16.32.355, which contains minimum licensure standards for outpatient facilities. Copies of ARM 16.32.355 may be obtained from the department's Licensing, ~~and~~ Certification, & Construction Bureau, Cogswell Bldg., Helena, Montana 59620 [444-~~5401~~2037].

RULE XVI (16.32.416) SPECIALTY MENTAL HEALTH FACILITY--MEDICAL RECORDS (1) A specialty mental health facility must maintain a medical records system in accordance with written policies and procedures, as well as meet the following standards:

(a) Same as proposed.

(b) Create and maintain a record for each person receiving specialty mental health care services from the facility that includes, if applicable:

(i)-(ix) Same as proposed.

(c)-(f) Same as proposed.

(2) The department hereby adopts and incorporates by reference ARM 16.32.308, which contains medical records requirements for types of health care facilities other than hospitals. Copies may be obtained from the department's Licensing, ~~and~~ Certification, & Construction Bureau, Cogswell Bldg., Helena, Montana 59620 [444-~~5401~~2037].

RULE XVII (16.32.417) SPECIALTY MENTAL HEALTH FACILITY--QUALITY ASSURANCE (1) The governing body of the facility must ensure that there is an effective, on-going, facility-wide written quality assurance program and implementation plan in effect which ensures, monitors, and evaluates the quality of the patient care provided there and which includes the following:

~~(a) Periodic review, not less than semi-annually, in order to determine whether utilization of services was appropriate, established policies were followed, and any changes are needed of the following:~~

~~(i) the utilization of facility services, included at least the number of patients served and the volume of services;~~

~~(ii) a representative sample consisting of not less than 10% of both active and closed patient records; and~~

~~(iii) the facilities health care policies.~~

(a) Identification of all health and safety aspects of each patient's individual treatment plan;

(b) Development and documentation of indicators that are

used to monitor and evaluate the health and safety aspects of patient treatment and care;

(c) Documentation and evidence that the findings, conclusions, and results of corrective actions to improve patient care which are identified through the quality assurance program are applied in a manner which improves patient treatment and care.

~~(b)~~(d) Consideration and documentation by the facility's medical and professional staff of the findings of the evaluation and the taking of subsequent remedial action, if necessary.

~~(c)~~(e) Evaluation, with complete documentation, of all services provided by contractors.

~~(d) Implementation of a discharge planning program that facilitates the provision of post-discharge care and:~~

~~(i) Ensures that discharge planning for each patient is initiated in a timely manner; and~~

~~(ii) Ensures that each patient, along with the necessary medical information, is transferred or referred to appropriate facilities, agencies, or outpatient services, as needed, for continued, follow-up, or ancillary care.~~

~~(e)~~(f) The taking and documentation of appropriate remedial action to address deficiencies found through the quality assurance program, as well as documentation of the outcome of the remedial action.

(g) Periodic review of all quality assurance activities, at least semi-annually, which is submitted in writing to the governing body and also made a part of the facility's medical records file.

RULE XVIII (16.32.418) SPECIALTY MENTAL HEALTH FACILITY--UTILIZATION REVIEW (1) A specialty mental health facility must: ~~(a) Have~~ have in effect a utilization review plan to review services furnished by the facility to patients, ~~both~~ either through contracted services ~~and~~ or by members of its medical staff to patients~~.~~, in order to determine through semi-annual review, whether utilization of services was appropriate, established policies were followed, and any changes are needed.

~~(b) Contract with the state peer review organization (PRO) or its equivalent to do the following:~~

~~(i) certify whether all admissions to the facility were medically necessary; and~~

~~(ii)~~ (2) Such a review mechanism shall consider, during each semi-annual review period, at least the following:

(a) the utilization of facility services, including at least the number of patients served and the volume of services;

(b) ~~periodically~~ sample facility cases consisting of not less than 10% of both active and closed patient records; ~~and~~

(c) review ~~them~~ of the sample cases to determine the medical necessity of the medical and professional services furnished, including drugs and biologicals~~.~~; and

(d) the facility's health care policies.

RULE XIX (16.32.419) SPECIALTY MENTAL HEALTH FACILITY-

-INFECTION CONTROL (1) Same as proposed.

(2) The facility must be in compliance with Title 75, Part 10, MCA, the Infectious Waste Management Act.

(3) The department hereby adopts and incorporates by reference Title 75, Part 10 MCA, containing requirements for health care facilities in handling of infectious wastes. A copy of the law may be obtained from the department's Licensing, Certification, and Construction Bureau, Cogswell Building, Helena, Montana 59620 [444-2037].

RULE XX (16.32.420) SPECIALTY MENTAL HEALTH FACILITY--PHYSICAL ENVIRONMENT (1)-(8) Same as proposed.

(9) The facility must establish a written ~~preventative~~ preventive maintenance program to ensure that all equipment is operative.

RULE XXI (16.32.421) SPECIALTY MENTAL HEALTH FACILITY--EMERGENCY SERVICES (1) The facility must ensure that patients have access to emergency services and to more intensive levels of care, including acute or inpatient psychiatric care~~, whether or not such care is provided by the facility~~.

(2) ~~If emergency medical services or more intensive psychiatric care are not available within the facility, the~~ The facility must have an agreement with an outside source for ~~these~~ emergency medical and inpatient psychiatric services to ensure that they are immediately available to ~~those~~ patients who may need ~~them~~ such services.

RULE XXII (16.32.422) SPECIALTY MENTAL HEALTH FACILITY--ENVIRONMENTAL CONTROL Same as proposed.

RULE XXIII (16.32.423) SPECIALTY MENTAL HEALTH FACILITY--DISASTER PLAN Same as proposed.

RULE XXIV (16.32.424) SPECIALTY MENTAL HEALTH FACILITY--LAUNDRY AND BEDDING Same as proposed.

RULE XXV (16.32.425) SPECIALTY MENTAL HEALTH FACILITY--LIFE SAFETY AND BUILDING CODE (1) A specialty mental health facility must be in compliance with the provisions of:

(a) the 1991 National Fire Protection Association (NFPA) 101 Life Safety Code, Chapters ~~21~~ 22 and 23, residential occupancy; and

(b) the ~~1988~~ 1991 Uniform Building, Electrical, and Mechanical Codes.

(2) The department hereby adopts and incorporates by reference the 1991 NFPA 101 Life Safety Code, Chapters ~~21~~ 22 and 23, residential occupancy, and the ~~1988~~ 1991 Uniform Building, Electrical, and Mechanical Codes, which set national building and safety standards for various types and uses of buildings. Copies of the codes may be obtained from the department's Licensing, ~~and~~ Certification, & Construction Bureau, Cogswell Bldg., Helena, Montana 59620 [444-~~5401~~ 2037].

RULE XXVI (16.32.426) SPECIALTY MENTAL HEALTH FACILITY--PHYSICAL PLANT (1) Each patient room in a specialty mental health facility must meet the following standards:

(a)-(f) Remains the same.

~~(g) Each patient must have access to a toilet room without having to enter the general corridor area.~~

~~(h)~~(g) Each patient must have within his/her room a separate wardrobe, locker, or closet suitable for hanging full-length garments and for storing personal effects.

(2)(a)-(c) Same as proposed.

(d) have a floor area of not less than 15 square feet if it has one toilet and one lavatory.

(3) Separate toilet facilities and lockers shall be provided for employees.

(4) The facility's water supply system must meet the standards contained in ARM 16.20.207 and ARM 16.10.635.

(5) The facility's wastewater system must meet the standards contained in ARM 16.20.636.

(6) Fixtures must meet the following standards:

(a) Toilets must be:

(i) provided in numbers ample for use according to the number of residents, at least one toilet for every four residents or fraction thereof.

(ii) if for resident use, provided with grab bars of a type approved by the department on at least one side.

(iii) ventilated, with a mechanical system vented to the outdoors that provides a minimum of four air changes per hour.

(iv) where more than one toilet is provided in the same room, partitioned each from the other, including a door capable of remaining closed which affords full visual privacy.

(v) be accessible to each resident without the resident having to enter a kitchen, dining room, living area, or another resident's room.

(b) Sinks and handwashing fixtures must be:

(i) provided close to each work station and in each utility room;

(ii) if used by staff, equipped with valves which can be operated without the use of hands;

(iii) provided separately in the main kitchen and located so that the person in charge may supervise handwashing by food service personnel; and

(iv) supplied with a paper towel dispenser, soap dispenser, and a covered wastebasket.

(7) A bathroom must:

(a) when individual bathing facilities are not provided in patient rooms, include a bathtub or shower with approved grab bars and serve no more than 12 licensed beds or fraction thereof.

(b) be ventilated by a mechanical system to the outdoors providing a minimum of 10 air changes per hour.

(c) have a floor entirely covered with a non-absorbent covering approved by the department. [Note: A continuous solid covering is preferred over block tile, but is not mandatory.]

(d) contain an adequate supply of toilet tissue, towels, soap, and wastebaskets.

(e) if it contains a shower or bath serving more than one patient, provide a private area for bathing, drying, and dressing.

(8) At least one resident bathroom for residents with physically handicapping conditions must be provided that has space for a wheelchair and an assisting attendant, whether or not any of the residents are classified as handicapped.

~~(3)~~ (9) Service areas must meet the following standards:

(a)-(k) Same as proposed.

~~(l) Showers, bathtubs, and sitz baths must meet the following standards:~~

~~(i) Each must be in an individual room or enclosure that provides privacy for bathing, drying, and dressing;~~

~~(ii) When individual bathing facilities are not provided in patient rooms, there must be at least one shower and/or bathtub for each 12 beds or a fraction thereof.~~

(m)-(r) Same as proposed but are renumbered (l) through (q).

(10) Where the requirements of this section appear in conflict with those of NFPA 101, Chapters 22 and 23, the requirements of this section shall apply.

~~(4)~~(11) The department hereby adopts and incorporates by reference:

(a) section 7.28A(11) of the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1987 edition) published by the American Institute of Architects, a manual which specifies architectural requirements to ensure comfort, aesthetics, and safety in hospital and medical facilities. A copy of section 7.28A(11) or the entire manual may be obtained from the American Institute of Architects Press, 1735 New York Avenue NW, Washington, D.C. 20006.

(b) ARM 16.20.207, stating maximum microbiological contaminant levels for public water supplies, and ARM 16.10.635, which outlines the department construction, operation, and maintenance standards for springs, wells, and cisterns and other water supply system minimum requirements. Copies of the rules may be obtained from the department's Licensing, Certification, and Construction Bureau, Cogswell Building, Helena, Montana 59620 [444-2037].

(c) ARM 16.20.636, outlining department construction and operation standards and other minimum requirements for sewage systems. A copy of the rule may be obtained from the department's Licensing, Certification, and Construction Bureau, Cogswell Building, Helena, Montana 59620 [444-2037].

NEW RULE XXVII (16.32.427) SPECIALTY MENTAL HEALTH FACILITY -- PATIENT RIGHTS (1) A specialty mental health facility shall have written policies and procedures to assure the individual patient the right to dignity, privacy, and safety, and shall support and protect the basic human, civil, and constitutional rights of the individual patient.

(2) A written policy and procedure approved by the

governing body shall provide a description of the patient's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the patient and family, designated relative, guardian, or custodian, with a clearly written and readable statement of patients' rights and responsibilities. The statement shall be read to the patient and family, guardian, or custodian if any cannot read, and shall cover, at a minimum:

(a) each patient's access to treatment, regardless of race, religion or ethnicity;

(b) each patient's right to recognition and respect of his or her personal dignity in the provision of all treatment and care;

(c) each patient's right to be provided treatment and care in the least restrictive environment possible;

(d) each patient's right to an individualized treatment plan;

(e) each patient's and family's participation in planning for treatment;

(f) the nature of care, procedures, and treatment that he or she will receive;

(g) the risks, side effects, and benefits of all medications and treatment procedures used;

(h) the right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the facility when the patient refuses treatment, or, in accordance with legal and professional standards, to terminate the relationship with the patient upon reasonable notice; and

(i) the patient and family members' right to access to a patient advocate.

(4) The rights of patients must be written in language which is understandable to the patient, his or her family, custodian, or guardian, and must be posted in appropriate areas of the facility.

(5) The policy and procedure concerning patient rights shall assure and protect the patient's personal privacy within the constraints of his or her treatment plan. These rights to privacy shall at least include:

(a) visitation by the resident's family, relatives, guardian, or custodian in a suitable private area of the facility;

(b) sending and receiving mail without hindrance or censorship; and

(c) telephone communications with the patient's family, relatives, guardian, or custodian at a reasonable frequency.

(6) If any rights to privacy must be limited, the patient and his or her family, guardian, or custodian shall receive a full explanation. Limitations must be documented in the patient's record and their therapeutic effectiveness must be evaluated and documented by professional staff every seven days.

(7) The right to initiate a complaint or grievance

procedure and the means for requesting a hearing or review of a complaint must be specified in a written policy approved by the governing body and made available to patients, family, guardians, and custodians responsible for the patient. The procedure shall indicate:

(a) to whom the grievance is to be addressed; and

(b) steps to be followed for filing a complaint, grievance, or appeal.

(8) The patient and his or her family, guardian, or custodian must be informed of the current and future use and disposition of products of special observation and audio visual techniques such as one-way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding patient's rights shall ensure the patient's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The patient may be allowed to work for the facility only under the following conditions:

(a) the work is part of the individual treatment plan;

(b) the work is performed voluntarily;

(c) the patient receives wages commensurate with the economic value of the work;

(d) the work project complies with applicable law and regulations; and

(e) the performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, are not considered work for the facility and need not be compensated or voluntary.

(11) Measures utilized by the facility to discipline patients must be:

(a) established by written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body;

(b) fully explained to each patient and the patient's family, guardian, or custodian;

(c) fair, consistent, and administered based on the individual's needs and treatment plan.

(12) The facility shall prohibit all cruel and unusual disciplinary measures, including but not limited to the following:

(a) corporal punishment;

(b) forced physical exercise;

(c) forced fixed body positions;

(d) group punishment for individual actions;

(e) verbal abuse, ridicule, or humiliation;

(f) denial of three balanced nutritional meals per day;

(g) denial of clothing, shelter, bedding or personal hygiene needs;

(h) denial of access to educational services;

(i) denial of visitation, mail, or phone privileges for punishment;

(j) exclusion of the patient from entry to his or her

assigned living quarters; and

(k) restraint or seclusion as a punishment or employed for the convenience of the staff.

(13) Written policy shall prohibit patients from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct care staff from administering disciplinary measures to patients.

(14) Written rules of patient conduct must be:

(a) developed in consultation with the professional and direct care staff and approved by the governing body;

(b) developed with the participation of patients to a reasonable and appropriate extent; and

(c) based on generally acceptable normal and natural behavior for the patient population served.

(15) The application of disciplinary measures should correlate with the violation of established rules.

AUTH: 50-5-301, MCA; IMP: 50-5-301, MCA

3. The department has thoroughly considered the comments received on the proposed rules. The following is a summary of comments received, along with department responses to these comments.

Comment: The proposed rules appear to violate 50-5-101(15), MCA, which refers to hospital licensure.
Response: The point of the comment was obscure. The department has no intention of proposing licensure rules for a specialty mental health facility to be licensed as a hospital.

Comment: The proposed rules violate 53-21-101, et seq., MCA, concerning the seriously mentally ill and should require voluntary admissions of individuals with such serious mental illnesses to be approved by professional persons.
Response: The department has drafted these rules to specifically exclude treatment of seriously mentally ill persons in specialty mental health facilities.

Comment: Treatment in a residential speciality facility for the types of patients contemplated by the proposed rules is neither medically necessary nor appropriate. The needs of most patients who would be admitted to specialty mental health facilities are being adequately served by out-patient care, and those needing inpatient care require an acute setting.
Response: Treatment in specialty mental health facilities is allowed only for patients who suffer from eating disorders, pathological gambling, or sexual disorders. The department believes past and present utilization of providers who could potentially be licensed under the proposed rules may indicate the service is both needed and appropriate.

Comment: The proposed definition of addiction in Rule II is too broad, including a wide variety of perceived addictions.
Response: The department agreed and adopted a more clear and

concise definition.

Comment: Eating disorders should not be treated in programs structured for treatment of chemical dependency.
Response: The rules allow the treatment of eating disorders in a specialty mental health setting as distinct from a chemical dependency facility setting. If both types of programs are housed in the same building, which is allowable under the proposed rules, the treatment requirements shall remain separate and the facility will have to be licensed separately for the separate services.

Comment: The phrase "patients with mental health conditions associated with addiction" and the definition of addiction both lack clarity.
Response: The department modified the definition of addiction in Rule II to clearly indicate that the service is limited only to eating disorders, pathological gambling, and/or sexual disorders.

Comment: Individualized treatment planning should be required.
Response: The department, in Rule XII, has added a requirement that detailed individual treatment planning will be required for each person admitted.

Comment: The minimum requirement in Rule III that a specialty mental health facility have "at least inpatient beds" was questioned.
Response: The comment is too vague for the department to presume its meaning or what was being recommended, so no action was taken.

Comment: The service requirements that 24-hour observation, medical monitoring, and treatment be available to patients who are "severe enough to require residential services" are not supported by the proposed staffing requirements, admission criteria, or initial assessment guidelines.
Response: No change will be made because the proposed rules require "a multi-disciplinary staff appropriate and sufficient to care for" these patients.

Comment: It seems contradictory for pharmaceutical services to be offered when chemical restraints are prohibited and patients needing an intensive medication regime cannot be admitted.
Response: The department believes that there exist situations where persons admitted to this type of facility may be taking prescribed or non-prescribed medications for conditions which may be unrelated to the reason(s) for initial admission and therefore are not in conflict with stated prohibitions on chemical restraints or intensive medication regimes for orientation to reality or for behavior modification. Additionally, there may be some medication regimes recognized as appropriate for patients admitted to these facilities which

are appropriate to successful individual treatment planning and which are not in conflict with the proposed prohibitions on medication usages. For purposes of clarity, the department has modified Rule IV(1)(e) to more precisely indicate the parameters of the stated prohibition.

Comment: The admission criteria should require patients entering these facilities to have a psychiatric and physical evaluation prior to admission.
Response: The department amended Rule XI to require a psychiatric evaluation, the most critical of the two evaluations, to be completed prior to admission, while retaining the requirement that a physical examination be conducted within 24 hours after or seven days prior to admission.

Comment: Ms. Wilson refers to the types of diagnoses for admission to this type of facility and their relation to the ICD-9 or DSM III-R.
Response: Codependency has been deleted from the proposed rules. The reference to the DSM III-R will be clarified to point directly to the diagnoses of eating disorders, pathological gambling and sexual disorders and will reference the applicable codes in the DSM III-R in Rule XI(2).

Comment: The Rule XI admission procedure should clarify that a psychiatric evaluation is conducted by a psychiatrist.
Response: The department adopted this clarification in Rule XI. Additionally, Rule XI was clarified to state that the facility's staff psychiatrist is responsible for the psychiatric evaluation, or, if an evaluation has already been conducted separately, the staff psychiatrist is responsible for review and approval of the evaluation and for placing supporting documentation in the patient's records.

Comment: Rule XII's clinical program is not individualized or of a comprehensive nature, and should be required to conform to state nursing statutes.
Response: The department does require a comprehensive individual treatment plan in Rule XII and believes the rules are not in conflict with Montana's nursing statutes. Since the comments made no recommendations for precise modifications or additions to this rule or concerning what should be included in an individual treatment plan, no changes were made other than to add language to cover minimum treatment aspects not already clearly covered.

Comment: Rule XV should require that outpatient services include examinations by a physician and/or psychiatrist rather than a "practitioner".
Response: The department adopted this recommendation.

Comment: In Rule XVII, quality assurance reviews should be conducted more than semi-annually and appropriateness of

service should be conducted by an outside agency.
Response: The department changed Rule XVII to read "at least semi-annually", but did not adopt the second suggestion since no reasons were offered why an outside agency should conduct review of appropriateness of service.

Comment: Managed Care Montana commented that it reserves the right to determine medical necessity and appropriateness of service and care for all contracting patients.
Response: Since the comment was irrelevant to the content of the rules, no action was taken.

Comment: A commentor was concerned that no assurance existed that emergency services would be available even though a physical or psychiatric evaluation does not have to occur until 24 hours after admission.
Response: Since the department is now requiring a psychiatric evaluation to be conducted prior to admission in Rule XI, "immediate access" to emergency services, as determined at least by the evaluating psychiatrist, should be sufficient.

Comment: A nurse call system should be made mandatory.
Response: In the proposed rules, the department has eliminated the need for a nurse call system altogether. A specialty mental health facility will be expected to provide 24-hour staffing to patients whose level of disorder does not inhibit their ability to locate staff on their own at any time during their residence at the facility. Such freedom of movement will be a right of each patient of the facility. If a patient is in obvious need of placement in an environment where nurse call systems are mandatory, then such a person would not be eligible for placement in a specialty mental health facility. However, there is no prohibition that would preclude a facility from voluntarily installing a nurse call system, although such a voluntary installation would move licensure surveyors to observe the purposes for such a system's use.

Comment: Blue Cross/Blue Shield contracts, and most health insurance policies, expressly exclude coverage for many of the conditions which would be treated in the facilities under which the proposed rules would apply.
Response: No action was taken, since the comment is irrelevant to the proposed rules.

Comment: The department's definition of addiction is inappropriate, since it is a government agency defining a medical diagnosis, and correct definitions within the medical and psychiatric professions already exist.
Response: The department's definition is not meant to be a medically or psychiatrically correct one, but rather to specify who may be treated by this particular type of facility. It has become apparent, however, that the definition still requires some clarification. Therefore, the department has clarified the meaning of addiction in Rule II to explicitly state that,

for purposes of these rules, the term "addiction" refers only to psychological dependence associated with eating disorders, pathological gambling, or sexual disorders.

Comment: The proposed rules recognize the serious diagnoses of eating disorders, pathological gambling, sexual disorders, and codependency, yet they are not listed in any recognized classification, especially as addictions.
Response: The department clarified the use of the DSM III-R in Rule XI as it refers to eating disorders, pathological gambling, and sexual disorders. It is the intent of the department to use the term "addiction" in these rules as a descriptor of the treatable diagnoses, including the levels of acuity acceptable for admission to this type of facility. Additionally, the department has deleted the term "codependency" from the proposed rules.

Comment: The "addiction model treatment" that would be allowed in a specialty mental health facility has not been proven effective.
Response: The department agrees that we are indeed sailing unchartered waters in the search for documented proof as to the effectiveness of any treatment model for the diagnoses which would be treatable under the proposed rules. The department is, however, willing to proceed with the adoption of these licensure standards to 1) recognize that past and current utilization of existing services which could be licensed under these standards may provide a case for their legitimacy, and 2) to facilitate the gathering of evidence of "documented proof" through required record keeping and other documentation of these services.

Comment: There is a lack of psychiatric and physician involvement with patients after their initial admission evaluations.
Response: The department requires, in Rule XII, detailed individual treatment planning procedures that will obligate the facility to develop such plans through a multi-disciplinary method, and will include the participation and approval of a psychiatrist.

Comment: The need for a disaster plan was questioned, in that such a facility could not adequately treat victims of disasters unless prohibition were reintroduced and a large number of addicted individuals required treatment.
Response: No change was made because disaster plans are not necessarily developed to accommodate an influx of individuals, but rather to deal with the effects on a facility and its occupants of a disaster such as an earthquake.

Comment: A commentor questioned how statistics and insurance claims would be handled, since adequate statistics and insurance claims require coding by "accepted diagnostic nomenclature".

Response: Records will be kept by these facilities according to Rule XVI. Where "accepted" nomenclature may not have existed before, it should become accepted or at least recognized through the adoption of these rules. The department, in Rule XVI, requires that the records are specific for each person receiving specialty mental health services. As for insurance claims, it is not within the department's jurisdiction to regulate by a licensure rule the records necessary for insurance carriers to obtain.

Comment: There is no rule requirement for the treatment of indigent patients, a requirement that is apparently generally accepted for other types of health care facilities.
Response: It is beyond the legal authority of the department to require that such a facility provide indigent care through licensure rules.

Comment: Statutory requirements for third party payers to pay for this type of residential treatment will increase other health insurance.
Response: The legislature rather than the department defines what constitutes a health care facility and has charged the department, by law, with developing rules for all types of those facilities, of which specialty mental health facilities are one. It is also the legislature rather than the department that can specify what facilities third-party payors must pay, so if there is any consequent impact on the cost of health insurance, the department is not the agency that can prevent it.

Comment: Rule VII(c) should read, "The nursing service must have a procedure to ensure that all nursing personnel have valid and current Montana nursing licenses."
Response: The department agrees and adopts the recommendation.

Comment: Dependency on psychoactive substances should be included in Rule IV(j) along with the three disorders already mentioned as treatable under this license.
Response: The department rejects this suggestion because there is already in existence a licensure category to treat individuals who require inpatient treatment for substance abuse.

Comment: The requirement in Rule XVIII that both an internal utilization review and an external one through contract take place should be struck because it adds to the cost of care and is an outdated requirement, discriminatory, outside the department's jurisdiction, already performed by third-party payors and insurers, duplicates internal efforts, and possibly in conflict with Senate Bill 394.
Response: While disagreeing with some of the above contentions, the department agrees that both internal and external utilization review is unnecessary and will require that either internal or contracted review occur.

Comment: Rule XI admission procedures should be modified to also include admission criteria based on levels of clinical dysfunction that require a specifically residential level of care.
Response: The department made no change since it believes that the rules already make clear that only persons suffering from eating disorders, pathological gambling, or sexual disorders and who might best benefit from services offered in a residential setting can be admitted to this type of facility.

Comment: Rule IV(f) should be clarified to prohibit admission of persons needing intensive medical care supervision.
Response: The department agreed and will clarify the specific prohibition in Rule IV(f) accordingly.

Comment: Rule IV(j) should be modified to include co-dependents as also being treatable at this type of a facility.
Response: The term "co-dependency" or any derivation thereof has been deleted from the proposed rules. The department recognizes that there exist certain dangers in adopting a set of licensure rules with terminology such as "co-dependency" when it could be applied to an unlimited number of disorders and there is considerable internal division in the medical and psychiatric professions concerning its use and application as a diagnosable disorder. In the future, when the term has received more attention and acceptance from the medical and psychiatric professions, the department will be more willing to consider its inclusion in these licensure rules.

Comment: The following requirement should be added to Rule XI admission procedure: "An assessment procedure for early detection of mental health problems that are life threatening and are of such serious nature that intensive hospital-based psychiatric care is required."
Response: The department rejects this suggestion because it would be redundant, given the fact that there is language in Rule IV prohibiting the admission to a specialty mental health facility of any person who could be assessed as described above.

Comment: There is some confusion between Rule XVII and Rule XVIII, and the language in Rule XVII should be modified to more accurately reflect the intent of quality assurance in health care standards.
Response: The department agrees that the proposed language is confusing and transferred some of the elements of Rule XVII to Rule XVIII. Additionally, while the department agreed with the spirit of the modifications proposed for Rule XVII by the commentor, it preferred to incorporate the intent of the proposal using its own language.

Comment: Rule XVII(b) and (d)(ii) should be amended to use the terminology "medical and professional staff", since the

terms relate to Rule VI medical and professional staff.
Response: The department assumes that this request is to promote consistency in the rules. Rule XVII(b) was amended accordingly; however, it was not readily apparent why Rule XVII (d)(ii) needed such a change, so the request was rejected.

Comment: The elements covered in Rule XVII(1)(a) and (d) regarding quality assurance are more appropriate to Rule XVIII concerning utilization review.
Response: The department agrees with the suggestion and transposed the Rule XVII(1)(a) language into Rule XVIII. In addition, the department agrees that (1)(d) of Rule XVII was also misplaced. However, since the section refers to discharge planning, department research and other comments made during the process suggest that such an element of these rules rightfully belongs under a section of treatment planning, and has therefore been incorporated into Rule XII, regarding clinical programs, as new (7)(a) and (b). Similarly, Rule XII is now entitled "Treatment Program" rather than "Clinical Program".

Comment: A number of requirements in Rule XXVI appear inconsistent with Rule XXV(1)(a), which refers to the 1991 National Fire Protection Association (NFPA) 101 Code, Chapter 21.
Response: The department was in error in citing NFPA 101 Chapter 21 and amended the rule to cite the correct chapters 22 (New Residential Board and Care Occupancies) and 23 (Existing Residential Board and Care Occupancies) and otherwise update the cites. However, the commentor failed to note which other inconsistencies between the two rules were troublesome, so the department, on its own, identified one other potential problem area. Where there may be requirements in Rule XXVI which are greater than the requirements cited in Rule XXV which reference NFPA 101, it is because the minimum requirements in NFPA 101 are inadequate. Therefore, a clarification is added to the end of Rule XXVI to state that where its requirements are found to be greater than those of NFPA 101, the greater requirements shall apply.

Comment: The rules should reflect nationally accepted standards developed by the Joint Commission on Accreditation of Healthcare Organizations for physical plant requirements.
Response: The department rejects this proposal because there is no demonstrated evidence that the proposed standards will be overly cumbersome, cost prohibitive, or detrimental to patient care. Additionally, if the department were to adopt JCAHO standards, the department would be put in the untenable position of having to interpret and enforce such standards. When JCAHO itself cites deficiencies to JCAHO standards, such information remains confidential to the facility and to JCAHO.

Comment: Rule XI(4) admission procedures should be changed to allow a psychiatric evaluation to be conducted within 72 hours

of admission, rather than the proposed 60.
Response: The department rejects this suggestion. The results of ongoing research during the past year, including since these rules were originally proposed, indicate that the psychiatric evaluation is most appropriately conducted prior to admission. In Rule XI, the admission procedure language has been changed to accommodate circumstances in which the psychiatric evaluation cannot feasibly be completed prior to admission, depending upon when a patient physically appears at such a facility.

Comment: The prohibitions in Rule IV(1)(e) and (f) are confusing and should be struck.
Response: The department rejected the suggestion; it, however, was aware that both statements needed some clarification and therefore provided additional language to that effect. Apparently the commentor, a doctor, is arguing that the prohibitions would apply to patients whom he might admit. These rules are meant to address eating disorders, gambling disorders, and sexual disorders, not delirious or psychotic patients, or individuals diagnosed under a depression disorder, and should not in any way be construed to equate the supervision and therapeutic intervention needs of patients needing care in a hospital with those needing or receiving care in a specialty mental health facility.

Comment: Mr. Melby proposes to include mental health conditions associated with chemical dependency be included as a condition treatable under Rule IV(1)(j) Prohibitions and Rule XI Admission Procedures.
Response: The department rejects these suggestions since there is already a separate licensure category for chemical dependency.

Comment: The department neglected to allow the treatment of mental problems of family members in a primary relationship with an addict.
Response: The department recognizes the value of including family members with the treatment of patients at a specialty mental health facility. The department will include a provision for family involvement in Rule XII(6)(c) for the treatment of patients at such a facility, but has no intention at this time of expanding the license to include anything more than treatment for individuals with eating disorders, pathological gambling, and sexual disorders.

Comment: An assessment procedure complementary to a psychiatric evaluation should occur within 24 hours after admission to detect the presence of a mental health condition that requires a greater level of care that is offered in a specialty mental health facility.
Response: The department believes that the adoption of the requirement of a psychiatric evaluation prior to admission will fulfill the need of an assessment procedure in order to prevent

inappropriate admissions.

Comment: In regard to Rule XXVI, physical plant requirements, handwashing facilities in patient rooms are inappropriate to this type of facility in new construction and having toilet rooms and lavatories accessible to patients without their having to pass through the general corridor area is unnecessary.
Response: The department agreed to eliminate the provision restricting entry into the general corridor area and instead required that each resident have access to a toilet room without entering another resident's room, kitchen, dining or living area. As for the requirement that handwashing facilities must be provided in patient rooms, the department sees no reason why such a requirement in new construction should create a hindrance to the type and level of care offered in this type of facility.

Comment: Since Senate Bill 254, passed during the 1991 legislative session, authorizes the department to rely upon JCAHO standards when licensing facilities, it was suggested that the department rely on JCAHO standards to license specialty mental health facilities.
Response: The department rejects this proposal, noting that SB 254 gives the department the option to adopt JCAHO standards for health care facilities. It is the department's position that it is in the best interest of the health care consumers in Montana that the regulatory approach that would result from reliance upon JCAHO not be adopted for the regulation of this particular type of facility. However, an examination of the JCAHO standards made apparent that more detailed physical plant standards would be advisable; such standards were added to Rule XXVI.

Comment: Rule III fails to address treatment of family members, in the sense that "treatment" is defined in 53-24-103(11), MCA, in the statutes relating to alcohol and drug dependence.
Response: The department declined to include treatment of family members under the license for reasons already mentioned, and feels the statutes relating to drug and alcohol dependence do not apply to this licensure category. However, since the department does support the concept of family involvement in the treatment of individuals, Rule XII was changed accordingly.

Comment: The Rule IV prohibitions in (1)(e) and (f) were unclear.
Response: The department agreed and the sentences in question were clarified.

Comment: Either Rule IV(1)(j) should be modified to delete the list of disorders which are treatable, substituting the word "addictions", or "chemical dependency" should be added to the list of treatable disorders; the same suggestion was made

regarding Rule XI(2).
Response: The department's intent in promulgating these rules was to deliberately limit them to the three disorders listed and reiterates that there already exists a licensure category for chemical dependency.

Comment: A 60-hour time period with which to conduct a psychiatric evaluation, as stated in Rule XI(4) is not reasonable.
Response: The department disagrees that such a time frame is unreasonable and, in fact, based on other testimony and research, believes that it is completely reasonable to require a psychiatric evaluation prior to admission.

Comment: The department's definition of addiction in Rule II is objectionable and the services described in the rules are not "addictive" disorders in the DSM III-R.
Response: The department deliberately fashioned a definition for "addiction" so its application in these rules is clear and not confused with any other definition of the term. The DSM III-R does describe the three disorders. Whether or not it describes them as addictions is irrelevant.

Comment: Does Rule IV(1)(a) prohibit only admissions resulting from court commitment; or alcohol/drug treatment ordered by the court or interventions by family members?
Response: Rule IV(1)(a) allows any admission to a specialty mental health facility where the patient seeks admission on his or her own behalf or seeks admission through a referral from a physician or psychiatrist when the level of need by the individual does not otherwise disqualify him or her from admission to such a facility. If alcohol or drug treatment is necessary for an individual, that individual cannot be admitted to a specialty mental health facility for chemical dependency treatment.

Comment: Does "non-ambulatory" in Rule IV(1)(c) include wheelchair bound persons or those who need assistance in walking or wheeling?
Response: Rule IV(1)(c) was clarified to define what constitutes "ambulatory".

Comment: In Rule IV(1)(d), shouldn't persons with serious mental illness be presumed to have impaired judgment concerning self-preservation?
Response: Persons with serious mental illness are indeed presumed to have impaired judgement concerning self-preservation and cannot be admitted to a specialty mental health facility.

Comment: In Rule IV(1)(e), how will a facility rule out mental health problems which are organic prior to admission when physician involvement is not required until after admission?
Response: Physician involvement is required anywhere from

seven days before up to 24 hours after admission to a specialty mental health facility (see Rule XI). The department feels this requirement is adequate in helping to prevent inappropriate admissions to the facility, especially coupled with the revised requirement of a psychiatric evaluation prior to admission in Rule XI.

Comment: Rule IV(1)(f) is vague; if a facility must have 24-hour nursing, why wouldn't it be capable of intensive supervision?
Response: The department has provided language to clarify Rule IV(1)(f). The commentor's assertion that 24-hour nursing implies it is capable of intensive supervision lacks real relevancy to the proposed rules since a specialty mental health facility may or may not be capable of intensive supervision. The part of the rule in question refers to prohibitions of persons who are in need of intensive supervision.

Comment: Does Rule IV(1)(g) refer to physical endangerment of life and limb, or include other dangers as well?
Response: Rule IV(1)(g) is changed to state that a person may not be admitted to this type of facility if that person requires treatment that focuses on management of a psychiatric condition that may endanger the person, facility, staff, or others as determined through a psychiatric evaluation prior to admission. The endangering conditions referred to in the prohibition are any and all kinds of dangers, physical or otherwise, that may be present in an individual which would prohibit the likelihood of successful treatment in this type of a facility. It is expected that the interpretive guidelines for these rules will be more specific in what shall constitute dangers in relation to this provision. An example would be that the individual seeking treatment for an eating disorder would most likely present in a condition that is a potential danger to him- or herself, but would still be a candidate for admission depending on the level of acuity as determined through the psychiatric evaluation.

Comment: In Rule V, how will a facility determine an appropriate discharge time and with what criteria?
Response: The department believes that it is incumbent upon the provider to determine discharge criteria and appropriate discharge times per each patient based upon an individual treatment planning process which requires discharge planning to commence upon admission [Rule XII(3)].

Comment: The psychiatric evaluation, physical and neurological examination should all be completed prior to admission. Since the prohibitions disallow admission of persons who are suffering from acute medical conditions or who pose dangers to themselves or others, the above medical evaluations could be done on an outpatient basis without endangering the patient. Such requirements would ensure that the prohibitions in Rule IV are met.

Response: The department agrees that the three required evaluations may be done on an outpatient basis. Additionally, the department is requiring that a psychiatric evaluation be conducted prior to admission to help ensure that the prohibitions in Rule IV are met. The changed timeframe with which to conduct a psychiatric evaluation should eliminate the need to modify the time frames for physical or neurological examinations.

Comment: The reference in Rule XXI (emergency services) to "more intensive levels of care" should be removed since such levels of care are prohibited in Rule IV.
Response: The department agrees and removed any part of Rule XXI which indicated that emergency medical or inpatient psychiatric services might be available in a specialty mental health facility.

Comment: Why would the department assert that the behaviors under question would have an addictive basis, implying that understanding and treatment of the behaviors would be analogous to understanding and treatment of chemical addiction.
Response: Throughout the development of these rules, the department has taken the position that the addictions are behavior based, not behaviors based on addictions. Second, it is not the assertion of the department that these behaviors can and should be treated or understood in a manner analogous to the treatment of chemical addictions.

Comment: It is ironic that the department is considering the creation of these new facilities in light of limitations of insurance coverage for other types of psychiatric treatment for which the need and effectiveness of inpatient care are well documented.
Response: No documentation was given to support this comment, nor can the assertion, if true, negate the need for licensure standards for an entity that is a health care facility by statutory definition.

Comment: The proposed rules raise many questions, including the role of medical and psychiatric provisions and supervision of care, pro bono care, validity of diagnosis, need for inpatient care, benefit of proposed treatment methods, and cost of care.
Response: There was no suggestion of how to change the rules, so no change was made.

Comment: Rule II(1)(a) needs clarification to indicate that this class of health care facility is designed to provide for the mental health needs of individuals who are primarily seeking treatment for true addictive disorders and is not designed for alternative treatment for patients with serious mental disorders.
Response: The definition in Rule II was clarified to acknowledge that a specialty mental health facility is for the

treatment of eating disorders, pathological gambling, and sexual disorders.

Comment: The definition of addiction in Rule II(1)(b) should be deleted.
Response: The department rejects this proposal. The definition of addiction in these rules has been deliberately fashioned to refer only to these rules so as to avoid confusion with any other definition of the term that exists. The department has, however, clarified the definition so as to specifically relate to the three disorders that are the subject of these rules.

Comment: Objective admission treatment and criteria are needed in Rule III(1)(c) regarding required treatment services.
Response: The department has clarified the provision to refer to individual psychiatric evaluations and admission criteria.

Comment: Clarification of Rule III(1)(d) is necessary in order to eliminate any ambiguities or possible conflicts with Rule IV(1)(f).
Response: The department agrees and has clarified the provision of 24-hour observation to be done by staff, and required that, if continuous medical monitoring and treatment is necessary for a patient, the patient must be transferred to an appropriate inpatient setting.

Comment: A review process should be adopted where admission and treatment records are regularly reviewed by psychiatrists not affiliated with the specialty mental health facility and who are certified by the ABPN.
Response: The department believes that the quality assurance and utilization review standards that are required for specialty mental health facilities will adequately fulfill the review process proposed.

Comment: A well defined set of admission criteria should determine appropriateness of admissions, and the DSM III-R has nothing to do with admissions criteria.
Response: The department does not intend to use the DSM III-R as a method to determine admissions criteria. Rather, as is set out in the proposed Rule XI, the DSM III-R manual is to be used as a guide to determine admission criteria based upon the diagnoses of eating disorders, pathological gambling, and sexual disorders. The department has added the specific codes from the DSM III-R that are specific to the three disorders that are treatable in a specialty mental health facility.

Comment: In Rule II, mental health treatment should be delivered on an outpatient, contractual basis by licensed/certified mental health professionals for inpatients being treated for chemical dependency.
Response: The department does not disagree with the feasibility of such an arrangement and suggests that the rules

under consideration do not inhibit providers from entering into such agreements.

Comment: In Rule III(1)(a) following "...regimen of 24-hour", delete "professionally directed", and add "said regime to be prepared and delivered by mental health professionals."
Response: The department agreed to the change in modified form.

Comment: In Rule III(1)(c) following "utilize", delete "a multi-disciplinary", and insert "mental health" staff.
Response: The department agreed to the change in modified form.

Comment: In Rule III(1)(d) following "and have medical", insert "and/or mental health" monitoring and treatment to insure that treatment for mental health conditions is delivered by mental health professionals.
Response: The department agreed to the change.

Comment: The department should refer to the Department of Corrections and Human Services for standards of what constitutes "mental health professionals".
Response: The department agreed and will incorporate the standards which define mental health professionals from the Department of Corrections and Human Services in the interpretive guidelines to these rules.

Comment: Rule IV removes the need for reference to residential or inpatient treatment as defined in Rule III(1)(c). Also, parts (1)(e), (f), and (g) discriminate against admissions of the very people who are most in need of residential services.
Response: The terminology of Rule III(1)(c) has been modified, so the comment is no longer applicable. As for the second part of the comment, the department has always intended for the services offered in a specialty mental health facility to be limited for those individuals who experience certain levels of eating disorders, pathological gambling, and sexual disorders.

Comment: In Rule V(1)(c)(i), the department should insert "locally resident" psychiatrist following "under the care of".
Response: The department believes that the required psychiatric evaluation prior to admission and the involvement of a psychiatrist in the individual treatment planning process insures that a facility will have a psychiatrist available within a reasonable geographic location, so adding this terminology is unnecessary.

Comment: In Rule VI(1)(b) following "the numbers of qualified", insert "mental health" professional and support staff.
Response: The department agreed and made the change.

Comment: In Rule VI(1)(c)(iii) following "that a physical",

insert "and psychiatric" examination be made; following "and medical", insert "and psychiatric" history be taken.
Response: The intent of the suggestion is addressed in the requirement for a psychiatric evaluation elsewhere in the rules.

Comment: In Rule VI(1)(d) following "the medical staff includes at least one Montana-licensed", insert "and locally resident" psychiatrist.
Response: The department believes that the required psychiatric evaluation prior to admission and the involvement of a psychiatrist in the individual treatment planning process insures that a facility will have a psychiatrist available within a reasonable geographic location, so adding this terminology is unnecessary.

Comment: In Rule VI(1)(e)(i) following "and medical supervision of", insert "mental health professional" staff.
Response: The department agreed.

Comment: In Rule VII(1)(a) following "must be a licensed registered nurse", insert "with a masters degree in psychiatric nursing."
Response: The proposal is unnecessary because it implies a level of care comparable to inpatient psychiatric rather than specialty mental health.

Comment: In Rule VII(1)(b) following "must be on duty", delete "at least 8 hours" and insert "24 hours" per day "when any patient is in the facility."
Response: The proposal is unnecessary because the rule requires that the director of nursing or another registered nurse designated as the director's alternate be available to the facility within 20 minutes at all times.

Comment: In Rule VII(1)(c) following "valid and current nursing license", insert "with emphasis in psychiatric nursing."
Response: The proposal is unnecessary because it implies a level of care comparable to inpatient psychiatric rather than specialty mental health. However, such a characteristic of the nursing staff in this type of facility is undoubtedly desirable.

Comment: In Rule VII(1)(d) following "keep current a", insert "psychiatric" nursing care plan.
Response: The proposal is unnecessary because the individual treatment plan should encompass the mental health treatment of each patient while the nursing services should remain concerned with nursing care.

Comment: In Rule VII(1)(e), following "a registered nurse", insert "with a masters degree in psychiatric nursing"; following "in accordance with the patient's needs", insert "as

determined by the admitting psychiatrist"; and following "of the nursing staff", delete "available".
Response: Requiring a registered nurse to have a masters degree in psychiatric nursing is unnecessary because it implies a level of care comparable to inpatient psychiatric rather than specialty mental health. However, the department agrees that the admitting psychiatrist should be involved with nurse services and therefore adopted the second suggestion. The suggested deletion of the term "available" is also reasonable and was adopted.

Comment: In Rule VII(1)(f) following "supervision of, nursing", delete "or other" personnel.
Response: Rather than deleting the terminology "or other" personnel as suggested, the department will clarify that other personnel in this case refers to qualified medical personnel.

Comment: In Rule VII(1)(h)(i) following "accepted only by", delete "personnel", and insert "licensed registered nurses".
Response: Prescriptions can only be accepted over the telephone or orally in conformity with federal and state law, according to the rule, so a change in the terminology is unnecessary.

Comment: Rule VIII should require that an administrator of a mental health facility have training and/or experience in administering a mental health facility.
Response: The department believes that the preference of formal training and/or experience in the administration of a mental health facility is desirable, but not specifically necessary if an individual can demonstrate the ability to perform the functions and duties required by these rules. The department therefore agrees to modify the language with such a preference stated.

Comment: In Rule IX(2)(b) (pharmaceutical services), following "pharmacy or storage solely by", the phrase "the personnel designated in writing in medical staff and pharmaceutical services policies" should be deleted and "a licensed registered nurse" be inserted.
Response: The department believes that the existing language is adequate because removal of drugs and biologicals from a storage area must conform with state and federal law.

Comment: In Rule X(1), following "certified in the", delete "professional", and insert "mental health" disciplines, because the treatment team for mental health conditions must include licensed mental health professionals.
Response: The department agrees to this suggestion.

Comment: In Rule XI(2) (admission procedures), following "The facility must assign a", insert "Montana"; and following "licensed"' insert "and locally resident" psychiatrist.
Response: The department agrees that the admitting

psychiatrist should at a minimum be licensed in Montana. However, requiring such a person to be locally resident is not necessary since the level of involvement required by psychiatrists in the operations of a specialty mental health facility will require a proximate location at any rate.

Comment: The time limits within JCAHO standards should be applied in place of the time limits specified in Rule XI(3), (4), (5) and (6).
Response: The department deals with these time limits elsewhere within the context of these comments. The only change that is incorporated is the requirement that a psychiatric evaluation occur prior to admission.

Comment: Rule XII(1) should have the terminology "mental health professionals on the" multi-disciplinary team inserted after "mental impairment as defined by", and in (2)(b) following "group", "psychological" should be inserted.
Response: The department agrees that the two suggestions are reasonable and adopted them.

Comment: In Rule XIV(1)(b), following "must utilize a", delete "qualified", and insert "registered" dietitian.
Response: The department agrees that the proposed language requires modification to coincide with current Montana law and to facilitate the treatment of the types of patients who may be treated at a specialty mental health facility. Therefore, this rule will eliminate the reference to qualified dietitian and instead require that the facility utilize Montana licensed nutritionists. Additionally, the rule is modified to accommodate the term nutrition in several places and update the reference to the current edition of the recommended daily dietary allowances of the National Research Council.

Comment: In Rule XV(1), following "each outpatient must be examined by a", insert "Mental health professional as described by ARM 20.14 subchapter 5", and add a reference to ARM 20.14.501-512. Both suggestions incorporate the treatment aspects by mental health professionals, while the proposed rule addresses only the medical aspects of an outpatient program.
Response: The department agrees with the intent of the suggestions. However, it has been determined that the rule will require the involvement of a psychiatrist in the provision of outpatient services, so therefore see no need to incorporate reference to the Administrative Rules of Montana which govern licensure of mental health professionals.

Comment: In Rule XXI(1), following "including acute psychiatric care", delete "whether or not such care is provided by the facility" because such care should be provided in the facility.
Response: This change has been incorporated as a result of previous comments. The department disagrees that a specialty mental health facility should offer acute psychiatric care.

Comment: In Rule XXV(1), a new paragraph should be adopted to accommodate House Bill 239 of the 52nd Legislature calling for infectious waste management.
Response: The department adopted this suggestion.

Comment: In Rule XXVI, JCAHO standards for seclusion rooms should be adopted.
Response: The department rejected this suggestion because there should be no need for seclusion rooms in a specialty mental health facility where only eating disorders, pathological gambling, or sexual disorders are treated. If a patient needs to be in an environment where seclusion rooms are a part of the treatment modalities, then such a patient should not be admitted to a specialty mental health facility.

Comment: It is unclear as to what is the range of disorders treatable in this type of facility and the department should specifically denote the disorders.
Response: The department believes that this concern has adequately been addressed by clarifying the three disorders treatable in a specialty mental health facility.

Comment: The language in Rule IV(1)(c) excludes people with disabilities.
Response: The department has modified the provision so as to clarify its intent.

Comment: The prohibition in Rule IV(1)(e) appears to prevent anyone taking medication for any kind of behavioral/psychiatric problem from being admitted to a specialty mental health facility.
Response: The department has modified the provision in order to clarify its intent.

Comment: The exclusion in Rule IV(1)(f) is inadvisable because anyone who neither requires intensive supervision nor specialized therapeutic interaction can and should be treated on an outpatient basis.
Response: The department does not disagree with the assertion that anyone who falls within this prohibition can be treated on an outpatient basis, but this prohibition does not disallow such an arrangement.

Comment: The rules should describe the range of treatment modalities which must be available with these programs and from which each individual's treatment plan is designed.
Response: The department has modified Rule XII to accommodate this suggestion.

Comment: The department should not grant a license as a specialty mental health facility to any applicant where the staff consists of only a few individuals with the necessary qualifications.

Response: The department believes that the rules have been adjusted to accommodate staffing concerns by interested parties.

Comment: More specific admission and treatment criteria should be adopted.
Response: The department has modified both Rule III, Rule XI, and Rule XII to be more specific on admission and treatment criteria.

Comment: Treatment methods such as Azrin's community reinforcement approach should be required by these facilities.

Response: The department rejects the notion of requiring specific treatment methods in this type of health care facility. Such a provision would present an unnecessary inflexibility in the ongoing administration of the service while disallowing for future change in the absence of future changes in the licensure standards.

Comment: Strict accountability measures for quality and effectiveness of treatment should be required.
Response: The suggestion is vague but the department has modified the rules concerning both quality assurance and utilization review of this service.

Comment: Why was codependency removed from the proposed rules?
Response: During the process of development of these rules, the evident disagreement in the medical, psychiatric and mental health fields relating to the concept of codependency left the department little choice but to omit the terminology until greater understanding and agreement can be achieved. Until the medical, psychiatric, and mental health communities are more comfortable with a common understanding of the term and its meaning(s), and specific diagnoses and prognoses, the department will not include it in licensure rules. It is important to note that there may be a future opportunity to approach the department in order to consider rule changes.

Comment: The rules authorize admission of patients without alcohol or drug abuse, thus creating an unwarranted extension of the concept of addiction, and have important shortcomings as guidelines for the treatment of the true dual diagnosis patient.
Response: The department already has one licensure category for chemical dependency facilities and does not intend to add a second. The rules under consideration here are specifically limited to eating disorders, pathological gambling, and sexual disorders.

Comment: The department should add a rule to the proposed standards regarding patient rights, provide specific mention to the mental health patient bill of rights in Title 53,

Chapter 21, MCA, and include access to a patient advocate. Response: The department agrees that patient rights are necessary elements of any type of mental health treatment, so incorporates a new rule (XXVII) to address those rights. The department will not at this time make reference to Title 53 for patient rights since Title 53 refers mainly to services for the seriously mentally ill, individuals who are not eligible for admission to specialty mental health facilities.

Notes: Legislative Council staff requested that this final rule notice include mention of the fact that these rules are necessary, not because of a new licensure category created by statute, but because a new type of health care facility has developed in recent years for which no appropriate rules yet existed.

The reference to eating disorders, etc., in Rule IV(1) was deleted as redundant, since the definition in Rule II of "addiction" is already restricted to those disorders.

DENNIS IVERSON, Director

Certified to the Secretary of State December 2, 1991

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule I Purpose and scope of rules; Rule II Definitions; Rule III Exemptions; Rule IV Complaints and answers; Rule V Investigation; Rule VI Conciliation; Rule VII Representation of charging party; Rule VIII Final disposition	)	NOTICE OF THE ADOPTION OF RULE I (24.9.1501) PURPOSE AND SCOPE OF RULES; RULE II (24.9.1502) DEFINITIONS; RULE III (24.9.1503) EXEMPTIONS; RULE IV (24.9.1504) COMPLAINTS AND ANSWERS; RULE V (24.9.1505) INVESTIGATION; RULE VI (24.9.1506) CONCILIATION; RULE VII (24.9.1507) REPRESENTATION OF CHARGING PARTY; RULE VIII (24.9.1508) FINAL DISPOSITION

TO: All Interested Persons

1. On October 17, 1991, at page 1912 of the 1991 Montana Administrative Register, Issue No. 19, the human rights commission published notice of the proposed adoption of Rules I - VIII (24.9.1501 - 1508).

2. The commission adopted the rules listed above as proposed with the following changes:

Rule I (24.9.1501) PURPOSE AND SCOPE OF RULES Adopted as proposed.

Rule II (24.9.1502) DEFINITIONS (1) "Child" means an individual who has not attained the age of 18 and who is domiciled with:

(a) A parent or another person having legal custody of the individual; or

(b) The designee of a parent, ~~or~~ other person or entity having custody, with the written permission of the parent, ~~or~~ other person or entity.

(2) "Familial status" - The protections afforded against discrimination on the basis of familial status shall also apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(3) As proposed.

Rule III (24.9.1503) EXEMPTIONS As proposed.

Rule IV (24.9.1504) COMPLAINTS AND ANSWERS As proposed.

Rule V (24.9.1505) INVESTIGATION As proposed.

Rule VI (24.9.1506) CONCILIATION As proposed.

Rule VII (24.9.1507) ~~STAFF~~ REPRESENTATION OF CHARGING PARTY (1) In any case in which the commission staff has determined after investigation that there is substantial evidence ~~to believe~~ that a discriminatory housing practice has occurred (reasonable cause finding), the commission staff shall provide representation for the charging party in any contested case hearing before the commission unless the charging party waives ~~staff~~ the representation.

Rule VIII (24.9.1508) FINAL DISPOSITION As proposed.

3. The authority for the commission to adopt these rules is based upon Section 49-2-204, MCA.

4. The rules implement Sections 49-2-305 and 510, MCA.

5. The commission did not receive any public comments regarding the proposed rules.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIRPERSON

By: Anne L. MacIntyre
ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS COMMISSION STAFF

Certified to the Secretary of State December 2, 1991.

I certify that I have been appointed by the head of the Department of Labor and Industry to review departmental rulemaking notices and that I have reviewed this rulemaking notice pursuant to section 2-4-110, MCA.

William E. O'Leary
William E. O'Leary

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

In the matter of rules regarding occupational safety and health and construction safety	)	NOTICE OF AMENDMENT of ARM 24.30.102 and 24.30.103 and ADOPTION of NEW RULE I (24.30.104) and RULE II (24.30.105, 24.30.106 and 24.30.107)

TO ALL INTERESTED PERSONS:

1. On September 12, 1991, the Department published notice of the proposed amendment and adoption of rules relating to occupational safety and health and construction safety at page 1660 of the 1991 Montana Administrative Register, Issue No. 17.

2. On Tuesday, October 8, 1991, a public hearing was held to consider such proposed amendments and adoption of rules. Oral testimony was received during the hearing and written comments were received both to and subsequent to the hearing.

3. After carefully considering the comments received the Department has adopted the rules as proposed with the following changes:

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR GENERAL INDUSTRY (1) Remains the same.

(2) Remains the same except that in order to list definitions alphabetically proposed (2)(c) shall become (2)(d) and proposed (2)(d) shall become (2)(c).

(3) and (4) Remains the same.

AUTH: Sec. 50-71-311, MCA IMP: Sec. 50-71-312, MCA

24.30.103 CONSTRUCTION SAFETY CODE (1) 1926.1 Purpose and scope. Section 50-71-311 MCA, of the Montana ~~s~~Safety ~~a~~Act provides that the ~~division of workers' compensation~~Department of Labor and Industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment including the repair and maintenance of such places of employment to render them safe. The federal ~~o~~Occupational ~~s~~Safety and ~~h~~Health ~~a~~Act of 1970 does not include safety standards ~~coverage~~ for employees of this state ~~or political subdivisions of this state~~ OR POLITICAL SUBDIVISIONS OF THIS STATE. Therefore, it is the intent of these rules adopted below under the Montana ~~s~~Safety ~~a~~Act that employees ~~in~~ of this state and political subdivisions of this state shall be protected by the same safety standards for employments covered by the federal ~~o~~Occupational ~~s~~Safety and ~~h~~Health ~~a~~Act of 1970. The ~~division~~Department is therefore adopting by reference certain safety and health regulations for construction adopted by the United States ~~s~~Secretary of ~~l~~Labor under the ~~o~~Occupational ~~s~~Safety and ~~h~~Health ~~a~~Act of 1970 which are found in the federal register as indicated below~~:~~, together

with all safety standards incorporated by reference therein. Under section 2-4-307 MCA, the ~~division~~Department consents to the omission from publication in the code or register the rules adopted below because the ~~division~~Department has determined, with the assent of the ~~s~~Secretary of ~~s~~State, that publication of the rules would be unduly cumbersome and expensive. The rules in printed form are available and copies may be obtained at cost ~~upon application to the division of workers' compensation~~from the Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624 or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) Remains the same except that in order to list definitions alphabetically proposed (2)(d) shall become (2)(b); proposed (2)(b) shall become (2)(c); proposed (2)(c) shall become (2)(d); and proposed (2)(g) modified as follows to reflect the above renumbering:

(2)(g) "Designated person" means "authorized person" as defined in paragraph ~~(d)~~ ~~(e)~~ (d) of this section.

(3) Remains the same except that reference to definition of "employer" is corrected from proposed (2)(j) to (2)(i) to accurately reflect the appropriate cite.

(4) Remains the same.

AUTH: Sec. 50-71-311, MCA IMP: Sec. 50-71-312, MCA

Rule I (24.30.104) INSPECTIONS AND CITATIONS Remains the same.

RULE II (24.30.105) RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: PURPOSE AND SCOPE

(1) Remains the same except that the phrase "Purpose and Scope" has been moved into the title.

(2) Remains the same except that pursuant to the requirements of ARM 1.2.215 and to alphabetize the definitions the following restructuring has been made:

RULE II (24.30.106) RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES: DEFINITIONS

~~(2) Definitions:~~ As used in this rule, unless the context clearly requires otherwise:

~~(a)~~ (5) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

~~(1)~~ (a) Fatalities, regardless of the time between the injury and death, or the length of the illness; or

~~(2)~~ (b) Lost workday cases, other than fatalities, that result in lost workdays; or

~~(3)~~ (c) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or required medical treatment (other than first aid) or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workdays cases.

Proposed (2)(b) through (2)(d) Remains the same except that in order to properly list definitions alphabetically and numerically proposed (2)(b) shall become (4); proposed (2)(c) shall become (2); and proposed (2)(d) shall become (3); (2)(e) shall become (1).

(3) Remains the same except that pursuant to the requirements of ARM 1.2.215 and to accurately identify the subsections the following restructuring has been made:

RULE II (24.30.107) RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES; LOG AND SUMMARY

~~(3) Log and Summary of Occupational Injuries and Illnesses.~~

~~(a)~~ (1) Each employer shall:

~~(1)~~ (a) faithfully maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and

~~(2)~~ (b) enter each recordable injury and illness on the log and summary as early as practicable but no later than six (6) working days after receiving information that a recordable injury or illness has occurred. For this purpose a form equivalent to the OSHA No. 200 furnished by the Department of Labor and Industry or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form. The OSHA form No. 200 shall not be used.

(4) through (7) Remains the same except that in order to properly number these subsections they shall be designated (2) through (5), respectively.

AUTH: Sec. 50-71-311, MCA IMP: Sec. 50-71-312, MCA

4. The Department has thoroughly considered the comments received on the proposed rules. Oral and written comments received during and after the hearing are summarized as follows, along with the response of the department:

COMMENT: The Montana Secretary of State's office suggested that Rule II be broken down into three rules, all definitions be arranged alphabetically and that the subsections under paragraphs (2) and (3) of Rule II (24.30.105) be properly earmarked and indented.

RESPONSE: The Department agrees with these suggestions and amendments have been made accordingly.

COMMENT: Joe Liuzza, Industrial Hygienist with the Department, noted that the amendments to ARM 24.30.103 incorrectly sought to delete the phrase "or political subdivisions of this state" from the rule.

RESPONSE: The Department agrees that for the sake of clarity the above-noted phrase should be retained and an amendment has been made accordingly.

COMMENT: Mr. Liuzza also felt that ARM 24.30.103 was confusing as to the scope of its coverage.

RESPONSE: The Department agrees. ARM 24.30.103, as proposed, indicated that the Montana Safety Act applied to employees in this state, whereas it would be more accurate to say that it applies to employees of this state. An amendment has been made accordingly.

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State: December 3, 1991

Reviewed by:

Bill O'Leary, Chief Legal Counsel
DEPARTMENT OF LABOR AND INDUSTRY

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the Adoption of New Rules for the control of migratory bison from herds affected with a dangerous disease	))))	NOTICE OF THE ADOPTION OF RULE I [32.3.224(A)] TO CONTROL MIGRATORY BISON FROM HERDS AFFECTED WITH A DANGEROUS DISEASE

TO: All Interested Persons

1. On October 18, 1991 at 9:00 A.M., a public hearing was held in the conference room of the Department of Livestock on the third floor of the Scott Hart Building, 6th and Roberts, Helena, Montana for consideration of the proposed adoption of rules to control migratory bison from herds affected with a dangerous disease. Notice of the above cited hearing was published September 12, 1991 at pages 1668 and 1669 of the 1991 Montana Administrative Register, issue Number 17.

2. On November 20, 1991, the Board of Livestock acting through the Department of Livestock adopted the proposed rules exactly as proposed.

3. All testimony and comments received were favorable.

4. The Department of Fish, Wildlife and Parks offered an amendment which would have required the State Veterinarian to make a determination that these bison would constitute a danger to livestock because of exposure to a dangerous disease.

COMMENT: This amendment was rejected because it is the opinion of the State Veterinarian and the Board of Livestock that the mere presence of migratory bison from herds exposed to or affected with a dangerous disease constitutes a danger to the domestic livestock industry as well as a threat to humans in the form of undulant fever. No formal determination of danger is necessary.

5. The authority of the department to make the proposed rules is based upon section 81-2-102, MCA and 81-2-103, MCA and implements sections 81-2-102, MCA and 81-2-103, MCA.

F. Lon Mitchell, Staff Attorney
Rule Reviewer

Jack Salmond, Chairman
Board of Livestock

Certified to the Secretary of State December 2, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.16.111 through 42.16.119 and 42.16.131 and the ADOPTION of Rule I (42.2.601); Rule II (42.2.602); Rule III (42.2.603); Rule IV (42.2.604); Rule V (42.2.605); Rule VI (42.2.606); Rule VII (42.2.607); Rule VIII (42.2.608); Rule IX (42.2.609); Rule X (42.2.610); Rule XI (42.2.611); Rule XII (42.2.612); relating to Uniform Review Procedures for Taxpayer Objections to Additional Tax Assessments and Refund Denials	NOTICE OF REPEAL of ARM 42.16.111 through 42.16.119 and 42.16.131 and the ADOPTION of Rule I (42.2.601); Rule II (42.2.602); Rule III (42.2.603); Rule IV (42.2.604); Rule V (42.2.605); Rule VI (42.2.606); Rule VII (42.2.607); Rule VIII (42.2.608); Rule IX (42.2.609); Rule X (42.2.610); Rule XI (42.2.611); and Rule XII (42.2.612) relating to the Uniform Review Procedures for Taxpayer Objections to Additional Tax Assessments and Refund Denials

TO: All Interested Persons:

1. On September 12, 1991, the Department published notice of the proposed repeal and adoption of rules pertaining to a Uniform Review Process for Taxpayer Objections to Additional Tax Assessments and Refund Denials at page 1686 of the 1991 Montana Administrative Register, issue no. 17.

2. A Public Hearing was held on October 15, 1991, to consider the proposed repeal and adoption. Oral and written testimony was presented at the hearing and subsequent to the hearing.

3. As a result of the comments received, the Department has repealed ARM 42.16.111 through 42.16.119 and 42.16.131. The Department has also adopted Rule III (42.2.603) through Rule XII (42.2.612) as proposed.

4. Further, as a result of the comments received, the Department amends Rule I (42.2.601) and Rule II (42.2.602) with the following amendments:

RULE I (42.2.601) UNIFORM TAX REVIEW PROCEDURE - DEFINITIONS - APPLICABILITY DATE (1) remains the same.

(a) REVISED ASSESSMENTS PURSUANT TO 15-8-601, MCA, OF Centrally assessed property taxes provided for in Title 15, chapter 23, MCA;

(b) through (p) remain the same.

(2) "Tax assessment", "assessment of tax" or "assessment" as the terms are used in this sub-chapter include original assessments, additional assessments and the assessment of penalties and/or interest for any taxes listed in this rule. The terms do not include the original assessment of centrally

assessed property taxes but do include revised assessments of centrally assessed taxes pursuant to 15-8-601, MCA. THE TERMS DO NOT APPLY TO REVISIONS OF CENTRALLY ASSESSED PROPERTY UNDER 15-23-102, MCA.

(3) and (4) remain the same.

RULE II (42.2.602) NOTICE TO TAXPAYER (1) and (2) remain the same.

(3) WHEN THE TAXPAYER MUST RESPOND WITHIN A SPECIFIED TIME TO THE NOTICE, THE NOTICE SHALL INCLUDE A STATEMENT IN CAPITAL LETTERS, BOLD FACE, UNDERLINED, AND AT LEAST 14 POINTS TYPE, AT THE TOP OF THE NOTICE GIVING THE TAXPAYER A WARNING THAT ACTION MUST BE TAKEN WITHIN THE TIME PROVIDED FOR IN THE NOTICE. THE STATEMENT MAY TAKE THE FOLLOWING OR SIMILAR FORM: **"WARNING YOU MUST RESPOND WITHIN THIRTY DAYS OF THIS ASSESSMENT, OR YOU WILL LOSE YOUR RIGHT TO APPEAL"**.

5. Oral and written comments were received during and subsequent to the hearing from Burlington Northern Railroad Company, Council of the Montana State Bar Section on Taxation and Probate Law; Ward Shanahan, Attorney at Law; and the State Tax Appeal Board. The comments which were received are summarized as follows along with the response of the Department:

COMMENT: The Department should acknowledge in the rules that the rules may not deny a taxpayer's access to federal courts when a separate and distinct right of such action exists under applicable federal law, e.g., the "4R Act."

RESPONSE: It is unnecessary for the Department to refer to the taxpayer's right to federal courts in the rules since the Department cannot expand, limit, or define those rights. It is the Congress and the federal courts which determine a taxpayers access, if any, to federal courts. Also, it is not within the legal competence or authority of the Department to adopt rules which address that issue.

COMMENT: Are revised assessments of centrally assessed property pursuant to 15-8-601, MCA subject to the procedures found in 15-1-211, MCA and these rules?

RESPONSE: Yes.

COMMENT: Are conferences and appraisals of centrally assessed property made pursuant to 15-23-102, MCA subject to the procedures found in 15-1-211, MCA and these rules?

RESPONSE: No. The provisions of 15-23-102, MCA are part of the original assessment of centrally assessed property. Revisions of centrally assessed property are done pursuant to 15-8-601, MCA. Therefore, the provision in 15-1-211, MCA reading "any revised assessment of centrally assessed property taxed pursuant to Chapter 23" refers to revisions under 15-8-601, MCA and not the original assessment of centrally assessed property under 15-23-102, MCA. The rules have been amended to make it clear that they apply to revised assessments of centrally assessed property made pursuant to 15-8-601, MCA and

not to the original assessments of centrally assessed property made pursuant to 15-23-102, MCA.

COMMENT: The rules should clarify and harmonize the method and time for appeals of the adjusted assessments made to centrally assessed property pursuant to 15-23-102, MCA as opposed to revised assessments made pursuant to 15-8-601, MCA.

RESPONSE: The rules as proposed, have been amended to clarify that they only apply to revised assessments of centrally assessed property made pursuant to 15-8-601, MCA. The rules do not apply to adjustments or revisions made to the assessment of centrally assessed under Title 15, chapter 23, e.g., revisions under 15-23-102, MCA.

COMMENT: The rules should address that when the taxpayer must act within a specified period of time, it shall be clearly stated on the face of the notice that the taxpayer must act within a specified time.

RESPONSE: The rules have been amended to require that when the taxpayer is required to respond within a specified time, that requirement will be prominently stated on the top of the notice in capital letters, bolded and underlined.

COMMENT: The rules possibly conflict with the provisions of 15-2-302, MCA.

RESPONSE: There is no conflict between the rules and 15-2-302, MCA. The rules only apply to administrative proceedings before the Department. Once those proceedings are over the taxpayer may exercise his rights, if any, under 15-2-302, MCA.

COMMENT: Consideration should be given to a rule reflecting 15-1-211(7), MCA for the guidance to taxpayers.

RESPONSE: Section 15-1-211(7), MCA requires the Department to follow Rule 6, M.R.Civ.P., in computing the time limits. Reference to Rule 6 in the notice will only confuse the taxpayer since most taxpayers do not have access to those rules.

COMMENT: It was suggested that the Department follow a similar procedure as that set out in Rules V(4) and VIII(4) with regard to settlements of tax disputes.

RESPONSE: The Department does not believe it is in the best public interest to follow rules similar to Rules V(4) and VIII(4) for settlements of tax disputes. Settlement of tax disputes are fact specific and generally contain specific disclaimers as to their effect of future actions of either the taxpayer or the Department. Settlements do not reflect Department policy as such and have no value as a precedent. Access to settlements with other taxpayers would not be of value to other taxpayers or their attorneys. Because settlements are so fact bound, they generally contain confidential information of the taxpayer which is difficult to separate from the settlement; therefore, public access would generally result in a violation of the taxpayers right of privacy.

COMMENT: It appears in passing Ch 811, L. 1991, the Legislature may (inadvertently) have created overlapping appeal tracks, one for review by the Department and the other (15-2-302, MCA) for appeal to the State Tax Appeal Board.

RESPONSE: Overlapping appeal tracks were not created with the passage of Ch. 811, L. 1991. Section 15-2-302, MCA has always required that the decision appealed by the taxpayer be a final decision. Preliminary audit reports were never appealable "actions" by the Department.

COMMENT: It should be made clear in Rule XII(3) that a taxpayer is authorized at any time to access departmental papers by virtue of his constitutional right to know and 2-6-102 and 2-6-104, MCA.

RESPONSE: It is unnecessary for the Department's rules to repeat the constitutional and statutory provisions which authorize the taxpayer to review his own records.

COMMENT: These proposed rules confirm our understanding that the Department will not raise the defense of variance to a taxpayer's reasons for objections, either to the Division Administrator or Director.

RESPONSE: It is not clear what was meant by the phrase "defense of variance." However, when proceeding within the Department the taxpayer is not bound by any formal rules of pleading. Once the dispute goes beyond the Department the normal rules on pleading before the State Tax Appeal Board and the courts apply to those proceedings. The Department's rules do not waive any defense it might normally raise in proceedings before those bodies.

5. Therefore, the Department adopts the rule with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 2, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I (42.19.1240) relating to Taxable Rate Reduction for Value Added Property - New and Expanding Industry	NOTICE OF THE ADOPTION of Rule I (42.19.1240) relating to Taxable Rate Reduction for Value Added Property - New and Expanding Industry

TO: All Interested Persons:

1. On October 17, 1991, the Department published notice of the proposed adoption of Rule I (42.19.1240) relating to taxable rate reduction for value added property - new and expanding industry at page 1921 of the 1991 Montana Administrative Register, issue no. 19.

2. No public comments were received regarding the rule.

3. The Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 2, 1991.

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

In the matter of the emergency amendment of rule 46.10.404 pertaining to Title IV-A day care for children	))))	NOTICE OF EMERGENCY AMENDMENT OF RULE 46.10.404 PERTAINING TO TITLE IV-A DAY CARE FOR CHILDREN

TO: All Interested Persons

1. This rule amendment is necessary to bring the rates paid to providers of day care to children of Aid to Families with Dependent Children (AFDC) recipients in line with the rates authorized by the 52nd Montana Legislature. The proposed rule will decrease rates from what is currently authorized by ARM 46.10.404.

The legislature appropriated funds to increase the rates paid to day care providers to 75% of the market rate. ARM 46.10.404 was therefore amended to increase day care rates to 75% of the market rate effective October 1, 1991. However, after the rule was amended, the Office of the Legislative Fiscal Analyst and the Governor's Budget Office advised the department that the legislature intended the increase to 75% to occur in increments rather than all at once.

The legislative history of House Bill 2, the appropriations bill passed by the 52nd Legislature, shows that the legislature intended day care rates to be increased by $1.00 per day for family and group day care providers and $.50 per day for day care centers effective October, 1, 1991, with additional increases in fiscal year 1993 to bring rates to 75% of the market rate. The rates provided in the current rule are thus too high and must be decreased to the level intended by the legislature. The proposed rates, though less than the current rates, will provide an increase over the rates prior to October 1, 1991, of $1.00 per day for family and group day care providers and $.50 per day for day care centers.

An emergency rule is necessary because the department unintentionally exceeded its statutory authority when it amended ARM 46.10.404 to provide a rate increase higher than that which the legislature mandated. The current rule is therefore invalid. Payment of the higher rate will cause the department to overspend the appropriation allowed for child care. This may result in an early termination of the child care program. A termination of the child care program will jeopardize federal approval of this state's entire AFDC program, including monthly money grants to families in need. Additionally, the rates contained in the current rule are higher than the rates being paid by the Department of Family Services (DFS).

It is not reasonable for DFS and SRS to pay providers different rates for the same services.

The invalidity of the current rule, the potential loss of federal funds for the entire AFDC program and the discrepancy between the rates being paid DFS and those contained in the current rule create an imminent peril to the public welfare. An emergency rule is necessary to rectify the situation as quickly as possible and allow the department to pay the rates intended by the legislature while ARM 46.10.404 is being amended through the regular rule process.

2. Rule 46.10.404 is amended as follows:

46.10.404 TITLE IV-A DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES

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

(e) The maximum rate for full-day care in day care homes is ~~$11.25~~10.50 per day per child for children 24 months of age or older and $12.00 per day per child for infants under 24 months of age. The maximum rate for full-day care in group day care homes is ~~$11.25~~11.00 per child per day for children 24 months of age or older and $12.00 per child per day for infants under 24 months of age. The maximum rate for full-day care in day care centers is ~~$12.00~~11.00 per child per day for children 24 months of age or older and $13.00 per child per day for infants under 24 months of age.

Subsection (2)(e)(i) remains the same.

(f) The maximum rate for part-time care in day care homes is ~~$1.50~~1.35 per hour per child. The maximum rate for part-time care in group day care homes is ~~$1.50~~1.35 per hour per child. The maximum rate for part-time care in day care centers is ~~$2.00~~1.65 per hour per child. Part-time care payments may not exceed the full-day or night care rate.

Subsections (2)(g) and (i) remain the same.

(ii) exceptional child care, as defined in ARM 11.14.101 (6)(d), at a maximum of $12.00 per day per child for full-time care or ~~$1.75~~1.65 per hour per child for part-time care in day care homes or group day care homes and $12.15 per day per child and ~~$2.00~~1.75 per hour per child in day centers.

Subsections (2)(h) and (i) remain the same.

AUTH: Sec. 53-4-212 and 53-4-503 MCA
IMP: Sec. 53-4-211, 53-4-514 and 53-4-716 MCA

3. Pursuant to federal regulation, copies of this change will be available for public review at county offices of human services throughout the state of Montana. Written comments concerning this amendment may be sent to Russ Cater, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210.

4. This emergency rule amendment will be effective December 2, 1991.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 2, 1991.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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 lists 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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1991. This table includes those rules adopted during the period October 1, 1991 through December 31, 1991 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, 1991, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1991 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

2.21.306 and other rules - Work Cite Closure During A Localized Disaster or Emergency, p. 2209, 994
2.21.1801 and other rules - Leave Administration for Salaried Employees, p. 876
(Public Employees' Retirement Board)
I-III Annual Retirement Benefit Adjustments for Montana Residents, p. 1888
2.43.404 and other rules - Purchasing Service Credits - Election of Coverage Under New PERS Disability Retirement Provisions - Calculation of Payment of Supplemental Retirement Benefits for Retired Municipal Police Officers, p. 1604, 2216
(Teachers' Retirement Board)
I-II Eligibility and Calculation of Annual Benefit Adjustments, p. 2238
2.44.306 and other rules - Crediting Military Service - Payment of Benefits at Death - Payment of Child's Benefit - Bonuses as Compensation - Correcting Errors on Wages Not Reported, p. 1770
(State Compensation Mutual Insurance Fund)
2.55.301 and other rules - Medical Deductible Plan - Assignment of Classifications - Premium Ratesetting, p. 1967
2.55.301 Method for Assignment of Classifications of Employments, p. 568, 996
2.55.310 Variable Pricing Within a Classification, p. 486, 997

AGRICULTURE, Department of, Title 4

I Notice to Sellers of Financial Risk, p. 1370, 1828
I Standards for Grading Cultivated Buckwheat, p. 1372, 1830
I Honeybee Hourly Inspection Fee, p. 880, 1272
I Grading Standards for Hulless Barley, p. 383, 812
I-IV Specifying the Exact Scientific Procedures for Testing Kjeldahl Proteins on Barley, Chit and Germinations on Barley and Falling Number Determinations on Wheat, p. 935, 1549
4.5.201 and other rules - Designation of Noxious Weeds, p. 210, 511
4.10.311 and other rules - Regulatory Status and Use of Aquatic Herbicides, p. 100, 354
4.12.1012 Grain Fee Schedule, p. 1374, 1829
4.12.1012 Grain Fee Schedule, p. 570, 998
4.12.1504 Fee on All Mint Oil Producers, p. 385, 813
4.12.3402 Seed Laboratory - Reports - Enforcement, p. 341, 738

STATE AUDITOR, Title 6

I-XII and other rules - Crop Insurance, p. 1775
6.6.103 Examinations - Waiting Periods Before Re-examination, p. 1785, 2217

COMMERCE, Department of, Title 8

(Board of Athletics)
8.8.3103 and other rules - Point System - Scoring - Number and Duration of Rounds - Mouthpieces, p. 1891
8.8.3402 Referees, p. 387, 814
(Board of Barbers)
8.10.403 and other rules - Fees - General Requirements - Sanitation Requirements - Teaching Staff - College Requirements - Applications - Procedure Upon Completion - Identification and Sanitation Requirements - Preparation and Publication of Posters, Notices, Orders, New Schools - Violation, p. 344, 911
(Board of Dentistry)
I Management of Infectious Wastes, p. 1617
8.16.401 and other rules - Practice of Dentistry, p. 943
8.16.405 and other rules - Fee Schedule, p. 2182
8.16.605 and other rule - Dental Hygienist Examination - Dental Hygienist Licensure by Credentials, p. 1615, 2026
8.17.403 and other rules - Practice of Denturitry, p. 937
(Board of Hearing Aid Dispensers)
8.20.402 and other rule - Fees - Record Retention, p. 575, 1273

(Board of Horse Racing)
8.22.710 and other rules - Trainers - General Requirements - Exacta Betting - Requirements of Licensee - Pick (N) Wagering, p. 1786
(Board of Medical Examiners)
8.28.908 and other rule - Equivalency - EMT - Advanced Certification, p. 764, 2027
(Board of Morticians)
8.30.408 and other rule - Inspections - Sanitary Standards - Preparation Room, p. 2184
(Board of Nursing)
8.32.301 and other rules - Specialty Areas of Nursing - Substantive Rules - Disciplinary Actions - Board Organization - Approval of Schools - Standards for Montana Schools of Professional Nursing - Standards for Montana Schools of Practical Nursing - Fees - Nurse Specialist Prescriptive Authority - Nurses' Assistance Program, p. 1791
(Board of Occupational Therapists)
I-II Practice of Occupational Therapy - Treatment - Therapeutic Devices, p. 1377
(Board of Optometrists)
8.36.403 and other rule - Application for Examination - Examination, p. 882, 1485
(Board of Nursing Home Administrators)
8.34.406 and other rules - Nursing Home Administrators, p. 1619
(Board of Outfitters)
8.39.502 and other rules - Licensure - Qualifications - Licensure - Examinations - Conduct, p. 213, 999
(Board of Physical Therapy Examiners)
8.42.403 Fees, p. 1817
(Board of Real Estate Appraisers)
I-XVI Practice of Real Estate Appraisers, p. 1524, 1924
(Board of Social Workers and Professional Counselors)
8.61.401 Definitions, p. 884, 1931
(Board of Passenger Tramway Safety)
8.63.501 and other rule - ANSI Standard - Fee and Assessment Schedule, p. 577
(Board of Veterinary Medicine)
8.64.402 Fees - Continuing Education - Definitions - Applications for Certification - Examinations - Continuing Education - Use of Specific Drugs - Supervision - Record Keeping - Unprofessional Conduct with Respect to Embryo Transfer, p. 1625, 2030
(Weights and Measures Bureau)
8.77.101 and other rules - Scale Pit Clearance - Fees - Voluntary Registration of Servicemen and Service Agencies - Weighing Device License Transfer - Random Inspection of Packages - Liquified Petroleum Gas - Accessibility to Stock Scales, p. 886, 1486

(Consumer Affairs Unit)
8.78.301 Disclosure Fees, p. 176, 739
(Financial Division)
8.80.301 Consumer Loan Licensees - Advertising, p. 2186
8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be Applied, p. 766, 1274
(Board of Milk Control)
8.86.301 Producer Prices - Quota Rules, p. 1894
8.86.301 and other rules - Class I Wholesale Price - Statewide Pool and Quota Plan, p. 768, 1550
(Board of County Printing)
8.91.303 and other rule - Official Publications and Legal Advertising - Schedule of Prices, p. 892
(Board of Investments)
8.97.1301 and other rules - Definitions Related to General Requirements for All Investments in Mortgages and Loans - Requirements for All Residential, Commercial, Multi-Family, Federally Guaranteed Loans - Economic Development Linked Deposit Programs, p. 772, 1379
(Business Development Division)
I-II Definitions - Certification of Microbusiness Development Corporations, p. 1898
I-III Microbusiness Finance Program - Definitions - Composition of the Council - Soliciting Nominations, p. 579, 1140, 1932
I-XI Development Loans to Microbusiness Development Corporations - Loans to Microbusinesses, p. 2188
(Coal Board)
I-II Incorporation by Reference of Rules for Implementing the Montana Environmental Policy Act - Categorical Exclusions from Environmental Review Process, p. 1381, 2218
(Montana Board of Science and Technology Development)
8.122.607 and other rules - Application Procedures for a Research and Development Project Loan - Medical Research Facility Projects - Research and Development Loans Made by Montana Board of Science and Technology Development, p. 1632

EDUCATION, Title 10

(Superintendent of Public Instruction)
10.16.1705 Supervisors of Special Education Teachers, p. 1970
(Board of Public Education)
10.55.601 Accreditation Standards: Procedures, p. 1383
10.55.707 Certification, p. 493, 1933
10.57.102 and other rules - Teacher Certification - Renewal Requirements, p. 2194

TRANSPORTATION, Department of, Title 18

18.8.509 and other rules - Overdimensional Vehicles - Qualifications and Training for Motor Carrier Services Division Personnel as Peace Officers, p. 1403, 2219

JUSTICE, Department of, Title 23

I-XII and other rules - Fire Prevention and Investigation Bureau - Enforcement of Rules - Fire Safety, p. 1186, 1839

I-XVI and other rules - Fire Marshal Bureau - Describing Enforcement of the Rules - Incorporating by Reference the 1988 Uniform Fire Code, a Montana Supplement to the Code - Other Provisions Generally Dealing with Fire Safety, p. 2074, 291, 1283

23.4.201 and other rules - Alcohol Analysis, p. 785, 1281

23.5.102 Motor Carrier Safety Regulations, Adoption of Amendments to Federal Agency Rules Incorporated by Reference - Department of Transportation and I.C.C. Rules, p. 2201

23.16.101 and other rules - Public Gambling, p. 1407, 1942

23.16.1701 and other Temporary rules - Gambling, p. 972, 1504

LABOR AND INDUSTRY, Department of, Title 24

(Human Rights Commission)

I-VIII Housing Discrimination Procedures - Purpose and Scope of Rules - Definitions - Exemptions - Complaints and Answers - Investigation - Conciliation - Staff Representation of Charging Party - Final Disposition, p. 1912

24.9.805 and other rules - Records on Age, Sex, and Race - Employment Applications, p. 904, 1841

24.16.1509 and other rule - Montana's Minimum Hourly Wage Rate, p. 1546, 2264

24.16.9007 Prevailing Wage Rates, p. 497, 1005

24.29.1401 and other rules - Workers' Compensation Medical Services, p. 1975

24.30.102 and other rules - Occupational Safety - Health and Construction Safety, p. 1660

STATE LANDS, Department of, Title 26

I-XIV and other rule - Recreational Access Program for State Lands - Weeds, Pests, and Fire Protection on State Lands, p. 1986

26.4.1301A Modification of Existing Coal and Uranium Permits, p. 1983

LIVESTOCK, Department of, Title 32

I Control of Migratory Bison from Herds Affected with a Dangerous Disease, p. 1668
I Emergency Rule - Control of Migratory Bison from Herds Affected with a Dangerous Disease, p. 1007
32.3.136 and other rules - Treatment, Control and Elimination of the Disease of Pseudorabies, p. 625, 1145

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Reject Permit Applications for Consumptive Uses and to Modify Permits for Nonconsumptive Uses in Towhead Gulch Basin, p. 1670, 1918
I-X Financial Assistance Available Under the Wastewater Treatment Revolving Fund Act, p. 637, 1952
36.12.103 Water Right Application Fees, p. 634, 1009
36.16.117 Water Reservation Applications in the Upper Missouri Basin, p. 1198, 1951
(Board of Water Well Contractors)
36.21.403 and other rules - Requirements for Water Well Contractors - Definitions - Plastic Casing - Casing Perforations - Movement of Casing after Grouting - Sealing - Temporary Capping - Disinfection of the Well - Abandonment - Placement of Concrete or Cement - Verification of Experience for Monitoring Well Constructor Applicants - Application Approval - Definitions - Installation of Seals - Abandonment - Casing Depth - Verification of Equivalent Educationand Experience for Monitoring Well Constructors - Types of Wells Requiring Abandonment, p. 223, 913
36.21.415 Fees, p. 636, 1010

PUBLIC SERVICE REGULATION, Department of, Title 38

I-II and other rules - Telecommunications Service Standards, p. 989
I-VI Two-way, End-of-Train Telemetry Devices on Trains Operating in Montana Within Mountain Grade Territory, p. 1201, 1843
I-XI Rate Filings for Electric, Gas, Water and Sewer Rates, p. 2004
I-XII Establishing Policy Guidelines on Integrated Least Cost Resource Planning for Electric Utilities in Montana, p. 2240
I-XV and other rules - New Class E Motor Carrier Status (Transportation of Logs), p. 982, 1724
38.4.120 Waiver of Monies Due to Railroads, p. 2203

REVENUE, Department of, Title 42

SECRETARY OF STATE, Title 44

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46.12.2003 Physician Services, Reimbursement/General Requirements and Modifiers, p. 428, 824
46.12.2011 and other rule - Nurse Specialist Non-Covered Services, p. 665, 1044
46.12.3401 and other rule - Non-Institutionalized Medical Assistance for Children, p. 661, 1046
46.12.3601 and other rule - Medicaid for Disabled Widows/Widowers, p. 692, 1049
46.12.3803 Medically Needy Income Standards, p. 667, 1050
46.12.4002 and other rules - Restricting Inpatient Psychiatric Services, p. 2212
46.13.303 and other rules - Low Income Energy Assistance Program, p. 1450, 1857
46.25.101 and other rule - General Relief Assistance Extension of Benefits, p. 2254
46.25.101 and other rules - General Relief Assistance - General Relief Medical Assistance, p. 701, 1053
46.25.725 and other rules - General Relief Medical Income and Resources, p. 1209, 1736
46.25.727 and other rule - General Relief Assistance - General Relief Medical Income Standards, p. 663, 1057