MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13
JULY 7, 1994
PAGES 1784-1946
INDEX COPY

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed amendment of ARM 2.21.6701, 2.21.6702, 2.21.6703, 2.21.6708, the repeal of 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, 2.21.6718 and adoption of a new rule relating to the Statewide Employee Incentive Award Program	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 2.21.6701, 2.21.6702, 2.21.6703, 2.21.6708, THE REPEAL OF 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, 2.21.6718 AND ADOPTION OF A NEW RULE RELATING TO THE STATEWIDE EMPLOYEE INCENTIVE AWARD PROGRAM

TO: All Interested Persons.

1. On July 28, 1994, at 9:00 a.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the proposed amendment of ARM 2.21.6701, 2.21.6702, 2.21.6703, 2.21.6708, the repeal of 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, 2.21.6718, and adoption of a new rule relating to the Statewide Employee Incentive Award Program.

The department of administration will make reasonable accommodations for persons with disabilities who wish to participate in the rule making process. To request an accommodation to participate in the public hearing, contact the State Personnel Division, Department of Administration, Attn: Ms. Constance Enzweiler, Room 130, Mitchell Building, P.O. Box 200127 Helena, MT. 59620-0127; telephone (406) 444-3871; TT (406)444-1421; FAX (406)444-0544, no later than 5:00 p.m. on July 22, 1994, to advise us of the nature of the accommodation that you need. Persons with disabilities who need an alternative accessible format of this rule notice, or who require some other reasonable accommodation in order to participate in the rule making process also should contact Ms. Enzweiler.

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

2.21.6701 SHORT TITLE (1) This sub-chapter may be cited as the statewide employee incentive awards program.

(Auth. 2-18-1103, MCA; Imp. 2-18-1101 et seq. MCA)

2.21.6702 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) ~~"Adopted suggestion" means a formal suggestion that has been approved for an award by the program administrator and has been approved for implementation within at least one state agency.~~ "Agency head" means, as defined in 2-18-1101, MCA, "a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana University system. The term includes the president or other person in charge of a unit of the Montana

university system."

~~(2) "Advisory council" means the incentive awards advisory council established by the director of the department of administration, as provided in ARM 2.21.6704.~~

~~(3) "Date of receipt" means the date on which a formal suggestion is postmarked or received, whichever is earlier, and documented as being received by the program administrator.~~

~~(4)~~ (2) "Employee" means, as ~~provided~~ defined in 2-18-1101, MCA, "any employee of the executive, legislative, or judicial branch or the Montana university system."

(3) "Group or team of employees" means, as defined in 2-18-1101, MCA, "a group, team or work unit of employees working cooperatively."

~~(5) "Formal suggestion" means an employee's suggestion to reduce costs or improve services that is documented on an incentive awards suggestion form prepared by the department of administration.~~

~~(6) "Implemented suggestion" means a formal suggestion that has become a function being performed by one or more agencies.~~

~~(7) "Incentive award" means a monetary inducement of up to $1,500 per suggestion to encourage employees to suggest ways to save costs, improve state services, or both.~~

~~(8) "Incentive award committee" means a committee established by an agency head in accordance with ARM 2.21.6706.~~

~~(9) "Program administrator" means the director of the department of administration or his designee.~~

~~(10) "Recognition certificate" means a certificate of achievement signed by the governor and the program administrator recognizing an employee for his adopted suggestion and incentive award.~~

~~(11) "Suggestion delayed for further evaluation" means a formal suggestion that has had the adoption decision delayed through a recommendation by an agency.~~

~~(12) "Suggestion review" means a review conducted by the program administrator in consultation with the incentive awards advisory council at the request of the suggesting employee to reevaluate a formal suggestion.~~

~~(13) "Unadopted suggestion" means a formal suggestion that has been disapproved by the program administrator for an award and implementation.~~

(Auth. 2-18-1103, MCA; Imp. 2-18-1101 et seq., MCA)

2.21.6703 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that~~, as provided in 2-18-1103, MCA, ". . . an employee may be eligible for an incentive award if his suggestion or invention results in~~:

~~(a) eliminating or reducing an agency's expenditures" in a manner that does not reduce the ability of the agency to meet its program objectives or reduce its ability to serve the public; or~~

~~(b) "improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations."~~ (a) there be a statewide

employee incentive award program that recognizes and monetarily rewards individual employees, groups or teams of employees, and nonemployees, as provided in 2-18-1105, MCA, for:

(i) "efforts that significantly contribute to documented achievements or outcomes eliminating or reducing an agency's expenditures; or

(ii) improving the effectiveness of state government or improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations."

(b) each state agency make reasonable accommodation for persons with disabilities who wish to participate in the statewide employee incentive award program, and

(c) all documents related to the administration of this program are public information and any meeting called to administer this program is a public meeting.

(2) It is the objective of this policy to:

(a) establish ~~uniform procedures~~ minimum standards for the administration of the statewide employee incentive award~~s~~ program; and

(b) delegate to agency heads the authority to adopt an internal agency policy for the implementation of the program, if the agency head chooses to adopt a policy.

(Auth. 2-18-1103, MCA; Imp. 2-18-1101 et seq., MCA)

2.21.6708 PROGRAM ADMINISTRATION ~~As provided in 2-18-1103, MCA, the department of administration shall:~~

(1) ~~"adopt rules to equitably administer the employee incentive awards program;~~ An agency head makes the final decision to grant an incentive award. Any and all disputes concerning an incentive award will be resolved by the agency head.

(2) ~~provide an opportunity for all employees to participate in the program;~~ An agency head may adopt an internal agency policy consistent with this sub-chapter to implement and administer the statewide employee incentive award program. The policy may include, but is not limited to:

(a) a system to collect and track suggestions or ideas, including designation of a point of contact for employees and nonemployees;

(b) a system to collect and track nominations for proposed incentive awards that document an outcome or achievement;

(c) an evaluation process to include criteria and methods to evaluate and prioritize the usefulness or monetary value of documented outcomes and achievements and to determine how often during a year awards will be made; and

(d) any other matters that the agency head believes are necessary to administer the program.

(3) To assist agencies in making incentive awards, ~~under the program;~~ as provided in 2-18-1103, MCA, the department of administration may develop the following materials, including, but not limited to:

(a) a model agency policy, forms, and notification letters, which an agency head may implement or modify; and

(b) a guide to requirements of the program to assist an agency head in evaluating the impact of outcomes and achievements or nominations and in determining a monetary value.

~~(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first year savings;~~

~~(5) hear appeals from employees on the operation of the program; and~~

~~(6) prepare a biennial report to the legislature containing a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of any recommendations for improving the program.~~

~~(7) The director of the department of administration or his designee shall administer and promote the state employee incentive awards program on a statewide basis and shall:~~

~~(a) determine the originality and eligibility of suggestions;~~

~~(b) protect a suggester's anonymity within reason until an agency or committee decides to implement or not to implement the suggestion in whole or in part;~~

~~(c) refer eligible suggestions to the relevant agencies or committees for investigation and evaluation;~~

~~(d) acknowledge receipt of suggestions.~~

~~(8)~~ (4) The acceptance of a ~~cash award~~ monetary payment or paid leave ~~for any suggestion adopted~~ through the statewide employee incentive award~~s~~ program ~~shall~~ constitute~~s~~ an agreement by the employee, by a group or team of employees, or by a nonemployee that all reasonable claims, ~~pertaining to the suggestion~~ immediate and future, on the state of Montana are waived."

(Auth. 2-18-1103, MCA; Imp. 2-18-1103, 2-18-1105 and 2-18-1106, MCA)

3. The proposed new rule provides as follows:

RULE I REPORTING REQUIREMENTS (1) The department of administration shall issue requirements for reporting on statewide employee incentive award program activity, including, as provided in 2-18-1103, MCA, "a list of incentive awards and the corresponding savings to the state and improvements in the effectiveness of state government . . ."

(Auth. 2-18-1103, MCA; Imp. 2-19-1103, MCA)

4. The rules proposed to be repealed are on pages 2-1536 through 1539 and 2-1542 of the Administrative Rules of Montana.

5. It is reasonably necessary to amend, adopt and repeal these rules because the 53rd Legislature, Special Session in S.B. 32 extensively amended the former Employee Incentive Program and in 2-18-1103, MCA, directed the Department of Administration to adopt rules. The proposed amendments to rules and the proposed new rule implement the new program created in S.B. 32. The rules proposed to be repealed pertain only to the

former program and implement sections of 2-18-1101 et seq., MCA, now repealed.

6. Interested persons may submit their data, views or arguments concerning the proposed amendment, adoption and repeal of rules to Gale B. Kuglin, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Room 130 Mitchell Building, P.O. Box 200127, Helena, Montana 59620-0127 no later than August 5, 1994.

7. Gale B. Kuglin, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Room 130 Mitchell Building, P.O. Box 200127, Helena, Montana 59620-0127, has been designated to preside over and conduct the hearing.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois Menzies, Director
Department of Administration

Certified to the Secretary of State July 27, 1994

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.5.601, 11.5.602 and 11.5.607 pertaining to case records of abuse and neglect.	NOTICE OF PROPOSED AMENDMENT OF RULES 11.5.601, 11.5.602 AND 11.5.607 PERTAINING TO CASE RECORDS OF ABUSE AND NEGLECT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1994, the Department of Family Services proposes to amend rules 11.5.601, 11.5.602 and 11.5.607 pertaining to case records of abuse and neglect.

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

11.5.601 PURPOSE (1) ~~These~~ The rules of this subchapter ~~are being adopted to~~ govern the disclosure and amendment of case records containing reports of ~~child~~ abuse, ~~and~~ neglect, and exploitation.

AUTH: 52-2-111, 41-3-208, 52-3-205, 2-4-201, MCA; IMP: 41-3-205, 52-3-204, 2-4-201, MCA

Rationale: The department recently amended the child protective services provisions in ARM 11.5.602 and ARM 11.5.609 to include coverage of adult protective services records. See Notice of May 12, 1994, published on page 1290 of the 1994 Montana Administrative Register, issue number 9. Because of the amendments, the phrase describing the rules in ARM 11.5.601 must be amended to reflect the additional function of the rules. The phrase is also proposed to be changed to clarify that the applicable rules are contained in subchapter 6; that the rules do "govern," as opposed to "being adopted to govern" disclosure of the records; and that they also cover amendment of records.

11.5.602 DEFINITIONS (1)(a) through (c) remain the same.

(d) "Any other ~~P~~person responsible for a child's welfare" means those persons specified in 41-3-102, MCA, and includes the child's parent, guardian, foster parent, staff at a day care facility and an employee of a residential facility. For the purpose implementing this Title and Mont. Code Ann. Title 41, chapter 3 only, "any other person legally responsible for the child's welfare in a residential setting" also may include:

(i) any adult living in the child's household; and

(ii) any minor living in the child's household where the circumstances of the living arrangement indicate that the minor should be treated as a person responsible for the child's welfare

in a residential setting.

(1)(e) through (1)(i) remain the same.

AUTH: 52-2-111, 41-3-208, 52-3-205, 2-4-201, MCA; IMP: 41-3-205, 52-3-204, 2-4-201, MCA

Rationale: Adults and minors living in the home of a child are included as "other persons legally responsible for the child's welfare in a residential setting" to reflect the need of social workers to work with, and generate records on, family members in extended families, live-in companions, and minors who might be abusing children in the home.

11.5.607 DISCLOSURE (1) Records may be disclosed to those individuals or entities referred to in ~~section~~ the applicable provisions of 41-3-205, MCA, and 52-3-811, MCA, subject to any limitations imposed by ~~that~~ those statutes. In addition, records shall be disclosed to employees of the department of social and rehabilitation services if disclosure is necessary for the administration of programs designed to benefit the ~~child~~ person alleged to be abused, neglected or exploited.

AUTH: 52-2-111, 41-3-208, 52-3-205, 2-4-201, MCA; IMP: 41-3-205, 52-3-204, 2-4-201, MCA

Rationale: (See rationale for amendment to ARM 11.5.601, set out above.)

3. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than August 5, 1994.

4. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than August 5, 1994.

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

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, June 27, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rules 11.5.501, 11.5.508, 11.5.520, and 11.5.522, the adoption of Rules I and II, and the amendment of Rule 11.5.515 pertaining to child protective services.	NOTICE OF PROPOSED REPEAL OF RULES 11.5.501, 11.5.508, 11.5.520, AND 11.5.522, AND THE PROPOSED ADOPTION OF RULES I AND II, AND THE PROPOSED AMENDMENT OF RULE 11.5.515 PERTAINING TO CHILD PROTECTIVE SERVICES.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 25, 1994, the Department of Family Services proposes to repeal Rules 11.5.501, 11.5.508, 11.5.520, and 11.5.522, to adopt Rules I and II, and to amend Rule 11.5.515 pertaining to child protective services.

2. The proposed rules for repeal follow. Full text of the rules is found at pages 11-199, 11-200, 11-205 and 11-211, ARM.

11.5.501 ELIGIBILITY FOR CHILD AND FAMILY PROTECTIVE SERVICES (IS HEREBY REPEALED)

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, MCA

11.5.508 LEGAL TERMINATION OF PARENTAL RIGHTS (IS HEREBY REPEALED)

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, MCA

11.5.520 SERVICES FOR UNMARRIED PARENTS, PROCEDURES FOR OBTAINING SERVICES (IS HEREBY REPEALED)

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, MCA

11.5.522 SERVICES FOR UNMARRIED PARENTS, ELIGIBILITY REQUIREMENTS (IS HEREBY REPEALED)

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, MCA

3. The rules to be adopted, and the rule to be amended, provide as follows:

RULE I DEFINITIONS For the purpose of implementing this Title and Mont. Code Ann. Title 41, chapter 3 only, the following

definitions apply: (1) "Any other person legally responsible for the child's welfare" means those persons as defined in ARM 11.5.602.

(2) "Identifiable and substantial impairment of the child's intellectual or psychological functioning" includes, but is not limited to severely humiliating, degrading, shaming, frightening or otherwise emotionally damaging behavior, tactics or discipline.

(3) "Parent" means the child's biological, adoptive or step-parent.

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, MCA

RULE II CHILD PROTECTIVE SERVICES INVESTIGATIONS REGARDING PERSONS PRESENT IN LICENSED OR REGISTERED FACILITIES OR IN ASSISTANCE OF LAW ENFORCEMENT (1) When a department social worker or other authorized department representative conducts an investigation regarding any person present in a facility licensed or registered by the department, the investigating worker may:

(a) substantiate child abuse or neglect if the person investigated is a person responsible for a child's welfare for entry of the finding in the protective services information system; or

(b) substantiate child maltreatment if the person investigated is not a person responsible for a child's welfare for entry of the finding in the protective services information system.

(2) When a department social worker or other authorized department representative conducts an investigation to assist in a law enforcement investigation, the investigating worker may:

(a) substantiate child abuse or neglect if the person investigated is a person responsible for a child's welfare for entry of the finding in the protective services information system; or

(b) substantiate child maltreatment if the person investigated is not a person responsible for a child's welfare for entry of the finding in the protective services information system.

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, 52-2-741, 41-3-1142, MCA

11.5.515 PROTECTIVE SERVICES INFORMATION SYSTEM OPERATION (1) through (2)(d) remain the same.

(3) Operation of central file:

(a) Definitions:

(i) "Protective services information system" means a collection of records in a central location of all reports of child abuse or neglect cases.

(ii) "Substantiated" has the meaning as defined by ARM 11.5.602 ~~means that, upon investigation, the reporting worker has determined that the reported complaint is occurring or has occurred (does not require that all evidence be admissible in~~

~~court)~~.

(iii) "Unsubstantiated" has the meaning as defined by ARM 11.5.602 ~~means that, upon investigation, the reporting worker has determined the reported complaint has not occurred or was unable to determine whether the reported complaint occurred~~.

(b) Unless an investigation of a report conducted pursuant to state law determines there is some credible evidence of alleged abuse or neglect, all information identifying the subject of the report ~~shall~~ may be expunged from the protective services information system forthwith. The decision to expunge the record shall be made by the administrator of the program and planning division based upon the investigation made by the county department or the local law enforcement agency.

(3)(c) to (3)(c)(i) remain the same.

(~~i~~d) Request for examination of protective services information system records or changes in the information shall be made to program and planning division.

~~(ii) Persons dissatisfied with the response to their request for change of information in the protective services information system have the right to a fair hearing.~~

(~~d~~e) At no time shall the identity of the referral source making the initial referral or providing information in the course of the investigation be shared with the person or persons about whom the referral is made.

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, 52-2-741, 41-3-1142, MCA

Rationale: The rules to be repealed are out-dated and the department is evaluating whether or not the rules are necessary in light of the controlling authorizing and implementing statutes and existing policy. Therefore, the existing rules should be repealed.

The Department proposes to further define the terms in 41-3-102 to reflect the on-going practice of child protective services in Montana. Step-parents are included in the definition of "parent" to reflect the reality of many families following divorce and remarriage. There is no definition of "parent" in Title 41, and definitions elsewhere in the code do not include this important category of adults who are so significant in the lives of children.

Likewise, adults and minors living in the home of a child are included as "other person legally responsible for the child" (by reference to ARM 11.5.602, see proposed amendment published this date, MAR #11-67). The change in this definition is intended to reflect the need of social workers to work with extended families, live-in companions or minors who might be abusing children.

The definition of "identifiable and substantial impairment of the child's intellectual and psychological functioning" is necessary to protect children from emotional abuse by the people responsible for their welfare. The definition of "mental injury" in the code

should be fleshed out through this rule-making to fulfill the legislature's mandate for protection of children. Significantly humiliating, shaming, degrading or frightening tactics imposed by parents, guardians, foster parents, day care staff, or other persons legally responsible for the child's welfare in a residential setting should fall within the definition.

A rule covering investigations of persons present in a licensed or registered facility is necessary to implement tracking and possible exclusion of such persons based on a finding substantiating child abuse or maltreatment. Similarly, where department workers investigate to assist law enforcement investigations of assaults and similar alleged crimes, findings resulting from the department's investigation should be included in the information system. Authorizing entry of findings in either instance is not intended to expand their relevancy beyond issues related to child protective services, licensing, or registration.

The amendment to ARM 11.5.515 is reasonably necessary to reflect the department's current computerized information system and the legal authority of the department to substantiate child abuse or neglect. The change from "shall" to "may" in the proposal on 11.5.515 is necessary to clarify that review is not mandatory every time records are generated.

3. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than August 5, 1994.

4. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than August 5, 1994.

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

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, June 27, 1994.

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

In the matter of the amendment of 16.10.239, 303, 633, and 1311, and the adoption of new rules I-XIII dealing with minimum performance requirements for local health authorities	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND ADOPTION OF NEW RULES I-XIII (Food & Consumer Safety)

To: All Interested Persons

1. On July 28, 1994, at 10:00 a.m., the department will hold a public hearing in Room C209, Side 2, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned new rules and amendment of the above existing rules.

2. The proposed amendments to existing rules and the proposed new rules add provisions establishing minimum performance standards for local health authorities who assist in enforcement of the law and rules governing food establishments; food and beverage vending; food processing establishments; drinking water and ice; hotels, motels, roominghouses, tourist homes and retirement homes; youth camps; work camps; and swimming pools and bathing places.

3. The rules, as proposed, appear as follows, and the subchapters and subject matter to which they apply are noted [additions to existing rules are underlined, and deletions are interlined]:

a. Subchapter 2, "Food Service Establishments":

16.10.239 INSPECTIONS (1) The local health officer or a sanitarian or sanitarian-in-training employed by or contracted with the local board of health must perform ~~An~~ an inspection of ~~a~~ each food service establishment ~~shall be performed by the regulatory authority or local sanitarian~~ within the jurisdiction of the local board of health at least once every 6 months unless that schedule is modified by signed agreement with the department. Additional inspections of the food service establishment shall be performed as often as necessary for the enforcement of this subchapter.

(2) ~~Representatives~~ The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department, ~~local health officer, or state and local sanitarians~~ after proper identification, ~~shall~~ must be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with this subchapter~~.~~

~~The representatives shall~~ and must be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(3) Whenever an inspection of a food service establishment ~~or commissary~~ is made, the findings ~~shall~~ must be recorded on ~~the inspection report form, DHES 54.10-1~~ an inspection form authorized by the department. The inspection report form shall summarize the requirements of this subchapter and shall set forth a weighted point value for each requirement. Inspection~~al~~ remarks ~~shall~~ must be written to reference~~, by item number, the item~~ each rule violated and shall state the correction to be made. The rating score of the establishment ~~shall~~ will be the total of the weighted point values for all violations subtracted from 100. A copy of the completed inspection report form ~~shall~~ must be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that ~~shall~~ must be made available for public review or distribution upon payment of copying costs to any person upon request.

(4)-(5) Remain the same.

(6) In the case of 4 and 5-point weighted items, the local health officer, sanitarian, or sanitarian-in-training must, within 10 days after the last day given for corrective action, conduct a follow-up inspection to check for correction compliance and record the results on an inspection form authorized by the department.

AUTH: 50-50-103, 50-50-301, 50-50-305, MCA; IMP: 50-50-301, 50-50-302, 50-50-305, MCA

RULE I MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in standardized food service inspection techniques and/or hazard analysis critical control point (HACCP) inspection. The department is responsible for making training and standardization review available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) If a preliminary inspection is required under ARM 16.10.241, the food service establishment is inspected for compliance with this subchapter within 10 days after receiving notice from the department or the establishment that such a preliminary inspection is needed.

(ii) Each food service establishment within the jurisdiction of the local board of health is inspected at least

once every 6 months, or on the schedule specified in a signed agreement with the department.

(iii) All the requirements of ARM 16.10.239 are complied with.

(iv) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(v) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(vi) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-50-305, MCA; IMP: 50-50-305, MCA

b. Subchapter 3, "Food Processing Establishments":

16.10.303 PRELIMINARY INSPECTION (1) All food processing establishments shall comply with all of the following items of sanitation. Before any establishment~~, as hereinafter defined,~~ shall commence serving the public, the owner, or manager thereof shall notify the ~~health officer or sanitarian~~ department or local health officer, sanitarian, or sanitarian-in-training in order that a preliminary inspection may be made to determine whether or not the establishment complies with the following items of sanitation, and no establishment shall open unless there ~~shall be~~ is on display an inspection report indicating satisfactory compliance with all such items. This provision shall also apply to existing establishments whenever the ownership, location, operation, or management of such existing establishment is changed or interrupted.

AUTH: 50-50-103, 50-50-301, MCA; IMP: 50-50-103, 50-50-301, MCA

RULE II INSPECTIONS (1) Food processing establishments, local health boards, local health officers, and sanitarians and sanitarians-in-training working for local health boards must comply with the inspection requirements of ARM 16.10.239, with the understanding that references to "food service establishment" in that rule will be read to be "food processing establishment".

(2) The department hereby adopts and incorporates by reference ARM 16.10.239, which specifies inspection require-

ments for food service establishments. Copies of the above referenced rule are available from the department's Food and Consumer Safety Bureau, Cogswell Building, Helena, Montana 59620 [phone: (406) 444-2676].
AUTH: 50-50-103, 50-50-305, MCA; IMP: 50-50-301, 50-50-302, 50-50-305, MCA

RULE III MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in food retail, food processing, and/or hazard analysis critical control point (HACCP) inspection techniques. The department is responsible for making training and standardization review available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Whenever a preliminary inspection is required by ARM 16.10.303, the food processing establishment is inspected for compliance with this subchapter within 10 days after receiving notice from the department that such a preliminary inspection is needed.

(ii) Each food processing establishment is inspected at least once every 6 months, or on the schedule specified in a signed agreement with the department.

(iii) All the requirements of [Rule II] are met.

(iv) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(v) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(vi) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.
AUTH: 50-50-305, MCA; IMP: 50-50-305, MCA

c. Subchapter 4, "Vending of Food and Beverages":

RULE IV INSPECTIONS (1) The local health officer or sanitarian or sanitarian-in-training employed by or contracted with the local board of health must perform an inspection of each licensed commissary or machine located within the board's jurisdiction at least once every 6 months, unless that schedule is modified by signed agreement with the department.

(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department, after proper identification, must be permitted to examine any commissary or machine location at any reasonable time for the purpose of making inspections to determine compliance with this subchapter and must be permitted to examine the records relating to the commissary or machine to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(3) Whenever an inspection of a commissary or machine location is made, the findings must be recorded on an inspection form approved by the department.

(4) The inspection form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations must be accomplished within the period specified.

(5) The inspection form shall state that failure to comply with any time limits for corrections may result in an order to cease operations.

AUTH: 50-50-103, 50-50-305, MCA; IMP: 50-50-301, 50-50-302, 50-50-305, MCA

RULE V MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(a) Each licensed commissary or machine located within the jurisdiction of the local board of health is inspected at least once every 6 months, or on the schedule specified in a signed agreement with the department.

(b) Quarterly inspection reports are submitted to the local board of health and the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(c) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(d) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a)-(d) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-50-305, MCA; IMP: 50-50-305, MCA

d. Sub-chapter 5, "Drinking Water and Ice":

RULE VI MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, for regulation of sources of drinking water and ice, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(a) Ensure that, at least once per year, each plant or establishment within the jurisdiction of the local board of health where water is prepared for sale in bottles or other containers or artificial ice is manufactured, and the sources of all such water, are inspected, either by the foregoing individuals or by another government agency and, at the same time, that a sample of the water is submitted to a DHES-approved laboratory for analysis for contaminants.

(b) Submit quarterly inspection reports to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(c) Retain for 5 years all documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, and, upon request, submit copies of the documentation to the department or otherwise make it available to the department.

(d) Send quarterly local board inspection fund account balance reports to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) through (d) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-50-305, MCA; IMP: 50-50-305, MCA

e. Sub-chapter 6, "Hotels, Motels, Tourist Homes, Retirement Homes, Roominghouses, and Boarding Houses":

16.10.633 LICENSURE, RENEWAL, AND INSPECTION (1) Upon

notification by the department that an application and fee ~~has~~ have been received ~~by the department~~ for a license for a previously unlicensed establishment, the local health ~~authority~~ officer, local health department sanitarian or sanitarian-in-training shall make a prelicensing inspection to determine compliance with the requirements of this subchapter.

(2) ~~A~~ The local health ~~authority shall~~ officer, or a sanitarian or sanitarian-in-training employed by or contracted with the local board of health must inspect ~~a~~ each licensed establishment within the jurisdiction of the local board of health to determine compliance with this subchapter at least once in every 12 months, unless ~~the department or local health authority determines more frequent inspection is necessary~~ that schedule is modified by signed agreement with the department.

(3) Remains the same.

AUTH: 50-51-103, 50-51-305, MCA; IMP: 50-51-103, 50-51-301, 50-51-305, MCA

RULE VII MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-51-303, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in public accommodation inspection techniques. The department is responsible for making training available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Upon notification by the department or the establishment, a prelicensing inspection is made to determine compliance with the requirements of this subchapter.

(ii) Each establishment within the jurisdiction of the local board of health is inspected at least once every 12 months, or on the schedule specified in a signed agreement with the department.

(iii) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(iv) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(v) Quarterly local board inspection fund account balance reports are sent to the department within 30 days fol-

lowing the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-51-303, MCA; IMP: 50-51-303, MCA

f. Sub-Chapter 8, "Youth Camps":

RULE VIII INSPECTIONS (1) A local health officer, or a sanitarian or sanitarian-in-training employed by or contracted with the local board of health, must conduct an inspection of each youth camp within the jurisdiction of the local board of health at least once every 12 months, unless that schedule is modified by signed agreement with the department.

(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department must be permitted to inspect any youth camp at a reasonable time for the purpose of determining compliance with this subchapter and to examine the records relating to the youth camp in order to assist in that determination.

(3) Whenever an inspection of a youth camp is made, the findings must be recorded on a form approved by the department, retained by the local health authority, and furnished to the department upon request.

(4) The inspection form must specify a reasonable period of time for the correction of any violations found, and the youth camp must correct the violations within the period specified.

(5) The inspection form shall state that failure to comply with any time limits for corrections may result in an order to cease operations.

AUTH: 50-52-102, 50-52-301, 50-52-302, MCA; IMP: 50-52-301, 50-52-302, 50-52-303, MCA

RULE IX MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-52-302, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) Each youth camp within the jurisdiction of the local board of health is inspected at least once every 12 months, or on the schedule specified in a signed agreement with the department.

(b) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(c) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigatins, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(d) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) through (d) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-52-302, MCA; IMP: 50-52-302, MCA

g. Sub-Chapter 9, "Work Camps":

RULE X INSPECTIONS (1) A local health officer, or a sanitarian or sanitarian-in-training employed by or contracted with the local board of health, must conduct an inspection of each work camp within the jurisdiction of the local board of health at least once every 12 months, unless that schedule is modified by signed agreement with the department.

(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department must be permitted to inspect any work camp at a reasonable time for the purpose of determining compliance with this subchapter and to examine the records relating to the work camp in order to assist in that determination.

(3) Whenever an inspection of a work camp is made, the findings must be recorded on a form approved by the department, retained by the local health officer, and furnished to the department upon request.

(4) The inspection form must specify a reasonable period of time for the correction of any violations found, and the work camp must correct the violations within the period specified.

(5) The inspection form shall state that failure to comply with any time limits for corrections may result in an order to cease operations.

AUTH: 50-52-102, 50-52-301, 50-52-302, MCA; IMP: 50-52-301, 50-52-302, 50-52-303, MCA

RULE XI MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL REGULATORY AUTHORITIES (1) To qualify for reimbursement under 50-52-302, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) Each work camp within the jurisdiction of the local

board of health is inspected at least once every 12 months, or on the schedule specified in a signed agreement with the department.

(b) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(c) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(d) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) through (d) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-52-302, MCA; IMP: 50-52-302, MCA

h. Sub-Chapter 13, "Swimming Areas":

16.10.1311 INSPECTIONS (1) The local health officer, or a sanitarian or sanitarian-in-training employed or contracted by the local board of health, must conduct annually at least one full facility inspection and one critical point inspection of each public bathing place operated year-round and within the local board's jurisdiction, ensuring that at least one inspection occurs every 6 months, and at least one full facility inspection annually of each seasonal public bathing place within that jurisdiction. In addition, the foregoing individuals and a designated representative of ~~T~~the ~~health~~ department ~~is~~ are authorized to conduct ~~such~~ the inspections as ~~it~~ deemed necessary to insure compliance with the provisions of this subchapter.

AUTH: 50-53-103, 50-53-218, MCA; IMP: 50-53-103, 50-53-209, 50-53-218, MCA

RULE XII MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL REGULATORY AUTHORITIES (1) To qualify for reimbursement under 50-53-218, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in public bathing place inspection techniques. The department is responsible for making training available on a

periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Upon notification by the department, a prelicensing inspection pursuant to ARM 16.10.1303 is made to determine compliance with the requirements of this subchapter.

(ii) Each public bathing place that is available for use year-round and is within the jurisdiction of the local board of health is inspected at least once every 6 months, and each public bathing place that is restricted to seasonal use, at least once every 12 months.

(iii) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(iv) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(v) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-53-103, 50-53-218, MCA; IMP: 50-53-103, 50-53-218, MCA

h. Sub-Chapter 15, "Swimming Pools and Spas":

RULE XIII MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-53-218, MCA, the local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in swimming pool inspection techniques. The department is responsible for making training available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Upon notification by the department, a prelicensing inspection is made pursuant to ARM 16.10.1503 to determine compliance with the requirements of this subchapter.

(ii) Each swimming pool or spa within the jurisdiction of the local board of health that is available for use year-round is inspected at least once every 6 months, and each swimming pool or spa that is available only for seasonable use, at least once every 12 months.

(iii) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(iv) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(v) Quarterly local board inspection fund account balance reports are sent to the department within 30 days following the close of each quarter of the fiscal year.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-53-103, 50-53-218, MCA; IMP: 50-53-103, 50-53-218, MCA

4. The department is proposing these rules in order to implement the legislature's directive in Chapters 708, 730, 731, and 732 of the 1991 session laws to adopt rules setting minimum performance standards that local boards of health must meet in order to receive local board inspection fund money, as well as to conform existing inspection requirements for local health authorities to those standards.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mitzi Schwab, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received no later than 5:00 p.m., August 5, 1994.

6. Cynthia Brooks has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 27, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the proposed adoption of a new rule to reject, modify or condition permit applications in the Willow Creek Basin	)))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On Tuesday, August 16, 1994 at 6:30 PM a public hearing will be held in the upstairs meeting room of City Hall, 223 So. 2nd, in Hamilton, Montana, to consider the adoption of new rule I.

2. The proposed new rule provides as follows:

"RULE I. WILLOW CREEK BASIN CLOSURE (1) The Willow Creek Basin means the Willow Creek drainage area, a tributary of the Bitterroot River hydrologic basin, 76H, in Ravalli County, Montana. The Willow Creek Basin designated as the closure area is all that drainage and head waters originating in the Sapphire Mountains, Township 6 North, Range 18 West, MPM, and flowing westerly through Township 6 North, Range 19 West, to it's confluence with the Republican Ditch at a point in Section 4, Township 6 North, Range 20 West, MPM, Ravalli County, Montana. The entire Willow Creek drainage, from it's head waters to it's confluence with the Republican Ditch, including all tributaries, is contained in the closure area as outlined on file map page 5.

(2) The department shall reject all surface water applications to appropriate water within the Willow Creek Basin for any diversions, including infiltration galleries, for any consumptive uses of water during the period from May 1 through September 30.

(3) Applications for nonconsumptive uses during the closure period shall be received and processed. Any permit if issued shall be modified or conditioned to provide that there will be no decrease in the source of supply, no disruption in the stream conditions, and no adverse effect to prior appropriators within the reach of stream between the point of diversion and the point of return. The applicant for a nonconsumptive use shall provide sufficient factual information upon which the department can determine the applicants ability to meet the conditions imposed by this rule.

(4) Applications for groundwater shall be accepted, however the applicant shall provide sufficient factual information upon which the department can determine whether or not the source of the groundwater is part of or substantially or directly connected to surface water. If it is found that the proposed diversion of groundwater would cause a calculable reduction in the surface water flow during the closure period the application shall be rejected. A calculable reduction

means a theoretical reduction based on credible information as opposed to a measured reduction. If the applicant fails to submit sufficient factual information as required, the application shall be considered defective and shall be processed pursuant to 85-2-302, MCA.

(5) Temporary emergency appropriations of water as defined in ARM 36.12.101 and 36.12.105 shall be exempt from this rule.

(6) This rule applies only to applications received by the department after the date of adoption of this rule.

(7) The department may, if it determines changed circumstances justify it, reopen the basin to additional appropriations and amend this rule accordingly after public notice and hearing.

AUTH: 85-2-112 and 85-2-319, MCA; IMP: 85-2-319, MCA

3. Rationale: On August 23, 1993 a petition was filed pursuant to 85-2-319, MCA with the Department of Natural Resources and Conservation. The petitioners requested that all new permit applications be rejected in the Willow Creek Basin claiming there is no unappropriated water in the basin at any time of the year. In response to the petition the Department conducted a water availability analysis of the basin and concludes the consumptive demand in the Willow Creek Drainage basin exceeds the available water for portions of the year. The current information on file with the Department supports a closure period from May 1 through May 15 and from June 15 through September 30. If additional evidence is presented at the hearing or by the deadline listed below which proves unappropriated water is not available during the period of May 15 through June 15 or that existing water rights will be adversely affected by accepting applications during this period, the rule shall be adopted to also close this period. This rule sets out the class of applications affected, the type of appropriation that is exempt and allows the reopening of the basin through rule amendment, notice and hearing.

4. Interested persons may present their data, views, or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Teresa McLaughlin, Department of Natural Resources and Conservation, 1520 E. 6th Avenue, Helena, Mt., 59620 postmarked no later than August 19, 1994.

5. Vivian Lighthizer has been designated to preside at and conduct the hearing.

Mark Simonich, Director

Mark A. Simonich

Donald D. MacIntyre

Rule Reviewer

Certified to the Secretary of State June 27, 1994.

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

In the matter of the amendment of rules 46.12.802, 46.12.805 and 46.12.806 pertaining to medicaid coverage and reimbursement of wheelchairs and wheelchair accessories	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.802, 46.12.805 AND 46.12.806 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF WHEELCHAIRS AND WHEELCHAIR ACCESSORIES

TO: All Interested Persons

1. On July 27, 1994, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.802, 46.12.805 and 46.12.806 pertaining to medicaid coverage and reimbursement of wheelchairs and wheelchair accessories.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on July 18, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS Subsections (1) through (2)(e) remain the same.

(f) Recipients shall be limited to a new wheelchair no more than once every 5 years, unless the department determines that a new chair is required sooner because the recipient's current chair is causing the recipient serious health problems or because of a significant change in the recipient's medical condition.

Subsections (3) through (4) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS
Subsection (1) remains the same.

(a) Except as provided in subsection (5), ~~T~~the department will pay the lowest of the following for prosthetic devices, durable medical equipment, and medical supplies not also covered by medicare:

Subsections (1)(a)(i) remains the same.

(ii) the department's fee schedule maintained in accordance with the methodology described in ARM 46.12.806~~(2)~~.

(b) Except as provided in subsection (5), ~~T~~the department will pay the lowest of the following for prosthetic devices, durable medical equipment and medical supplies which are also covered by medicare:

Subsections (1)(b)(i) through (1)(c)(iv) remain the same.

(v) purchase of wheel chairs~~.~~;

(A) All wheelchairs and wheelchair accessories are subject to review by the department for medical necessity and must be prior authorized by the department. All prior authorization requests must include submission to the department of the pertinent manufacturer's price list pages for the requested item.

Subsections (1)(d) through (4) remain the same.

(5) If the department's fee calculated under ARM 46.12.806(3) for a requested wheelchair and/or wheelchair accessories would exceed $2,500, including both the wheelchair and any accessories, the wheelchair and accessories will be purchased and the reimbursement amount determined through a competitive bid process conducted by the department of administration.

(a) The department will be entitled to recover from the provider the entire fee paid for a wheelchair and all accessories if:

(i) the wheelchair or accessory was not purchased through a competitive bid process because the fee was less than $2,500;

(ii) the department determines on post-payment review that accessories were later added that, together with the amount of the wheelchair and accessories originally purchased, exceed $2,500; and

(iii) the department did not prior authorize the complete package of wheelchair and accessories either at the time of the original wheelchair purchase or at the time the later accessories were added.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE Subsection (1) remains the same.

(2) The department's fee schedule, referred to in ARM 46.12.805(1), for items other than wheelchairs and wheelchair accessories, shall include fees set and maintained according to the following methodology:

Subsections (2)(a) and (2)(b) remain the same.

(i) Once the department has established a fee as provided in subsection (b), such fee will not be adjusted except as provided in subsection (e4).

Subsections (2)(c) through (2)(d)(i) remain the same.

(ii) For all oxygen and oxygen-related items for which a fee was not set prior to July 1, 1993 under the provisions of subsection (b), the department's fee shall be the amount determined according to the provisions of subsections (a) through (c), less 15% of such amount, and subsequent increases shall be as provided in subsection (e4).

(3) The department's fee schedule, referred to in ARM 46.12.805(1), for wheelchairs and wheelchair accessories shall be as follows:

(a) The fee schedule amount for standard wheelchairs shall be 80% of the manufacturer's list price applicable to the wheelchair. For purposes of this rule, a standard wheelchair is a basic wheelchair that is not designed for modification and that accommodates a person weighing 250 pounds or less.

(b) The fee schedule amount for specialty wheelchairs shall be 85% of the manufacturer's list price applicable to the wheelchair. For purposes of this rule, a specialty wheelchair is any wheelchair that is not a standard wheelchair. Examples of specialty wheelchairs are lightweight, hemi, pediatric, recliner, tilt-n-space and heavy duty wheelchairs.

(c) The fee schedule amount for all wheelchair accessories shall be 85% of the manufacturer's list price applicable to the item.

(e4) The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature as follows:

(~~i~~a) The department shall increase or decrease those fees established as provided in subsections (2)(b) and (2)(d)(i) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective as provided by the legislature.

(~~ii~~b) The department shall not apply any legislative increase or decrease to those items described in subsection (2)(c) or (3), unless specifically directed by legislative enactment to do so.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141 MCA

3. The proposed changes to the administrative rules are necessary to specify certain requirements related to medicaid coverage and reimbursement of wheelchairs.

The department currently provides wheelchairs to medicaid recipients under a volume purchasing contract with a single provider. This agreement has allowed the department to achieve substantial cost savings, but has proved to be unsatisfactory. There have been delays in delivery of wheelchairs and the overall quality of service has not been acceptable. The department and the current contractor have both agreed that the current contract will not be renewed.

The department proposes that all qualified durable medical equipment suppliers be permitted to provide wheelchairs and wheelchair accessories to medicaid recipients. The proposed rules are necessary to establish specific reimbursement provisions for wheelchairs and accessories that will allow the department to provide timely and quality services to medicaid recipients, while preserving the cost savings realized under the volume purchasing contract.

The proposed changes to ARM 46.12.805(1) and ARM 46.12.806 would establish a specific fee schedule for wheelchairs and wheelchair accessories. The department's fee schedule for standard wheelchairs would be set at 80% of the manufacturer's list price and the fee schedule for specialty wheelchairs and accessories would be set at 85% of the manufacturer's list price.

If the department's reimbursement for a wheelchair and any related accessories would be reimbursed at $2,500 or more, then the items will be purchased and the reimbursement amount determined through a competitive bid process to be conducted by the department of administration. The proposed addition of ARM 46.12.805(5) would specify this procedure. This proposed subsection would also provide that medicaid reimbursement would be subject to recovery from the provider if the items were not purchased through a bid process because the price originally was under $2,500, but accessories were later added that brought the total price to $2,500 or more. The department could not recover on this basis if the provider had obtained prior authorization from the department for the entire package either at the time of the original purchase or at the time the additional accessories were purchased. The department expects that all accessories will be purchased as part of the original package, unless the need for additional items could not have been foreseen.

The proposed changes to ARM 46.12.805(1)(c)(v) would specify in more detail the medical necessity and prior authorization requirements for all wheelchairs and wheelchair items. This proposed rule would also specify that the manufacturer's list price must be submitted to the department as part of the prior authorization request.

The proposed addition of new ARM 46.12.802(2)(f) is necessary to specify that a recipient may not receive a new wheelchair more often than once every 5 years. Exceptions could be made if the department determines that the current chair is causing the recipient serious medical problems or if the recipient's medical condition has changed since the current chair was provided.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than August 4, 1994.

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

Dawn Sliva
Rule Reviewer

Michael D. Billings for
Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 27, 1994.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of proposed adoption of new rules relating to medical review of members, discontinuance of disability retirement benefits, and procedures for requesting an administrative hearing; amendment of ARM 2.43.201, 2.43.202, 2.43.302, and 2.43.502 relating to model rules, definitions, and the disability application process; and repeal of ARM 2.43.507 relating to election of disability coverage	NOTICE OF ADOPTION OF RULES I (2.43.508) - VIII (2.43.515), IX (2.43.203) - XI (2.43.205); AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons.

1. On May 12, 1994, the Public Employees' Retirement Board published notice of the proposed adoption of new rules pertaining to medical review of members, discontinuance of disability retirement benefits, and procedures for requesting administrative hearings; amendment of ARM 2.43.201, 2.43.202, 2.43.302, and 2.43.503 pertaining to model rules, definitions, and the disability application process; and repeal of ARM 2.43.507 in the Montana Administrative Register, Issue number 9, starting at page 1191 and inclusive of page 1199.

2. No written comments were received from any interested party.

3. On June 23, 1994, the Public Employees' Retirement Board adopted, amended and repealed the rules as proposed.

Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State June 27, 1994.

BEFORE THE BOARD OF THE
STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule 2.55.326 pertaining to minimum yearly premium.	NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On April 28, 1994, the State Compensation Insurance Fund published notice of the amendment to rule 2.55.326 concerning minimum yearly premium at page 981 of the 1994 Montana Administrative Register, issue number 8.

2. The board has amended rule 2.55.326 as proposed.
AUTH: Sec. 39-71-2315 and 39-71-2316
IMP: Sec. 39-71-2311 and 39-71-2316

3. After consideration of the comments received on the proposed amendment, the board has amended rule 2.55.326 as proposed.

COMMENT: Mr. Riley Johnson of the National Federation of Independent Businesses offered a comment expressing his concern that administrative costs to small employers on minimum policies are disproportionate, and would like to see them lowered, particularly with an annual premium payment. His concern is whether changing the rule allows the Board to set the amount a lot higher and whether risk might be considered in the formula setting.

RESPONSE: This rule amendment puts the decision on the amount of the minimum yearly premium clearly with the board. However, the board must still follow the statute which states that the minimum annual premium is to cover the administrative costs for coverage of a small employer. This change provides the board some flexibility in establishing the minimum yearly premium without being required to reduce its discretion.

COMMENT: Mr. Riley Johnson commented that with the new policy of annual premium, whether annual reporting will be taken into consideration in determining administrative costs.

RESPONSE: Future administrative costs may decline because of the annual premium in advance approach for minimum premium policies. The State Fund will be able to evaluate any changes brought about by premium in advance when the board addresses this issue next year.

COMMENT: Mr. Riley Johnson commented as to whether the board with this rule change would be able to charge a policy fee and then premium in addition to this fee.

RESPONSE: It would require a legislative change, as the comment describes what would be an expense constant plus premium. The statute has been applied as encompassing only the expense constant.

COMMENT: Mr. Jim Tutwiler, Montana Chamber of Commerce, offered comments expressing his concern regarding the equity of small businesses versus larger businesses paying minimum premium. He requested that if the board elects to adopt another procedure for determining minimum premium, that the Board show a comparison of what the rate of minimum premium would be under the new adopted calculation formula versus what it would have been if they kept this rule.

RESPONSE: The Board of Directors of the State Fund will take this comment into consideration in preparation for the establishment of fiscal year 1996 minimum yearly premium.

COMMENT: Mr. Riley Johnson commented as to whether or not this change would rule out utilizing the current system under the rule for calculating the minimum premium.

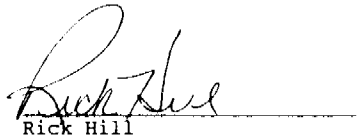
RESPONSE: The rule further implemented the statute; however, the statute itself requires that the minimum premium cover the administrative costs of coverage for a small employer. Therefore, even though the rule change provides the board flexibility in exercising its discretion in establishing a minimum premium, the current system could be used by the board as one method of determining administrative costs.

COMMENT: Mr. Riley Johnson commented that based on the hearing, he would like to change his comments to supporting the rule change but he would also like to see the same comparison commented above by Mr. Jim Tutwiler. In addition, he commented that he would like to see the board look at possible legislation for January 1995, as he is trying to obtain equity for the small employer.

RESPONSE: As noted in the response above, the Board of Directors of the State Fund will take this comment into consideration in preparation for the establishment of fiscal year 1996 minimum yearly premium.

In addition, the board would be willing to discuss possible legislation with interested parties.

Dal Smilie, Chief Legal Counsel
Rule Reviewer



Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State June 27, 1994.

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

In the matter of the adoption of new rules regarding electronic filing of the appointment and termination of insurance producers	))))	NOTICE OF ADOPTION

To: All Interested Persons.

On May 26, 1994, the state auditor and commissioner of insurance of the state of Montana published notice of public hearing with respect to the proposed adoption of new rules regarding electronic filing of the appointment and termination of insurance producers. The notice was published at page 1323 of the 1994 Montana Administrative Register, issue number 10.

1. The agency has adopted the new rules I (6.6.4301) and II (6.6.4302) as proposed.

2. The agency has adopted the text of new rule III (6.6.4303) with the following change (added material underlined, deleted material stricken):

NEW RULE III (6.6.4303) PROCEDURES FOR ELECTRONIC FILING OF APPOINTMENTS (1) through (2)(b) remain the same as proposed.

(c) A written notice of denial, including the reasons for the denial, shall be sent to both the insured~~r~~ and the producer in the regular course of the mail.

(3) through (4) remain the same as proposed.

AUTH: 33-1-313, 33-2-709, and 33-17-236, MCA
IMP: 33-2-708, 33-17-236 and 33-17-237, MCA

3. A public hearing on the proposed rules was held on June 21, 1994. One interested person attended the hearing. The person spoke in general support of the rules, but noted that there seemed to be a typographical error in Rule III(2)(c) and that the word "insured" should be changed to insurer. Three letters were received, requesting additional information regarding the technical and logistical implications of the electronic appointment and termination programs.

4. .RESPONSE: The word "insured" has been corrected to "insurer." None of the letters requesting additional information asked to comment on the rules themselves. The letters have been answered and the information provided.

5. The agency, having thoroughly considered the submissions received, adopts the rules with the indicated revision for ARM 6.6.4303.

State Auditor and
Commissioner of Insurance

By: _____
Mark O'Keefe

_____
David B. Gallik
for Gary L. Spaeth, Rules Reviewer

Certified to the Secretary of State this 27th day of June, 1994.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to the practice of cosmetology and electrology	) CORRECTED NOTICE OF 8.14.605 CURRICULUM - COSMETOLOGY/ MANICURING STUDENTS, 8.14. 805 APPLICATION - OUT-OF- STATE COSMETOLOGISTS/ MANICURISTS AND 8.14.1004 SALON

TO: All Interested Persons:

1. On February 24, 1994, the Board of Cosmetologists published a notice of proposed amendment of the above-stated rules at page 331, 1994 Montana Administrative Register, issue number 4. The Board published a notice of adoption at page 1679, 1994 Montana Administrative Register, issue number 12. Replacement pages are being completed for the June 30, 1994, filing date.

2. Subsection (7) of ARM 8.14.605 should have been stricken and subsection (8) renumbered (6) as stated in the original notice.

The language "or the equivalent of a high school diploma recognized by the superintendent of public instruction" currently in ARM 8.14.805(1)(a) was inadvertently omitted from the original proposal, but should have been included and stricken.

The words "thermolysis machine" currently existing in ARM 8.14.1004 under subsection (3)(d) should have been included in subsection (4)(a) in the original proposal between the language "galvanic generator," and "or".

3. The authority and implementing sections which were cited in the original proposal remain the same.

BOARD OF COSMETOLOGISTS
MARY BROWN, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 27, 1994.

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to retailer commissions and sales staff incentive plan	))))	NOTICE OF AMENDMENT OF 8.127.407 RETAILER COMMISSION AND 8.127.1007 SALES STAFF INCENTIVE PLAN

TO: All Interested Persons:

1. On April 28, 1994, the Montana Lottery Commission published a notice of proposed amendment of the above-stated rules at page 1002, 1994 Montana Administrative Register, issue number 8.

2. The commission amended the rules exactly as proposed.

3. No comments or testimony received.

MONTANA LOTTERY COMMISSION
BECKY ERICKSON, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 27, 1994.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal, amendment and adoption of rules pertaining to school funding and tuition	)))	NOTICE OF REPEAL, AMENDMENT AND ADOPTION OF RULES RELATING TO SCHOOL FUNDING AND TUITION

To: All interested persons

1. On April 28, 1994, the Superintendent of Public Instruction (OPI) published notice of public hearing on the proposed repeal, amendment and adoption of the rules referenced above at page 1006 of the 1994 Montana Administrative Register, issue number 8.

2. A public hearing was held on May 24, 1994. The hearing was recorded and the tape is included in the file on this matter. In addition, written comments were received at the hearing and prior to the closing of the comment period.

3. After consideration of the comments received, the following rules are being repealed as proposed: Rules 10.10.301A, 10.16.1312, 10.20.101, 10.20.203, 10.21.101, 10.21.103, 10.22.101, 10.22.106, 10.22.203, 10.23.101, 10.30.401, and 10.30.407, ARM.

COMMENT: 10.16.1312. The Administrative Code Committee (ACC) noted that OPI cited sections 20-5-305 and 20-5-312, MCA, as its rulemaking authority, which were both repealed during the 1993 regular session. For that reason, they can no longer be authority for any action by the Superintendent of Public Instruction.

RESPONSE: OPI will use section 20-5-323, MCA, as its rulemaking authority.

4. After consideration of the comments received, the following rules are being amended as proposed: Rules 10.10.101, 10.10.207, 10.10.208, 10.10.304, 10.10.309, 10.10.407, 10.10.501, 10.10.502, 10.10.504, 10.20.102, 10.20.103, 10.20.104, 10.20.201, 10.20.202, 10.21.104, 10.21.105, 10.22.102, 10.22.103, 10.22.104, 10.22.107, 10.22.201, 10.22.202, 10.22.204, 10.22.205, 10.23.103, 10.23.104, 10.23.105, 10.23.107, 10.30.102, 10.30.402, 10.30.403, 10.30.404, 10.30.405, and 10.30.406, ARM.

COMMENT: 10.10.304. At the hearing a comment was made that the rule regarding cash balances in the student extracurricular fund provided unnecessary detail.

RESPONSE: The rule is a statement of generally accepted accounting principles for fund accounting and answers a question that is frequently asked by districts and auditors.

COMMENT: 10.10.504(2). A comment was made at the hearing that there should be a different remedy for a budget or report error.

RESPONSE: This is the remedy required by statute.

COMMENT: 10.23.107. Three written comments and one comment at the hearing were received on ARM 10.23.107(2). The commentators believe that it is unreasonable to require that county equalization funds used to pay pre 1991-92 obligations only be paid on obligations reported to OPI by 1993.

RESPONSE: It is possible for a county superintendent to make distributions from the countywide equalization funds for outstanding obligations incurred prior to fiscal year 1990-91. Such situations are the exception, however, and the requirement that payment of such obligations be contingent on reporting them to OPI by 1993 is reasonable.

5. After consideration of the comments received, the following rules are being adopted as proposed and codified as follows: RULE II (10.23.101A), RULE IV (10.10.312), RULE V (10.10.313), RULE VII (10.21.102A), RULE VIII (10.21.101C), RULE X (10.21.101B), RULE XI (10.21.102B), RULE XII (10.21.101D), RULE XIII (10.21.101E), RULE XIV (10.21.101F), RULE XVI (10.21.102C), RULE XVII (10.21.102E), RULE XVIII (10.23.102A), RULE XIX (10.21.102D), RULE XX (10.21.101H), RULE XXI (10.21.101G), RULE XXII (10.21.101I), RULE XXIII (10.22.206), RULE XXIV (10.10.301B), and RULE XXVI (10.10.301C).

COMMENT: ACC noted that in proposing new rules, the Superintendent has cited section 20-9-369, MCA, as authority to implement sections 20-9-366 through 20-9-371, MCA. Section 20-9-366(2), MCA, specifically grants the superintendent authority to adopt rules only to implement sections 20-9-366 through 20-9-369, MCA.

RESPONSE: Where it is necessary to implement sections 20-9-370 and 20-9-371, MCA, OPI will use section 20-9-102, MCA, for its rulemaking authority as suggested by ACC.

COMMENT: A general comment was received that OPI does not have the legal authority to adopt funding rules.

RESPONSE: OPI has authority to adopt rules to ensure compliance with school budgeting laws § 20-9-201, MCA, and is required by § 20-9-201(2), MCA, to adopt rules necessary to secure compliance with the law governing school financial administration.

COMMENT: RULE IV (10.10.312). One comment was received concerning the requirement that an excess balance in the compensated absence liability fund be transferred back to the general fund was not in law nor a clarification. One comment was made at the hearing that this is a real obligation and the fund balance must equal the real liability.

RESPONSE: OPI does not agree. Section 20-9-512, MCA, provides the maximum amount allowed as the balance in the compensated absence liability fund but does not address what is to be done if the

maximum is exceeded. The purpose of this rule is to clarify that if the ending fund balance of this fund exceeds the maximum allowed by law, the excess shall be recorded and returned to the general fund before the accounting records are closed for the fiscal year.

COMMENT: RULE VIII (10.21.101C). Two written comments were received that the dates in this rule allow an unreasonably short amount of time to act.

RESPONSE: The timeline in this rule is necessary to provide mill value and GTB ratio information to districts on a timely basis.

OPI COMMENT: RULE XIII (10.21.101E). OPI proposed RULE XIII and RULE XV as the same rule.

RESPONSE: OPI withdraws Rule XV.

COMMENT: RULE XXIV (10.10.301B). Use of the term "resides" or "lives".

RESPONSE: This rule does not deal with legal residency. The terms "resides" and "lives" are synonymous for purposes of this rule. The key is where the pupil is physically living and not necessarily the parent's established residence.

COMMENT: RULE XXVI (10.10.301C). Two comments were received that OPI does not have the statutory authority to exclude non-residents from ANB count.

RESPONSE: This rule does not exclude non-resident students from the ANB count used for funding purposes. The maximum tuition rate established in 10.10.301 allows a district to charge the amount of the per-student entitlement normally raised through local levies. This rule allows districts to retain the same amount of tuition revenue for non-resident students as for Montana resident students. State per-ANB funding is not affected.

6. After consideration of the comments received, the following rules are being amended as proposed with those changes given below, new material underlined, deleted material interlined.

10.10.301 CALCULATING TUITION RATES (1) The maximum tuition rate a district may charge for the ensuing school year is 40% of the maximum per ANB entitlement established in section 20-9-306, MCA, as of March 15th. For a kindergarten student and a pre-school child with disabilities the rate is one-half the rate for an elementary student.

(2) - (5) remains the same as proposed.

(7) remains the same as proposed, renumbered (6).

(AUTH: 20-9-102, 20-9-201, MCA; IMP: Title 20, ch. 5, pt. 3, MCA)

COMMENT: Three written comments were received that the tuition rate for kindergarten students should be clarified.

RESPONSE: OPI agrees and has modified the rule to state that the tuition rate for kindergarten students is one-half the amount charged for an elementary student.

COMMENT: One comment was received that a tuition rate for special education pre-school was needed.

RESPONSE: OPI agrees with the comment. It is appropriate to pay tuition for eligible students with disabilities ages 3 through 21.

COMMENT: One written comment and one comment at the hearing were received that the rule does not contain the 15 district size groupings referred to in § 20-5-323, MCA.

RESPONSE: The reference to the 15 district size groupings was a carryover from the old foundation program schedules. Since the new BASE funding system does not establish a system of categories that can legitimately be divided into 15 sizes, the rule was drafted to conform to the new BASE funding system that establishes elementary and high school rates.

COMMENT: Two comments were received questioning using 40% of the maximum per ANB entitlement established in § 20-9-306, MCA, as the tuition rate.

RESPONSE: 40% of the maximum per ANB entitlement is a reasonable measure of the district's local per pupil cost. The Legislature mandated 80% of the basic and ANB entitlement plus up to 140% of special education allowable cost payment as the minimum dollar amount a district can set as its general fund budget. On a per pupil basis this means a district must budget to spend at least 80% of the per ANB entitlement. Local tax efforts must fund 40% of this amount, therefore, that is the maximum tuition rate.

COMMENT: One comment was received at the hearing and two written comments were received that the Tuition Task Force's recommendations were not followed.

RESPONSE: Several of the Task Force's recommendations are included in the rule. The Task Force discussed various methods of determining tuition rates, but a final rate method was never presented. The rate in the rule is equitable in that the tuition rate applies to all schools equally, regardless of size or relative wealth.

COMMENT: OPI in its proposed notice published "(7) remains the same." Subsection (7) remains the same but it should have been noticed that it is renumbered as subsection (6).

RESPONSE: The number is changed to reflect the comment.

10.10.308 COUNTY INVESTMENT OF SCHOOL DISTRICT FUNDS - PENALTY (1) - (2) remains the same as proposed.

~~(3) If a county treasurer fails to invest these county taxes~~

~~within three days of receipt, the board of trustees or the superintendent of public instruction may, after informing the county commissioners, require the county treasurer to pay a penalty from the county general fund. The amount of penalty to be paid will be calculated using the following formula:~~

~~[Taxes collected x 10%] x # days taxes not invested / 365 days~~

~~(4) The county treasurer shall allocate the penalty payment proportionately to, and deposit it in the district's appropriate countywide funds in the same manner as investment income.~~

(AUTH: 20-9-102, MCA; IMP: 20-9-212, 20-9-213, MCA)

COMMENT: Three written comments and one comment at the hearing were received that there was no statutory authority for the penalty in ARM 10.10.308(3).

RESPONSE: OPI agrees with the comment and has deleted 10.10.308 (3) and (4) from the rules. County treasurer's have a statutory duty to invest the county taxes within three days. Failure to do so is a breach of duty but it is not enforceable through a penalty.

10.10.310 UNOBLIGATED TUITION MONEY IN THE MISCELLANEOUS PROGRAMS FUND (1) If, for any given year, ~~special education~~ tuition money deposited in the miscellaneous programs fund under section 20-5-324, MCA, remains unobligated at year end, the money shall be transferred to the general fund prior to closing of the accounts for that fiscal year.

(2) remains the same as proposed.

(AUTH: 20-9-102, MCA; IMP: 20-5-324, MCA)

COMMENT: Four written comments and two comments at the hearing were received that the title did not match the text and was confusing. The words "special education" should be struck and the word "tuition" added.

RESPONSE: OPI agrees with this comment and has made the necessary changes.

10.10.503 REPORTS - NOTIFICATION TO BOARD OF PUBLIC EDUCATION (1) remains the same as proposed.

(2) The purpose of withholding distribution of a district's BASE aid is to ensure that required reports and budgets are prepared properly and are submitted ~~on time~~ timely. Therefore, the office of public instruction will notify the board of public education if a district or county repeatedly:

(a) through (13) remains the same as proposed.

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

COMMENT: One written comment was received that ARM 10.10.503(2) should use the term "timely" rather than "on time."

RESPONSE: OPI agrees with this comment.

10.16.1314 SPECIAL EDUCATION TUITION RATES (1) - (2) remain the same as proposed.

(3) A responsible school official of the receiving school district shall use one of the options defined below to determine the maximum amount which may be charged to the resident district for students with disabilities in addition to the regular education tuition rate ~~for students with disabilities~~:

(a) Option A: The additional charge shall be calculated by determining the number of hours during which direct special education and related services are being provided each week, as established on the student's individualized education program (IEP). If the total hours are less than 15 (seven and one half for kindergarten), tuition may not exceed the regular education tuition rate. If the total hours per week are 15 (seven and one half for kindergarten) or more, the total hours will be divided by 30 (the average number of school hours per week, 15 for kindergarten), and multiplied by the maximum regular education tuition rate in ARM 10.10.301 to determine the amount which may be added to the rate in ARM 10.10.301.

(b) Option B: The actual costs of services provided to the student ages 3 to 21 as per the individualized education program (IEP), minus the maximum per ANB entitlement and per ANB special education block grants, may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

(i) - (6) remains the same as proposed.

(AUTH: 20-5-323, MCA; IMP: 20-5-323, 20-5-324, 20-9-306, MCA)

COMMENT: One written and one oral comment were received that if districts cannot charge the parent for special education, districts will not accept the student. This comment also relates to ARM 10.10.301. Please see the comment and response to that rule.

RESPONSE: Charging children with disabilities a differential rate from all other children would be a discriminatory practice. OPI agrees, however, that ARM 10.16.1314(3) should more clearly explain special education tuition rates and has made some editorial changes.

10.23.102 FUNDING THE BASE BUDGET LEVY (1) - (3)(a) remains the same as proposed.

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

(ii) - (4)(b) remains the same as proposed.

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

COMMENT: At the hearing a comment was made that this rule does not address what to do if the levy results in a shortfall of revenue.

RESPONSE: A shortfall in revenue from the BASE budget levy would be handled the same as a shortfall in revenue from any funding source. A rule change is unnecessary.

COMMENT: Subsections (a) - (a)(i) were proposed as "remains the same." ARM 10.23.103 is being repealed so the reference to this rule needs to be deleted from subsection (i).

RESPONSE: The rule is being changed to reflect the comment.

7. After consideration of the comments received, the following rules are being adopted as proposed with those changes given below, new material underlined, deleted material interlined.

RULE I (10.15.101) DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) - (11) remains the same as proposed.

(12) "Certified countywide elementary ANB" or "certified countywide high school ANB" means the number certified by OPI on or before the fourth Monday in July using the previous fiscal year countywide enrollment count. ~~and~~ It is used to calculate mill values per ANB.

(13) - (27) remains the same as proposed.

~~(28) "First semester for ANB purposes" means the first 90 pupil instruction days of the school year.~~

(29) - (37) remains the same as proposed, renumbered (28) - (36).

(38) "Minimum amount of pupil instruction (PI) time for a high school student" means the student must be present for 2 periods of either a morning or afternoon session or the entire morning or afternoon session in order to be counted as being in attendance for one-half day. Attendance for the entire morning and afternoon sessions, or at least 2 ~~hours~~ periods of the morning session and at least 2 ~~hours~~ periods of the afternoon session, will be counted as attendance for a whole day.

(39) - (50) remains the same as proposed, renumbered (38) - (49).

~~(51) "Second semester for ANB purposes" means the last 90 pupil instruction days of the school year.~~

(52) - (58) remains the same as proposed, renumbered (50) - (56).

(59) "Taxable value" means the value of all the taxable property ~~in the area~~ within the boundaries of a district, county or the state as reported to the DOR. Taxable value is based on information delivered to the county clerk and recorder as required in section 15-10-305, MCA, for the prior calendar year.

(60) - (61) remains the same, renumbered (58) - (59).

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

COMMENT: One written comment was that subsections (28) and (51) were unnecessary because of the change in calculation of ANB.

RESPONSE: OPI agrees with this comment. The rule will be renumbered to account for subsections (28) and (51) not being included.

COMMENT: One written comment was received that subsection (38) should consistently use the term "period" instead of "hour."

RESPONSE: OPI agrees with this comment.

COMMENT: One written comment and one comment at the hearing were received that subsection (59) would be more accurate if the phrase "in the area" was changed to "within the boundaries."

RESPONSE: OPI agrees with this comment.

RULE III (10.10.314) INTERNAL SERVICE, ENTERPRISE, ~~TRUST, AND~~ AGENCY FUNDS (1) School districts may establish an internal service, enterprise, ~~trust, and~~ or agency funds if the intended purpose for which such fund will be used is approved by the superintendent of public instruction. These funds shall be operated and accounted for as nonbudgeted funds.

(2) If ~~a district's application to establish a particular fund type~~ the purpose for which a district intends to establish one of these funds is approved, the superintendent of public instruction will provide the district guidance on the application of generally accepted accounting principles to that type of fund. If a district fails to comply with generally accepted accounting principles or with accounting policies established by the superintendent of public instruction, the superintendent may rescind approval to use the fund.

(3) - (5)(c) remains the same as proposed.

(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-103, 20-9-208, MCA)

COMMENT: One written comment and one comment at the hearing were received on this rule. The commentators stated that OPI does not have the legal authority to approve or disapprove of internal service, enterprise, trust, or agency funds and that the requirements are too restrictive.

RESPONSE: The language has been modified to make it more closely mirror § 20-9-201, MCA. The requirements in this rule are necessary for adequate control and accountability of internal service, enterprise, and agency funds.

RULE VI (10.10.505) DISTRICT REVENUE AND EXPENDITURE REPORTS (1) The district clerk shall ~~provide~~ make available revenue and expenditure reports to the board of trustees ~~on a monthly or, at a minimum, quarterly basis~~.

(2) The recommended format for Rrevenue and expenditure reports for budgeted funds ~~should be presented in the following format~~ is:

(a) The revenue budget report ~~shall~~ should show by revenue account the amount budgeted by fund for each revenue account, the amount collected to date, and the amount remaining to be collected.

(b) The expenditure budget report ~~shall~~ should show ~~by line item~~ the amount budgeted by line item, ~~or~~ function or in total, the amount expended to date ~~by line item or function~~, and the amount of budget authority remaining.

~~(c) If the budget status report indicates a material revenue shortfall has or will occur, or a material budget overdraft has or will occur in a particular expenditure line item or function~~

~~category, the trustees shall take appropriate action to address the situation. Expenditures may not be moved or charged to an inappropriate line item or function category with budget authority remaining to avoid or correct budget overdrafts. As required by section 20-9-208, MCA, when the trustees authorize a transfer between appropriation item, the transfer must be entered in the permanent accounting records.~~

(3) remains the same as proposed.

~~(4) Copies of these reports shall be retained for audit purposes.~~ (AUTH: 20-9-102, MCA; IMP: 20-9-133, 20-9-213, MCA)

COMMENT: Sixteen written comments and four comments at the hearing were received on this rule. The commentators believe the timing and detail of budget reports from district clerks to trustees should be decided by trustees. They suggested changing the language from "provide" to "make available," requiring less detail, and removing subsection (4).

RESPONSE: OPI agrees with the comments and has changed the language of the rule to reflect the comments.

RULE IX (10.21.101A) EXPLANATION OF THE PURPOSE OF STATEWIDE AND DISTRICT GTB RATIOS (1) - (2) remains the same as proposed.

(3) The statewide GTB ratio is the ~~indicae~~ standard for comparing all districts' taxable values relative to their funding needs.

(4) remains the same as proposed.

(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-366 through 20-9-371, MCA)

COMMENT: One written comment was received that "indicae" did not appear in the writer's dictionary.

RESPONSE: "Indicae" has been changed to "standard."

OPI COMMENT: Transportation charges must be in compliance with rules OPI will adopt in the future.

RESPONSE: OPI will amend this rule once the new rules are adopted.

RULE XXV (10.10.301D) NEW TUITION REPORTS (1) remains the same as proposed.

(2) By July 30, the county superintendent shall submit out-of-district attendance reports to the superintendent of public instruction for those districts that are responsible for payment of out-of-state tuition charges and districts that charge out-of-state tuition ~~which~~ that exceeds the maximum regular education tuition rates established in ARM 10.10.301.

COMMENT: One written comment was received that "out-of-state" should modify tuition in the last sentence of subsection (2).

RESPONSE: OPI agrees with this comment.

8. Based on the foregoing, the Superintendent of Public Instruction hereby repeals, amends and adopts the rules as proposed with the changes noted above.

Kathleen F. Holden
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State June 27, 1994.

BEFORE THE FISH, WILDLIFE, & PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a new rule relating to a nonresident hunting license preference system.	)))))	NOTICE OF ADOPTION

To: All Interested Persons

1. On February 10, 1994, the Fish, Wildlife and Parks Commission published notice of the proposed adoption of rule I pertaining to a nonresident big game combination hunting license preference system at page 242 of the 1994 Montana Administrative Register, issue number 3.

2. The commission has adopted the rule as proposed. The new rule has been numbered 12.3.124.

3. The commission has thoroughly considered all comments and testimony received. The comments and commissions responses are as follows:

Comment: Roger Lloyd of Helena stated that precedence will be set for establishing a hunting license preference system for residents.

Response: With the number of applications received for this particular license, the department feels a preference system would benefit nonresidents at this time. Future requests for preference systems will be considered on a case-by-case basis.

Comment: Roger Lloyd stated that the fairness of the current system is important to maintain. A preference system will become inherently unfair.

Response: The current system allows a hunter to be successful or unsuccessful in consecutive years. The benefit and intent of the preference system is to allow an unsuccessful nonresident more time to plan a hunting trip to Montana when he knows he will be successful the following year.

Comment: Roger Lloyd asked why nonresidents who use the services of an outfitter are being excluded from this proposed rule.

Response: The outfitters have not asked that this category be changed from the current system to a preference system. The commission will consider requests on a case-by-case basis.

Comment: Roger Lloyd questioned whether a preference system will actually solve the "perceived problem" of the

declining success rate.

Response: Over the long run, the number of licenses issued to a hunter under a preference system will be about the same as the current system. In the short term, however, the current system may result in a hunter receiving a license in consecutive years, while another hunter receives nothing. A preference system will reduce this short-term irregularity.

Comment: Roger Lloyd stated that the problem could be corrected by issuing more licenses or raising the license fee.

Response: Either of these changes would require legislation.

Comment: Roger Lloyd questioned other states' experiences with preference systems.

Response: Experience of other states is varied, depending upon the number of applications and quotas for the licenses. If a great number of applications are received for a limited number of licenses, preference systems usually do not achieve the desired result as everyone moves into the preference category. Preference systems where applicants can be assured to receive a license in a short period of three to four years, have a higher rate of success.

4. The Montana Fish, Wildlife and Parks Commission has evaluated the current method of issuing general nonresident big game combination licenses authorized by 87-2-505, MCA. As the demand for this license has increased, the opportunity to receive one has decreased. The success rate has gone from 100% in 1989 to 67% in 1993. Some nonresidents are unhappy with the current process of issuing these licenses by random drawing and, through a recent questionnaire distributed by the department, have expressed their desire for a preference system.

Under a preference system, priority would be given to those who were unsuccessful the previous year. Licenses would be issued to this group first. Any remaining licenses would be issued through a random drawing of the remaining license applicants.

The commission has decided that the proposed preference system is a fairer method of allocating these nonresident licenses. Nonresidents desiring to hunt in Montana will be able to make reasonable assessments of their chances of receiving a license in any year. This greater certainty will be a benefit to hunters for planning purposes.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Secretary

Certified to the Secretary of State on June 27, 1994.

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

In the matter of the amendment of rules 16.24.104-105, 16.24.107, and 16.24.111, setting standards for the children's special health services program	NOTICE OF AMENDMENT OF RULES (Children's Special Health Services)

To: All Interested Persons

1. On May 26, 1994, the department published notice at page 1340 of the 1994 Montana Administrative Register, issue No. 10, to consider the amendment of the above-captioned rules.

2. The department amended the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

16.24.104 APPLICANT ELIGIBILITY Same as proposed.

16.24.105 CSHS SERVICES Same as proposed.

16.24.107 PAYMENT LIMITS AND REQUIREMENTS (1)-(10) Same as proposed.

(11) In addition to the above, CSHS will pay:

(a) the lesser of either the actual charge for drugs and other prescribed materials, or the price~~, plus $4 dispensing fee,~~ cited in the Annual Pharmacists' Reference ~~1992~~ 1994 Redbook~~, whichever is less~~ plus a $4 dispensing fee and any minor adjustments deemed reasonable by the department to reflect market changes.

(b)-(f) Remain the same.

(12)-(13) Remain the same.

(14) The department hereby adopts and incorporates by reference the American Dental Association's Code on Dental Procedures and Nomenclature, which assigns units of value to the various dental procedures; and the Annual Pharmacist's Reference ~~1992~~ 1994 Redbook, which suggests prices for drugs. Anyone wishing to examine any of the above references may do so by contacting the department's CSHS Program, Cogswell Building, Capitol Station, Helena, Montana 59620 [phone: 444-3622].

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

16.24.111 ADVISORY COMMITTEE Same as proposed.

3. The department noted that, when updating these rules, it had overlooked updating the Annual Pharmacist's Reference Redbook as well, an update that is necessary to ensure that pharmacists are paid the fairest price for drugs supplied to CSHS clients. Therefore, ARM 16.24.107 was also amended to incorporate the latest edition to the Redbook and supplemental language allowing the department to pay the most appropriate

prices.

No other comments were received.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 27, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the repeal of rules 16.32.356 and 16.32.357 and the adoption of new rules I-XI dealing with licensure of adult day care centers	))))	NOTICE OF REPEAL OF ARM 16.32.356 AND 357 AND ADOPTION OF NEW RULES I-XI PERTAINING TO ADULT DAY-CARE

To: All Interested Persons

1. On May 12, 1994, the Department published a notice of public hearing on the above-stated proposed repeal of rules and adoption of new rules at page 1255, 1994 Montana Administrative Register, issue number 9. The hearing was held on June 3, 1994, at 1:00 p.m. in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana.

2. The Department has repealed rules 16.32.356 and 16.32.357 as proposed.

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

RULE I (16.32.1001) GENERAL SERVICES, ADMINISTRATION AND STAFFING (1) Same as proposed.

(2) If an adult day-care center is operated on the premises of another licensed health care facility:

(a) the ~~center~~ other facility may provide to day-care clients any of the services for which the other facility is licensed, subject to the limitation that overnight service to a client may be provided for no more than 7 successive nights;

(b) adequate facilities and staff must be provided to ~~prevent overcrowding or diminished services to the residents or inpatients of the latter~~ appropriately serve the clients of each licensed facility; and

(c) Same as proposed.

(3)-(4) Same as proposed.

(5) An adult day-care center must ~~set aside one room for resting for every five clients, must furnish each such room with at least one bed or lounge chair, and must provide blankets and pillows for the resting room. If the center has a bed or beds in the resting room, it must:~~ provide an area in which clients desiring to do so may rest. A bed or lounge chair, as well as blankets and pillows, must be available and furnished to those who need them. If the center provides a bed or beds, it must:

(a)-(c) Same as proposed.

(6)-(10) Same as proposed.

(11) Each adult day-care center must employ a manager who must be in good physical and mental health, be of reputable and responsible moral character, and exhibit concern for the safety and well-being of clients, and who:

(a) Same as proposed.

~~(b) is at least 21 years of age;~~

(eb) has completed high school or has a general education

development (GED) certificate; and

(~~d~~c) has knowledge of and the ability to conform to the applicable laws and rules governing adult day-care centers; ~~and~~

~~(e) has not been convicted of a crime involving violence, fraud, deceit, theft, or other deception for which s/he is still under state supervision.~~

(12) Same as proposed.

(13) The manager must:

(a)-(f) Same as proposed.

(g) ~~notify the nearest peace officer, law enforcement agency, or protective services agency whenever there is reason to believe that a client has been subjected to abuse, neglect, or exploitation, require and encourage the center staff to report observations or evidence of abuse, and investigate and take corrective action as indicated,~~ comply with the provisions of the Montana Elder and Developmentally Disabled Abuse Prevention Act, 52-3-801 et seq., MCA.

(h)-(k) Same as proposed.

~~(14) Any employee having responsibility for clients must be at least 18 years of age.~~

(15)-(18) Same as proposed but are renumbered (14)-(17).

RULE II (16.32.1002) FOOD SERVICE (1)-(10) Same as proposed.

(11) Tobacco products may not be used in the food preparation ~~and service~~ areas.

(12) Same as proposed.

RULE III (16.32.1003) CLIENT AND PERSONNEL RECORDS Same as proposed.

RULE IV (16.32.1004) MEDICATIONS Same as proposed.

RULE V (16.32.1005) POLICIES AND PROCEDURES Same as proposed.

RULE VI (16.32.1006) INFECTION CONTROL Same as proposed.

RULE VII (16.32.1007) MAINTENANCE AND HOUSEKEEPING Same as proposed.

RULE VIII (16.32.1008) ENVIRONMENTAL CONTROL (1) An adult day-care center must be constructed and maintained so as to prevent as much as is practially possible the entrance and harborage of rats, mice, insects, flies, or other vermin.

(2)-(3) Same as proposed.

RULE IX (16.32.1009) DISASTER AND FIRE PLAN Same as proposed.

RULE X (16.32.1010) LAUNDRY Same as proposed.

RULE XI (16.32.1011) CONSTRUCTION (1)-(2) Same as proposed.

(3) An adult day care center must meet the water supply system requirements of ARM 16.10.635 and the sewage system requirements of ARM 16.10.636.

(4) The department hereby adopts and incorporates by reference ARM 16.10.635, which sets forth requirements for construction and maintenance of water supply systems, and ARM 16.10.636, which sets forth requirements for construction and maintenance of sewage systems. Copies of the materials cited above are available from the Health Facilities Division, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

4. The Department has thoroughly considered all commentary received:

COMMENT: Karen Black, Administrator of Brendan House, commented, in writing, that Rule IV, which provides that a client must be able to self-administer drugs, conflicts with Rule I(2)(a), which provides that an adult day-care center on the premises of another licensed facility can provide the day-care clients with any of the services for which the other facility is licensed. Ms. Rose Hughes also noted the same conflict and recommended that the rule be rewritten to prohibit adult day-care centers from administering drugs. In that way, adult day-care centers with no other license would be unable to accept clients who cannot self-administer medications, but those authorized to do so under some other license could accept and serve these clients.

RESPONSE: The department acknowledges the apparent conflict. The intent of Rule I(2)(a) was to allow a center's clients to utilize the services of another health care facility on the same premises, but the wording mistakenly allows the center itself to administer medication if it happens to share premises with a facility licensed to do so. The conflict has been eliminated by saying that the other facility with which a center shares a site may provide its services to the center's clients, rather than saying that the center itself may provide the services of the other facility.

COMMENT: Ms. Black also asked if a Level I screen would be required for respite care in an adult day-care center.

RESPONSE: From the Department's perspective, it is not anticipated that a Level I screen is required. However, the Department of Social and Rehabilitation Services, Medicaid Services Division, might require such a screen for reimbursement purposes.

COMMENT: Donna Wallace, Administrator of Heritage House, commented, in writing and orally, that there is a need for overnight respite care and that Rule I(3) takes away a freestanding

adult day-care center's ability to provide this service. Ms. Wallace also provided a letter of recommendation from WestMont attesting to Ms. Wallace's "high quality of personal care" and the importance of respite care. Ms. Wallace also submitted written comments from Ed and Lois Gilleran who support her provision of respite care. The Gillerans explained that respite care at a nursing home is not an appropriate option because of the stress on the client and the cost involved, and believe Ms. Wallace should be allowed to continue providing respite care.

RESPONSE: The department did not make the requested change to allow overnight stays at an adult day-care facility. Many freestanding adult day-care centers are not equipped or staffed for overnight respite care. Rule I(2)(a) allows an adult day-care center to provide overnight services for no more than seven successive nights if the facility is licensed in a category that allows in-patient care to be delivered or shares premises with such a licensed facility. A provider could apply for a personal care Category A license and this would allow the facility to offer overnight respite care. This ensures that the facility is properly equipped and staffed to protect the safety and welfare of the clients.

COMMENT: Rose Hughes, Executive Director of the Montana Health Care Association, commented, in writing, that Rule I(2)(b) was confusing, as it fails to recognize that the needs of the clients in both or all licensed entities must be met. She suggested that the language "over-crowding" and "diminished services" is unnecessary, and that the rule would be better worded as follows:

> adequate facilities and staff must be provided to appropriately serve the clients of each licensed facility; and

RESPONSE: The Department agrees with the comment and has amended the rule accordingly.

COMMENT: Ms. Hughes commented that Rule I(5) should be changed to read as follows:

> (5) An adult day-care center must provide an area in which clients desiring to do so may rest. A bed or lounge chair, as well as blankets and pillows, must be available and furnished to those who need them. If the center provides a bed or beds, it must:

Ms. Hughes believes this language allows maximum flexibility while still assuring that all those wishing to rest will have what is required.

RESPONSE: The Department agrees with the comment and has amended the rule accordingly.

COMMENT: Ms. Hughes commented that Rule I(13)(g) should specifically refer to the need to comply with all provisions of

the Elder Abuse Act.

RESPONSE: The Department agrees with the comment and has amended the rule accordingly.

COMMENT: Ms. Hughes commented that Rule I(11)(b)(e) and (14) are beyond the authority of the Department in that the Department does not have the authority to place an age requirement on employees of adult day-care centers.

RESPONSE: The Department has deleted the age requirements from the rule and amended the rule accordingly.

COMMENT: Ms. Hughes commented that the language in Rule I(11)(e) relating to the conviction of a crime appears to go beyond what is provided for by § 50-5-207, MCA.

RESPONSE: The Department believes that § 50-5-207, MCA, governs this issue and as such a rule regarding the same is unnecessary. This provision has been removed and the rule has been amended accordingly.

COMMENT: Ms. Hughes commented that Rule II(11) appears to ban smoking in any eating area, regardless of client choice and facility policies. Section 50-40-106, MCA, prohibits smoking in kitchen areas but not in eating areas, and Ms. Hughes does not believe we should prohibit smoking in eating areas.

RESPONSE: The words "and service" have been deleted and the rule has been amended accordingly.

COMMENT: Ms. Hughes also commented that Rule VIII(1) is overly broad and unrealistic, in that no building is constructed or maintained so as to prevent the entrance of insects and flies, and requests a more reasonable standard.

RESPONSE: In response to this comment, the Department has amended the language to require preventive efforts to the extent practically possible.

COMMENT AND RESPONSE: The department, in Rule XI, intended to incorporate the ARM 16.32.302 construction standards currently applicable to adult day-care centers, but overlooked the latter rule's requirements concerning water and sewage systems. Therefore, to correct the oversight, the department has amended Rule XI to include ARM 16.32.302's public water and sewage system requirements.

5. The department has determined that its statement of reasonable necessity in the notice of proposed rulemaking was inadequate and therefore provides the following further support for the adoption and repeal of the rules: ARM 16.32.356 and 16.32.357, which are being repealed, contain the current minimum standards specific to adult day care facilities and are

being replaced by Rules I and II in amended form; Rules I and II will then be assigned to a separate subchapter devoted to adult day care standards. At the same time, the minimum standards which currently apply to all health care facilities (i.e. 16.32.302, 16.32.304-313) are being incorporated specifically into the new adult day care subchapter so that all the rules applying to adult day care are encapsulated in one subchapter. (The department intends to follow the same process with the other categories of health care facilities.) At the same time, the minimum standards are being updated to reflect the most current accepted health standards.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 27, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of A.R.M. 26.3.180, 26.3.181, 26.3.182, 26.3.186, 26.3.187, 26.3.189, 26.3.192, and 26.3.193 and adoption of new Rules I, II, and III pertaining to recreational use of state lands.	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On March 31, 1994, the Board of Land Commissioners and Department of State Lands published notice of proposed adoption of new Rules I and II and amendment of A.R.M. 26.3.180, 26.3.182, 26.3.186, 26.3.187, 26.3.189, 26.3.192, and 26.3.193, concerning recreational use of state lands, at page 641 of the 1994 Montana Administrative Register, Issue No. 6.

2. The agency has adopted new Rules I and II with the following amendments:

RULE I (26.3.190) MANAGEMENT CLOSURES AND RESTRICTIONS

(1) Except as provided in ~~(4)~~ (5), affected leased or licensed state land is closed to recreational use or subject to recreational use restrictions if the lessee complies with (2) and one of the following situations exists:

(a) through (c) same as proposed.

(d) ~~The department, the board of county commissioners, or the governing body of a consolidated city-county government have declared fire danger to exist.~~

~~(e)~~ Weed control treatment is occurring or has recently occurred.

~~(f)~~(E) The ~~lessee~~ LAND is ~~actively irrigating~~ BEING IRRIGATED; provided, however, that land may not be closed to foot traffic during a hunting season under this provision.

~~(g)~~(F) The use would occur in close proximity to dwellings, structures, or facilities in use by the lessee; provided however, that ingress and egress to state land may not be prohibited under this provision.

(2) Same as proposed.

(3) Any person may object to a notice of management closure made pursuant to (1) on grounds that no basis for closure or restriction exists, that the area of closure or restriction in the notice is larger than necessary, or that the closure or restriction notice specifies a period that is longer than necessary. The objector shall notify the appropriate area office of the objection and the reason for it. The area manager or designee shall investigate the objection and within two working days of receipt of the objection shall determine whether the closure or restriction complies with this rule. AN AREA

MANAGER MAY ALSO CONDUCT AN INVESTIGATION WITHOUT RECEIVING AN OBJECTION. If he determines that the closure or restriction should be modified or terminated, he shall notify the lessee or his agent in writing. The lessee or agent shall immediately modify or terminate the closure or restriction to comply with the area office decision. Failure to comply with the area office directive subjects the violator to a civil penalty pursuant to ARM 26.3.193. ~~The~~ IF THE INVESTIGATION RESULTED FROM AN OBJECTION, THE area office shall also give written notice to the objector. The objector or the lessee may appeal the area office decision to the commissioner by filing a written appeal with the area office within five working days of receipt of the notice. The area office shall forward the appeal to the commissioner. The commissioner shall convene the recreational use advisory council and, upon receipt of a recommendation of the council issue a written determination of the issue. The commissioner's decision is binding on the parties. If the commissioner's decision is to terminate or modify the closure or restriction, the lessee shall immediately remove or modify the closure or restriction signs. Failure to comply with the commissioner's decision subjects the violator to civil penalty pursuant to 26.3.193.

(4) Same as proposed.

(5) GENERAL RECREATIONAL USE CONDUCTED IN CONJUNCTION WITH A SPECIAL RECREATIONAL USE LICENSE APPLIED FOR PRIOR TO JULY 1, 1994, IS EXEMPT FROM CLOSURES OR RESTRICTIONS IMPOSED PURSUANT TO THIS RULE.

AUTH: 77-1-804, MCA; IMP: 77-1-804, MCA

RULE II (26.3.191) RECREATIONAL USE ADVISORY COUNCIL

(1) Same as proposed.

(2) The advisory council shall gather information and advise the commissioner on the validity of management closure or restriction appeals made pursuant to Rule I~~,~~ AND on appeals of area manager decisions regarding site-specific closure petitions pursuant to ARM 26.3.189~~, and on the issue of whether a recreationist has made a reasonable attempt to notify pursuant to ARM 26.3.192(1)~~. In advising the commissioner, the council shall attempt to provide reasonable recreational use of state lands within the bona fide management constraints of lessees.

(3) The following are general guidelines for the council's use in determining whether the term of a management closure or restriction is reasonable: for calving or lambing, 60 days; for breeding, 30 days; for gathering or moving, one day; for weed treatment, 5 days; and for concentration of 200 or more animal units per section for weaning and shipping, 30 days. The council may deviate from these guidelines as management circumstances dictate.

AUTH: 77-1-804; IMP: 77-1-804, 2-15-122

3. In addition, the agency has adopted a new Rule III in response to comments received on proposed amendments to 26.3.192. New Rule III reads as follows:

RULE III (26.3.192A) GENERAL RECREATIONAL USE OF STATE LANDS; NOTICE TO LESSEES OF OVERNIGHT USE, HORSEBACK USE FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, AND FOR DISCHARGE OF A FIREARM FOR ANY PURPOSE OTHER THAN LICENSED HUNTING

(1) If a lessee wishes to be notified prior to a recreationist entering upon the leasehold for overnight use not in conjunction with floating, horseback use for any purpose other than licensed hunting or for discharge of a firearm for any purpose other than licensed hunting, the lessee shall post, at all customary access points, signs that are provided by the department or duplicated from signs provided by the department. The lessee must include on the sign the following information:

(a) the name of the lessee or lessee's agent who must be notified;

(b) the telephone number of the person designated pursuant to (a); and

(c) clear directions to the residence of the person designated pursuant to (a).

(2) If a lessee wishes to be notified prior to a recreationist entering upon the leasehold for overnight use in conjunction with floating of a river or stream, the lessee shall post, at the customary access points, signs that are provided by the department or that are duplicated from signs provided by the department. The lessee must include on the signs the following information:

(a) the name, address, and telephone number of the lessee or lessee's agent;

(b) clear directions to the residence of the person designated pursuant to (a), if the residence is within 500 yards of the customary access point; and

(c) directions to the location of the nearest drop box.

(3) A lessee who posts land pursuant to (1) or (2) shall provide a clearly identified drop box:

(a) for posting pursuant to (1), at the residence of the person designated for notice pursuant to (1)(a); or

(b) for posting pursuant to (2):

(i) at the residence of the person designated for notice pursuant to (2)(a), if the residence is within 500 yards of the customary access point; or

(ii) if the residence is not within 500 yards of the customary access point, at the point that is closest to the access point and reasonably accessible to floaters. A lessee of two or more contiguous state tracts along a stream may, if the lessee wishes, provide drop boxes for those tracts at the outer upstream and downstream boundaries only.

(4) If the person designated pursuant to (1)(a) wishes to be notified in person or by telephone, that person shall be available to receive notice by telephone or in person from the hours of 7:00 A.M. until 9:00 A.M. A person wishing to engage in horseback use for any purpose other than licensed hunting or discharge of a firearm for any purpose other than licensed hunting shall contact the person designated for notice pursuant to (1)(a) during those hours, unless the person is not available. A floater shall attempt to contact a person

designated for notice pursuant to (2)(a) between 7:00 A.M. and 9:00 P.M, unless the person is not available. The recreationist may determine which method of contact to employ. If the recreationist contacts the person in person or by telephone, the recreationist shall, upon request provide his or her name, address, recreational use license number, and the name and recreational use license number of each person in his or her party. Notice authorizes the recreationist to engage in firearm or horse use for three consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. Notice authorizes overnight use for two consecutive days only.

(5) If the recreationist attempts to contact the person designated for notice by telephone or in person but that person is not available, or if the recreationist is a floater who wishes to engage in overnight use and no person has been designated for personal or telephone notice pursuant to (2)(a), the recreationist shall leave notice in the drop box provided pursuant to (3). The notice must provide the recreationist's name, address, and recreational use license number and the same information for each person in the party, and the dates of use. Notice by drop box is effective for firearm or horse use for three consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical. Notice by drop box is effective for overnight use for two consecutive days.

(6) The department shall, after notice and opportunity for informal hearing at the main office of the department in Helena, revoke the general recreational use license of any person who violates (4) or (5) above. In addition, the department may prohibit the person from obtaining a recreational use license for a period not exceeding two years from the effective date of the revoked license.

AUTH: 77-1-804, 77-1-806; IMP: 77-1-804, 77-1-806

4. The agency has amended the rules proposed for amendment with the following changes:

26.3.180 OVERVIEW OF RECREATIONAL USE RULES

(1) Same as proposed.

(2) Recreational use is divided into ~~three~~ TWO categories as follows:

(a) General recreational use - This use is generally defined as ~~licensed hunting, hunting related activities, fishing, hiking, and bird-watching.~~ any type of non-concentrated, non-commercial outdoor recreational activity except disturbance of archeological, historical, or paleontological sites (which is prohibited by the Montana Antiquities Act and subjects the violator to criminal penalties), wood gathering, tree cutting, ~~and~~ commercial rock

or mineral collecting, AND TRAPPING. This is more specifically defined in ARM 26.3.182(11). It requires purchase of a recreational use license. Detailed procedures and restrictions are contained in ARM 26.3.183 through ARM 26.3.197.

(b) Same as proposed.

~~(3) Other recreational use. Types of recreational use not within the definitions of general recreational use or special recreational use, such as non-commercial berry picking, do not require a recreational use or special recreational use license from the department. On leased state land, however, permission must be secured in accordance with ARM 26.3.157.~~ The purpose of [ARM 26.3.181 through 26.3.198 and Rules I and, II AND III] is to provide reasonable recreational use of legally accessible state lands within the bona fide management constraints of state land lessees. These rules should be interpreted to accomplish this purpose.

AUTH: 77-1-804; IMP: 77-1-801 through 77-1-810

26.3.182 DEFINITIONS Wherever used in ARM 26.3.180 through ARM 26.3.198, unless a different meaning clearly appears from the context:

(1) through (10) same as proposed.

(11) "General recreational use" means ~~fishing, hunting for game for which a hunting license is required by the department of fish, wildlife and parks, hiking, and bird-watching. It also includes accompanying a person who is hunting or fishing for the purpose of assisting that person. Day horseback use in conjunction with hunting and fishing is included as general recreational use. General recreational use includes scouting for big game on leased land if conducted during the weekend and the day before the beginning of any hunting season during which the recreationist intends to hunt.~~ non-concentrated, non-commercial recreational activity, except:

(a) collection, disturbance, alteration, or removal of archeological, historical, or paleontological sites or specimens (e.g., fossils, dinosaur bones, arrowheads, old buildings, including siding) (which requires an antiquities permit pursuant to 22-3-432, MCA);

(b) mineral exploration, development or mining (which requires a lease or license pursuant to Title 77, Chapter 6 3, MCA);

(c) collection of valuable rocks or minerals (which requires a lease or license pursuant to Title 77, Chapter 6 3, MCA); ~~and~~

(d) cutting or gathering of standing or downed trees (for which the department conducts sales pursuant to Title 77, Chapter 5, MCA, and issues licenses pursuant to ARM 26.3.160); AND

(E) TRAPPING.

(12) through (21) same as proposed.

(22) "Special recreational use" means:

(a) commercial recreational activities, such as outfitting, in which a private person, corporation, group or other entity charges a fee or obtains other consideration;

(b) non-commercial recreational activities conducted by an organization, such as a lodge, business, church, union, or club; ~~and~~

(c) ~~camping~~ overnight recreational use on leased or licensed lands by one or more persons ~~at other than~~ outside a designated ~~campgrounds~~ campground and more than 200 feet from a customary and legal access point or water body; AND

(D) OVERNIGHT HORSE USE.

AUTH: 77-1-804; IMP: 77-1-101, 77-1-804

26.3.186 GENERAL RECREATIONAL USE OF STATE LANDS; RESTRICTIONS (1) The following restrictions apply to persons engaging in general recreational use of state lands:

(a) and (b) same as proposed.

(c) A recreationist shall use firearms in a careful and prudent manner. A recreationist may not negligently, as defined in 45-2-101(37), MCA, discharge a firearm on state lands or discharge a firearm within one-quarter mile of an inhabited dwelling or of an outbuilding in close proximity to an inhabited dwelling without permission of an inhabitant. Temporary absences of inhabitants do not render a dwelling uninhabited. ~~Pursuant to ARM 26.3.192(1), a recreationist must make a reasonable attempt to notify the lessee of leased or licensed land prior to shooting for any purpose other than licensed hunting.~~

(d) ~~Camping and open~~ Open fires on leased or licensed land are restricted to campgrounds designated by the department for public camping. ~~Camping on all state land is limited to 14 consecutive days.~~ No fireworks may be discharged on state land.

(e) Overnight recreational use on leased or licensed land must take place within 200 feet of a legal and customary access point or water body that is navigable for recreational purposes under 23-2-302, MCA, ~~and only after a reasonable attempt to notify the lessee of leased or licensed land prior to the use in compliance with ARM 26.3.192(1)~~. The person may not drive or park a vehicle more than 50 feet from the access point. ~~A recreationist may not make overnight recreational use on leased or licensed land more than two consecutive nights or in designated campgrounds or on unleased, unlicensed land more than 14 consecutive days.~~ A RECREATIONIST'S OVERNIGHT USE OF STATE LANDS MUST NOT EXCEED THE FOLLOWING TIME LIMITS:

(I) FOR ANY SITE ON LEASED OR LICENSED LAND OUTSIDE A DESIGNATED CAMPGROUND - TWO CONSECUTIVE DAYS;

(II) FOR A DESIGNATED CAMPGROUND - 14 CONSECUTIVE DAYS;

(III) FOR UNLEASED, UNLICENSED LANDS OUTSIDE A CAMPGROUND - 14 DAYS PER CALENDAR YEAR, UNLESS PERMISSION FOR A LONGER PERIOD IS OBTAINED FROM THE DEPARTMENT.

(f) A recreationist may not keep horses on state land overnight. ~~Under ARM 26.3.192(1), for horse use that is not conducted in conjunction with licensed hunting, the recreationist must make a reasonable attempt to notify the lessee of leased or licensed land prior to the use.~~

(g) A recreationist ~~must~~ SHALL keep ~~dogs~~ PETS on a leash or otherwise in control. A recreationist may not allow the ~~dog~~

PET to harass livestock.

(h) through (j) same as proposed.

(2) same as proposed.

AUTH: 77-1-804; IMP: 77-1-804

26.3.187 GENERAL RECREATIONAL USE OF STATE LANDS; CATEGORICAL CLOSURES (1) Except as provided in (2), the following state lands are closed to general recreational use by the public:

(a) through (d) same as proposed.

(e) lands on which the department has ~~declared~~ proclaimed the threat of wildfire to be extreme pursuant to ARM ~~26.2.219~~ 26.6.219 or for which the governor has made such a proclamation pursuant to ARM ~~26.2.220~~ 26.6.220.

(2) through (3) same as proposed.

AUTH: 77-1-804; IMP: 77-1-804

26.3.192 GENERAL RECREATIONAL USE OF STATE LANDS; NOTICE TO LESSEES OF ALL USES OTHER THAN HORSE USE NOT FOR THE PURPOSE OF LICENSED HUNTING, DISCHARGE OF FIREARMS NOT FOR THE PURPOSE OF LICENSED HUNTING, AND OVERNIGHT USE

(1) ~~Before discharging a firearm or using a horse for any purpose other than licensed hunting or engaging in overnight recreational use on leased or licensed land, a recreationist shall make a reasonable attempt to notify the lessee or lessee's agent in person or by telephone of the planned activity and the date it will occur. Upon request, the recreationist shall provide his or her name, address, recreational use license number, and the names and recreational use license numbers of all recreationists in the party. Whenever the department has received notice from a lessee or lessee's agent that a recreationist may have violated this requirement, it shall immediately commence an investigation and shall within two working days advise the lessee or lessee's agent whether a civil penalty action will or will not be commenced or whether further investigation is necessary.~~

~~(2)(a)~~ If a lessee~~, in addition to the notice required in (1),~~ wishes to be notified prior to anyone entering upon the leasehold for ~~any other type of~~ general recreational ~~purposes~~ use OTHER THAN DISCHARGE OF FIREARMS FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, HORSE USE FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, OR OVERNIGHT USE, the lessee shall post, at all customary access points, signs ~~purchased from~~ that are provided by the department ~~at cost~~ or ~~constructed, in accordance with design and content specifications developed~~ that are duplicated from signs provided by the department. The lessee must include on the sign the following information:

~~(a)(i)~~(A) name of the lessee or lessee's agent who must be notified;

~~(b)(ii)~~(B) telephone number of the lessee or lessee's agent;

~~(c)(iii)~~(C) clear directions to the location at which the lessee or the lessee's agent may be contacted; and

~~(d)(iv)~~(D) clear directions to the location of the closest

drop box. If the lessee does not wish to be notified in person or by telephone, the sign must so indicate and need not contain the information required in ~~(b)(iii)~~(B) and ~~(c)(iii)~~(C). The information must be legible and legibility must be maintained.

~~(2)(b)~~(2) A lessee who posts land pursuant to ~~(1)(2)(a)~~(1) shall provide a clearly identified drop box for each single tract at a customary access point to the tract, except that a lessee of 2 or more contiguous tracts may provide one drop box for those tracts to which the access point provides convenient access. In cases in which a customary access point cannot be easily identified or a question of the convenience of an access point is raised by the public, the area manager shall make a determination and the lessee shall install drop boxes in accordance with that determination.

~~(3)(c)~~(3) If the lessee or agent wishes to be notified in person or by telephone, the lessee or his or her agent shall be available to receive notice from recreational users by telephone or in person from the hours of 7:00 A.M. until 9:00 P.M. A person wishing to make general recreational use of state lands posted pursuant to ~~(1)(2)(a)~~(1) shall ~~attempt to~~ contact the lessee or lessee's agent in person or by telephone during those hours if the recreationist's access point to the state land is five miles or less by the shortest road from the nearest public telephone or the location at which the lessee or lessee's agent is available UNLESS THE LESSEE OR LESSEE'S AGENT IS NOT AVAILABLE. The recreationist may determine which method of contact to employ. If the recreationist contacts the lessee or agent in person or by telephone, the recreationist shall, upon request, provide his or her name, address, and recreational use license number, the name and recreational use license numbers of all recreationists in his or her party and the dates of use. Notice is considered to have occurred if the recreationist is answered by a telephone answering machine and the recreationist leaves his or her name, address, and recreational use license number and the same information for each member of his or her party. Notice authorizes the recreationist to engage in general recreational use for three consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. If the recreationist attempts to contact the lessee by telephone or in person but the lessee or agent is not available, or if the shortest road distance from the recreationist's access point to the nearest public telephone or the location at which the lessee or lessee's agent is available is greater than five miles, the recreationist shall leave a notice in the drop box provided pursuant to (2). Notice by drop box is effective for three consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical.

~~(4)(d)~~(4) If the lessee wishes to be notified by drop box only, the recreationist shall leave notice in the drop box

provided pursuant to (2). The notice must provide the recreationist's name, address, and recreational use license number and the names, addresses, and recreational use license numbers of each person in his or her party, and the dates of use. The recreationist is responsible for providing paper and pencil or pen to prepare the notice. Notice by drop box is effective for three consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical, such as a back country hunting or fishing trip.

~~(5)(e)~~(5) The department shall, after notice and opportunity for informal hearing at the main office of the department in Helena, revoke the general recreational use license of any person who violates ~~(3) or(4)~~ ~~(2)(e) or (g)~~ (3) OR (4) above. In addition, the department may prohibit the person from obtaining a recreational use license for a period not exceeding 2 years from the effective date of the revoked license.

AUTH: 77-1-804, 77-1-806; IMP: 77-1-804, 77-1-806

26.3.193 GENERAL RECREATIONAL USE OF STATE LANDS: CIVIL PENALTIES (1) Pursuant to 77-1-804(8), MCA, the department may assess against a recreationist, lessee or other person a civil penalty of up to $1,000 for each day of violation of ARM 26.3.183(3), (4), (5), (6), or (7), ARM 26.3.186, ARM 26.3.187, ARM 26.3.188, ~~or~~ ARM 26.3.189, OR Rule I(3) ~~or ARM 26.3.192(1). The decision to pursue assessment of a penalty for violation of ARM 26.3.192(1) must be made by the commissioner, who may make the decision only after consulting with the recreational use advisory council~~. The department may waive the civil penalty for minor or technical violations and shall waive the civil penalty if a criminal penalty has been assessed for the violation.

(2) through (5) same as proposed.

AUTH: 77-1-804; IMP: 77-1-804

4. The agency has adopted the amendments to 26.3.189 as proposed.

5. In response to comments received on 26.3.186(1)(d) regarding fires, the agency has amended 26.3.181(2)(d) as follows:

26.3.181 ADMINISTRATION OF RECREATION ON STATE LANDS ADMINISTERED BY THE DEPARTMENT OF STATE LANDS

(1) Same as proposed.

(2) Lands owned by the state that are not subject to ARM 26.3.180 through ARM 26.3.198 are:

(a) through (c) same as proposed.

(d) highways and highway rights-of-way, EXCEPT THAT THE PROHIBITION AGAINST OPEN FIRES IN 26.3.186(1)(D) APPLIES WHERE A HIGHWAY CROSSES STATE LANDS ADMINISTERED BY THE DEPARTMENT;

(e) through (1) same as proposed.

(3) through (5) same as proposed.

AUTH: 77-1-209, 77-1-804, 77-1-806; IMP: 77-1-801 through 77-1-810

6. Approximately 850 people submitted written comments on the rules, and 90 persons testified at the four hearings held on the rules. A summary of the comments objecting to or proposing modification of the rules and the agency's responses to those comments are as follows:

26.3.182(11) - EXPANDED USE

COMMENT 1: Additional recreational use on a year round basis may result in management problems for the lessee (erosion, fire, weeds, etc.).

RESPONSE: The existing site-specific and emergency closure provisions are designed to minimize these impacts. For example, lands may be closed for weed control or to prevent significant environmental impact. These closure provisions are applicable to the expanded uses. In addition, fires are prohibited. Furthermore, the lessee may post the land for prior notice. This will allow the lessee to advise the recreationist of management concerns and will, in most cases, result in cooperation by the recreationist.

COMMENT 2: There's no definition of concentrated or non-concentrated use.

RESPONSE: "Concentrated recreational use" is defined in 77-1-101(2), MCA, as "any recreational use that is organized, developed, or coordinated, whether for profit or otherwise".

COMMENT 3: Is trapping now considered to be general or special recreational use?

RESPONSE: Trapping poses safety concerns for livestock and dogs and is not compatible with the surface use of state lands. Therefore, the definition of "general recreational use" has been amended to specifically exclude trapping. Trapping on leased or licensed state land will require the permission of the lessee or licensee. Trapping is allowed on unleased or unlicensed land.

COMMENT 4: There's no reason to add this additional access on state land as we have federal lands and established parks and recreational areas for these activities. The exception is hunting because harvest of animals is essential to keep them at a reasonable level.

RESPONSE: There is an expanded interest in and requests for recreation in Montana. The multiple use law (77-1-203, MCA,) encourages the Department to allow multiple use on these lands if those uses are deemed to be compatible with other authorized uses.

COMMENT 5: Even if the law says that a lessee is not liable, the lessees will have to pay to defend themselves if lawsuits are filed.

RESPONSE: Under 77-1-805, MCA the lessee is liable for

injury or property damage claims of recreationists only if the lessee's conduct constitutes willful or wanton misconduct. This high standard should minimize the number of lawsuits filed. In addition, a lessee may recover attorney's fees for defending lawsuits that are deemed frivolous by the court.

26.3.186(1)(c) - FIREARMS

COMMENT 6: Many comments were received which requested to not allow the discharge of firearms outside of the hunting season because of concerns regarding littering with shell casings, shell boxes, etc. as well as management problems and safety concerns.

RESPONSE: The Board recognizes the management and safety concerns over firearm usage outside of the hunting season. To mitigate these concerns, the lessee may, by posting the land, require notice prior to shooting outside of the hunting season. To facilitate notice when the lessee is not available for personal or telephone notice, the final rule (Rule III) provides for the drop box to be placed at the lessee or agent's residence. Littering is prohibited under the existing rules.

COMMENT 7: It's unreasonable to restrict shooting outside of the hunting season.

RESPONSE: Discharge of a firearm outside of the hunting season is not restricted. Under the proposed amendment to the rules, notification is required. A notification requirement does not require permission.

RULE 26.3.186(1)(d) - FIRES

COMMENT 8: A number of commentors stated that all fires should be prohibited because of the possibility of wildfires. One person cited the availability of camp stoves. Others stated that warming and signal fires should be allowed in emergencies. Still others stated that fires are allowed on BLM land and land administered by the Department of Fish, Wildlife, and Parks and that these fires have proven not to be a problem. Finally, some commentors stated that the rules should be amended to specifically prohibit fires between high water marks on navigable streams and within barrow pits of public roads.

RESPONSE: The Board believes that open fires above the high water mark pose an unacceptable risk of wildfire and that requiring use of campstoves is a minimal inconvenience to recreationists. The rule has therefore been adopted as proposed. The Board does not feel that fires below the high water mark create an unacceptable risk of wildfire and, therefore, the Board has chosen not to modify whatever right to build a fire is granted by the stream access law. The Board does, however, believe that fires in rights of way, which often contain high grass or often are not close to water, do pose an unacceptable risk. Therefore, the Board has added a restriction to 26.3.181(2)(d) which prohibits fires within the rights-of-way of the highways maintained by the State of Montana that cross

state land. Fires within the rights-of-way of county roads are prohibited by 26.3.186(1)(d).

COMMENT 9: Who is responsible for damage to state and private land from wildfires which are caused by recreational use of state land? If the recreationist is responsible, how can he be held accountable if no one knows who the recreationist is?

RESPONSE: The party that caused fire ignition is liable for damages to all lands affected by the fire if the fire was intentionally or negligently set or left to escape. When a human caused fire occurs, a fire investigation is initiated and an effort is made to determine who is responsible. If the responsible party cannot be determined, the lessee is eligible for reimbursement for damages to improvements on state land in accordance with ARM 26.3.194 to the extent that funds are available under that rule. Damage to private land would be compensable only to the extent the owner is insured.

COMMENT 10: The proposed rules are not clear regarding where fires are prohibited.

RESPONSE: Open fires are allowed on unleased, unlicensed land. Open fires on leased or licensed land are restricted to campgrounds designated by the Department for public camping. In addition, the rules do not apply between the ordinary high water marks on recreationally navigable streams. Open fires anywhere else on leased or licensed land are prohibited by these rules.

COMMENT 11: Any restriction on fires by recreationists should also apply to lessees.

RESPONSE: No activity conducted by the lessee for management purposes on state land is subject to the recreational use rules other than 26.3.183(4). However, if the lessee is engaged in general recreational use on the state tract, the recreational use rules must be adhered to.

COMMENT 12: The Board cannot pass a rule which prohibits fires between the high water marks because those fires are allowed under the Stream Access Law.

RESPONSE: The recreational use rules, as they currently exist, do not apply between the high water marks on streams that are navigable for recreational purposes under the stream access law (see 26.3.181(2)(c)). This has not been changed in the rules as adopted.

26.3.186(1)(e) - CAMPING

COMMENT 13: Several commentors objected to allowing overnight use because of littering, rendering the land unproductive, and interference with the lessees' management of the land. Other commentors stated that overnight use should not be limited to two nights or restricted to areas close to access points. One person suggested that overnight use be expanded to be allowed within 200' of a usable road or trail.

RESPONSE: Notification is only required if posted as such. In the proposed rule, camping on leased or licensed land is only allowed within 200' of a customary access point or navigable water body. In addition, the proposed rule limits camping on this land to two consecutive nights. The two day limit and the requirement to camp within 200' of an access point have been retained to minimize impacts. Furthermore, the lessee may by posting the land require prior notice. Therefore, the impacted area will be confined; the impact will be minimized; and the lessee will be able to monitor and adjust management activities if necessary. Littering is currently prohibited by rule.

COMMENT 14: In 26.3.186(1)(e) the phrase "14 consecutive days" should follow the word "nights or" to clarify that it applies to designated campgrounds. The 14 day limit should also be broadened to prohibit continuous use by moving each 14 days or by leaving the same site for one day at the end of each 14 day period. In addition, it would be desirable to add to this rule "...or on unleased, unlicensed land more than 14 days in a calendar year without permission from the Department...".

RESPONSE: The rule has been amended substantially as suggested.

26.3.186(1)(F) - HORSEBACK USE

COMMENT 15: A number of commentors objected to horseback use on state land because of potential for cattle rustling; weed infestation; and impacts on cattle, such as weight loss and scattering of cattle during breeding season. Some commentors suggested that only horses that had been fed certified weed seed free hay be allowed on the land. Others suggested that horseback use be allowed only when cattle are not present.

RESPONSE: Horse use is allowed under the existing rules if conducted in conjunction with licensed hunting. The rule as proposed requires that other horseback use to be limited to day use only and that recreationists may not keep horses on state land overnight. The lessee may require notification prior to the use. This notification requirement should reduce impacts to grazing livestock. Additionally, the proposed management closure provisions allow for closure of the state land to general recreational use during periods of potential conflict with bona fide management activities. The restriction to day horseback use reduces the potential for noxious weed introduction. There is a potential for cattle theft whether or not horseback use outside the hunting season is allowed. The Board feels that prohibiting night time horseback use and requiring notification will reduce the potential for theft. Horseback use therefore has been retained.

COMMENT 16: The lessee's lease rate should be adjusted to account for grass eaten by other horses.

RESPONSE: The amount of forage that could be consumed per day by a recreationist's horse will be minimal and will not impact the forage base available for the lessee's grazing

livestock. Therefore, there is no need to adjust the animal unit month carrying capacity on the lease.

COMMENT 17: Does 26.3.186(1)(f) prohibit horses kept in a trailer or truck?

RESPONSE: The proposed rule prohibits keeping a horse on state land overnight. That prohibition applies to horses actually on the ground or in a horse trailer.

COMMENT 18: Please clarify that overnight horse use on unleased, unlicensed land requires a Special Recreational Use License?

RESPONSE: The prohibition to overnight horse use applies to all state land regardless of whether it is leased/licensed or unleased/unlicensed. ARM 26.3.182(22) has been amended to include the suggested change.

26.3.186(1)(g) - DOGS

COMMENT 19: The word "dogs" should be changed to "pets" and all pets should be on a leash and not just "under the control".

RESPONSE: The word "dogs" has been changed to "pets". Imposing a leash requirement would be unreasonable to hunters utilizing dogs for game location and retrieval. In addition, the rule requires the recreationist to prevent the pet from harassing livestock. It is therefore not necessary to impose a strict leash requirement.

COMMENT 20: Rule 26.3.186(1)(g) needs to be reconsidered in the context of recreational and commercial lion hunting where normally the dogs used for such activities are not necessarily "under the control" when released on a lion track. It may be possible to limit this requirement to leased or licensed land and by requiring lessee permission if there's livestock in the area.

RESPONSE: The Board is of the opinion that this rule is not violated by use of trained tracking dogs.

26.3.192 - NOTICE TO LESSEES

COMMENT 21: (a) The phrase "reasonable attempt to notify" is not sufficient and personal notification should be required.

(b) Reasonable attempt to notify is too vague and needs to be clarified.

(c) Under a "reasonable attempt" requirement most recreationists will say they made the attempt but will likely never try.

(d) "Reasonable attempt" is a farce because the lessee can't be available 24 hours a day.

(e) Mandatory notification must be required because livestock inspectors ask us to report any strange vehicles on our property.

(f) The term "reasonable attempt" is not useful in this

context and will cause management problems as well as cause or enhance hard feelings among lessees and recreationists. Either require mandatory notification or use the optional notification procedures as delineated in (2)(a).

(g) Personal notification must be required for shooting, horseback use (outside of licensed hunting season) and overnight camping. This is workable because of (1) need for public safety; (2) to allow the lessee to fulfill their contractual obligations by protecting the quality of these lands; and (3) it is important to maintain communication between all persons. Personal notification is not complicated and all people have to do is plan ahead by contacting the lessee a few days ahead of the planned activity. You can call DSL to get the lessees name and address and drop him a note or letter.

(h) Personal notification should be required so that each party understands the other's concerns and intentions.

(i) Reasonable attempt to notify is acceptable but personal notification is too burdensome.

(j) If the rancher cannot be contacted, it's an automatic denial of access.

(k) Mandatory notification would create a confrontational situation and floaters would find it difficult.

(l) If private land is not posted, notification or permission is not needed and the recreationist simply uses the land unless he is notified to leave by the owner. Why should use of state land be more restrictive than unposted deeded land? Legislature has previously turned down motions for mandatory notification and it should not ever be required for any purpose.

(m) It is unlawful to require mandatory notice without requiring the lessee to post signs.

(n) The present rules already give the lessee the right to require notification and this should be sufficient if the lessee feels that notification is required.

(o) If they want notification, they should have to identify the state land with blue paint.

RESPONSE: Section 77-1-806 requires a lessee who wishes to be notified of recreational use to post the land. Comparably, if a private landowner wishes to be notified of recreational activity (except big game hunting) occurring on private land, the landowner must post that land. The Board finds that the same considerations that have led to this general rule for private land are applicable to leased state land. For these reasons, the Board has eliminated proposed 26.3.192(1) and has instead adopted new Rule III. This rule applies to overnight use, firearm use not for licensed hunting, and horse use not for licensed hunting and requires the lessee to post if he or she wishes to be notified of these uses. The Board does, however, recognize that special considerations pertain to these three uses, and it is for this reason that a separate rule has been adopted. In recognition of the special safety and management concerns of lessees, the rule requires that the notification drop box be at the lessee's residence. Furthermore, it does not allow the recreationist to notify the lessee by answering machine, as does 26.3.192. Additionally, in recognition of the

minimal mobility of floaters who encounter a posting sign, it provides that a lessee is available for personal notification from floaters only if the lessee or agent's residence is within 500 yards of the sign. Furthermore, it provides that, if the residence is farther than 500 yards, and the lessee wishes to be notified, then the lessee shall erect a drop box on the river where the river first enters the state tract. Such drop box notice in conjunction with floating shall be sufficient.

COMMENT 22: It's hard to provide notice to a lessee for certain recreational activities when you have no idea who the lessee is or how to contact them.

RESPONSE: The recreationist can acquire the lessee information by contacting the Department before commencing travel.

COMMENT 23: (a) Either sign-in boxes or proper posting for notification which would include the landowners name, address and telephone number, should be required.

(b) Why not consider mandatory posting of the recreational use license or coupon on a vehicle or boat to provide proof that the recreationist has purchased the license and to let the lessee know who's using the land.

RESPONSE: The purpose for requiring personal notification is to have pre-activity communication between the recreationist and the lessee to prevent safety hazards and to allow communication of management concerns. Sign-in boxes and license display on vehicles do not achieve these goals.

COMMENT 24: I'm against having to ask permission to get onto our public land.

RESPONSE: These rule amendments do not require the recreationist to ask permission for any general recreational activity. Notification is the act of informing the lessee of intent to engage in the authorized activity and not a request for permission.

COMMENT 25: As a handicapped individual, I object to having to notify anyone for use of state land.

RESPONSE: Notice by telephone is allowed under the section (1) as adopted. Therefore, a handicapped person can comply.

COMMENT 26: If the landowner is required to provide sportsmen with their name, address, etc., it will only advertise the state land to people who never knew the state land was there.

RESPONSE: Nothing in the proposed rules or proposed rule amendments requires a lessee to advertise the existence of state land. However, recreationists may inquire to the Department as to the name, address, and telephone number of the lessees of any leased or licensed tract.

COMMENT 27: (a) Lessees have to plan their activities to accommodate recreational use. Therefore, the recreationist

should contact the lessee days prior to the planned activity and on the day of the proposed activity.

(b) Mandatory notification should be required one week in advance of the planned activity.

(c) Mandatory notification should require two notices: The first could be by answering machine or letter, but the second one should be face-to-face with the lessee.

RESPONSE: Because of the uncertainty of personal on-site contact, a responsible recreationist will initiate the notification process in advance by telephone. However, even if last minute notification occurs, the objectives of the notification requirement still will have been met because the lessee will be able to notify the recreationist of management concerns.

COMMENT 28: The recreationist should have to provide proof of identification when providing notice.

RESPONSE: The key to an improved lessee/recreationist partnership is a cooperative and trusting attitude. Under the rule, the lessee has the option of requesting the name, address and phone number of the recreationist. However, authorizing the lessee to require the recreationist to show identification would not foster a cooperative and trusting relationship.

COMMENT 29: Notification isn't enough. Use of this land should require lessee permission.

RESPONSE: Under the recreational use law (Title 77, Chapter 1, Part 8, MCA), a recreationist may not be required to obtain the lessee's permission to engage in general recreational use.

COMMENT 30: Define reasonable attempt as "a genuine effort to contact the lessee in a manner that's calculated to be effective".

RESPONSE: The reasonable attempt provision has been removed from the rule. No definition is therefore necessary.

COMMENT 31: Use common sense as to the best time of day to contact a rancher/lessee.

RESPONSE: The hours during which the recreationist must attempt to contact the lessee are provided in 26.3.192(3) and Rule III(4).

COMMENT 32: Allowing recreational use without permission/notification will devalue the lease.

RESPONSE: Closures are authorized to minimize impacts on the lessee's operation and the land. The lessee may require notification for recreational activities by posting the land for notification. Whether, despite these revisions, the lease is devalued has not been determined. This determination will be made when the Board sets the AUM rate by rule in late 1994 or early 1995.

COMMENT 33: Are you aware that unannounced persons on ones

property (private or leased) could be considered stalking?
RESPONSE: The offense of stalking is committed by repeatedly following or harassing the stalked person. Arriving unannounced does not come within this definition.

COMMENT 34: A drop box is only as effective as the willingness of the people to cooperate.
RESPONSE: Drop box notification is used in 26.3.192 and Rule III only as the alternative means of notification.

COMMENT 35: Are you aware that you can't get insurance on land that you can't control access to?
RESPONSE: Section 77-1-805(1) limits the lessee's liability to the recreationist to instances in which the lessee has engaged in willful or wanton misconduct. Control of access to land does not preclude a lessee from obtaining property insurance on his or her improvements. To the extent damage is not compensated by insurance, the lessee may apply for compensation under 26.3.195.

COMMENT 36: Since the lessee has personal property and other investments on the land, could refusing to require personal notification be in conflict with personal property rights?
RESPONSE: The lessee has the authority to require personal notification under 26.3.192 and Rule III for nearly all types of general recreational use. The Board does not believe that not requiring notice in certain instances violates property rights.

COMMENT 37: To implement mandatory notification, will the Department provide a listing of current lessees?
RESPONSE: The rules as adopted do not provide for mandatory notification without posting. Lessee information must be provided on the signs.

COMMENT 38: There should be a number at DSL or DFWP that people can call to tell them that they plan to use an area of state land at a certain time.
RESPONSE: The purpose for requiring personal notification to the lessee is to encourage communications between the lessee and the recreationist. Notice to the Department or DFWP is not consistent with this purpose.

COMMENT 39: The present rules discourage lessees from requiring prior notification. ARM 26.3.192 should allow the lessee to post specific information in the area office instead of on a sign.
RESPONSE: The portion of the rule to which the commentor refers is 26.3.192(2), which is existing and is based on 77-1-806, MCA. That statute requires posting at the customary access points. No amendment may be made.

RULE I - MANAGEMENT CLOSURES

COMMENT 40: The DSL Area Managers should know the AUM capacities and the location of shipping pens on each state tract that is granted a management closure because they're the sole judge and jury for such closures.

RESPONSE: Subsection (3) of the proposed rule allows anyone to object to a notice of management closure. This triggers an investigation and determination by the Department. Additionally, a new provision has been added which allows the Department's area manager to review and terminate any closure or restriction which is unfounded.

COMMENT 41: The ad hoc committee wants the closure for irrigation to allow for closures during archery and upland bird season. This provision should remain as presently written and only allow closure on the area actually wetted by irrigation water and not the entire tract. [This comment was not made by the ad hoc committee.]

RESPONSE: This rule prohibits all recreational use on state lands under irrigation except for foot traffic for the purposes of ingress and egress during a hunting season. The Board agrees with the comment that the rule should remain as written regarding the seasons during which closure is limited. The rule has been amended to clearly provide the only those lands actually under irrigation are closed.

COMMENT 42: Intensive grazing should be added to the list of reasons for management closures.

RESPONSE: Intensive grazing is limited in extent on state land. In addition, land on which intensive grazing is occurring is not desirable for recreational use. Therefore, the suggested amendment has not been made.

COMMENT 43: The allowable reasons for closure appear to be too broad.

RESPONSE: The commentor did not indicate how the grounds for closure and restriction should be narrowed. The Board believes that the management closures and restrictions are reasonable. No change has been made.

COMMENT 44: No land should be excluded from public use for hunting and the rancher who leases state land should have his cattle off of it by hunting season.

RESPONSE: In some cases, the state lease is an integral part of a livestock operation and, because of the distribution of state lands, grazing use must fit into the lessee's overall livestock operation. Restricting or prohibiting grazing during hunting season could render tracts unusable for grazing and thus result in loss of revenue from that use. The management closure provisions as proposed are a reasonable accommodation to allow multiple use of the state lands.

COMMENT 45: The closure process fails to consider "short notice closure circumstances" such as changes in the weather that causes the rancher to have to gather cattle and pasture

them on state land. These circumstances shouldn't require 24 hour notice. For this type of closure, the lessee should be encouraged to provide recreational use on deeded property.

RESPONSE: The purpose of the 24 hour requirement is to allow the department to record the closure and thereby ensure that recreationists have an opportunity to be notified of it. This outweighs the minimal inconvenience to the lessee. The Board has not placed in the rule any language encouraging lessees to open private land because management closures are of short duration and because that language would not be binding.

COMMENT 46: There's already a law in effect dealing with closures due to fire danger and it covers all land, not just state land. A declaration by the county to only close state and not other federal and private land may conflict with this law. It is also a marked departure from procedures adopted under ARM 26.3.187 for categorical closures, and provides an opportunity for abuse of this type of management closure since and will result in confusion to the public. Use existing laws, policies and procedures and at a minimum, let the area manager make the up-front decision whether to invoke this type of closure.

RESPONSE: This ground for a management closure has been removed.

COMMENT 47: Can the Department object to a management closure under this rule? Due to large areas, other workload and small staff, it is unrealistic to expect DSL to thoroughly investigate management closure objections within two working days. To be consistent with other law enforcement activities, the investigation should include photos, witness statements, etc., that will hold up under legal action. The rule should be revised to read "...area manager or designee shall make adequate inquiry regarding the objection in a timely manner to determine...". Also, it is impossible to provide the lessee with the appropriate closure signs within 24 hours after receiving notification from the lessee.

RESPONSE: The Board recognizes a need for unsolicited review in some circumstances. Therefore, Rule I(3) has been amended to allow for Department review and closure termination if warranted by facts.

The Board agrees that the two working day time frame may be difficult to comply with, especially if an intensive investigation were required. The review conducted within the two day time frame will not be intensive. The intensive investigation will occur if there is an appeal of the area manager's decision.

The rule does not require that the signs be provided to the lessee within 24 hours. The rule requires the Department to provide signs. If the lessee wishes to have the closure effective within 24 hours, it is his or her responsibility to obtain and post signs within that time frame.

COMMENT 48: Outfitters pay a significant annual rental for Special Recreational Use Licenses (SRUL) and allowing management

closures which may affect outfitters should be a concern. In some situations, this could cause an extreme hardship on the outfitter because it prohibits using the land with little or no prior notice. It could also result in the Department having to refund a portion or all of the license rental for the affected SRUL. These types of closures should not apply to general recreational use being conducted under the terms of an SRUL and at a minimum, existing licenses should be grandfathered as exempt from these closures.

RESPONSE: The Board recognizes that outfitting and other special uses provide a good source of income to the trusts and that existing SRULs have been applied for or been issued for up to five years without any stipulations regarding management closures imposed by lessees. Therefore, in order to fulfill the terms of these existing applications and SRULs, there has been added to the rule a grandfather clause exempting SRULs applied for prior to July 1, 1994. However, if there are valid management reasons for closure, all general recreational use should be prohibited in order to preserve the leasehold value. New SRULs issued after adoption of the proposed amendments will include a stipulation which recognizes the lessees' management closure privilege.

COMMENT 49: If there are frequent management closures, it is unrealistic for DSL to maintain an accurate and current master list of management closures.

RESPONSE: It is unrealistic to expect a daily or even weekly updated master listing of management closures for the entire state. However, such a statewide listing is feasible on a periodic basis. Area Offices will maintain up to date listings as they are reported.

COMMENT 50: I have some concerns regarding restrictions on calving and concentrations of animal units. Some of these restrictions could be lump summed so that closure could extend over a time period which is longer than necessary.

RESPONSE: Rule I(3) has been amended by adding a provision which will allow the Department to review a closure at any time and terminate the closure if warranted. Anyone believing that management closures are being abused by a lessee may object to the closures and trigger a review by the Department.

COMMENT 51: Rule II(3) references only "guidelines", so apparently the actual term is up to the lessee.

RESPONSE: This comment is correct, except that the actual closure term is subject to review by the appropriate Department area manager and ultimately by the Recreational Use Advisory Council and Commissioner, if necessary.

COMMENT 52: Management closures by the lessees cannot be allowed as they would violate 77-1-203(4), MCA. That statute provides that "...leased lands may not be closed at any time for general recreational purposes without advance written permission of the Department".

RESPONSE: The management closures provided for by Rule I are not imposed by the lessee. Rather, lands on which the activities described in Rule I(1) are categorically closed by virtue of the activities. (The closure cannot be enforced, however, until the lessee advises the Department and posts the land.) Therefore, the management closure does not violate the requirement that land cannot be closed to general recreational use without the permission of the Department.

GENERAL

COMMENT 53: Many commentors questioned the Department's ability to enforce the license requirements and the restrictions regarding recreational use.

RESPONSE: The Department is limited in its ability to enforce the license requirement and program rules. However, the Department, along with the Department of Fish, Wildlife, and Parks, is charged with enforcement of the program and will enforce to the extent possible.

COMMENT 54: If game is shot on state land but dies on private land, the hunter must, by law, retrieve it. Therefore, you've granted right of trespass.

RESPONSE: The state land recreational use program does not grant access onto any private lands for retrieval of wounded game. If a game animal is shot on state land but dies on private land, the hunter must obtain permission from the landowner to retrieve it. This is no different than for wounded game that travels from one private tract to another.

COMMENT 55: Many lessees questioned whether they would be required to enforce these rules. Some believe that they can watch the land better than wardens and should be able to demand to see the license before the use can take place.

RESPONSE: There is no requirement in the existing or proposed rules that the lessee enforce the rules. During the public comment period on the initial rules, a number of persons suggested that recreationists be required to show the recreational use license to the lessee upon demand. This comment was rejected. The rationale for the rejection was as follows:

> "Giving a lessee the right to inspect a recreationist's license could lead to confrontation. Also, the right to inspect the license is at least a quasi-law enforcement function that should not be delegated to persons who have not had law enforcement training. The state could incur liability for the lessee's actions in this situation. However, a lessee should not be precluded from making inquiry as to the recreationist's status. A provision allowing for inquiry has been added as section (6). In addition, a cross-reference to this provision has been added to Rule X."

The Board reasserts this reasoning in response to the current comment.

COMMENT 56: Recreationists should not be able to use the lands at night.

RESPONSE: The only recreational use that will occur to any significant degree after dark is camping. The lessee can, by posting, require notification. This notification will give the lessee an opportunity to provide the recreationist with his or her concerns and requests regarding safety and management. Thus, impacts from night use should be minimal and night use has not been prohibited.

COMMENT 57: The decisions agreed to by the ad hoc committee should be tried without change for one complete season.

RESPONSE: Under the Administrative Procedure Act, every citizen has the right to suggest amendments to these proposed rules and to have his or her comments considered by the Board.

COMMENT 58: The Board seems set on providing everyone with recreational facilities. They should be concerned with getting money for the state land as it was originally intended and not providing recreational facilities for a special few.

RESPONSE: The Board has attempted to recognize all legitimate activities on state lands in such a manner that those activities can coexist with minimal conflict with one another and provide income to the trusts.

COMMENT 59: Whose money and time will be spent eradicating weeds and putting out fires? The public historically litters and inflicts other damage on parks and roadways and there's no reason to think this land will be treated differently. How do you plan to handle this?

RESPONSE: ARM 26.3.195 allows a lessee to apply for assistance in weed control when weeds have been introduced by recreational activities. The proposed rules prohibit open campfires leased or licensed on state land. Additionally, 77-1-805(2), MCA, provides that the lessee or licensee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user, except that he or she shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority, or both, as circumstances dictate.

Littering is prohibited on state lands. Motor vehicle use is restricted to certain public roads. Violators of these provisions, if identified, will be prosecuted.

COMMENT 60: Each recreational use license should be site-specific to a particular section. This would still allow access but would enable the lessee to find a record of who has access to his lease.

RESPONSE: Section 77-1-802 provides that the recreational use license authorizes the holder to use all accessible state land that is not closed to recreational use. If a lessee desires to know who is recreating on a state lease, the lessee may post the land under ARM 26.3.192 and Rule III. Notification

would then be required for all recreational use.

COMMENT 61: The proposals, if accepted, threaten to result in the closing of thousands of acres of private land. This would have a very serious economic impact on the state.

RESPONSE: The Board has no control over what may occur on private lands. In determining whether to expand the definition of general recreational use, the Board must consider the compatibility of expansion of the definition with the existing uses of state lands.

COMMENT 62: Testimony would indicate that the present funds for weed control are almost inaccessible. The state is setting itself up for a weed liability that it is not prepared to handle either managerially or financially.

RESPONSE: Monies, although limited, are available for weed control on noxious weeds proven to be the result of recreational activity. Lessees must apply for the available funds through the local DSL area office. It is speculative at this time to assume that a weed problem will develop that cannot be adequately addressed.

COMMENT 63: Section 26.3.180 requires that the rules provide reasonable recreational use of the land within the bona fide constraints of the leases - in short, having recreational use with the same regulations and rules as the lessee. In 26.3.186(1)(b) through (g) the restrictions should apply to anyone, not just recreational users.

RESPONSE: The language to which the commentor refers references constraints on recreationists in order to minimize impacts on lessee's operations. A lessee who engages in recreational use is bound by the restrictions. Lessee activities pursuant to the lease are regulated by the lease and state land leasing rules.

COMMENT 64: The Board should declare a two year moratorium of any changes or uses of state land to let the process work.

RESPONSE: Under 2-4-315, MCA, any person may petition for an amendment to an administrative rule. The Board cannot refuse to consider a petition filed under this statute on grounds that it has imposed a moratorium on rule making.

COMMENT 65: Why not consider recreational leases and make the individual or organization with the lease responsible for use of the land. Also, put these recreational leases up for bid to generate more money.

RESPONSE: HB778, which was passed in 1991 and is known as the recreational use law, provides for the recreational license system and does not allow the Department to issue recreational leases.

COMMENT 66: I understood that a compromise would be worked out by the MSGA and the MWF and then be presented for public comment. This has been presented by the media like it's a done

deal. The MSGA does not represent all leaseholders and not everybody agrees with their compromise. It is a disservice to other recreationists and leaseholders to have only these two organizations involved.

RESPONSE: The compromise to which the comment refers is the basis for the proposed rules. However, any person has the right to submit comments on the proposed rules. The Board has considered the comments received and made changes in the proposed rules where it determined that the comments demonstrate that a change is warranted. No comment has been rejected because it differs from the compromise.

COMMENT 67: In 26.3.180(2), the words "three categories" should be " two categories" because there is now only general and special recreational use.

RESPONSE: The rule has been amended in accordance with the comment.

COMMENT 68: In Rule I(1), the phrase "except as provided in (4)" should be eliminated because there's no (4) in the rule.

RESPONSE: The rule has been amended to reference a new section (5) that is being added to the rule for other reasons.

COMMENT 69: DSL should supply signs to all lessees and the lessee could mark the approximate boundary of state lands without any surveys needed.

RESPONSE: The issue of marking state lands is not a part of this rule making proceeding.

COMMENT 70: If the Board takes away the land control from the lessee, then the Board should be responsible for the damages caused by the recreationists.

RESPONSE: A recreationist is responsible for damages that he or she causes. If the recreationist cannot be identified, the lessee may apply for reimbursement under ARM 26.3.194.

COMMENT 71: I hope the Board doesn't base its decision on popular vote, but rather on the facts. Recreationists need to understand how this land is meant to be used.

RESPONSE: Under the Administrative Procedure Act, the Board's decision must be based on information and arguments available to it or received during the comment period.

COMMENT 72: There were several comments that question whether the current $5.00 fee for recreational use fee is fair market value for that use. Who determines the fee for this use?

RESPONSE: Section 77-1-802, MCA, passed during the 1991 Legislature established a $5.00 fee for recreational use. The 1993 Legislature amended 77-1-802 to require that the Board, taking into account recommendations of the State Land Board Advisory Council, set the fee for the license at a level that will attain full market value. The Advisory Council is scheduled to make this recommendation in late 1994 or early 1995. The Board will then determine, by rule, whether to adjust

the license fee.

COMMENT 73: There were several comments which stated that these are public lands and that they are under a multiple use mandate. Therefore, the Board should not restrict the kinds of recreational activities allowable.

RESPONSE: The Legislature, in House Bill 778, amended the multiple use statute to provide that state lands are open to general recreational use. However, in HB778, the Legislature also provided that the term "general recreational use" includes hunting, fishing, and "other activities determined by the Board to be compatible with the use of state lands." Therefore, the Legislature specifically authorized the Board to limit the recreational activities allowed on state lands.

COMMENT 74: When HB778 was originally passed, no one envisioned year round recreational use.

RESPONSE: Section 2 of HB778 specifically provided that the term "general recreational use" includes hunting, fishing, and "other activities determined by the Board to be compatible with the use of state lands". Nothing in this language indicated that the Board may not expand recreational use to include activities that may occur on a year round basis.

COMMENT 75: The Department is in violation of the Montana Constitution and the Multiple Use Act (77-1-203, MCA) [specific comments were directed at sections 3 and 4 of this statute and indicated, that since these sections have been on the books since 1927, the Department has been in violation for many years] and the Range Land Management Act (76-14-102,MCA).

RESPONSE: State lands are not "public" lands in the same sense as federal lands. The Montana Constitution Article X, Section 11 states, "All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been granted, donated or devised." Essentially, all of the state lands administered by the Department were granted to the state from the federal government at statehood (through the Enabling Act) to generate revenue for the support of the common schools and other state institutions.

In specific response regarding comments on sections 3 and 4 of the multiple use law, those sections were not enacted until the passage of HB778 in 1991. For further response to the comment regarding the multiple use law, see the response to Comment #76.

In response to the comment regarding the Rangeland Resources Act, that act is administered by the Department of Natural Resources and Conservation and creates a rangeland improvement loan program. Therefore, that act has nothing to do with state trust land management.

COMMENT 76: Several comments questioned whether

recreational use has precedence over lease rights and a persons livelihood or ability to make a living.

RESPONSE: ARM 26.3.157(3), and the Department's lease form specifically provide that the Department reserves the right to allow recreational use. Under the multiple use law and 77-1-101(5), the Board is to allow recreational use in a manner that is compatible with the use for which each tract is classified.

7. The Administrative Code Committee of the Montana Legislature commented to the Department that the Notice of Reasonable Necessity contained in the Notice of Proposed Rule Making should have, but did not, indicate why amendments were reasonably necessary at this time. The proposals were necessary at this time because in the fall of 1993, the department received a number of petitions to amend the recreational use rules. These petitions requested both that the recreational use of state lands be expanded and that it be narrowed. These rules the parties requesting narrowing of the definition did so because of management concerns. This rule making was proposed to deal with concerns raised by both those who wish to have recreational use expanded and those who wish to have it narrowed.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State June 27, 1994.

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

In the matter of the amendment of ARM 26.4.201, 26.4.202, 26.4.204, 26.4.205, 26.4.206, and 26.4.207; repeal of ARM 26.4.203; and adoption of Rules I through V implementing the Opencut Mining Act.	NOTICE OF AMENDMENT, REPEAL, AND ADOPTION

TO: All Interested Persons

1. On April 14, 1994, the Department of State Lands published notice of the proposed amendment of rules ARM 26.4.201, 202, 204, 205, 206, and 207; the proposed repeal of rule ARM 26.2.203; and the proposed adoption of new Rules I through V in place of repealed rule ARM 26.2.203 concerning implementation of the Opencut Mining Act at pages 914 through 924 of the 1994 Montana Administrative Register, issue number 7.

2. The agency has amended ARM 26.4.201 as proposed with the following changes:

26.4.201 APPLICABILITY (1) - (3) Same as proposed rule.

(4) Under certain conditions specified in 82-4-431, MCA, an operator WHO HOLDS A CONTRACT may remove up to 1,000 cubic yards of mineral and overburden without first obtaining aAN ADDITIONAL contract or amendment. In addition to the requirements stated in 82-4-431, MCA:

(a) and (b) same as proposed rule.

3. The agency has amended ARM 26.4.202 and 26.4.205 through 26.4.207 as proposed.

4. The agency has repealed rule ARM 26.4.203, found on pages 26-415 through 26-419 of the Administrative Rules of Montana.

5. The agency has adopted new Rules I through V (ARM 26.4.203A through 26.4.203E) as proposed in place of repealed rule ARM 26.4.203.

6. The agency has amended ARM 26.4.204 as proposed with the following changes:

26.4.204 APPROVAL OR DISAPPROVAL OF AN APPLICATION FOR A CONTRACT (1) same as proposed rule.

~~(3)~~(2) ~~No excavations will be allowed~~The department may not approve any application involving excavations on any river or live stream channels~~, in confined drainages,~~ or on floodways at locations likely to cause detrimental erosion or offer a new channel to the river or stream at times of flooding except that such excavations may be allowed when necessary to protect or promote the health, safety, or welfare of the people.

(3), (4), (5) same as proposed rule.

7. The following is a summary of the comments opposing or recommending modification of the proposed rules and the agency's responses to those comments:

GENERAL COMMENTS

COMMENT: The language in many of these proposals is often vague and places the burden upon a contractor who is only trying to complete work for a state or federal project owner with a contractual completion date. Vague language found in many environmental rules and regulations often results in serious delays and unexpected cost overruns to an urgent construction project.

RESPONSE: The proposed rules do not contain excessively vague language, but do leave room for different ideas and techniques that meet the requirements of the Act and flexibility to meet varying specific circumstances on the ground. Language requiring specific, unwaivering performance standards would create a greater burden on industry in attempting to comply with these rules. The Department has prepared and distributed guidelines that provide acceptable standards, and also examples of acceptable reclamation plans. Most operators are aware of the requirements prior to submitting bids that subject them to reclamation statutes.

COMMENT: The proposed rule changes contain nothing concerning retroactivity or nonretroactivity to existing operations, and how the proposed changes may affect current reclamation plans. We oppose any retroactive effect the proposed changes may have on existing operations.

RESPONSE: The proposed new rules and amendments to existing rules do not take effect until adopted by the Board of Land Commissioners and published in the Montana Administrative Register. 2-4-306, MCA. All reclamation contracts approved after the effective date must comply with the new rules. Contracts approved prior to the effective date will not be affected by the new rules. The procedures for amendment and revision (26.4.205), progress reports (26.4.206), determination of civil penalties (26.4.207), and bond adjustments and release (Rule I) will apply to all contracts, however.

ARM 26.4.201 APPLICABILITY

COMMENT: Regarding proposed amendments to ARM 26.4.201(4), the rules should not change the maximum cubic yards of material and overburden to be mined from 10,000 to 1,000, before a reclamation plan is required.

RESPONSE: This proposed amendment implements Section 82-4-431, MCA, as that section of the Opencut Mining Act was amended in 1987 (Sec. 4, Ch. 280, L. 1987). This provision does not change the maximum yardage mined before the operator is subject to the Opencut Mining Act. Rather, it allows an operator who is already subject to the Act (has previously exceeded 10,000 cubic yards), to mine up to 1,000 yards by complying with specific sections of the Act, but not requiring the submittal of a complete application and bond. Section (4) has been amended to clarify that this is the case.

ARM 26.4.204 APPROVAL OR DISAPPROVAL OF AN APPLICATION FOR CONTRACT

ARM 26.4.204(1)

COMMENT: Proposed rule ARM 26.4.204(1) would require the De-

partment to disapprove an application because weather or other conditions on site do not permit an appropriate on-site evaluation. This proposed rule is overbroad, vague, and leaves too much open for interpretation. Denial of the application should not be mandatory. The language should be changed to substitute "may be disapproved" for "shall be disapproved".

RESPONSE: Section 82-4-434, MCA, requires the board to approve or disapprove a reclamation plan within 30 days after receipt, or the plan will be considered approved by default. This section provides an additional 30 days of review for sufficient cause. Applications are frequently received during the months when excessive snow cover does not allow a thorough examination of the land to be affected. Without examining the site, the Department cannot make an informed decision on the adequacy of the proposed reclamation plan. Because the statute requires the board to notify the applicant of approval or disapproval, "shall" is the proper term to use.

The Department does not agree that the phrase "weather or other conditions on site" is overbroad and vague. This language is sufficiently specific yet flexible enough to allow for unforeseen conditions on site that may preclude an adequate evaluation by Department staff.

ARM 26.4.204(2)

COMMENT: The proposed amendments to ARM 26.4.204(2) would prohibit mining involving excavation in confined drainages. What does the term "confined drainage" mean? Could it be misinterpreted to mean literally ALL drainages?

RESPONSE: The Department agrees that the term "confined drainages" may be too inclusive and difficult to define. The Department has therefore deleted this proposed change.

ARM 26.4.204(3)

COMMENT: ARM 26.4.204(3) should be changed to address the fact that contractors working on state and federally funded highway construction projects are already required to seek and receive archaeological clearances from the State Historical Preservation Office and/or the archaeologist for the Montana Department of Transportation. In almost all newly opened pits, an independent archaeological survey and inventory must be completed prior to any disturbance. Your proposed rule does not recognize these agencies or the existing rules to protect archaeological sites from damage.

COMMENT: Commenter opposes the requirement contained in ARM 26.4.204(3) that an operator sponsor an archaeological survey if the site is likely to contain significant archeological or historical artifacts. Sponsoring such surveys could prove costly to an operator, both from the standpoint of halting potential production, as well as absorbing any expense of a survey. The language in its current form hints of a taking, and if anything, the state should absorb any survey related expenses.

COMMENT: The phrase "significant archaeological or historical artifacts" is very subjective, and leaves too much to the interpretation to an appointed authority.

RESPONSE: It is recognized that operations which may involve

federal or specific state funds, must comply with federal requirements under Section 106 of the National Historic Preservation Act. However, many operations do not fit into that category. Section 82-4-434 (2)(j) of the Opencut Mining Act requires that archaeological and historical values in areas to be mined be given appropriate protection. It is impossible to comply with that section without conducting surveys to determine if, in fact, there are any values that require protection. If a survey is required, allowing any competent professional to conduct the survey will create options for the operator to select that person. The Department will continue to recognize acceptable surveys required by other agencies.

The term "significant" is intended to prevent questionable or ambiguous values from prohibiting or delaying a proposed operation. It is difficult to further define criteria for what would constitute "significant" archeological or historical values requiring a survey as this determination requires the exercise of expertise and judgment. The staff of the Department's Opencut Mining Bureau has received paraprofessional and certification training in recognizing such values and consult with the State Historic Preservation Office of the Montana Historical Society to make this determination.

RULE III MINING AND RECLAMATION PLAN

COMMENT CONCERNING RULE III(9)(b): The stipulation of 3:1 slopes contained in Rule III(9)(b) is for successful reclamation and safe equipment operation. Successful reclamation and safe equipment operation has been achieved at slopes of 2:1 or flatter at many sites in the mining industry. Therefore the 3:1 slope stipulation should be changed to 2:1 or 2½:1 slope angles. This can mean a significant amount of money to a small operator.

RESPONSE: As a general rule, moisture infiltration is increased, and runoff (sedimentation) decreased, as slope steepness is reduced, and the easier for wheeled equipment to traverse on the contour. The proposed rule does allow for exceptions and requests to construct steeper slopes would continue to be considered and evaluated. If the applicant can provide assurance that reclamation will be successful, approval may be expected.

COMMENT CONCERNING RULE III (13)(e): Hydroseeding is not included in this stipulation but has been proven to be a successful method of revegetation. Hydroseeding should be included with drill seeding, and broadcast seeding as an option to the operator.

RESPONSE: Hydroseeding is an acceptable method of broadcast seeding and is highly recommended in specific situations.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner of State Lands

Certified to the Secretary of State June 27, 1994.

BEFORE THE BOARD OF OIL AND GAS
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules pertaining to horizontal wells and enhanced recovery tax incentives	))))	NOTICE OF THE ADOPTION OF NEW RULES I THROUGH VI

To: All Interested Persons.

1. On April 14, 1994, the Department of Natural Resources and Conservation, Oil and Gas Division, published notice of a public hearing on the proposed adoption of new rules pertaining to horizontal wells and enhanced recovery tax incentives in the Montana Administrative Register Issue No. 7, starting at page 925 and inclusive of page 928.

2. On May 12, 1994, at 1:00 p.m., in the conference room, Oil and Gas Conservation office, 2535 St. Johns Avenue, Billings, Montana, the Board of Oil and Gas held a public hearing to consider the adoption of new rules pertaining to certification of horizontal wells and enhanced recovery projects for tax purposes.

3. No comments or testimony were received on proposed rules I, II, IV, V, and VI. Comment was received on proposed rule III. The comment has been considered.

4. The board has adopted new rules I (36.22.1701), II (36.22.1702), IV (36.22.1704), V (36.22.1705), and VI (36.22.1706) as proposed. The board adopts rule III (36.22.1703) as proposed with the following changes (new material is underlined, deleted material is interlined):

NEW RULE III (36.22.1703) APPLICATION - CONTENTS AND REQUIREMENTS (1) Applications for certification and approval of secondary recovery projects and new tertiary recovery projects that comply with the requirements of 82-11-204, MCA, et seq. need not file an additional application for certification; the project will be certified upon approval by the board. Applications for secondary recovery projects and new tertiary recovery projects following the procedure in ARM 36.22.1229 through 36.22.1234 must additionally include a map or plat showing the project boundaries and a legal description of all of the tracts to be included in the project area. Applicants for certification of tertiary projects must also describe the tertiary method(s) to be used. Applicants will be required to supply technical and economic evidence that the project can reasonably be expected to result in a significant ~~is reasonably necessary to~~ increase in the ultimate recovery of oil. ~~and that the value of the estimated additional oil recovery exceeds the estimated additional cost incidental to conducting such operations.~~

(2) Applications for approval and certification of expansion of an existing enhanced recovery project must include:

(a) a map or plat of the previously approved project and the area to be affected by the proposed expansion;

(b) a description of the method or methods to be used to enhance recovery in the project area;

(c) the name(s), depths, and description of the unitized or target formation(s) and the formation(s) which are producing or have produced within the project area;

(d) the location of all oil and gas wells, input wells, dry holes, and drilling wells;

(e) the location of proposed new injection or production wells or horizontally re-completed injection or production wells and the anticipated timetable for drilling or re-completion of such wells;

(f) the proposed effective date of the project. If the project expansion involves a change in operating conditions the application must include a description of both the current operating practices and the proposed changes to be made. The applicant must demonstrate that the proposed expansion is reasonably expected to result in the recovery of oil that would not otherwise be recovered if the expansion were not performed. (History: Sec. 82-11-111 MCA; AUTH: 7-7-2101, Eff. 12-17-93; IMP, Sec. 15-23-601 and 15-36-101 MCA.)

COMMENT: The Montana Petroleum Association (MPA) comments that the language contained in the last sentence of paragraph 1, rule III is derived from the statutory pooling language in Sec. 82-11-205(2) MCA, and therefore does not apply to the "entire realm of enhanced recovery projects". MPA suggests that the proposed rule would require disclosure by applicants of sensitive internal economic information and the requirement could become intrusive depending upon its interpretation by future regulators. MPA requests that the sentence be deleted.

RESPONSE: The language cited by MPA is indeed the economic test to be applied to all projects that rely upon compulsory unitization for approval; most of Montana's enhanced recovery projects have been formed in this way and have met this test in the process. Rule III covers three types of projects: (1) compulsory projects formed under Sec. 82-11-204 MCA, (2) wholly voluntary projects formed under the existing Administrative Rules, and (3) expansion of existing projects already formed under (1) or (2). The economic test applied to compulsory projects will continue to be the statutory language cited; the proposed rule applied the same test to voluntary projects for consistency and to assist potential applicants in preparing testimony to meet this unambiguous economic test. The test that the board must make under SB18 is less straightforward: "The project must involve ... methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of ... oil that may

potentially be recovered" (Sec. 15-36-101(c) MCA). The legislation leaves the determination of significance to the board, but requires it to consider all of the facts and circumstances in doing so. The board cannot eliminate the consideration of economics as part of its process and its rules should not lead an applicant to believe that such matters will not be considered. However, to the extent that the economic test required under the compulsory unitization statute does appear to require submission of more extensive economic evidence than that which would ordinarily be needed to support approval of a voluntary project, the proposed rule III has been modified as shown above. This modification more closely follows the language of the legislation and removes that part of the economic test that could be interpreted as requiring disclosure of proprietary internal economic data. The rule is adopted as modified.

5. The effective date of the new rules is July 8, 1994.

BOARD OF OIL AND GAS CONSERVATION

THOMAS P. RICHMOND, ADMINISTRATOR

DONALD D. MACINTYRE, RULE REVIEWER

Certified to Secretary of State June 27, 1994.

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

In the matter of the correction relating to the amendment of rules 46.12.1107, 46.12.1108, 46.12.1109, 46.12.1110, 46.12.1111, 46.12.1112, 46.12.1113 and 46.12.1114 pertaining to medicaid coverage of services provided to recipients age 65 and over in institutions for mental diseases	))))))))	NOTICE OF THE CORRECTION RELATING TO THE AMENDMENT OF RULES 46.12.1107, 46.12.1108, 46.12.1109, 46.12.1110, 46.12.1111, 46.12.1112, 46.12.1113 AND 46.12.1114 PERTAINING TO MEDICAID COVERAGE OF SERVICES PROVIDED TO RECIPIENTS AGE 65 AND OVER IN INSTITUTIONS FOR MENTAL DISEASES

TO: All Interested Persons

PLEASE NOTE: The Department of Social and Rehabilitation Services' amendment notice published at page 1591, 1994 Montana Administrative Register, issue number 11, adopted proposed amendments to ARM 46.12.1109 that included errors in paragraph numbering. This notice specifies the correct form of the amendments to ARM 46.12.1109.

1. The Department has amended the following rule as proposed with the following changes:

46.12.1109 ~~GENERAL REQUIREMENTS AND LIMITATIONS FOR~~ INSTITUTIONS FOR MENTAL DISEASES, PROVIDER PARTICIPATION REQUIREMENTS ~~(1) An institutions for mental disease must follow the rules set forth at ARM 46.12.1246(2) through (2)(b), 46.12.1223(1) through (1)(e), 46.12.1223(1)(f), 46.12.1245, 46.12.1246, 46.12.1254, 46.12.1258, 46.12.1260, 46.12.1261, 46.12.1264 and 46.12.1268.~~

~~(2) Payment is not available for services provided to any individual who is under age 65 and is in an institution for mental diseases except for persons under 21 receiving inpatient psychiatric services described at ARM 46.12.590.~~

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

(1) An institution for mental diseases, as a condition of participation in the Montana medicaid program, must be a nursing facility that meets the following requirements:

(a) complies with the requirements set forth at ARM 46.12.1223 for medicaid nursing facility service providers;

(b) has been determined by the department, in accordance with ARM 46.12.1108, to be an institution for mental diseases;

(c) complies with ARM 46.12.1265 regarding utilization review and quality of care for nursing facilities; and

(d) enters into and maintains a written agreement with the department that specifies the respective responsibilities of the department and the provider including arrangements for:

Subsections (3)(a) through (3)(d) remain the same in text but are renumbered (1)(d)(i) through (1)(d)(iv).

(ev) ~~the duty of the provider to record, report and exchange~~ recording, reporting and exchanging medical and social information about recipients; and

Subsection (3)(f) remains the same in text but is renumbered (1)(d)(vi).

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

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

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

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

~~(d) appropriate medical treatment in the institution; and~~

~~(e) appropriate social services.~~

~~(5) Institutions for mental diseases must meet three or more of the following factors:~~

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

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

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

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

~~(e) the facility is under the jurisdiction of the state's mental health authority (the Montana department of corrections and human services);~~

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

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

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

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

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

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

2. The changes made to ARM 46.12.1109 are clerical in nature only. Subsections that were incorrectly numbered have been corrected in this notice.

3. All other information for the notice of amendment will remain as originally published at page 1591, 1994 Montana Administrative Register, issue number 11.

4. These amendments will be effective retroactively to July 1, 1994, to coincide with the effective date of the amendments as published at page 1591, 1994 Montana Administrative Register, issue number 11.

Dawn Sliva
Rule Reviewer

Michael B Billings for
Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 27, 1994.

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

In the matter of the amendment of rules 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1249 and 46.12.1251 pertaining to medicaid coverage and reimbursement of nursing facility services	)	NOTICE OF THE AMENDMENT OF RULES 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1249 AND 46.12.1251 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF NURSING FACILITY SERVICES

TO: All Interested Persons

1. On April 28, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.1222, 46.12.1223, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1249 and 46.12.1251 pertaining to medicaid coverage and reimbursement of nursing facility services at page 1096 of the 1994 Montana Administrative Register, issue number 8.

2. The Department has amended rules 46.12.1222, 46.12.1223, 46.12.1232, 46.12.1235, 46.12.1241, 46.12.1245, 46.12.1249 and 46.12.1251 as proposed.

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

46.12.1229 OPERATING COST COMPONENT Subsections (1) through (3)(a) remain as proposed.

(4) The operating cost limit is ~~110%~~ 115% of median operating costs.

Subsections (5) and (5)(a) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1231 DIRECT NURSING PERSONNEL COST COMPONENT Subsections (1) through (3) remain as proposed.

(4) The direct nursing personnel cost limit is ~~125%~~ 130% of the statewide median average wage, multiplied by the provider's most recent average patient assessment score, determined in accordance with ARM 46.12.1232.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113 MCA

46.12.1237 CALCULATED PROPERTY COST COMPONENT (1) This section specifies the method used by the department to calculate the property cost component for a specific provider for rate years beginning on or after July 1, 1992~~3~~4. Such property cost component is expressed in dollars and cents per patient day.

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

(i) For rate years beginning on or after July 1, 1993~~4~~4, the property rate cap is $9.64~~81~~ $11.00.

Subsections (2)(e) through (3) remain as proposed.

(a) If the provider's 1993~~4~~4 property component is greater than the provider's base year per diem property costs, then the provider's calculated property cost component is the lesser of the provider's 1993~~4~~4 property component or the property rate cap of ~~$9.6481~~ $11.00.

(b) If the provider's base year per diem property costs exceed the provider's 1993~~4~~4 property component by more than ~~$0.17~~ $1.36, then the provider's calculated property cost component is the sum of the provider's 1992~~4~~4 property component plus ~~$0.17~~ $1.36.

(c) If the provider's base year per diem property costs exceed the provider's 1993~~4~~4 property component by ~~$0.17~~ $1.36 or less, then the provider's calculated property cost component is the provider's base year per diem property costs.

Subsection (4) remains as proposed.

(a) the adjusted component shall be the lesser of ~~$9.6481~~ $11.00 or a blended rate determined by dividing the sum of the product of pre-construction square footage and the provider's July 1 calculated property cost component and the product of the additional constructed square footage and ~~$9.6481~~ $11.00, by the total square footage after construction.

Subsection (5) remains as proposed.

(a) the adjusted component shall be the lesser of ~~$9.6481~~ $11.00 or the existing component plus a per diem amount determined by amortizing 80% of the amount derived by dividing the total allowable remodeling cost by the number of licensed beds after remodeling. Such amount shall be amortized over 360 months at 12% per annum. A per diem amount shall be determined by multiplying the monthly amortization amount by 12 months and dividing the result by 365.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: Several commentors requested that the department rebase the nursing facility reimbursement system to use 1993 cost reports rather than 1992 cost reports as proposed by the department. The following reasons were advanced in support of rebasing to 1993 cost data:

(1) Use of anything other than the most current available cost information results in inaccurate rate setting due to non-current data and mixing of old cost data and current PAS data.

(2) Inflating the 1992 cost data does not reflect the actual changes that may have occurred in the operating situation of a nursing facility, such as changes in facility census.

(3) The inflation factor of approximately 12% understates the actual cost increases that have occurred in significant cost areas such as wages and benefits. Actual census numbers are available from 1993 cost reports and could be used to mitigate the impact of census changes. One facility has increased certified nurse assistant wages 18% and workmen compensation rates for nursing wages has increased by 25%.

(4) The current system does not come close to meeting current cost increases and facilities must make up the difference by increasing private pay rates, which means that private paying residents have to make up the difference between what medicaid pays and what it costs to take care of those patients.

(5) The department's use of 1992 cost data means that the increased costs resulting from the medicaid survey process are not recognized in the rates. Facilities continue to see substantial cost increases associated with assessment and care plans, as well as higher expectations in the social services and activities areas.

(6) The need to receive all of the more current year's cost reports in advance of the rate setting process could be addressed by establishing a cut-off date for submitting cost reports for inclusion in the rate cost base for rate setting purposes.

RESPONSE: The department disagrees with the commentors' basis for concluding that rebasing is required for fiscal year 1995 rate setting. The department will not rebase the system for fiscal year 1995 rate setting.

The rate system was rebased in fiscal year 1993 to use 1991 cost report information and in 1994 to use 1992 cost report information. However, the department does not believe that annual rebasing is necessary to reasonably and adequately reimburse nursing facilities. The DRI-SNF inflationary component has proven to be an accurate index of aggregate cost increases in Montana. The DRI index is applied to all of the facilities'

operating and direct nursing costs. The adequacy of the DRI index must be measured by comparing it to the total cost increases in all cost areas. The adequacy of the index cannot be measured by comparing the DRI percentage with the rates of increase for individual cost items in individual facilities. Not every specific cost increase will be projected in the inflationary adjustment, but the department believes that in the aggregate all necessary cost increases are met or exceeded by application of the DRI index. Moreover, the fact that any particular facility actually incurs costs at a certain rate of increase does not mean that all of such costs need be incurred by an economically and efficiently operated facility or that the costs must be reimbursed. The system is not a cost based system and is not intended to reimburse all of the costs incurred at each facility. Because the department believes that the use of the 1992 cost base and the DRI index adequately recognizes all necessary cost increases, the department disagrees with the comments that suggest current costs are not accounted for in the rates or that private paying patients are required to make up for inadequate medicaid rates.

With respect the use of the patient assessment score (PAS), the reimbursement methodology uses both the facility's current PAS and the PAS that corresponds most closely to the base cost period. Further, the department's rules already establish cutoff dates for use of cost reports in rate setting. The date of receipt of cost reports was not a significant factor in the department's decision not to rebase.

The department has not made any commitment to rebase the system in fiscal year 1995 or on an annual basis. The department has agreed to rebase in fiscal year 1996 to a more current cost period, although no determination has yet been made as to what period will be used to set 1996 rates.

Direct Nursing

COMMENT: The calculation of the nursing hourly wage is not accurate and does not reflect actual costs experienced by facilities. The calculation is based on 1992 costs divided by the product of occupied days during the cost report period and a current PAS. This mismatch of data causes our facility to be under-reimbursed in this component.

RESPONSE: The nursing hourly wage is calculated as follows: base period nursing costs are divided by the product of occupied days during the cost reporting period and the PAS that most closely corresponds to the base period. The resulting cost per hour is then inflated to the midpoint of the rate period and is compared to the median upper limit. The current PAS average is then applied to the cost per hour to compute the total direct

nursing component. Under this computation, the base period components that most closely correspond to each other are used to calculate the nursing hourly wage, that wage is inflated forward and then multiplied by the current PAS. The department does not agree that this calculation mismatches data. The department believes that this methodology projects nursing costs with reasonable accuracy and results in reasonable and adequate reimbursement. The department will continue to use this computation for the direct nursing component in fiscal year 1995 rate setting.

COMMENT: The department originally proposed to blend the patient assessment scores (PAS) in effect for the base period for purposes of calculating the nursing hourly wage. But under either the current approach or the proposed blending approach, the department fails to take into account the actual staffing utilized by the facility during the base period. Facilities staffed below the PAS receive a calculated hourly wage that is less than what they actually spent. Those that staffed above the PAS receive a calculated hourly wage that is higher than what they actually spent. Many facilities that staffed below the PAS in the base period currently staff at or above the PAS but are penalized by this calculation, while many facilities that staffed above the PAS in the base period now staff below the PAS and receive a "bonus" under this calculation. The current methodology is seriously flawed and there is no rational basis to support it. What is the department's rationale for continuing this methodology?

The department should address this problem in an equitable fashion, and at a minimum should adopt an exception process to allow rate adjustments for facilities adversely affected by this calculation. One solution would be to blend staffing report information and PAS information to mitigate the problem.

COMMENT: The department should continue its current practice regarding use of the PAS that most closely corresponds to the base period. This is consistent with practice in prior years, and when combined with rebasing would generate fair rates. The proposal to blend the PAS with staffing report information to calculate the nursing wage warrants further study by the department but should not be adopted at this time. Such a change would constitute a significant departure from the proposed rule and SRS would be required to re-notice the current rule before adopting the suggestion. Many facilities would be affected significantly by such a change. While this change would address some of the anomalies in the current system, this change would create other adverse effects.

One example would be when SRS measures the average PAS during the 1992 base year, but staffing during that year was mandated

at the 1991/1992 PAS score used to set the fiscal year 1994 rate. Consider a facility with a base year acuity of 3.528 and a 1991/1992 PAS of 2.851. This facility was required to staff to meet patient needs but was paid for the lower staffing levels in the rate for subsequent periods. There is a catch up period built into the rule, because staffing and old PA scores are used in the formula. But one should not make conclusions about operational efficiency based upon a cursory review of changing PA scores. Some small facilities must also contend with the problem of adequate staffing without the volume of care enjoyed at larger facilities. Because of persistent turnover of staff and a shortage of people willing to become nurse aides, a small facility usually must carry more staff to prevent a temporary shortage from creating a deficiency in staffing under SRS rules. Interchange of staff from hospital based providers is a more efficient approach to meeting community health needs and is a reasonable factor to consider in the nursing home rate formula.

COMMENT: We would support the proposed method of averaging the PAS scores applied to the base period. We are staffing in accordance with the regulations but our PAS has decreased since the base period. Using actual staffing would adversely affect our reimbursement.

RESPONSE: The comments regarding the calculation of the direct nursing component varied depending on the actual reimbursement impact for the specific facilities or type of facilities that commented.

The department does not believe that the current methodology is flawed as the commentor states. The department believes that use of the PAS, which is a measurement of the relative acuity and care needs of residents served by facilities, is a reasonable approach to determining efficient and economical nursing costs. Moreover, we believe that the mix of information used in the current calculation will tend to encourage providers to staff based upon resident needs rather than reimbursement impacts, because understaffing or overstaffing will have a balanced rate result under the methodology. The department does agree that this approach does not in every case provide a precise indication of staffing needs during the corresponding period, and that further consideration is warranted to determine whether an approach could be developed that would achieve better results.

At this time, the impacts of adopting the suggested approach of using staffing report information are unknown, except that rates clearly would be impacted significantly due to this blending. The use of staffing report information in the computation would require considerable study. It is unclear what the staffing report information indicates about each facility's operation,

its actual staffing needs and the degree to which its actual staffing costs are efficient and economical. It appears at the present time that the suggested approach would actually tend to reward facilities that staffed below the PAS during the base period and would tend to penalize facilities that staffed above the PAS during the base period. While cost containment is an important goal, the department does not believe that it should simply pay a facility more because it spends less. More importantly, in the area of direct nursing the department does not wish to create incentives to reduce staffing below required levels simply to reduce costs, which would be contrary to the department's goal of encouraging high quality of care to nursing facility residents.

The department also finds the use of staffing reports as an indicator of nursing costs to be problematic. Cost reports include all costs associated with nursing over a significant period of time, while staffing reports reflect only direct care hours during a limited period of time. Patient care abstracts (used to calculate the PAS) reflect the care needs of the residents during the base period, while staffing reports reflect only the facility's actual level of staffing using the 10% staffing variance allowance. The department also is concerned that the use of staffing reports might allow facilities to manipulate staffing levels simply to impact reimbursement.

For rate year 1995, the department will continue to use the PAS that most closely corresponds to the base period costs for computation of the nursing wage rate. The impact of using staffing report information with the PAS information will be considered further, along with various other proposals that may be considered in conjunction with implementation of the minimum data set (MDS) or some other assessment system in the next biennium. Any change in the computation of nursing costs or the patient assessment system would impact the direct nursing computation and would need to be considered in great detail prior to implementation. The Health Care Financing Administration (HCFA) will be mandating a computerized MDS assessment tool by the end of 1994 or early in 1995 for reporting into a national data base. The computerization requirement will assist the department in converting to a new acuity measure for reimbursement which will use MDS information and eliminate duplication of requirements for providers. The development and implementation of such a system may also provide additional options to address the concerns that have been raised regarding the nursing wage computation.

COMMENT: One provider indicated that the draft rate spreadsheets issued by the department showed them with a deficient monitor score, but due to the results of a 100% monitor they in fact will not be deficient for 1995 reimbursement calculations.

RESPONSE: At the time the department computed and issued the draft reimbursement spreadsheets and PAS calculation spreadsheet it did not have the final results of 100% monitors performed at two facilities. These results have been received and finalized, and will be reflected in the final rate calculations for each of these impacted facilities. The commentor will receive a six-month average PAS in its rate calculation because the 100% monitor showed that it was not deficient in its patient assessment documentation.

COMMENT: One provider commented that its contract nursing costs were incorrectly included in the operating rather than the direct nursing cost centers in the proposed 1995 rate spreadsheets.

RESPONSE: Contract nursing should have been included in the nursing cost center for both fiscal years 1994 and 1995 rate setting purposes. The department will recompute this provider's 1994 rate based on this information and will calculate the 1995 rate with the costs properly classified. Providers are encouraged to review how their costs are allocated through the rate formula each year and to inform the department promptly when there is a discrepancy. This adjustment could have been made sooner if the provider had informed the department of the problem. We will adjust these costs accordingly in the rate computation for this provider for fiscal year 1995 and update the computation of the medians for the 1995 rate setting based on these cost adjustments.

CAP Percentage Increases

COMMENT: The department agreed in the settlement agreement to increase the cap in the nursing component from 125% to 130% of the statewide median wage and to increase the operating cap from 110% to 115% of median operating costs. These changes were not included in the original proposal, but the department later issued a proposal that included these changes. Sufficient funds appear to be available to make these adjustments in fiscal year 1995. The department should adopt these changes. These changes would significantly benefit some providers.

RESPONSE: The department will adopt an increase in the direct nursing personnel cost limit median from 125% to 130% of the statewide median nursing wage. The department will also increase in the operating cap from 110% to 115% of median operating costs. These changes will assist providers by allowing more flexibility to respond to staffing needs and operating requirements, and therefore to provide higher quality care.

Property

COMMENT: In an earlier settlement agreement, SRS agreed to an increase in the funding of the property cost component of approximately $1.2 million dollars. Yet under the department's proposals, not all of that funding would actually be spent on increases in the property cost component. While SRS has some flexibility under the terms of the settlement agreement not to use all of that amount to fund property reimbursement, any balance must be used to fund improvements in other components of the rate methodology. SRS's proposal does not appear to use the balance of the $1.2 million in any other component, but sets it aside as a cushion. SRS should reconsider its proposal not to distribute all of the funds appropriated for medicaid reimbursement of nursing homes. SRS should either spend all of the $1.2 million in the property system or in other rate components. One suggestion is to provide a flat $1.00 per day increase in each facility's property rate.

The present capital expenditure thresholds make it virtually impossible for facilities to gain reimbursement for capital projects that need to be done. Facilities are getting older and are not being upgraded and refurbished.

SRS has promised for years to change the property system for nursing facilities. The current formula is targeted for further study and still relies on a decade old cost base. The decision to look at property costs, along with other parts of the reimbursement system in the future by a task force is a good one.

RESPONSE: The department originally proposed to increase property rates at a minimum of $0.17 (17 cents) or an increase up to a property rate cap of $9.81 for fiscal year 1995. This increase was the minimum property rate increase allowed under the settlement agreement provisions, assuming appropriations were adequate to implement such an increase.

The department will adopt an increase in property rates for some providers up to an $11.00 cap or a $1.36 per day increase in property reimbursement over 1994 levels. Under this rule, providers will remain at their 1994 rate if that rate already exceeded their costs, or otherwise would receive the lower of an increase up to their cost per day or an increase of $1.36. The department believes that this increase is warranted to address increased costs that have resulted from capital improvements. The department does not believe that a flat increase of $1.00 or any other amount to each facility's property rate is justified, because many providers already are receiving property rates in excess of the property costs they are incurring.

The department previously completed a property reimbursement study, but has not yet implemented a new property methodology. The department will continue with plans to form a task force in the next year to work on property system changes for fiscal year 1996. This task force will specifically look at new construction, remodeling and incentives to refurbish nursing facilities. It should be noted that when a new property methodology is adopted property rates may be calculated upon an entirely different basis than under the present system. Property rates are likely to shift considerably up or down for many facilities, and much of the increase received in this year's or prior year's property rates may be reduced for some facilities.

The department agrees that the settlement agreement identified approximately $1.2 million that was appropriated for property methodology modifications. The settlement agreement allows the department the option of using this funding to implement a new property reimbursement methodology, or to provide a minimum increase of $0.17 per patient day or up to $9.81 in the property cap and to use the remaining funding for improvements in other rate components. However, the department's obligation to implement any particular methodology or improvements to the methodology are expressly conditioned upon appropriation of sufficient funds to do so. The legislature has directed that agencies must live within their appropriations and that no supplemental budget requests will be granted. The department projects that the final reimbursement methodology adopted in this rule notice, including the $1.36 increase in the property rate cap and the increases in the operating and direct nursing limit percentages, will in fact spend the entire available appropriation, when the post-July 1 rate increases required by this methodology are taken into consideration. The department has complied with the settlement agreement and anticipates that it will spend the entire appropriation to implement the methodology required under the final rules.

Appropriation Distribution

COMMENT: We urge the department to distribute through the rate formula all of the money that was appropriated for nursing facility reimbursement by the legislature in HB 2 and HB 333. The bed tax was increased from $2.00 to $2.80 on July 1, 1994. This was done to increase the money available for nursing home reimbursement, in accordance with the settlement agreement signed between the department and Montana Health Care Association (MHCA). The bed tax was designed to provide increased funding that the department is now intending to withhold. This is contrary to legislative intent.

The proposal to set aside money as a buffer during the year is not supported by evidence that indicates this buffer is

necessary. The department will have cost increases during the year as well as cost decreases. Because of rate adjustments they may have to pay greater amounts of money but because of audits the facilities will also have to refund money. Rates go up and down during the year and should average during the year and a reserve will not be necessary.

Depending on which changes are finally adopted SRS is proposing to distribute an amount that is between $700,000 and $3,000,000 less than the legislative appropriation for medicaid reimbursement for nursing facilities. These funds are in addition to what will be saved as a result of rates exceeding the private pay limitation. This could result in a surplus in the monies appropriated for nursing home reimbursement at the end of the fiscal year of $1,500,00 or more. In the settlement agreement between SRS and MHCA, SRS agreed that increased proceeds from the bed tax would be used solely for the purpose of increasing aggregate funding for medicaid payments to nursing facilities. By allowing a surplus to accumulate which will revert to the State's general fund at the end of fiscal year 1995, or be used to offset general fund appropriations, SRS will be breaching its agreement on the use of bed tax funds.

RESPONSE: The department originally issued two proposals that would have allocated some funds for rate increases required by the methodology but taking effect on dates after July 1 of the rate year. In the past, rate changes that occur during the year have required spending in excess of the appropriated levels. The department has previously had some flexibility to request supplemental funds to cover the cost of these rate increases. In the last regular legislative session, the legislature mandated state agencies to not exceed appropriated levels. If increases occurred that would result in exceeding appropriated funds, state agencies were to cut rates or services to stay within funding limits. The department has not proposed this allocation as a means of saving funds for reversion to the general fund or transfer to other program areas, but for the purpose of meeting the requirements of the rate methodology.

The department projects that it will spend appropriated funds through the July 1 rate spreadsheet to pay a weighted average rate of $80.15 or $114,603,014 in total federal, general and patient contribution funds. Private pay limit savings resulting from facilities whose rates are limited when the facility's private pay rate effective July 1 is lower than the computed medicaid rate, will be used during the 1995 fiscal year to meet the costs of rate increase that take effect after July 1. These include finalized interim rates based on filed cost reports during 1995, rate appeals, and patient assessment adjustments on January 1, 1995 for deficient providers who pass a subsequent monitor and are no longer deficient.

While there were some audits performed on 1992 cost reports which impacted 1994 rates, there will be no additional 1992 audits where a potential for cost recovery will occur in 1995. There are 10 facilities that have a July 1, 1994 rate set with a deficient monitor score. There are 12 facilities that are operating under an interim rate that will be settled to a final cost report during 1995.

The final 1994 rate spreadsheet had a private pay cushion of $736,000 to cover the cost of changes during that fiscal year. Many changes were made to the 1994 rate spreadsheet that resulted in the department spending funds over the appropriated level. There were also audits that resulted in the recovery or payment of funds from about 8 facilities during 1994. The most current 1994 spreadsheet indicates that after the changes in spending and recoveries that occurred during the year, the appropriation was overspent by $540,000 and private pay savings were used to cover the cost of this overspending. Approximately $200,000 remains of the original private pay savings amount. There will continue to be retroactive rate adjustments that will impact the 1994 rate spreadsheet that will result in rate increases.

The final 1995 rate spreadsheet allocates approximately $1,000,000, consisting of private pay savings and a small portion of the appropriation, for rate changes that occur after July 1. Because there will be no further audits of the 1992 cost base, recoveries of cost will happen only if the final cost report for an interim rate provider shows a cost per day that is less than the interim rate they were paid. Because of the large number of interim rate facilities and the number of deficient patient assessment score facilities, the department expects that it will spend most or all of these funds. Other impacts could be the settlement of property construction additions and remodeling projects and any rate appeals that result from the established rates. All of these anticipated adjustments are just as much a requirement of the rate methodology as are the July 1 rates, and it is reasonable and necessary that the department take them into consideration in rate setting.

As discussed in a previous response, the department's obligation to implement any particular methodology or improvements to the methodology or to spend any particular amount of funds is expressly conditioned upon appropriation of sufficient funds to do so. The legislature has directed that agencies must live within their appropriations and that no supplemental budget requests will be granted. The department projects that the final reimbursement methodology adopted in this rule notice, including the $1.36 increase in the property rate cap and the increases in the operating and direct nursing limit percentages, will in fact spend the entire available appropriation, when the

post-July 1 rate increases required by this methodology are taken into consideration. The department has complied with the settlement agreement and anticipates that it will spend the entire appropriation to implement the methodology required under the final rules.

Miscellaneous Comments

COMMENT: Some facilities are concerned with the fact that changes are made in the reimbursement formula every year. Although it is a good idea to revisit the methodology from year to year, the department should try to maintain a methodology that is consistently applied and rebased annually, rather than constantly adjusting the system to satisfy the needs of special interests.

COMMENT: Estimated rates are barely known before the public hearing, and final rates may not be calculated until well after the beginning of the rate year. The department should adopt a firm deadline for establishing estimated rates and that deadline should be no later than the first notice of rules. SRS should establish a time early in each rate year to discuss and model various suggestions in advance of the rulemaking process so that substantial changes are afforded a more thorough review and discussion by providers.

COMMENT: We strongly agree with the establishment of a working group to work in areas of concern for proposed changes to the 1996 reimbursement rule. We favor incorporating the PAS with the MDS to reduce duplicative paper work. Other topics suggested such a property, subacute care and an exceptions process would also be excellent topics. We hope these changes can be analyzed in advance so rates could be made available at an earlier date so that analysis could be made in a timely manner by the providers as well as department staff.

RESPONSE: The department has attempted to maintain consistency in the rate methodology. The department has resisted suggested changes in the methodology that have appeared to be designed only to benefit special interest groups. However, the department believes that it must make occasional adjustments in the system to account for new information or to address problems that arise. Whatever changes are made, the department attempts to use a balanced and fair approach.

The department agrees that the sooner reimbursement issues can be looked at during the fiscal year the easier the reimbursement task will be for both providers and the department. The department attempts to prepare the information and proposals as soon as possible. However, the department must work within circumstances and limitations over which it has no control. The

department would welcome any suggestions that would help to improve the process and allow for an earlier commencement of discussions. Because of timing problems in this year's rate setting process, the department felt that it was appropriate to extend the comment period. The department believes that with the extension of the comment period, affected parties had a reasonable and adequate opportunity to comment on the department's proposals.

We believe that we can resolve many of these issues with the establishment of a working committee or advisory group which would work on several areas of the reimbursement system for proposed changes to the 1996 reimbursement rule. The department would like assistance from this group on areas of improvements in the reimbursement system. Areas to be considered would include the patient assessment system and the ability to combine this tool with the MDS or another assessment tool to adjust rates for patient care or acuity. Property system changes incorporating the study prepared by Myers and Stauffer and other information regarding property costs need to be evaluated. Subacute reimbursement for ventilator dependent and head injured residents and how these residents care needs fit into the case mix or acuity system need to be explored. An exceptions process to allow consideration of rate relief for exceptional circumstances outside the control of a provider that occur after rates have been set on July 1, would also be a topic for discussion and development by this group.

COMMENT: The department should consider a modification to the formula to establish a different benchmark for incentive payments to hospital based facilities. Most hospital based nursing facilities cannot earn an incentive under the current rules due to the allocation of costs required under cost reporting principles. Even though these facilities may appear less efficient than their freestanding counterparts, we believe that the current rule doesn't consider their relative efficiency, it only compares their different structures. Under the original rule notice, 54 of 100 facilities are projected to earn an incentive payment but only 7 or those homes are hospital based. SRS should consider a new strategy to measure the relative efficiency of hospital based facilities by comparing their costs to other peer facilities so that they may earn an incentive. This payment should be a reward for performing better than expected for similar facilities, not just for having a particular structure. As an alternative, the department could move the operating cap from 110 percent of median costs to 125% of the median costs.

RESPONSE: The department will consider these issues when it forms an advisory group to study further changes to the reimbursement system.

COMMENT: The department's proposal does not include a system for allowing exceptions for those facilities with extraordinary expenses. An exception process should be set up since there is no rebasing.

RESPONSE: The department will consider an exception process during the next year for possible implementation in 1996. Considerable study will be required, as it is unclear at this time under what circumstances, if any, such exceptions should be granted.

COMMENT: The department has specified a 30-day advance notice requirement for terminating participation from the Medicaid program. This rule may conflict with other department rules or state statutes when termination is involuntary. A facility which is denied participation by reason of lost certification may not be able to comply with this rule. For example, a facility who loses its license is precluded by other state statute from offering nursing home care. A suggestion would be that the department integrate these rules with sanction rules and licensure/certification rules used by the Department of Health and Environmental Sciences.

RESPONSE: The department's proposal is based upon a requirement in the current provider agreement signed by all nursing facilities, which requires written notice from providers of a change in ownership or change in management of a nursing facility. This is being incorporated into the rules so that more providers are likely to take note of the requirement and to comply. This will address recent situations where provider changes have occurred without advance notice to the department, resulting in incorrect payments to providers, payments at incorrect rates, use of incorrect provider numbers, issuance of incorrect tax information and failure to execute or update provider agreements in a timely manner. Providers who have not notified the department in advance have created a substantial amount of unnecessary claim adjustment work that could have been avoided if the provider had enrolled as a new provider and a new number had been issued in a timely manner for claim processing purposes.

Terminations from the program as a result of survey deficiencies or involuntary terminations are typically initiated by the Department of Health and Environmental Sciences in conjunction with Health Care Financing Administration and SRS. Medicare and/or medicaid initiates these termination actions and is aware of the dates of termination and of the impact on provider participation. We are unaware of any circumstances where 30-day advance notice would not be feasible.

COMMENT: The idea of crafting a special payment policy for head injured and ventilator dependent residents in nursing facilities is supported. The proposal is a move in the right direction. However, we believe the process described in the proposed rule is exceptionally time-consuming and may continue to deter facilities from serving these types of residents. Respiratory therapy services need to be considered in this increment.

RESPONSE: The department looks forward to working with providers to create these programs and services for a population of resident who are truly in need of these complex services. We hope to build on the provisions in the current rule for documentation and a way to make this process less time-consuming while still gathering meaningful information concerning the care needs and cost of these residents.

5. These changes will be retroactively applied to July 1, 1994.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 27, 1994.

VOLUME NO. 45 OPINION NO. 25

HEALTH BOARDS AND DISTRICTS - City-county boards of health, financing, application of tax limitations to special levies; TAXATION AND REVENUE - Application of property tax limitations in Mont. Code Ann. title 15, chapter 10, part 4, to special levies which finance city-county boards of health pursuant to Mont. Code Ann. §§ 50-2-111(2) and -114; MONTANA CODE ANNOTATED - Title 15, chapter 10; sections 15-10-401 and -402, 15-10-411 and -412, 50-2-111, 50-2-114; OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987).

HELD: If the conditions established in Mont. Code Ann. § 15-10-412(11)(b)(i) are met, the limitations on the amount of taxes levied which are set forth in Mont. Code Ann. title 15, chapter 10, do not apply to either the special one-mill levy under Mont. Code Ann. § 50-2-114 or the special five-mill levy under Mont. Code Ann. § 50-2-111(2)(b).

June 21, 1994

Mr. Dennis Paxinos
Yellowstone County Attorney
P.O. Box 35025
Billings, MT 59107-5025

Dear Mr. Paxinos:

You have requested an Opinion of the Attorney General on the following questions:

1. Is the special one-mill levy authorized by Mont. Code Ann. § 50-2-114 subject to the taxation limitations imposed under Mont. Code Ann. §§ 15-10-401, -402, 15-10-411, and -412?

2. Is the special five-mill levy authorized by Mont. Code Ann. § 50-2-111(2)(b) subject to the taxation limitations imposed under Mont. Code Ann. §§ 15-10-401, -402, 15-10-411, and -412?

The taxation limitations to which you refer are the result of the codification of Initiative 105 (Mont. Code Ann. §§ 15-10-401 and -402), and the legislature's subsequent clarification and modification of the initiative (Mont. Code Ann. §§ 15-10-411 and -412). A previous Attorney General's Opinion, 42 Op. Att'y Gen. No. 21 (1987), held that such legislative modifications to an initiative are valid.

Your specific questions refer to city-county boards of health, one of several types of local boards of health discussed in Mont. Code Ann. title 50, chapter 2, and § 15-10-412(11)(b)(i). The county's share of the financing of a city-county board of health may come from either of two sources: (1) the county may appropriate money from its general fund, Mont. Code Ann. § 50-2-111(1); or (2) the county may, subject to specified conditions, establish a special levy of not more than five mills, Mont. Code Ann. § 50-2-111(2).

A county may choose to appropriate money from its general fund to support a city-county board of health, and such appropriation may not be sufficient to meet the board's approved budget. In this situation, the county may, subject to specified conditions, make a special levy of not more than one mill. Mont. Code Ann. § 50-2-114. The general fund appropriation and special one-mill levy are a financing mechanism which is mutually exclusive from the special five-mill levy. Mont. Code Ann. §§ 50-2-111 and -114.

Montanans have enacted limitations on property taxes in Mont. Code Ann. title 15, chapter 10, part 4. These limitations have been made quite specific by Mont. Code Ann. § 15-10-412. Subsection (11) of that statute sets forth several exceptions to the general limitation of property taxes to 1986 levels:

> (11)(a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.
>
> (b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:
>
> (i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.
>
> (ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2); and
>
> (iii) a rail authority, as provided in Title 7, chapter 14, part 16, authorized by a board of county commissioners. A levy for the support of a rail authority may not exceed the 6-mill limit established in 7-14-1632.

Mont. Code Ann. § 15-10-412(11).

Subsection (11)(b)(i) establishes a specific exception to the general limitation on tax levies established in Mont. Code Ann. title 15, chapter 10, for city-county boards of health. This exception is separate from and independent of subsection (11)(a). I must conclude that subsection (11)(b)(i) applies to both the one-mill special levy and the five-mill special levy. I reach this conclusion because the legislature made no attempt to distinguish the two special levies in fashioning the exception, and the legislature is presumed to act with full knowledge of existing laws, Thiel v. Taurus Drilling Ltd., 1980-II, 218 Mont. 201, 207, 710 P.2d 33, 36 (1985); Department of Revenue v. Burlington Northern, Inc., 169 Mont. 202, 211, 545 P.2d 1083, 1088 (1976).

Taking into account the complexity involved in reading statutes which place options upon options, the language of Mont. Code Ann. § 15-10-412(11) is clear: The tax limitations set forth in Mont. Code Ann. title 15, chapter 10, do not apply to city-county boards of health which meet the conditions of the statute. I must conclude that this is what the legislature intended, Dorn v. Board of Trustees, 203 Mont. 136, 144, 661 P.2d 426, 430 (1983); White v. White, 195 Mont. 470, 473, 636 P.2d 844, 845-46 (1981).

THEREFORE, IT IS MY OPINION:

> If the conditions established in Mont. Code Ann. § 15-10-412(11)(b)(i) are met, the limitations on the amount of taxes levied which are set forth in Mont. Code Ann. title 15, chapter 10, do not apply to either the special one-mill levy under Mont. Code Ann. § 50-2-114 or the special five-mill levy under Mont. Code Ann. § 50-2-111(2)(b).

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/bjh

VOLUME NO. 45 OPINION NO. 26

COUNTIES - Reimbursement by counties for administrative costs;
EXPENSES - Computerization of public assistance eligibility determinations, reimbursement for;
PUBLIC ASSISTANCE - Computerization of eligibility determinations, reimbursement for expenses of;
SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - Reimbursement by counties for administrative costs;
MONTANA CODE ANNOTATED - Sections 53-2-201(1)(d), 53-2-207(1), 53-2-304(2), 53-2-305, 53-2-306;
OPINIONS OF THE ATTORNEY GENERAL - 45 Op. Att'y Gen. No. 23 (1994).

HELD: Counties are required by law to reimburse the Department of Social and Rehabilitation Services for the expenses associated with the computerization of public assistance eligibility determinations.

June 22, 1994

Peter S. Blouke, Ph.D.
Director
Department of Social and Rehabilitation Services
P.O. Box 4210
Helena, MT 59620-4210

Dear Dr. Blouke:

You have requested my opinion on the following question:

> Are counties required by law to reimburse the Department of Social and Rehabilitation Services for the expenses associated with the computerization of public assistance eligibility determinations?

As you know, the administration of public assistance is governed generally by Mont. Code Ann. tit. 53, ch. 2. Part 2 of title 53, chapter 2 sets forth the specific powers and duties of the State Department of Social and Rehabilitation Services [SRS], and part 3 of that same title and chapter sets forth the powers and duties of county departments of public welfare. "County departments [of public welfare] are under the supervision of the department of social and rehabilitation services and subject to audit by the department." Mont. Code Ann. § 53-2-305.

The payment of the costs of the administration of public assistance is governed by specific statutes and has long been a subject of dispute. State v. Potter, 107 Mont. 284, 84 P.2d 796 (1938). In answering your question, I must examine these specific statutes. Mont. Code Ann. § 53-2-207(1) gives SRS the authority to

> require the county to bear the proportion of the total of local public assistance as is fixed by law relating to the assistance . . . .

Id. State law further expressly requires that counties bear all the costs associated with the administration of public assistance which are not reimbursed to SRS by the federal government:

> [T]he county board of public welfare shall reimburse the department of social and rehabilitation services from county poor funds . . . the full amount of the department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government.

Mont. Code Ann. § 53-2-304(2).

The legislature has given SRS powers of administration and supervision of public assistance. Mont. Code Ann. §§ 53-2-201(1)(d), 53-2-306.

The statutes uniformly require that counties reimburse SRS for the legitimate costs of administration of county public assistance functions. That the legislature was informed of and approved these administrative costs is clear. Amendments to the Executive Budget, Jan. 4, 1993, at 18-19; Minutes, House Human Services and Aging Subcommittee, Jan. 28, 1993; Office of the Legislative Fiscal Analyst, Appropriations Report 1995 Biennium, vol. 1, at B-91.

You state that several counties have resisted paying SRS for administrative costs. The resisting counties often claim equitable estoppel, citing a letter of June 2, 1989, from then Governor Stephens indicating that "[f]unding for the development and implementation of the computerization is provided by the state and federal governments." However, the Montana Supreme Court has said that "the application of the doctrine of equitable estoppel to governmental entities will be looked upon with disfavor. The doctrine will only be applied in exceptional circumstances or where there is manifest injustice." Chennault v. Sager, 187 Mont. 455, 461, 610 P.2d 173, 176 (1980). In this case, Governor Stephens chose his words carefully: The letter does not indicate an obligation on the State's part to finance these costs in perpetuity. County responsibility for a proportionate share of the costs of administration of public assistance has long been the law (Rev. Codes Mont. §§ 71-217 and -222 (1947)). Therefore, I must conclude that neither exceptional circumstances nor manifest injustice exists in this case, and the doctrine of equitable estoppel does not apply.

I find no authority that indicates any other legislative intentions with regard to the administration of public assistance. The term "administrative costs," as used in the statute, clearly encompasses "expenses associated with the computerization of public assistance eligibility determinations" as used in your question. *Cf.* 45 Op. Att'y Gen. No. 23 (1994) ("administrative costs" for protective services include costs for rent, equipment, and office supplies). Thus, I must conclude that the legislature intended what it clearly stated, and I may not go further in attempting to ascertain legislative intent. Dorn v. Board of Trustees, 203 Mont. 136, 144, 661 P.2d 426, 430 (1983); White v. White, 195 Mont. 470, 473, 636 P.2d 844, 845-46 (1981).

THEREFORE, IT IS MY OPINION:

Counties are required by law to reimburse the Department of Social and Rehabilitation Services for the expenses associated with the computerization of public assistance eligibility determinations.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/mlr

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 March 31, 1994. This table includes those rules adopted during the period April 1, 1994 through June 30, 1994 and any proposed rule action that was 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 March 31, 1994, 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 1994 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

2.5.202 and other rules - State Purchasing, p. 1, 383
2.21.137 and other rules - Sick Leave, p. 480, 1407
2.21.224 and other rules - Annual Vacation Leave, p. 2861, 151
2.21.704 Leave of Absence Without Pay, p. 483, 1409
2.21.903 and other rules - Leave of Absence Due to Disability and Maternity, p. 473, 1410
2.21.1604 and other rule - Alternate Work Schedules, p. 476, 1411
2.21.1812 Exempt Compensatory Time, p. 2462, 22
2.21.3607 and other rules - Veterans' Employment Preference p. 2464, 23
2.21.3702 and other rules - Recruitment and Selection, p. 487, 1412
2.21.5006 and other rules - Reduction in Work Force, p. 498, 1419
2.21.8011 Grievances, p. 485, 1421
2.21.8109 Equal Employment Opportunity/Affirmative Action, p. 478, 1422

(Public Employees' Retirement Board)

I-III Mailing Membership Information about Non-Profit Organizations, p. 508
I-XI and other rules - Medical Review of Members - Discontinuance of Disability Retirement Benefits - Procedures for Requesting an Administrative Hearing - Model Rules - Definitions - Disability Application Process - Election of Disability Coverage, p. 1191

2.43.302 and other rules - Definitions - Request for Release of Information by Members - Effect of Voluntary Elections - Lump Sum Payments of Vacation or Sick Leave - Purchase of Previous Military Service -- Modifications Affecting Actuarial Cost - Disability Retirement - Conversion of Optional Retirement Benefit Upon Death or Divorce from the Contingent Annuitant, p. 2864, 291

2.43.302 and other rules - Retirement Incentive Program Provided by HB 517, p. 2057, 2762

(Teachers' Retirement Board)

2.44.405 and other rules - Adjusting Disability Allowances - Interest on Non-Payment for Additional Credits - Creditable Service for Teaching in Private Educational Institutions, p. 2858, 561

(State Compensation Insurance Fund)

2.55.320 and other rules - Method for Assignment of Classifications of Employments - Premium Ratesetting - Construction Industry Premium Credit Program - Medical Deductible, p. 597, 1423

2.55.324 Premium Ratesetting, p. 1497

2.55.326 Minimum Yearly Premium, p. 981

2.55.327 and other rules - Construction Industry Program - Scheduled Rating for Loss Control Non-compliance Modifier and Unique Risk Characteristics Modifier, p. 2870, 292, 661

2.55.404 Scheduled Rating - High Loss Modifiers, p. 661

AGRICULTURE, Department of, Title 4

I-II and other rules - Civil Penalties - Enforcement and Matrix - Sale, Distribution and Inspection of Nursery Stock in Montana, p. 2580, 24

I-VIII Rinsing and Disposal of Pesticide Containers, p. 1317

I-VIII Pesticide Disposal Program, p. 600, 1280

4.2.102 and other rule - Exceptions and Additions for Agricultural Sciences Division - Exceptions and Additions for Plant Industry Division, p. 1501

4.5.202 and other rule - Category 1 Noxious Weeds, p. 93, 563

4.10.206 Licensing for Pesticide Operators, p. 2063, 2669

4.15.101 and other rule - Fees - Mediation Scheduling and Agreement Procedures, p. 1499

STATE AUDITOR, Title 6

I-II Emergency Adoption - Allowing Credit to Domestic Ceding Insurers - Reduction of Liability for Reinsurance Ceded by Domestic Insurers to Assuming Insurers, p. 564

I-II and other rules - Establishing Accreditation Fees for Annual Continuation of Authority - Defining "Money Market Funds" as they Relate to Investments by Farm Mutual Insurers - Remove Limitations on the Issuance of Credit Life and Credit Disability Insurance to

8.16.904 and other rules - Administration of Anesthesia and Sedation by Dentists - Prohibition - Permits Required for Administration - Minimum Qualifying Standards - Minimum Monitoring Standards - Facility Standards - On-site Inspection of Facilities, p. 2478, 1130

8.16.1002 and other rules - Continuing Education - Requirements and Restrictions, p. 988, 1506

(State Electrical Board)

8.18.402 and other rules - Applications - General Responsibilities - Temporary Permit - Fees - Examinations - Continuing Education - Pioneer Electrician Certificates, p. 225, 951

(Board of Hearing Aid Dispensers)

8.20.402 and other rules - Fees - Examinations - Licensees from Other States, p. 717

(Board of Horse Racing)

8.22.501 and other rules - Definitions - Licenses - Fees - Clerk of Scales - General Provisions - Grooms - Jockeys - Owners - Declarations and Scratches - Claiming - Paddock to Post - Permissible Medication, p. 547, 1282

8.22.1402 and other rule - Permissible Medication - Trifecta Wagering, p. 1507

(Board of Landscape Architects)

8.24.409 and other rule - Fee Schedule - Renewals, p. 991, 1579

8.24.409 Fee Schedule, p. 2986, 388

(Board of Medical Examiners)

8.28.502 and other rules - Requirements for Licensure - Unprofessional Conduct - Definitions with Regard to the Practice of Acupuncture, p. 613, 1580

8.28.1501 and other rules - Physician Assistants - Definitions - Qualifications - Applications - Fees - Utilization Plans - Protocol - Temporary Approval - Informed Consent - Termination and Transfer - Unprofessional Conduct, p. 720, 1582

(Board of Funeral Service)

8.30.407 and other rules - Fees - Unprofessional Conduct - Crematory Facility Regulation - Casket/Containers - Shipping Cremated Human Remains - Identifying Metal Disc - Processing of Cremated Remains - Crematory Prohibitions, p. 1787, 2670

(Board of Nursing)

8.32.304 and other rules - Advanced Practice Registered Nurses - Executive Director - Examinations - Inactive Status - Schools - Prescriptive Authority - Clinical Nurse Specialists - Delegation of Nursing Tasks, p. 100, 1424

8.32.1501 and other rules - Prescriptive Authority, p. 615, 1326

(Board of Nursing Home Administrators)
8.34.414A Application for Examinations, p. 993
(Board of Occupational Therapy Practice)
8.35.402 and other rules - Definitions - Use of Modalities, p. 116, 663
8.35.408 Unprofessional Conduct, p. 2483, 25
(Board of Optometry)
8.36.601 and other rules - Continuing Education - Approved Courses and Examinations - New Licenses - Therapeutic Pharmaceutical Agents, p. 120
8.36.602 Continuing Education - Approved Programs or Courses, p. 2294, 152
8.36.801 and other rule - Therapeutic Pharmaceutical Agents - Approved Drugs, p. 2485, 153
(Board of Outfitters)
8.39.504 and other rules - Outfitter Operations Plans - Conduct of Outfitters and Guides - Unprofessional Conduct, p. 2070, 155
(Board of Pharmacy)
8.40.404 and other rules - Fees - Out-of-State Mail Service Pharmacies, p. 2073, 2586, 571
(Board of Physical Therapy Examiners)
8.42.402 and other rules - Examinations - Fees - Licensure by Endorsement - Foreign-Trained Applicants, p. 996, 1583
8.42.402 Examinations - Fees - Temporary Licenses - Licensure by Endorsement, p. 2587, 159
(Board of Professional Engineers and Land Surveyors)
8.48.407 and other rule - Affiliation with National Associations - Complaint Process, p. 1625
(Board of Psychologists)
8.52.606 and other rule - Required Supervised Experience - Licensees from Other States, p. 2590, 389
(Board of Radiologic Technologists)
8.56.409 and other rules - Examinations - Renewals - Fees - Permits - Permit Fees, p. 1455, 2912
(Board of Real Estate Appraisers)
8.57.401 and other rules - Definitions - Application Requirements - Course Requirements - Continuing Education - Fees, p. 727, 1584
8.57.403 and other rules - Examinations - Experience Requirements - Education Requirements - Fees - Agricultural Certification, p. 2170, 2775
(Board of Realty Regulation)
8.58.406C and other rule - Application for Equivalency -- Broker - Grounds for License Discipline - General Provisions - Unprofessional Conduct, p. 730, 1585
8.58.419 Grounds for License Discipline - General Provisions - Unprofessional Conduct, p. 232, 667
8.58.419 Grounds for License Discipline - General Provisions - Unprofessional Conduct, p. 2719, 297

8.86.301 and other rules - Transportation of Milk from Farm-to-Plant and as it Relates to Minimum Pricing - Readjustment of Quotas - Settlement Fund Payments, p. 2315, 3018

(Banking and Financial Institutions Division)

8.87.202 and other rules - Investigation Responsibility - Application Procedures and Requirements for a Certificate of Authorization for a State Chartered Bank - Assuming Deposit Liability of Any Closed Bank - Merger of Affiliated Banks - Establishment of New Branch Banks - Discovery and Hearing Procedures - Application Requirement, p. 361, 1146

(Local Government Assistance Division)

I Administration of the 1994 Treasure State Endowment (TSEP) Program, p. 125, 1589

I Administration of the 1994 Federal Community Development Block Grant (CDBG) Program, p. 127, 1587

8.94.4102 and other rules - Report Filing Fees Paid by Local Government Entities - Financial Statements - Incorporation by Reference of Various Standards, Accounting Policies and Federal Laws and Regulations under the Montana Single Audit Act, p. 999

(Hard-Rock Mining Impact Board)

8.104.101 and other rules - Administration of the Hard-Rock Mining Impact Act, p. 1627

(Board of Housing)

8.111.405 Income Limits and Loan Amounts, p. 5, 577

(Montana State Lottery)

8.127.407 and other rule - Retailer Commissions - Sales Staff Incentive Plan, p. 1002

8.127.407 Retailer Commission, p. 2078, 391

EDUCATION, Title 10

(Superintendent of Public Instruction)

10.10.301A and other rules - School Funding and Tuition, p. 1006

(Board of Public Education)

I Teacher Certification - Surrender of a Teacher Specialist or Administrator Certificate, p. 817

I Teacher Certification - Area of Specialized Competency, p. 237, 954

10.55.601 Accreditation Standards; Procedures, p. 1642

10.57.211 Test for Teacher Certification, p. 1463, 2781

10.57.301 Teacher Certification - Endorsement Information, p. 815, 1690

10.57.501 Teacher Certification - School Psychologists, School Social Workers, Nurses and, Speech and Hearing Therapists, p. 234, 955

10.58.102 and other rules - Teacher Certification - Teacher Education Programs Standards, p. 814

10.60.101 and other rules - Board of Public Education Policy Statement - Due Process in Services - Identification of Children with Disabilities - Opportunity and

16.28.202 and other rules - Communicable Diseases - Reportable Diseases, p. 623, 1295
16.28.1005 Tuberculosis Control Requirements for Schools and Day Care Facilities, p. 1652
16.28.1005 Tuberculosis Control Requirements for Schools and Day Care Facilities, p. 2721
16.30.801 and other rules - Emergency Medical Services - Reporting of Exposure to Infectious Diseases, p. 1251, 1704
16.30.801 and other rules - Emergency Amendment - Reporting of Exposure to Infectious Diseases, p. 415
16.32.110 Health Planning - Certificate of Need Required Findings and Criteria, p. 639, 1296
16.32.356 and other rules - Adult Day Care - Licensure of Adult Day Care Centers, p. 1255
16.32.373 and other rules - Standards for Licensure of Hospices, p. 631
16.32.380 and other rules - Personal Care - Licensure of Personal Care Facilities, p. 1342
16.44.102 and other rules - Hazardous Wastes - Hazardous Waste Management, p. 2330, 2952
16.44.303 and other rules - Solid and Hazardous Waste - Hazardous Waste Management - Use of Used Oil as a Dust Suppressant, p. 556
16.45.1201 and other rules - Underground Storage Tanks - Underground Storage Tank Installer and Inspector Licensing - Tank Permits - Tank Inspections - Inspector Licensing Fees, p. 1221

(Petroleum Tank Release Compensation Board)

16.47.311 and other rules - Consultant Labor Classifications, p. 2206, 2678

TRANSPORTATION, Department of, Title 18

18.7.302 and other rules - Motorist Information Signs, p. 137, 674
18.8.101 and other rules - Motor Carrier Services (Formerly "Gross Vehicle Weight"), p. 2875, 1148

CORRECTIONS AND HUMAN SERVICES, Department of, Title 20

(Board of Pardons)

20.25.101 and other rules - Revision of Rules of the Board of Pardons - ARM Title 20, Subchapters 3 through 11, p. 2495, 168

JUSTICE, Department of, Title 23

I Issuance of Seasonal Commercial Driver's License, p. 1610, 169
I-VI and other rules - Rules of the Fire Prevention and Investigation Bureau Describing the Revision of Licensure Requirements for Persons Selling, Installing or Servicing Fire Protection Equipment -

Other Provisions Dealing with Fire Safety, p. 1855, 2953, 3025

I-VII Regional Youth Detention Services, p. 2886, 579

I-XI and other rules - Instituting Procedures for the Revocation or Suspension of the Certification of Peace Officers and Other Public Safety Officers - Procedures for Peace Officer Standards and Training, p. 893, 1449

23.5.101 State Adoption of Federal Hazardous Materials Regulations, p. 1469, 141, 578

23.15.102 and other rules - Crime Victims Compensation, p. 1381

23.16.101 and other rules - Regulating Public Gambling, p. 1974, 2786, 3025

LABOR AND INDUSTRY, Department of, Title 24

I-IV Implementation of Education-based Safety Programs for Workers' Compensation Purposes, p. 257, 1156

I-IX Groups of Business Entities Joining Together for the Purchase of Workers' Compensation Insurance, p. 9, 681

I-XIX and other rules - Claims for Unpaid and Underpaid Wages - Calculation of Penalties, p. 367, 1152

I-XX Certification of Managed Care Organizations for Workers' Compensation, p. 2890, 420

(Workers' Compensation Judge)

24.5.301 and other rules - Procedural Rules of the Court, p. 2747, 27

24.5.322 and other rules - Procedural Rules of the Court, p. 248, 675

24.16.9007 Montana's Prevailing Wage Rate, p. 912, 1705

24.26.202 and other rules - Rules of Procedure before the Board of Personnel Appeals - Labor-Management Relations and Grievances, p. 2339, 3026

24.29.1402 Liability for Workers for Medical Expenses for Workers' Compensation Purposes - Payment of Medical Claims, p. 1870, 2801

24.29.1409 Travel Expense Reimbursements for Workers' Compensation Purposes, p. 1872, 2804

24.29.1416 Applicability of Rules and Statutes in Workers' Compensation Matters - Applicability of Date of Injury, Date of Service, p. 143, 679

24.29.1504 and other rules - Selection of Treating Physician for Workers' Compensation Purposes, p. 1878, 2809

24.29.1513 and other rules - Utilization and Medical Fee Schedules for Workers' Compensation Matters, p. 146, 680

STATE LANDS, Department of, Title 26

I Rental Rates for Grazing Leases and Licenses - Rental Rates for Cabinsite Leases - Fees for General Recreational Use License, p. 2496, 34

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

SECRETARY OF STATE, Title 44

(Commissioner of Political Practices)

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

CROSS REFERENCE INDEX

Montana Code Annotated
to
Administrative Rules of Montana

January - June 1994 Registers

MCA	Rule or A.G.'s Opinion	Register Page No.
1-2-109	Opinion No. 20	37
1-2-201	Opinion No. 20	37
2-3-103	Rule I (FWP)	1649
2-3-103	8.104.201	1627
2-3-104	Rule I (FWP)	1649
2-3-203	8.104.201	1627
2-4-103	6.6.8301	608
2-4-201	Rule I (FWP)	1649
2-4-201	2.43.201, 202	1191
2-4-201	4.2.102, 103	1501
2-4-201	8.104.101	1627
2-4-201	11.5.602, 609	1290
2-4-201	24.5.302, 303, 306, 308, 309, 317	27
2-4-201	24.5.322 - 325, 331, 340, 346, 350	248
2-4-201	24.5.322, 324, 350	675
2-4-201	36.12.204, 210, 215, 220	307
2-4-201	46.2.202	1111
2-4-201	46.12.509A	1111
2-4-601	36.12.204	307
2-4-602	36.2.215	307
2-4-611	36.12.220	307
2-4-612	36.12.220	307
2-4-614	38.2.309	929
2-6-109	Rules I - III (Administration-PERB)	508
2-7-503	8.94.4110, 4111	999
2-7-504	8.94.4111	999
2-7-505	8.94.4111	999
2-7-506	8.94.4111	999
2-7-514	8.94.4102	999
2-9-101	Opinion No. 22	1549
2-9-211	Opinion No. 22	1549
2-9-212	Opinion No. 22	1549
2-15-122	Rule II (State Lands & Board of Land Commissioners)	641
2-15-501	Opinion No. 22	171
2-18-102	Rule I (Administration)	487
2-18-102	Rules I, II (Administration)	498
2-18-102	2.21.903, 909, 912	473

MCA	Rule or A.G.'s Opinion	Register Page No.
2-18-102	2.21.1604, 1606	476
2-18-102	2.21.1604	1411
2-18-102	2.21.3702, 3703, 3708, 3709, 3712, 3713, 3715, 3719, 3721, 3726 - 3728	487
2-18-102	2.21.3702 - 3704, 3708, 3715	1412
2-18-102	2.21.5006, 5007, 5009, 5011	498
2-18-102	2.21.5007A, 5009, 5011	1419
2-18-102	2.21.8011	485
2-18-102	2.21.8109	478
2-18-111	2.21.5007A	1419
2-18-604	2.21.137, 144	480
2-18-604	2.21.137, 144	1407
2-18-604	2.21.704	483
2-18-618	2.21.137, 144	480
2-18-618	2.21.137, 144	1407
2-18-1201	Rule I (Administration)	487
2-18-1201	2.21.3702, 3712, 3713	487
2-18-1201	2.21.3702, 3704	1412
2-18-1201 - 1206	Rule II (Administration)	498
2-18-1203	2.21.5009	498
2-18-1203	2.21.5009	1419
7-8-2306	Opinion No. 24	1606
7-11-101	Opinion No. 22	1549
7-12-4183	Opinion No. 24	1606
7-13-241	Opinion No. 22	1549
7-13-301 311	Opinion No. 22	1549
7-22-2101	4.5.202, 203	93
7-32-303	23.14.401, 405, 412, 413	893
7-32-4112	23.14.412, 413	893
13-27-105	Opinion No. 20	37
13-37-114	44.10.331	659
13-37-218	44.10.331	659
15-1-201	Rules I, II (Revenue)	931
15-1-201	Rules I - III (Revenue)	1663
15-1-201	42.25.1201, 1203 - 1207	1663
15-6-208	Rule I (Revenue)	1663
15-10-412	10.23.105	1006
15-18-214	Opinion No. 24	1606
15-23-601	Rules I - VI (DNRC)	925
15-23-601	42.25.1203	1663
15-23-601 - 603	Rules I - III (Revenue)	1663
15-23-607	Rules I - III (Revenue)	1663

MCA	Rule or A.G.'s Opinion	Register Page No.
15-23-607	10.21.101	1006
15-23-612	Rules I - III (Revenue)	1663
15-23-703	10.21.101	1006
15-30-101	44.10.331	659
15-30-111	42.15.308	657
15-30-142	42.16.104	1657
15-30-305	42.15.308	657
15-30-305	42.16.104	1657
15-31-501	42.23.606 - 609	1659
15-31-502	42.23.606, 608, 609	1659
15-31-510	42.23.607, 608	1659
15-36-101	Rules I - III (Revenue)	1663
15-36-101	Rules I - VI (DNRC)	925
15-36-121	42.25.1201, 1203 - 1207	1663
16-10-103	Rules I - VIII (Revenue)	375
16-10-104	Rules I - VIII (Revenue)	375
16-10-301	Rules I - VIII (Revenue)	375
18-2-402	24.16.9007	912
18-2-431	24.16.9007	912
18-4-221	2.5.202, 301, 302, 601, 603, 604	1
18-4-221	2.5.202, 301, 302, 601, 603, 604	383
18-4-222	2.5.202, 301	1
18-4-222	2.5.202, 301	383
18-4-303	2.5.601	1
18-4-303	2.5.601	383
18-4-305	2.5.603	1
18-4-305	2.5.603	383
18-4-306	2.5.604	1
18-4-306	2.5.604	383
Title 19, Chs. 2, 3, 5 - 9, 13	2.43.302	1191
19-2-403	Rules I - III (Administration-PERB)	508
19-2-403	Rules I - XI (Administration-PERB)	1191
19-2-403	2.43.201 - 203, 502	1191
19-2-406	2.43.502	1191
19-3-1015	Rules I - VIII (Administration-PERB)	1191
19-5-612	Rules I - VIII (Administration-PERB)	1191
19-6-612	Rules I - VIII (Administration-PERB)	1191
19-7-612	Rules I - VIII (Administration-PERB)	1191

MCA	Rule or A.G.'s Opinion	Register Page No.
19-8-612	Rules I - VIII (Administration-PERB)	1191
19-9-904	Rules I - VIII (Administration-PERB)	1191
19-13-804	Rules I - VIII (Administration-PERB)	1191
20-1-304	10.65.101	1640
20-2-112	10.58.516	735
20-2-114	Rule I (Board of Public Education)	817
20-2-114	10.55.601	1642
20-2-114	10.58.102 - 104, 206, 208, 209, 301 - 303, 401, 403, 405, 406, 501 - 503, 505 - 515, 517 - 521, 523 - 527, 601, 701, 704, 707	735
20-2-115	10.58.404	735
20-2-121	Rule I (Board of Public Education)	817
20-2-121	10.65.101	1640
20-2-121	10.55.601	1642
20-2-121	10.58.102 - 104, 206, 208, 209, 301 - 303, 401, 403 - 406, 501 - 503, 505 - 515, 517 - 521, 523 - 527, 601, 701, 704, 707	735
20-2-121	10.64.355	733
20-2-121	10.64.355	956
20-3-106	10.20.103, 104, 203	1006
20-3-106	10.30.102, 401 - 407	1006
20-4-102	Rule I (Board of Public Education)	237
20-4-102	10.57.110	954
20-4-102	10.57.301	815
20-4-102	10.57.501	234
20-4-102	10.57.501	955
20-4-102	10.58.528	735
20-4-103	Rule I (Board of Public Education)	237
20-4-103	10.57.110	954
20-4-103	10.57.301	815
20-4-103	10.58.528	735
20-4-106	10.57.301	815
Title 20, Ch. 5, Pt. 3	10.10.301	1006

MCA	Rule or A.G.'s Opinion	Register Page No.
20-5-305	10.16.1312	1006
20-5-312	10.16.1312	1006
20-5-314	Rule XXVI (OPI)	1006
20-5-316	Rule XXVI (OPI)	1006
20-5-321 - 324	Rule XXIV (OPI)	1006
20-5-323	Rules XXV - XXVI (OPI)	1006
20-5-324	Rules XXV - XXVI (OPI)	1006
20-5-324	10.10.310	1006
20-6-701	10.30.401, 402	1006
20-6-702	10.30.404, 406	1006
20-6-711	10.30.403	1006
20-6-712	10.30.407	1006
20-7-431	Rule XXV (OPI)	1006
Title 20, Ch. 9	Rule I (OPI)	1006
20-9-102	Rules I - VI, XVIII, XX, XXIII (OPI)	1006
20-9-102	10.10.101, 207, 208, 301, 301A, 304, 308 - 310, 407, 501 - 504	1006
20-9-102	10.20.101, 102	1006
20-9-102	10.22.101 - 104, 106, 107, 202 - 205	1006
20-9-102	10.23.101 - 105, 107	1006
20-9-103	Rule III (OPI)	1006
20-9-103	10.10.407	1006
20-9-104	10.22.101, 103, 104	1006
20-9-121	10.10.501	1006
20-9-133	Rule VI (OPI)	1006
20-9-141	10.23.102	1006
20-9-145	10.23.101	1006
20-9-147	10.22.106	1006
20-9-161 - 165	10.22.201	1006
20-9-161	10.22.107	1006
20-9-163	10.22.202 - 203	1006
20-9-165	Rule XXIII (OPI)	1006
20-9-165	10.22.204, 205	1006
20-9-166	10.20.104, 201, 202	1006
20-9-201	Rule III (OPI)	1006
20-9-201	10.10.101, 207, 208, 301, 304, 407, 501 - 504	1006
20-9-209	10.10.101	1006
20-9-210	10.10.207	1006
20-9-212	10.10.308, 501	1006
20-9-213	Rule VI (OPI)	1006
20-9-213	10.10.308, 309, 502	1006
20-9-220	10.10.207, 208	1006
20-9-302	10.30.102	1006
20-9-308	Rules III, XVIII (OPI)	1006
20-9-308	10.22.107	1006

MCA	Rule or A.G.'s Opinion	Register Page No.
20-9-311	Rule II (OPI)	1006
20-9-311	10.20.102	1006
20-9-313	Rule II (OPI)	1006
20-9-313	10.20.101 - 103	1006
20-9-314	Rule II (OPI)	1006
20-9-314	10.20.101 - 103, 201, 202	1006
20-9-315	10.22.101, 102	1006
20-9-318	10.20.203	1006
20-9-322	10.20.203	1006
20-9-331	10.23.107	1006
20-9-333	10.23.107	1006
20-9-344	10.10.503, 504	1006
20-9-346	10.20.101	1006
20-9-353	10.22.107	1006
20-9-353	10.23.101, 103	1006
20-9-366 - 369	10.21.101, 103 - 105	1006
20-9-366 - 371	Rules VII - XVII, XIX, XXI, XXII (OPI)	1006
20-9-368	10.23.104	1006
20-9-369	10.20.101	1006
20-9-406	Rule XX (OPI)	1006
20-9-406	10.30.405	1006
20-9-442	10.10.501	1006
20-9-501	10.23.104	1006
20-9-503	Rule V (OPI)	1006
20-9-512	Rule IV (OPI)	1006
20-10-111	10.64.355	733
20-10-111	10.64.355	956
23-1-106	12.6.901	825
23-2-701	8.63.501	351
23-2-721	8.63.501	351
23-3-404	8.8.2804, 3301	985
23-3-405	8.8.2804, 2805, 3301	985
23-3-501	8.8.2804, 2805, 3301	985
23-3-502	8.8.2804	985
23-3-601	8.8.3301	985
23-4-101	8.22.501	547
23-4-101	8.22.501	1282
23-4-104	8.22.501 - 503, 701, 704, 705, 707, 803, 804, 806, 1402, 1501	547
23-4-104	8.22.501, 701	1282
23-4-104	8.22.1402, 1802	1507
23-4-106	8.22.1501	547
23-4-201	8.22.502, 503, 602, 701, 705	547
23-4-201	8.22.701	1282

MCA	Rule or A.G.'s Opinion	Register Page No.
23-4-202	8.22.501, 502, 602, 701, 704, 705, 707, 803, 804, 806, 1402, 1501	547
23-4-202	8.22.701	1282
23-4-202	8.22.1402	1507
23-4-402	8.22.501	1282
23-7-202	8.127.407, 1007	1002
23-7-301	8.127.407	1002
27-2-209	Opinion No. 23	1600
30-10-104	Rules I & II (State Auditor)	95
30-10-104	6.10.102	95
30-10-104	6.10.131	569
30-10-105	6.10.125	95
30-10-107	Rules I & II (State Auditor)	95
30-10-107	6.10.102, 125	95
30-10-107	6.10.131	569
32-1-202	8.87.701	361
32-1-203	Rule II (Commerce-Banking & Financial Institutions Division)	361
32-1-203	8.87.202, 204, 301 - 304, 601, 701	361
32-1-204	8.87.501	361
32-1-205	Rule I (Commerce-Banking & Financial Institutions Division)	361
32-1-213	8.80.104	853
32-1-371	8.87.601	361
32-1-372	8.87.701	361
32-1-491	Rule I (Commerce-Banking & Financial Institutions Division)	355
32-1-424	Rule II (Commerce-Banking & Financial Institutions Division)	355
32-1-433	Rule II (Commerce-Banking & Financial Institutions Division)	355
32-1-492	Rule I (Commerce-Banking & Financial Institutions Division)	355
32-3-801	8.80.404	161
32-3-802	8.80.404	161
32-3-803	8.80.404	161

MCA	Rule or A.G.'s Opinion	Register Page No.
32-3-804	8.80.404	161
32-5-104	8.80.307	359
32-5-201	8.80.307	359
32-5-301	8.80.307	359
32-5-302	8.80.307	359
32-5-306	8.80.307	359
32-6-305	Rule II (Commerce-Banking & Financial Institutions Division)	853
32-6-304	Rule I (Commerce-Banking & Financial Institutions Division)	853
32-6-401	Rules I & II (Commerce-Banking & Financial Institutions Division)	853
33-1-313	Rules I & II (State Auditor)	564
33-1-313	Rules I - III (State Auditor)	1323
33-1-313	Rules I - XIII (State Auditor)	1200
33-1-313	Rules I - XXIV (State Auditor)	511
33-1-313	6.6.5001, 5004, 5008, 5012, 5016, 5020, 5024, 5028, 5032, 5036, 5040, 5044, 5050, 5054, 5058, 5062, 5066, 5070, 5074, 5078, 5082, 5086, 5090, 5094 5098	1528
33-1-501	6.6.5044	1528
33-2-708	Rules I - III (State Auditor)	1323
33-2-709	Rules I - III (State Auditor)	1323
33-2-1216	Rule I (State Auditor)	564
33-2-1217	Rule II (State Auditor)	564
33-2-1517	Rules I & II (State Auditor)	564
33-16-1012	6.6.8301	608
33-17-236	Rules I - III (State Auditor)	1323
33-17-237	Rules I - III (State Auditor)	1323

MCA	Rule or A.G.'s Opinion	Register Page No.
33-22-1802	Rules I - XXIV (State Auditor)	511
33-22-1802	6.6.5001, 5004, 5008, 5012, 5016, 5020, 5024, 5028, 5032, 5036, 5040, 5044, 5050, 5054, 5058, 5062, 5066, 5070, 5074, 5078, 5082, 5086, 5090, 5094 5098	1528
33-22-1803	Rule I (State Auditor)	511
33-22-1803	6.6.5001	1528
33-22-1808	Rules II, XX, XXI, XXIV (State Auditor)	511
33-22-1808	6.6.5004, 5082, 5086, 5098	1528
33-22-1809	Rules IX, XV, XVII, XXI - XXIV (State Auditor)	511
33-22-1809	6.6.5036, 5062, 5070, 5086, 5090, 5094, 5098	1528
33-22-1810	Rules XIII, XVI (State Auditor)	511
33-22-1810	6.6.5054, 5066	1528
33-22-1811	Rules XI, XIV, XVI - XVIII (State Auditor)	511
33-22-1811	6.6.5044, 5058, 5066, 5070, 5074	1528
33-22-1812	Rules I - XXIV (State Auditor)	511
33-22-1812	6.6.5001, 5004, 5008, 5012, 5016, 5020, 5024, 5028, 5032, 5036, 5040, 5044, 5050, 5054, 5058, 5062, 5066, 5070, 5074, 5078, 5082, 5086, 5090, 5094 5098	1528
33-22-1813	6.6.5078	1528
33-22-1814	Rules XII, XV (State Auditor)	511
33-22-1814	6.6.5050, 5062	1528
33-22-1819	Rules I - XIII (State Auditor)	1200
33-22-1822	Rules I - XIII (State Auditor)	1200
33-22-1822	Rules I - XXIV (State Auditor)	511

MCA	Rule or A.G.'s Opinion	Register Page No.
33-22-1822	6.6.5001, 5004, 5008, 5012, 5016, 5020, 5024, 5028, 5032, 5036, 5040, 5044, 5050, 5054, 5058, 5062, 5066, 5070, 5074, 5078, 5082, 5086, 5090, 5094 5098	1528
Title 35, Ch. 8	Rules I & II (Revenue)	931
37-1-131	Rule I (Commerce-State Electrical Board)	225
37-1-131	Rule I (Commerce-Cosmetologists)	331
37-1-131	Rule I (Commerce-Medical Examiners)	613
37-1-131	Rule I (Commerce-Dentistry)	1120
37-1-131	Rule I (Commerce-Veterinary Medicine)	1329
37-1-131	8.6.405	715
37-1-131	8.6.407	983
37-1-131	8.12.601	222
37-1-131	8.12.601	1503
37-1-131	8.14.603, 606, 802, 803, 805, 806, 815 - 818, 902, 903, 905, 906, 1004	331
37-1-131	8.16.602	1120
37-1-131	8.16.904, 905	1130
37-1-131	8.18.402, 407 - 409	225
37-1-131	8.22.502	547
37-1-131	8.32.306, 416	100
37-1-131	8.42.402	159
37-1-131	8.42.402, 410	996
37-1-131	8.48.419	232
37-1-131	8.52.606	389
37-1-131	8.58.419	297
37-1-131	8.58.419	667
37-1-131	8.58.419	730
37-1-134	8.8.2805	985
37-1-134	8.12.601, 606	222
37-1-134	8.14.601, 814	331
37-1-134	8.18.407	225
37-1-134	8.20.402	717
37-1-134	8.22.503	547
37-1-134	8.23.502	613
37-1-134	8.24.406, 409	991
37-1-134	8.32.306, 416, 425	100

MCA	Rule or A.G.'s Opinion	Register Page No.
37-1-134	8.38.1504	720
37-1-134	8.42.403	996
37-1-134	8.62.413	1327
37-1-136	Rule II (Commerce-Cosmetologists)	331
37-1-136	8.32.413	100
37-1-136	8.48.419	232
37-1-136	8.58.419	297
37-1-136	8.58.419	667
37-1-136	8.58.419	730
37-1-137	Rule II (Commerce-Cosmetologists)	331
37-3-311	Rule I (Commerce-Medical Examiners)	613
37-4-101	Declaratory Ruling (Commerce-Dentistry)	183
37-4-205	Rule I (Commerce-Dentistry)	1120
37-4-205	8.16.602	1120
37-4-205	8.16.904, 905	1130
37-4-205	8.16.1002, 1003	988
37-4-307	8.16.1002, 1003	988
37-4-321	Declaratory Ruling (Commerce-Dentistry)	183
37-4-327	Declaratory Ruling (Commerce-Dentistry)	183
37-4-401	Rule I (Commerce-Dentistry)	1120
37-4-401	8.16.602	1120
37-4-406	8.16.1002, 1003	988
37-4-407	8.16.1002	988
37-4-511	8.16.904, 905	1130
37-7-201	8.40.1602, 1605	571
37-7-703	8.40.1602, 1605	571
37-7-704	8.40.1605	571
37-7-711	8.40.1605	571
37-8-101	Declaratory Ruling (Commerce-Nursing)	580
37-8-102	Petition for Declaratory Ruling (Commerce-Nursing)	178
37-8-102	Declaratory Ruling (Commerce-Nursing)	180
37-8-103	Petition for Declaratory Ruling (Commerce-Nursing)	178
37-8-103	8.32.408	100
37-8-202	Rules I - XIII (Commerce-Nursing)	100

MCA	Rule or A.G.'s Opinion	Register Page No.
37-8-202	8.32.304 - 306, 402 - 404, 408 - 410, 412, 414, 416, 425, 603, 604, 806, 1501, 1502, 1504 - 1510, 1607	100
37-8-202	8.32.1501, 1502, 1504 - 1510	615
37-8-202	8.32.304, 307, 1701, 1703 - 1705, 1708, 1710 - 1712	1424
37-8-301	8.32.806	100
37-8-302	8.32.806	100
37-8-401	8.32.409	100
37-8-406	8.32.402 - 404	100
37-8-416	8.32.402 404	100
37-8-430	8.32.408	100
37-8-431	8.32.306, 412, 416	100
37-9-203	8.34.414A	993
37-10-131	8.58.406C	730
37-10-202	8.36.601, 701, 702, 801	120
37-10-202	8.36.801	153
37-10-304	8.36.701, 702, 801	120
37-10-304	8.36.801	153
37-10-308	8.36.601	120
37-11-101	8.42.406	996
37-11-201	8.42.402	159
37-11-201	8.42.402, 403, 406, 410	996
37-11-303	8.42.402	159
37-11-303	8.42.402, 406	996
37-11-304	8.42.402	159
37-11-304	8.42.402, 403	996
37-11-307	8.42.403, 406	996
37-11-308	8.42.403	996
37-11-309	8.42.403	996
37-11-310	8.42.410	996
37-12-201	8.12.601, 606, 607	222
37-12-201	8.12.601, 605, 609, 615	1503
37-12-302	8.12.601	222
37-12-302	8.12.601	1503
37-12-304	Rule I (Commerce-Chiropractors)	1503
37-12-304	8.12.601	222
37-12-304	8.12.601, 605, 609	1503
37-12-305	8.12.601	222
37-12-305	8.12.605	1503
37-12-307	8.12.601, 606	222
37-12-321	8.12.607	222
37-12-322	8.12.607	222
37-12-323	8.12.609	1503
37-13-201	Rule I (Commerce-Medical Examiners)	613

MCA	Rule or A.G.'s Opinion	Register Page No.
37-13-201	8.23.502, 508	613
37-13-312	Rule I (Commerce-Medical Examiners)	613
37-15-102	8.62.502	1327
37-15-202	8.62.413, 502	1327
37-15-307	8.62.413	1327
37-15-308	8.62.413	1327
37-15-313	8.62.502	1327
37-16-202	Rule I (Commerce-Hearing Aid Dispensers)	717
37-16-202	8.20.402, 403	717
37-16-402	8.20.402	717
37-16-403	8.20.403	717
37-16-405	8.20.402	717
37-16-406	Rule I (Commerce-Hearing Aid Dispensers)	717
37-16-406	8.20.403	717
37-16-407	8.20.402	717
37-17-202	8.52.606	389
37-17-302	8.52.606	389
37-18-104	8.64.802	1329
37-18-202	Rule I (Commerce-Veterinary Medicine)	1329
37-18-202	8.64.802	1329
37-20-101	8.28.1503, 1504	720
37-20-201	8.28.1501, 1503 - 1508, 1510, 1518	720
37-20-202	Rule I (Commerce-Medical Examiners)	720
37-20-202	8.28.1510, 1518, 1519	720
37-20-203	8.28.1501, 1504, 1505, 1508, 1510	720
37-20-301	8.28.1504, 1506, 1508	720
37-20-302	8.28.1505	720
37-20-402	8.28.1503, 1504	720
37-20-403	8.28.1507	720
37-20-409	Rule I (Commerce-Medical Examiners)	720
37-24-105	Rules I, III, IV (Commerce-Occupational Therapy)	116
37-24-105	8.35.402	116
37-24-105	8.35.402, 501, 503	663
37-24-106	Rules I - IV (Commerce-Occupational Therapy)	116
37-24-106	8.35.402	116
37-24-106	8.35.402, 501 - 503	663
37-24-202	Rules I - IV (Commerce-Occupational Therapy)	116
37-24-202	8.35.402	116

MCA	Rule or A.G.'s Opinion	Register Page No.
37-24-202	8.35.402, 501 - 503	663
37-26-201	8.4.405	386
37-28-101	8.59.101	123
37-28-101	8.59.402	668
37-28-102	8.59.402	123
37-28-102	8.59.402	668
37-28-104	8.59.402	123
37-28-104	8.59.402	668
37-31-101	8.14.401	331
37-31-203	8.14.401, 601 - 603, 605 - 608, 801 - 803, 805 - 807, 813 - 818	331
37-31-204	8.14.601	331
37-31-301	8.14.401, 603, 801, 814, 816, 904, 906	331
37-31-302	8.14.401, 814, 818, 902, 903, 905, 906	331
37-31-303	8.14.401, 801, 802, 805, 814	331
37-31-304	8.14.401, 603, 606, 803, 805, 806, 814, 902, 903, 1004	331
37-31-305	8.14.607, 608, 801	331
37-31-306	8.14.805, 806, 814, 902, 903, 1004	331
37-31-307	8.14.802, 803, 805, 807, 814	331
37-31-308	8.14.801, 802, 805	331
37-31-311	8.14.401, 602, 603, 605, 606, 608, 803, 807	331
37-31-312	8.14.602, 814, 816	331
37-31-321	8.14.802, 814	331
37-31-322	8.14.814, 815	331
37-31-323	8.14.606, 814	331
37-31-331	8.14.401, 1004	331
37-32-201	Rule I (Commerce-Cosmetologists)	331
37-32-201	8.14.904 - 906, 1004	331
37-32-301	8.14.904, 906	331
37-32-302	Rule I (Commerce-Cosmetologists)	331
37-32-302	8.14.902, 903, 905, 906	331
37-32-303	Rule I (Commerce-Cosmetologists)	331
37-32-304	8.14.814, 902, 903, 1004	331
37-32-305	8.14.814	331
37-32-306	8.14.814, 902, 903, 1004	331
37-32-331	8.14.1004	331
37-34-201	Rule I (Commerce-Clinical Laboratory Science Practitioners)	611

MCA	Rule or A.G.'s Opinion	Register Page No.
37-34-201	8.13.306	1671
37-40-203	8.60.408	349
37-40-302	8.60.408	349
37-47-201	Rule I (Commerce-Outfitters)	155
37-47-341	Rule I (Commerce-Outfitters)	155
37-51-201	8.58.419	232
37-51-201	8.58.419	297
37-51-201	8.58.419	667
37-51-201	8.58.419	730
37-51-202	8.58.406C, 419	730
37-51-202	8.58.419	232
37-51-202	8.58.419	297
37-51-202	8.58.419	667
37-51-203	8.58.406C, 419	730
37-51-203	8.48.419	232
37-51-203	8.58.419	297
37-51-203	8.58.419	667
37-51-302	8.58.406C	730
37-51-321	8.58.419	232
37-51-321	8.58.419	297
37-51-321	8.58.419	667
37-51-321	8.58.419	730
37-51-512	8.58.419	232
37-51-512	8.58.419	667
37-54-105	8.57.401, 404, 406, 411, 412	727
37-54-112	8.57.412	727
37-54-201	8.57.412	727
37-54-202	8.57.406	727
37-54-203	8.57.406	727
37-54-210	8.57.411, 412	727
37-54-211	8.57.412	727
37-54-302	8.57.412	727
37-54-310	8.57.411, 412	727
37-54-403	8.57.401	727
37-54-406	8.57.412	727
37-65-204	8.6.405	715
37-65-204	8.6.407	983
37-65-303	8.6.407	983
37-65-305	8.6.405	715
37-66-202	8.24.406, 409	991
37-66-305	8.24.409	991
37-66-307	8.24.406, 409	991
37-67-202	8.48.407, 1106	1625
37-67-331	8.48.1106	1625
37-68-201	Rule I (Commerce-State Electrical Board)	225
37-68-103	8.18.402	225

MCA	Rule or A.G.'s Opinion	Register Page No.
37-68-201	8.18.402 - 404, 407 - 409	225
37-68-301	8.18.403	225
37-68-302	8.18.402, 403	225
37-68-304	8.18.402, 407, 408	225
37-68-305	8.18.402, 408	225
37-68-306	8.18.404, 407	225
37-68-307	8.18.407	225
37-68-309	8.18.407	225
37-68-310	8.18.402, 407	225
37-68-311	8.18.407	225
37-68-312	8.18.407	225
37-68-313	8.18.407	225
39-3-202	Rules I - XIX (Labor & Industry)	367
39-3-202	24.16.7503, 7506, 7511, 7514, 7517, 7521, 7524, 7527, 7531, 7534, 7537, 7541, 7544, 7547, 7551, 7556, 7561, 7566, 7569	1152
39-3-205	Rule III (Labor & Industry)	367
39-3-205	24.16.7511	1152
39-3-206	Rules XV - XIX (Labor & Industry)	367
39-3-206	24.16.7551, 7556, 7561, 7566, 7569	1152
39-3-209	Rules IX, X (Labor & Industry)	367
39-3-209	24.16.7531, 7534	1152
39-3-210	Rules VII, VIII (Labor & Industry)	367
39-3-210	24.16.7524, 7527	1152
39-3-211	Rule VI (Labor & Industry)	367
39-3-211	24.16.7521	1152
39-3-216	Rules XI - XIII (Labor & Industry)	367
39-3-216	24.16.7537, 7541, 7544	1152
39-3-217	Rule XIV (Labor & Industry)	367
39-3-217	24.16.7547	1152
Title 39, Ch. 3, Pt. 4	Opinion No. 21	171
39-3-403	Rules I, II, IV - XVII (Labor & Industry)	367

MCA	Rule or A.G.'s Opinion	Register Page No.
39-3-403	24.16.7503, 7506, 7514, 7517, 7521, 7524, 7527, 7531, 7534, 7537, 7541, 7544, 7547, 7551, 7556, 7561	1152
39-4-104	Opinion No. 21	171
39-29-103	2.21.3616	23
39-29-112	2.21.3616	23
39-71-203	Rules I - IX (Labor & Industry)	9
39-71-203	24.29.1416	679
39-71-203	24.29.1416	143
39-71-203	24.29.1513, 1536, 1541, 1551, 1561, 1566, 1571, 1581	146
39-71-203	24.29.2301, 2303, 2311, 2321, 2326, 2331, 2341, 2351, 2356, 2366, 2376	420
39-71-203	24.29.3701, 3703, 3704, 3707, 3711, 3721, 3726, 3731, 3741	681
39-71-224	24.29.2321, 2341, 2351	420
39-71-403	Opinion No. 22	1549
39-71-433	Rules I - IX (Labor & Industry)	9
39-71-433	24.29.3701, 3703, 3704, 3707, 3711, 3721, 3726, 3731, 3741	681
39-71-434	2.55.402	597
39-71-434	2.55.402	1423
39-71-704	24.29.1416	679
39-71-704	24.29.1416	143
39-71-704	24.29.1513, 1536, 1541, 1551, 1561, 1566, 1571, 1581	146
39-71-727	24.29.1416	143
39-71-727	24.29.1416	679
39-71-1102	24.29.1416	143
39-71-1102	24.29.1416	679
39-71-1103	24.29.2301, 2303, 2311, 2321, 2326, 2331, 2341, 2351, 2356, 2366, 2376	420
39-71-1105	24.29.2301, 2303, 2311, 2321, 2326, 2331, 2341, 2351, 2356, 2366, 2376	420
39-71-1505	Rules I - IV (Labor & Industry)	257
39-71-1505	24.30.2501, 2503, 2521, 2541	1156
39-71-2102	Opinion No. 22	1549
39-71-2211	2.55.320, 324, 327	1423
39-71-2211	2.55.324, 327	597
39-71-2211	2.55.324	1497

MCA	Rule or A.G.'s Opinion	Register Page No.
39-71-2311	2.55.320, 324, 327, 402	597
39-71-2311	2.55.320, 324, 327, 402	1423
39-71-2311	2.55.324	1497
39-71-2311	2.55.326	981
39-71-2315	2.55.320, 324, 327, 402	597
39-71-2315	2.55.320, 324, 327, 402	1423
39-71-2315	2.55.324	1497
39-71-2315	2.55.326	981
39-71-2315	2.55.404	661
39-71-2315	2.55.405	292
39-71-2316	2.55.320, 324, 327, 402	597
39-71-2316	2.55.320, 324, 327, 402	1423
39-71-2316	2.55.324	1497
39-71-2316	2.55.326	981
39-71-2316	2.55.404	661
39-71-2316	2.55.405	292
39-71-2341	2.55.404	661
39-71-2341	2.55.405	292
39-71-2901	24.5.302, 303, 306, 308, 309, 317	27
39-71-2901	24.5.322 - 325, 331, 340, 346, 350	248
39-71-2901	24.5.322, 324, 350	675
40-5-202	Rules I - X (SRS)	1392
40-5-202	46.30.1101	1392
40-5-226	46.30.1101	1392
40-5-272	Rule IX (SRS)	1392
40-5-273	Rules VI, IX, X (SRS)	1392
40-5-703	Rule IX (SRS)	1386
40-5-710	Rules I - XIII (SRS)	1386
40-5-713	Rules I - IX (SRS)	1386
41-3-205	11.5.602, 609	238
41-3-205	11.5.602, 609	1290
41-3-208	11.5.602, 609	238
41-3-208	11.5.602, 609	1290
41-3-1101	11.7.901	1294
41-3-1103	46.2.202	1111
41-3-1103	11.7.901	1294
41-3-1122	Opinion No. 23	1600
41-3-1142	46.2.202	1111
41-4-101, Article VII	11.7.901	621
41-4-101, Article VII	11.7.901	1294
41-5-311	11.8.308	819

MCA	Rule or A.G.'s Opinion	Register Page No.
44-1-1005	23.5.101	141
44-4-301	Rules I - XI (Justice)	893
44-4-301	23.14.401, 404 - 408, 411 - 413, 415, 416, 419	893
44-4-401	23.14.413	893
44-4-301	23.14.415	1449
44-11-301 - 305	23.14.404, 405	893
50-1-202	Rules I & II (Health)	623
50-1-202	16.24.104, 105, 111	1340
50-1-202	16.28.202, 203, 305 - 307, 606B, 606C, 638B	623
50-1-202	16.28.1005	1652
50-2-118	Rules I & II (Health)	623
50-2-118	16.28.202, 306, 307, 606B, 606C, 638B	623
50-5-103	Rules I - XI (Health)	1255
50-5-103	Rules I - XIII (Health)	882
50-2-735	16.28.1005	1652
50-5-103	Rules I - XXII (Health)	1343
50-5-103	16.32.356, 357	1255
50-5-103	16.32.373	631
50-5-103	16.32.399M - 399O	304
50-5-103	16.32.380 - 388	1343
50-5-106	16.32.380 - 388	1343
50-5-201	16.32.356, 357	1255
50-5-201	16.32.399M - 399O	304
50-5-204	16.32.356, 357	1255
50-5-204	16.32.373	631
50-5-204	16.32.380 - 388	1343
50-5-210	16.32.373	631
50-5-211	16.32.373	631
50-5-221	Rules I & II (Health)	631
50-5-221	16.32.373	631
50-5-225	16.32.380 - 388	1343
50-5-226	Rules XVII, XXI (Health)	1343
50-5-226	16.32.380 - 388	1343
50-5-227	Rules I - XXII (Health)	1343
50-5-227	16.32.380 - 388	1343
50-5-304	16.32.110	639
50-16-701	16.30.801, 802	415
50-16-701	16.30.801, 802	1251
50-16-702	16.30.803, 805	415
50-16-702	16.30.803, 805	1251
50-16-703	16.30.804	415
50-16-703	16.30.804, 805	1251
50-16-705	16.30.801 - 805	415
50-16-705	16.30.801 - 805	1251
50-16-711	16.30.805	415

MCA	Rule or A.G.'s Opinion	Register Page No.
50-17-103	16.28.202, 203	623
50-17-103	16.28.1005	1652
50-18-102	16.28.202, 203	623
50-18-105	16.28.202, 203	623
50-18-106	16.28.202, 203	623
50-53-103	16.10.1311, 1529	1513
50-53-106	16.10.1529	1513
50-53-107	16.10.1529	1513
50-53-209	16.10.1311, 1529	1513
50-60-103	8.70.101	299
50-60-103	8.70.101	1331
50-60-104	8.70.101	299
50-60-104	8.70.101	1331
50-50-108	8.70.101	299
50-60-108	8.70.101	1331
50-60-109	8.70.101	299
50-60-109	8.70.101	1331
50-60-201	8.70.101, 104, 304	299
50-60-203	8.70.101, 104, 304	299
50-60-203	8.70.101	1331
50-60-501	8.70.304	299
50-60-504 - 508	8.70.304	299
52-1-110	Opinion No.23	1600
52-2-111	11.7.901	621
52-2-111	11.7.901	1294
52-2-301 - 308	Rules I & II (Family Services)	1338
52-2-702	Rule I (Family Services)	129
52-2-702	11.14.104, 226, 301, 401	958
52-2-702	11.14.226, 301, 401	129
52-2-704	Rule I (Family Services)	129
52-2-704	11.14.104, 226, 301, 401	958
52-2-704	11.14.226, 301, 401, 609	129
52-2-713	11.14.301, 401	958
52-2-713	11.14.301, 609	129
52-2-723	11.14.301	129
52-2-723	11.14.301, 401	958
52-2-731	Rule I (Family Services)	129
52-2-731	11.14.104	958
52-2-731	11.14.401	129
52-2-735	11.14.226	129
52-2-735	11.14.226	958
52-3-204	11.5.602, 609	1290
52-3-205	11.5.602, 609	1290
52-5-102	11.8.304, 306, 308, 310	819
52-5-129	11.8.304, 306, 308, 310	819

MCA	Rule or A.G.'s Opinion	Register Page No.
53-2-201	Rule I (SRS)	933
53-2-201	46.2.202	1111
53-2-201	46.11.120, 125	1271
53-2-201	46.9.606	933
53-2-201	46.10.803, 805, 807, 811, 819, 825, 841, 843	1515
53-2-201	46.12.204	286
53-2-201	46.12.503 - 509	1076
53-2-201	46.12.505, 506	1732
53-2-201	46.12.509A	1111
53-2-201	46.12.571	949
53-2-201	46.12.590 - 592	1111
53-2-201	46.12.590 - 592	1744
53-2-201	46.12.1107 - 1114	936
53-2-201	46.12.1108, 1110, 1112	1591
53-2-201	46.12.1222, 1223, 1241, 1245, 1249	1096
53-2-201	46.12.2013	313
53-2-306	46.11.120, 125	1271
53-2-306	46.2.202	1111
53-2-322	Opinion No. 23	1600
53-2-606	46.2.202	1111
53-2-606	46.10.843	1515
53-2-606	46.12.509A	1111
53-2-801	Opinion No. 23	1600
53-2-801	46.2.202	1111
53-2-803	46.2.202	1111
53-3-102	46.2.202	1111
53-4-111	46.2.202	1111
53-4-112	46.2.202	1111
53-4-211	Rule I (SRS)	1271
53-4-211	Rule I (SRS)	1400
53-4-211	46.10.403	278
53-4-211	46.10.403	1090
53-4-211	46.10.403	1728
53-4-211	46.10.108, 207, 403, 505	1271
53-4-211	46.10.314, 402	1400
53-4-211	46.10.403	1264
53-4-211	46.10.803, 805, 807, 811, 819, 825, 841, 843	1515
53-4-212	Rule I (SRS)	1271
53-4-212	Rule I (SRS)	1400
53-4-212	46.2.202	1111
53-4-212	46.10.108, 207, 403, 505	1271
53-4-212	46.10.314, 402, 408, 409	1400
53-4-212	46.10.403	278
53-4-212	46.10.403	1090
53-4-212	46.10.403	1728
53-4-212	46.10.403	1264

MCA	Rule or A.G.'s Opinion	Register Page No.
53-4-212	46.10.803, 805, 807, 811, 819, 825, 841, 843	1515
53-4-215	46.10.803, 805, 807, 811, 819, 825, 841, 843	1515
53-4-231	46.10.108, 505	1271
53-4-231	46.10.314	1400
53-4-241	46.10.402	1400
53-4-241	46.10.403	278
53-4-241	46.10.403	1090
53-4-241	46.10.403	1264
53-4-241	46.10.403, 505	1271
53-4-241	46.10.403	1728
53-4-242	46.10.505	1271
53-4-403	46.2.202	1111
53-4-404	46.2.202	1111
53-4-503	46.2.202	1111
53-4-513	46.2.202	1111
53-4-701	46.10.408, 409	1400
53-4-702 - 708	46.10.803	1515
53-4-703	Rule I (SRS)	1400
53-4-703	46.10.805, 807, 811, 819, 825, 841, 843	1515
53-4-705	46.10.807, 811, 819	1515
53-4-706	46.10.805, 811	1515
53-4-707	46.10.805, 811	1515
53-4-708	46.10.805, 819	1515
53-4-715 - 718	46.10.803	1515
53-4-715	46.10.805, 807, 819, 825	1515
53-4-716	46.10.408, 409	1400
53-4-716	46.10.825	1515
53-4-717	46.10.805	1515
53-4-719	Rule I (SRS)	1400
53-4-719	46.10.409	1400
53-4-719	46.10.803, 805, 807, 811, 819, 825, 841, 843	1515
53-4-720	46.10.805, 807, 811, 819, 825, 841, 843	1515
53-5-304	46.2.202	1111
53-6-101	46.10.702	1525
53-6-101	46.12.503 - 509	1076
53-6-101	46.12.505, 506	1732
53-6-101	46.12.571	949
53-6-101	46.12.590 - 592	1744
53-6-101	46.12.1107 - 1114	936
53-6-101	46.12.1108, 1110, 1112	1591
53-6-101	46.12.1222, 1223, 1229, 1231, 1232, 1235, 1237, 1241, 1245, 1249, 1251	1096

MCA	Rule or A.G.'s Opinion	Register Page No.
53-6-101	46.12.2013	313
53-6-101	46.12.3803	1109
53-6-101	46.12.3803	1750
53-6-106	46.12.1223	1096
53-6-107	46.12.1223	1096
53-6-108	46.12.1223, 1232	1096
53-6-111	46.2.202	1111
53-6-111	46.12.503 - 509	1076
53-6-111	46.12.505, 506	1732
53-6-111	46.12.509A, 590 - 592	1111
53-6-111	46.12.590	1744
53-6-111	46.12.1107 - 1109, 1111 - 1114	936
53-6-111	46.12.1108, 1112	1591
53-6-111	46.12.1222, 1223, 1229, 1231, 1235, 1241, 1245, 1249, 1251	1096
53-6-113	46.2.202	1111
53-6-113	46.10.314	1400
53-6-113	46.10.702	1525
53-6-113	46.12.204	286
53-6-113	46.12.503 - 509	1076
53-6-113	46.12.505, 506	1732
53-6-113	46.12.509A, 590 - 592	1111
53-6-113	46.12.571	949
53-6-113	46.12.590 - 592	1744
53-6-113	46.12.1107 - 1114	936
53-6-113	46.12.1108, 1110, 1112	1591
53-6-113	46.12.1222, 1223, 1229, 1231, 1232, 1235, 1237, 1241, 1245, 1249, 1251	1096
53-6-113	46.12.2013	313
53-6-113	46.12.3803	1750
53-6-131	46.12.3803	1109
53-6-131	46.12.3803	1750
53-6-139	46.12.590, 591	1744
53-6-141	46.10.702	1525
53-6-141	46.12.204	286
53-6-141	46.12.503 - 509	1076
53-6-141	46.12.505, 506	1732
53-6-141	46.12.509A	1111
53-6-141	46.12.571	949
53-6-141	46.12.590 - 592	1744
53-6-141	46.12.3803	1109
53-6-141	46.12.3803	1750
53-7-102	46.2.202	1111
53-9-103	23.15.102	1381
53-9-104	Rule I (Justice-Crime Control)	1381

MCA	Rule or A.G.'s Opinion	Register Page No.
53-9-104	23.15.102 - 104, 201 - 203, 302, 304, 306, 308	1381
53-9-121	23.15.201	1381
53-9-122	23.15.202, 203	1381
53-9-123	23.15.304	1381
53-9-125	23.15.103, 104, 308	1381
53-9-127	23.15.201, 304	1381
53-9-128	23.15.302, 306	1381
53-9-130	Rule I (Justice-Crime Control)	1381
53-9-130	23.15.202, 203	1381
53-9-131	23.15.202, 203	1381
53-10-502	Rule I (SRS)	933
53-10-502	49.9.606	933
53-20-305	46.2.202	1111
60-5-503	18.7.302, 303, 306, 309, 320, 331	137
60-5-512	18.7.306, 309	137
60-5-513	18.7.302	137
60-5-514	18.7.331	137
60-5-521	18.7.320	137
60-5-522	18.7.303	137
61-10-101 - 148	18.8.510A, 514	1148
61-10-104	18.8.101	1148
61-10-121	18.8.101, 519	1148
61-10-124	18.8.101	1148
61-10-141	18.8.519	1148
61-10-155	18.8.101, 510A, 514, 519	1148
61-10-209	18.8.101	1148
69-1-110	38.2.3909	929
69-2-101	38.2.3909	929
69-3-103	38.2.3909	929
69-12-101	Rules I - V (PSR)	18
69-12-101	38.3.1003	1711
69-12-103	38.3.202 - 204	275
69-12-201	38.3.201 - 205	275
69-12-201	38.3.1003	1711
69-12-201	38.2.3909	929
69-12-401	38.3.203	275
69-12-421	38.3.201, 202, 205	275
69-12-201	Rules I - V (PSR)	18
69-12-201	38.3.2504, 2603 - 2605, 2607, 2806	14
Title 69, Ch. 12, Pt. 5	38.3.2504, 2603 - 2605, 2607, 2806	14

MCA	Rule or A.G.'s Opinion	Register Page No.
75-1-201	Rule I (FWP)	1649
75-2-111	Rules I & II (Health)	867
75-2-111	16.8.1301 - 1308	867
75-2-111	16.8.1413, 1429	1654
75-2-111	16.8.1907	1511
75-2-203	Rules I & II (Health)	867
75-2-203	16.8.1301 - 1308	867
75-2-203	16.8.1413, 1429	1654
75-2-211	Rules I & II (Health)	867
75-2-211	16.8.1302, 1304, 1306 - 1308	867
75-2-220	16.8.1907	1511
75-5-201	16.20.603, 617 - 624, 641	827
75-5-201	16.20.701 - 705	849
75-5-301	Rules I - IX (Health)	849
75-5-301	Rules I - X (Health)	835
75-5-301	16.20.603, 617 - 624, 641	827
75-5-301	16.20.1003, 1010, 1011	244
75-5-301	16.20.1003, 1010	846
75-5-303	Rules I - IX (Health)	849
75-5-303	16.20.701 - 705	849
75-5-303	16.20.1011	244
75-5-401	16.20.701 - 705	849
75-6-103	Rule I (Health)	1362
75-6-103	16.20.202 - 205, 207, 208, 210 - 214, 216, 217, 222, 229, 234, 242, 261	1362
75-10-103	Opinion No. 22	1549
75-10-112	Opinion No. 22	1549
75-10-204	Rule I (Health)	556
75-10-403	16.44.303, 304	556
75-10-405	16.44.303, 304, 330, 351, 402, 505	556
75-10-1006	Rule I (Commerce-Veterinary Medicine)	1329
75-11-202	16.45.1201	1221
75-11-203	16.45.1202	1221
75-11-204	16.45.1201 - 1240	1221
75-11-209	16.45.1203, 1214	1221
75-11-210	16.45.1203 - 1211	1221
75-11-211	16.45.1207, 1213, 1235 - 1240	1221
75-11-212	16.45.1214, 1216, 1217	1221
75-11-213	16.45.1215, 1220, 1221, 1225, 1230, 1232	1221
75-11-218	16.45.1233	1221
77-1-101	26.3.182	641
77-1-801 - 810	26.3.180	641
77-1-804	Rules I & II (State Lands & Board of Land Commissioners)	641

MCA	Rule or A.G.'s Opinion	Register Page No.
77-1-804	Rules I - VI (State Lands)	1071
77-1-804	26.3.180, 182, 186, 187, 189, 192, 193	641
77-1-804	26.3.186, 193	1071
77-1-806	26.3.1902	641
80-7-802	4.5.203	93
80-8-105	Rules I - VIII (Agriculture)	600
80-8-105	Rules I - VIII (Agriculture)	1317
80-8-105	4.10.1801 - 1808	1280
80-8-111	Rules I - VIII (Agriculture)	600
80-8-111	4.10.1801 - 1808	1280
80-8-112	Rules I - VIII (Agriculture)	600
80-8-112	4.10.1801 - 1808	1280
80-13-104	4.15.101, 201	1499
80-13-111	4.15.101	1499
80-13-201 - 203	4.15.201	1499
81-23-302	Rule I (Commerce-Milk Control)	1334
81-23-302	8.86.301	1334
82-4-403	26.4.202	914
82-4-422	Rules I - V (State Lands)	914
82-4-422	26.4.201, 202 - 207	914
82-4-423	Rule IV (State Lands)	914
82-4-423	26.4.204	914
82-4-431	26.4.201, 204	914
82-4-432	Rules I - III, V (State Lands)	914
82-4-432	26.4.203	914
82-4-433	Rule I (State Lands)	914
82-4-434	Rules II, III, V (State Lands)	914
82-4-434	26.4.204 - 206	914
82-4-441	26.4.207	914
82-11-111	Rules I - VI (DNRC)	925

MCA	Rule or A.G.'s Opinion	Register Page No.
85-2-113	Rules 1 - IV (DNRC)	262
85-2-113	36.16.102, 103, 105B, 106 - 108, 110, 112, 114, 116 - 118	262
85-2-113	36.12.204, 210, 215, 220	307
85-2-309	36.12.210	307
85-2-316	Rules I - IV (DNRC)	262
85-2-316	36.16.102, 103, 105B, 106 - 108, 110, 112, 114, 116 - 118	262
85-2-331	Rules I - IV (DNRC)	262
85-2-331	36.16.102, 103, 105B, 106 - 108, 110, 112, 114, 116 - 118	262
85-2-605	Rules I - IV (DNRC)	262
85-2-605	36.16.102, 103, 105B, 106 - 108, 110, 112, 114	262
87-1-241	Rules I - V (FWP)	1644
87-1-242	Rules I - V (FWP)	1644
87-1-242	12.9.501 - 507	1644
87-1-301	Rules I - X (FWP)	1064
87-1-301	12.4.201 - 210	1691
87-1-303	Rules I - X (FWP)	1064
87-1-303	12.4.201 - 210	1691
87-1-303	12.6.901	825
87-1-304	Rule I (FWP)	242
87-1-304	12.3.116, 118	6
87-2-505	Rule I (FWP)	242
87-2-506	12.3.116	6
87-2-701	12.3.116, 118	6
87-2-705	12.3.118	6
87-2-706	12.3.118	6
90-1-103	Rule I (Commerce-Local Government Assistance Division)	127
90-6-104	8.111.405	5
90-6-106	8.111.405	5
90-6-305	Rules I - III (Commerce-Hard-Rock Mining Impact Board)	1627
90-6-305	8.104.202 - 214, 217, 302, 303	1627
90-6-307	Rules I, III (Commerce-Hard-Rock Mining Impact Board)	1627
90-6-307	8.104.202 - 213, 216	1627
90-6-309	Rule II (Commerce-Hard-Rock Mining Impact Board)	1627
90-6-309	8.104.214	1627
90-6-310	8.104.211	1627

MCA	Rule or A.G.'s Opinion	Register Page No.
90-6-311	8.104.217	1627
90-6-710	Rule I (Commerce-Local Government Assistance Division)	125
Ch. 9, Sp. L. 1993	Rules I - VI (DNRC)	925
Ch. 634, L. 1993	Opinion No. 20	37
Ch. 770, L. 1991	Opinion No. 22	1549
Ch. 609, Secs. 14, 17, L. 1987	Opinion No. 23	1600
Opinion 45-2	Opinion No. 24	1606
Opinion 45-18	Opinion No. 20	37
Opinion 44-28	Opinion No. 22	1549
Opinion 43-68	Opinion No. 22	1549
Opinion 43-38	Opinion No. 24	1606
Opinion 42-21	Opinion No. 20	37
Opinion 41-77	Opinion No. 24	1606
Opinion 39-35	Opinion No. 21	171
Opinion 38-83	Opinion No. 21	171
Opinion 38-75	Opinion No. 22	1549
Opinion 37-16	Opinion No. 21	171
MT Constitution 1889, Art. V, Sec. 1	Opinion No. 20	37
MT Constitution 1889, Art. XVIII, Sec. 4	Opinion No. 21	171
MT Constitution 1972, Art. III, Sec. 5	Opinion No. 20	37
MT Constitution 1972, Art. XII, Sec. 2	Opinion No. 21	171