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MONTANA ADMINISTRATIVE REGISTER

1982 ISSUE NO. 15
AUGUST 12, 1982
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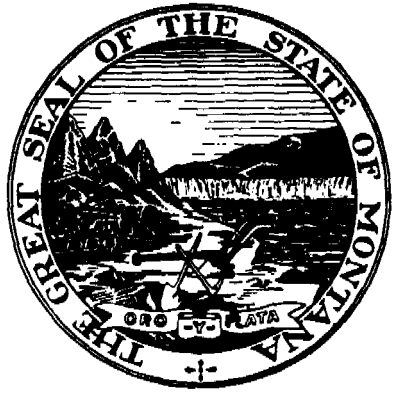

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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NOTICE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MORTICIANS

In the matter of the proposed adoption of a new sub-chapter 7 concerning rules of professional conduct.) NOTICE OF ADOPTION OF RULES OF PROFESSIONAL CONDUCT, SUB-CHAPTER 7

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 29, 1982, the Board of Morticians published a notice of proposed adoption of rules of professional conduct, as well as other rule amendments, repeal and adoption, starting at page 1428, 1982 Montana Administrative Register, issue number 14.

2. The notice inadvertently omitted the rationale for the rules of professional conduct. The six rules remain as published. The board is proposing to adopt the rules of professional conduct on September 11, 1982. The board has proposed the adoption to set guidelines and standards for all licensees to follow. Section 37-1-136, MCA allows the licensing boards to adopt rules specifying grounds for disciplinary action. The board feels that violation of the rules of professional conduct which are proposed should be grounds for the actions also proposed in the rules.

3. Interested persons may submit their data, views, and arguments concerning the proposed adoption in writing to the Board of Morticians, 1424 9th Avenue, Helena, Montana 59620-0407 no later than September 9, 1982.

4. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Morticians, 1424 9th Avenue, Helena, Montana 59620-0407 no later than September 9, 1982.

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

6. The authority of the board to make the proposed adoption is based on sections 37-19-202, MCA and 37-1-136, MCA and implements sections 37-1-136, MCA and 37-19-311, 404, MCA.

BOARD OF MORTICIANS
VERNON VIAL, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 2, 1982.

MAR NOTICE NO. 8-30-10

15-8/12/82

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

IN THE MATTER of the proposed amendment of ARM 8.44.404 concerning examinations) NOTICE OF PROPOSED AMENDMENT OF ARM 8.44.404 EXAMINATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 11, 1982, the Board of Plumber proposes to amend rule 8.44.404 concerning examinations.

2. The proposed amendment will change subsection (1) of the proposed rule and will read as follows: (New matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1237 and 8-1238 Administrative Rules of Montana.)

"8.44.404 EXAMINATIONS (1) All applications must be submitted on forms furnished by the department 60 days prior to the examination and must be accompanied by the $100.00 examination fee. Those applications received after the deadline will be processed for the following examination. Re-examination fees, which are $100.00, must ~~also~~ be submitted ~~60~~ 30 days prior to the examination. (2)..."

3. The board is proposing the amendment to allow re-examinees more time to submit their fees for re-examination. Currently the tests are given every two months and it could happen that there are less than 60 days between examinations. Under the current rule, an applicant who fails an examination might not be able to take the next exam because he couldn't submit his re-exam fees prior to the 60 day deadline.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Plumbers, 1424 9th Avenue, Helena, Montana 59620-0407 no later than September 9, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Plumbers, 1424 9th Avenue, Helena, Montana 59620-0407 no later than September 9, 1982.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1, based on the approximately 18 re-examinees per year.

7. The authority of the board to make the proposed change

is based on section 37-69-202, MCA and implements sections 37-69-306 and 307, MCA.

BOARD OF PLUMBERS
DANIEL P. ANTONIETTI,
ACTING CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 2, 1982.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA
MILK CONTROL BUREAU

In the matter of the amendment of Rule 8.79.302 regarding producer assessments	NOTICE OF PROPOSED AMENDMENT OF RULE 8.79.302 NO PUBLIC HEARING CONTEMPLATED DOCKET NO. 58

TO: All Interested Persons

1. On Sept. 11, 1982, the Department of Commerce proposes to amend Rule 8.79.302 relating to an assessment to be levied upon licensees pursuant to Section 81-23-105 and Section 81-23-202, MCA. The amendment will have retroactive effect to July 1, 1981 upon promulgation.

2. The purpose of the amendment is to suspend the assessments called for in the above rule until reinstated at some future undetermined date. The rule as proposed to be amended would read as follows:

"8.79.302 ADDITIONAL PRODUCER ASSESSMENTS

For the purpose of securing the necessary funds to administer a program of testing raw milk, as required by Section 81-23-105, MCA, an assessment is hereby levied on licensed producers in the amount of ~~two cents ($0.02)~~ no cents ($0.00) per hundredweight on the total volume of all milk subject to the milk control act sold by the producer."

3. Interested persons may present their data, views or arguments by submitting the same in writing to the Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620 no later than Sept. 9, 1982.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit that request along with any comments he may have to the above address, no later than Sept. 9, 1982.

5. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25 persons, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members whose members will be directly affected by the proposed amendment, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 29 persons based on an estimate of 296 subject to this assessment.

6. The authority of the agency to make the proposed amendment is based on Section 81-23-104, MCA, implementing Section 81-23-105, MCA.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

By: William E. Ross
William E. Ross, Bureau Chief
Milk Control Bureau

Certified to the Secretary of State August 2, 1982

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 8.79.101, (11) (i), (12), (16), (16)(c), (17)(a), (19)(a), (21),(24), (25), regarding purchase and resale: Rule 8.79.201 (1)(g),) (h), (i), (j), (k), (1), (2) (3), (4), regarding trade practices:	NOTICE OF PROPOSED AMENDMENT OF RULE 8.79.101, (11)(i), (12), (16), (16)(c), (17)(a), (19)(a), (21), (24), (25) TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE - RULE DEFINITIONS RULE 8.79.201 (1)(g), (h),(i), (j), (k), (1), (2), (3), (4) REGULATION OF UNFAIR TRADE PRACTICES NO HEARING CONTEMPLATED DOCKET NO. 59

TO: All Interested Persons:

1. On September 11, 1982, the Milk Control Bureau of the Department of Commerce proposes to amend Rule 8.79.101 and Rule 8.79.201 for the purpose of changing language to coincide with current language in ARM and requirements specified in statute.

2. The proposed Rule 8.79.101, (11)(i), (12), (16), (16)(c), (17(a), (19)(a), (21), (24), (25) as amended will read as follows: (full text of rule is located at pages 8-2302 through 8-2310 Administrative Rules of Montana)(new matter underlined, deleted matter interlined.)

"8.79.101 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE - ~~order~~ RULE DEFINITIONS (1)...

(11)...

(i) Rate paid for milk at test for each classification as established by applicable ~~order~~ rule.

...

(12)...

(i) Distributors shall, supply the ~~board~~ department with information of what producers, to their knowledge, have gone out of business during the preceding month, and in the blanks provided such information on said forms.

...

(16) The department shall cause periodic audits of the books and record of distributors to be made to verify the utilization of all milk reported pursuant to paragraph (12), thereof, and thereby establishing payment or non-payment of minimum producer prices fixed by ~~official order~~ rules of the board.

...

(c) At any time a distributor is unwilling or unable to reconcile the audit results with ~~official orders~~ rules of the board and/or department, it may request a review of the audit by the bureau chief of the milk control bureau.

The time limitation for final settlement payment to producers will be stayed until ten (10) days after such review is completed and the distributor has received notice of the bureau chief's decision.

...

(17)...

(a) All milk and its component quantities of skim milk and butterfat sold by a producer or a producer marketing organization, which is required to be reported pursuant to paragraph (12) of rule 8.79.101 will be classified by the department and its staff pursuant to Section 81-23-101, MCA, for the purpose of establishing compliance with minimum producer prices fixed by applicable ~~order~~ rule of the board to-wit:

...

(19)...

(a) Beginning ninety (90) days after the effective date of this ~~order~~ rule, no distributor will be permitted to allocate milk from its wholly owned farm, if any, to a higher use classification than that accorded milk from its established producers.

...

(21) Inferior quality or non-compliance with the lawful ~~regulations~~ rules of duly constituted health or sanitation agencies shall be reasons for the rejecting of producer milk. In all cases the rejection of the milk must be supported by a statement to the producer setting forth the reasons for which the milk was rejected. A copy of said statement must be mailed to the department.

...

(24) This ~~order~~ rule and the rescission herein of any previously existing ~~order~~ rule shall not affect any act or thing done or begun, liability incurred, or any right accrued or established or any penalty incurred or any such prosecution or proceeding, civil or criminal, pending or instituted under or on account of any such previous ~~order~~ rule herein rescinded in whole or in part, to enforce any right or penalty, or to punish any offense under the authority of any such previously existing ~~order~~ rule at the time this ~~order~~ rule takes effect, but as to all such acts, things, liabilities, rights, penalties, prosecutions or proceedings and such previously existing ~~order~~ rule shall remain in full force and effect.

(25) It is the intention of the department, that if any provision of the ~~order~~ rule, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this ~~order~~ rule, or the application of such provision to persons or circumstances other than those as to which is held invalid, shall not be affected, thereby.

..."

3. The amendments to the rule are proposed so language coincided with current required language in ARM.

4. The authority of the department to make the proposed rule is based on section 81-23-104 MCA, and implements the same section.

5. The proposed rule 8.79.201 (1)(g),(h)(i)(j), (k), (l), (2), (3), (4), as amended will read as follows: full test of rule is located at pages 8-2311 through 8-2312 Administrative Rules of Montana) (new matter underlined, deleted matter interlined).

"8.79.201 REGULATION OF UNFAIR TRADE PRACTICES (1)...

(g) The giving or agreeing to give discounts whether in the form of money, merchandise, coupons, stamps, prizes, bonuses or premiums in any form or the buying or selling of any merchandise conditional upon the sale of fluid milk products which would directly or indirectly reduce the monetary value of such products below the minimum price established by official ~~order~~ rule of the board of milk control.

(h) the using of such items as bottle caps, cartons, stamps, coupons or any other item distributed with milk sold at retail or wholesale to qualify a person to receive a prize, award or any other thing of value, which would directly or indirectly reduce the monetary value of fluid milk or fluid milk products below the minimum retail or wholesale price established by official ~~order~~ rule of the board of milk control.

(i) The selling by any distributor to any store, chain store, super market, restaurant, marketing cooperative, or other wholesale customers, under any mutual or secret agreement, arrangement, combination, contract or common understanding, whereby the ultimate wholesale price for milk received by the distributor is less than that fixed in the applicable official price ~~order~~ announcement of this board.

(j) The solicitation or acceptance from any distributor by any store, chain store, supermarket, restaurant, marketing cooperative, or other wholesale customer, under any mutual or secret agreement, arrangement, combination, contract, or common understanding whereby the ultimate wholesale price for milk received by the distributor is less than that fixed in the applicable official price ~~order~~ announcement of this board.

(k) The engaging by any distributor in the sale or offering for sale, to wholesale customers of fluid milk and cream products under the jurisdiction of the ~~board~~ department in combination with the sale of uncontrolled food items when the uncontrolled food items are sold or offered for sale at less than cost, or at unrealistically low prices. Such sales dilute the actual price for milk order-

and intended by the board in its official price fixing ~~orders~~ announcements.

(1) The acceptance or solicitation by wholesale customers of fluid milk and cream products under the jurisdiction of the ~~board~~ department in combination with uncontrolled food items when the uncontrolled food items are accepted or solicited for purchase at less than cost to the distributor or at unrealistically low prices.

...

(2) This ~~order~~ rule and the rescission herein of any previously existing ~~order~~ rule shall not affect any act or thing done or begun, liability incurred, or any right accrued or established or any penalty incurred or any such prosecution or proceeding, civil or criminal, pending or instituted under or on account of any such previous ~~order~~ rule herein rescinded in whole or in part, to enforce any right or penalty or to punish any offense under the authority or any such previously existing ~~order~~ rule, at the time this ~~order~~ rule takes effect, but as to all such acts things, liabilities, rights, penalties, prosecutions or proceedings and any such previously existing ~~orders~~ rules shall remain in full force and effect.

(3) It is the intention of the ~~board~~ department that if any provision of the ~~order~~ rule, or the application of such provision to any person or circumstances shall be held invalid, the remainder of this ~~order~~ rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(4) Nothing contained in the ~~order~~ rule shall be construed as requiring or authorizing the violation of any order, rule or regulation lawfully issued by any federal office having proper jurisdiction."

6. The amendments to the rule are proposed so language coincides with current required language in the Administrative Rules of Montana and requirements specified in the statute.

7. The authority of the department to make the proposed rule change is based on section 81-23-104 and implements section 81-23-303, MCA.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 not later than September 9, 1982.

9. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 no later than September 9, 1982.

10. If the Bureau receives request for a public hearing on the proposed amendments from either ten (10) percent or twenty five (25), whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than twenty five (25) members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten (10) percent of those persons directly affected, has been determined to be 39 based on approximately 390 licensees doing business in Montana.

GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

BY: William E. Ross
WILLIAM E. ROSS, CHIEF
BUREAU CHIEF
MILK CONTROL BUREAU

Certified to the Secretary of State August 2, 1982.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 8.86.301 (1)(a)(b), (6)(a), (9)(e), regarding the Board's Pricing Rules	NOTICE OF PROPOSED AMENDMENT OF RULE 8.86.301 (1)(a),(b), (6)(a), (9)(e) PRICING RULES NO PUBLIC HEARING CONTEMPLATED DOCKET NO. 60

TO: All Interested Persons:

1. On September 11, 1982, the Milk Control Bureau of the Department of Commerce proposes to amend Rule 8.86.301 for the purpose of changing language to coincide with current language in ARM which the department proposes to be effective September 11, 1982.

2. The proposed rule 8.86.301 (1)(a)(b), (6)(a), (9)(e) as amended will read as follows: (full text of rule is located at pages 8-2539 through 8-2549 Administrative Rules of Montana) (new matter underlined, deleted matter interlined).

"8.86.301 PRICING RULES (1)...

(a) The provision of this ~~official order~~ pricing rule and prices announced pursuant thereto are ordered in the exercise of authority delegated to the board of milk control by the provisions of section 81-23-302, MCA.

(b) Any person, subject to this ~~official~~ pricing rule or any price announcement issued hereunder shall be considered in violation thereof if he or it engages in such violation in any manner, directly or indirectly, or through an agent, employee, trust, subsidiary, or affiliated company or corporation.

...

6...

(a) The minimum prices which shall be paid to producers by distributors in all market areas of the state shall be calculated by either applying the flexible economic formula described below or the Minnesota-Wisconsin series plus three dollars ($3.00) whichever price is lower. The flexible economic formula utilizes a November, 1969 base equalling 100, an interval of 4.5, and consists of seven (7) factors. The factors and their assigned weights are as follows:

	FACTOR	WEIGHT	CONVERSION FACTOR
(i)	Unemployment U.S. (6.67 (3.8 - C) + 100).05	5%	
(ii)	Unemployment MT (6.67 (6.1 - C) + 100).10	10%	
(iii)	Weekly Wages - Total private (Revised and seasonally adjusted)	15%	.13297873

(iv)	Prices Received by Farmers - MT. ('47 - '49 = 100)	15%	.15789474
(v)	Mixed Dairy Feed	20%	.32258065
(vi)	Alfalfa Hay	12%	.48000000
(vii)	Prices Paid by Farmers - U.S. ('67 = 100)	23%	.20720721
		100%	

Note: The reported revised weekly wage - total private is seasonally adjusted by dividing each months revised figures by the following factors: Jan. - .9770; Feb. - .9760; March - .9795; April - .9838; May - .9934; June - 1.0067; July - 1.0292; August - 1.0274; Sept. - 1.0221; Oct. - 1.0135; Nov. - 1.0027; Dec. - .9887.

The following table will be used in computing producer prices:

TABLE I

Producer price determination using above formula with November 1969 - 100 and an interval - 4.5

FORMULA INDEX	PRICE PER CWT
201.5 - 205.1	$12.86
206.0 - 209.6	13.09
210.5 - 214.1	13.32
215.0 - 218.6	13.55
219.5 - 223.1	13.78
224.0 - 227.6	14.01
228.5 - 232.1	14.24
233.0 - 236.6	14.47
237.5 - 241.1	14.70
242.0 - 245.6	14.93
246.5 - 250.1	15.16
251.0 - 254.6	15.39
~~255.0---259.1~~ 255.5 - 259.1	15.62
260.0 - 263.6	15.85
264.5 - 268.1	16.08
269.0 - 272.6	16.31
273.5 - 277.1	16.54
278.0 - 281.6	16.77
282.5 - 286.1	17.00
~~287.0---190.6~~ 287.0 - 290.6	17.23

~~(i)~~ (a) The class I butterfat differential will be calculated by multiplying the average Chicago area butterfat price (Grade A 92 score) by or most recently reported by the United States Department of Agriculture, by .118 and the resulting answer from this calculation shall be rounded to nearest half cent. When milk does not test 3.5 percent butterfat, the price per CWT will be adjusted by the above resulting calculation for each .1 percent the butterfat test moves up or down.

...

9...

(e) Producers of bulk milk produced in one natural marketing area and sold in another natural marketing area must be paid for their milk transferred between plants by the exporting or transmitting distributor in accordance with the official price ~~order~~ announcement of the market area where produced and at the prices therein specified or fixed pursuant to statutory formula for the class or use in which it is ultimately used or sold. A freight allowance which is no more than that fixed in sub-paragraph (a) of paragraph (9) of this rule may be deducted from such payment by the exporting or transmitting distributor.

..."

3. The amendments to the rule are proposed so language coincides with current required language in ARM.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 not later than September 9, 1982.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau, 1430 Ninth Avenue, Helena, Montana 59620 no later than September 9, 1982.

6. If the Bureau receives request for a public hearing on the proposed amendments from either ten (10) percent or twenty five(25), whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a government agency or subdivision; or from an association having not less than twenty five (25) members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten (10) percent of those persons directly affected, has been determined to be 39 based on approximately 390 licensees doing business in Montana.

7. The authority of the Board to make the proposed rule change is based on section 81-23-302 MCA, and implements the same section.

BOARD OF MILK CONTROL
CURTIS COOK, CHAIRMAN

BY William E. Ross
WILLIAM E. ROSS, CHIEF
MILK CONTROL BUREAU

Certified to the Secretary of State August 2, 1982

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

In the matter of the adoption of Rules I through XV establishing groundwater classifications, standards, and a permit program	))))	NOTICE OF EXTENSION OF COMMENT PERIOD FOR ADOPTION OF RULES (Groundwater)

TO: All Interested Persons

The notice of proposed agency action published in the Montana Administrative Register on June 17, 1982 is amended as follows because the Department of Health and Environmental Sciences has requested an extension of the comment period on the proposed rules.

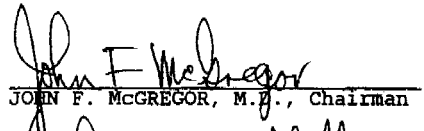
1. On July 9, 1982, a public hearing was held on the proposed rules establishing groundwater classifications, standards, and a permit program. No action was taken. Written comments were accepted until July 15, 1982.

2. On September 17, 1982, at 8:30 a.m., in Room C209 of the Cogswell Building, 1400 Broadway, Helena, MT, 59620, the Board will take action on the proposed rules.

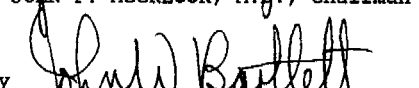
3. The proposed rules and the reasons and authority therefor are found in the Montana Administrative Register, 1982 Issue No. 11, pages 1167 - 1179, June 17, 1982.

4. Interested persons may present their data, views and arguments in writing no later than September 16, 1982. The Board may elicit further oral comments at the hearing on September 17, 1982.

5. Written comments may be submitted to Robert Solomon, Room B101, Cogswell Building, 1400 Broadway, Helena, Montana, 59620.



JOHN F. McGREGOR, M.D., Chairman

By 

JOHN W. BARTLETT, Deputy Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State August 2, 1982

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

In the matter of the repeal of rules 16.8.901 through 16.8.920 and the adoption of new rules for the prevention of significant deterioration of air quality	)))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES 16.8.901 - 16.8.920 AND ADOPTION OF NEW RULES (Air Quality)

To: All Interested Persons

1. On September 17, 1982, at 8:30 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209, Cogswell Building, 1400 Broadway, Helena, MT., to consider the repeal of rules 16.8.901 through 16.8.920 which pertain to the prevention of significant deterioration of air quality and the adoption of new rules in this matter.

2. The rules proposed to be repealed are on pages 16-170 through 16-197 of the Administrative Rules of Montana

3. The rules proposed for adoption make changes in the current Montana regulatory scheme for prevention of significant deterioration (PSD) of air quality in order to conform to federal requirements found in 40 CFR 51.24. The rules proposed for adoption provide in substance for changes in the current PSD program as follows:

(a) Sources requiring PSD review. Those sources requiring PSD permit review are changed somewhat from the existing rules. Major stationary sources that have the potential to emit 100 tons per year (listed sources) and 250 tons per year (unlisted sources) of any regulated pollutant will require the PSD review. The new rules determine the potential to emit by considering emissions after the use of air pollution controls while the existing rules determine the potential to emit by using the amount of pollutant emitted before the application of air pollution controls. This change reflects a change in the federal PSD program.

PSD review is also required for a major modification of a major stationary source. The same difference in potential to emit is noted for the modification as for the stationary source. In addition, the values that establish a source as a major modification are different. The existing rules use the values of 100 and 250 respectively (same as major stationary source) whereas the proposed rules use a specific level for each air pollutant. There is no differentiation between the listed and unlisted sources in terms of being a major modification.

(b) Baseline area and date. The existing rules establish a blanket baseline date for the entire state as August 7, 1977, for both particulate matter and sulfur dioxide. The

proposed rules would establish a statewide baseline date of March 26, 1979, for sulfur dioxide and March 19, 1982, for particulate matter. These dates correspond to the earliest date after August 7, 1977, that a corresponding major stationary source proposed construction.

(c) Impacts on another state. The proposed rules contain a provision for notifying other states if the impact from the proposed source would have a significant impact upon the other state. No such provisions exist in the current rules.

(d) Baseline monitoring. Both rules contain similar provisions requiring any proposed major stationary source or major modification to conduct ambient air quality monitoring before an application is submitted. The proposed rules, however, contain provisions to allow a source to submit a monitoring plan to the Department for approval before actual monitoring begins. Once the Department approves the plan, the Department may not disapprove the application on the basis of the monitoring plan when the application is received.

(e) Fugitive dust. Fugitive dust is handled somewhat differently. The existing rules exempt from increment consumption all fugitive dust which is unprocessed native mineral matter. The new rules do not make any exemptions for fugitive dust regarding increment consumption. The new rules, however, exempt PSD sources that are largely emitters of fugitive dust from PSD permit review requirements.

(f) Exemptions from impact analysis. Both rules offer some exemptions for major stationary sources or major modifications from assessing the impacts of their facilities from modeling, monitoring, and the effects on other air quality-related values (soils, visibility, etc.). The existing rules allow an exemption from these requirements if the source would not affect a Class I area and the source emits a minimum amount of air pollution. The new rules contain a slightly different exemption, but have the same undertones as the existing rules. Some of the exemption values are different in the new rules as well as offering some exemptions from monitoring if the effect of the modification on the existing air quality is below the concentrations specified in the rule for each air pollutant.

(g) Variances for Class I areas. The proposed rules contain a variance procedure for a major stationary source or major modification that would violate the Class I increments. The federal land manager, governor, and even the President, may be involved in the variance procedure. The procedure is essentially identical to the procedures found in the federal PSD program.

4. The Board is proposing these rules because the State of Montana desires to operate a program for the prevention of significant deterioration of air quality which would meet both the needs of Montana and the requirements for delegation of

the federal PSD program. Currently there are two PSD permitting reviews required in Montana, one administered by EPA and the other administered by the Montana Department of Health and Environmental Sciences. The existence of two reviews are the result of substantial differences between the regulatory requirements of the federal program and those currently existing in ARM 16.8.901 through 16.8.920. If adopted, the proposed rules will be submitted to EPA for inclusion into Montana's state implementation plan, and, if accepted by EPA, would delegate the federal PSD program to the Department, thereby eliminating the dual permitting system and leaving one PSD permitting review required in Montana administered by the Department.

5. A copy of the new rules as proposed to be adopted can be obtained by contacting the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620 (phone: 449-3454).

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Helena, Montana, 59620, no later than September 15, 1982. NOTE: The existing PSD rules were proposed for repeal, and a replacement set for adoption, in a notice published February 11, 1982, which was followed by extensive hearings and public comment during the subsequent 5 months. Since the Administrative Procedure Act requires the final notice of adoption of any rule to be published within 6 months after publication of the original notice of proposed action, in this case by August 11, 1983, and the notice of adoption could not be published by that deadline, the board must complete the rulemaking process over again, commencing with this renotice of proposed action. However, all public comment received in response to the notice published February 11, 1982, will be considered during the present rulemaking process and NEED NOT BE RESUBMITTED.

7. Robert L. Solomon, Helena, Montana, has been designated to preside over and conduct the hearing.

8. The authority of the Board both to repeal and to adopt the rules cited in this notice is based on sections 75-2-111, 75-2-203, MCA, and the rules implement sections 75-2-202, 75-2-203, MCA.

JOHN F. McGREGOR, M.D., Chairman

By _____
JOHN W. BARTLETT, Deputy Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State August 2, 1982

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

In the matter of the adoption of a rule and the amendment of Rules 46.9.301, 46.9.302, 46.9.303, 46.9.304 and 46.9.305 pertaining to county grant-in-aids	))))))	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF A RULE AND THE AMENDMENT OF RULES 46.9.301, 46.9.302, 46.9.303, 46.9.304 AND 46.9.305 PERTAINING TO COUNTY GRANT-IN-AIDS

TO: All Interested Parties

1. On September 2, 1982 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 adoption of a rule and the amendment of Rules 46.9.301, 46.9.302, 46.9.303, 46.9.304 and 46.9.305 pertaining to county grant-in-aids.

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

46.9.301 WHEN COUNTIES MAY APPLY AND AUTHORITY (1) A county may apply for an emergency grant-in-aid when it meets all the conditions set forth in section 53-2-323, MCA, any applicable conditions established in section 53-2-207, MCA and all conditions of the department set out below.

(2) A county may apply for a matching grant-in-aid when it meets all conditions set forth in Sec. 2, Ch. 11, Sp.L. 1981, and all conditions of the department set out in this sub-chapter.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.302 AMOUNT OF GRANT ~~A grant-in-aid will be awarded only for the portion of a poor fund deficiency which is attributable to nonmedical general assistance, the county share of federal share matching programs, or medical services for indigent persons except those covered by medicaid.~~

~~(2) All expenditures from the poor fund from the fiscal year for which a grant-in-aid is requested must be reasonable, necessary, and legal.~~

~~(a) All staff of the county department of public welfare will be paid in accordance with 53-2-304, MCA. The department will approve the staffing patterns and approve the filling of any vacant positions consistent with workload and caseload size.~~

~~(b) All reimbursement of costs for services provided by consultants and for contracted services will be based on policies in effect at the time for state agencies.~~

~~(c) No reimbursement through a grant-in-aid will be allowed if the costs were legally payable or reimbursable from another source.~~

(1) A county eligible for a matching grant-in-aid shall be reimbursed for fifty percent of all allowable poor fund expenditures in excess of the available resources resulting from a levy of 8 mills as defined at ARM 46.9.303 (4). This matching reimbursement shall continue until such time as the county qualifies for an emergency grant-in-aid.

(2) A county eligible for an emergency grant-in-aid shall be reimbursed for all allowable poor fund expenditures in excess of the available resources resulting from the maximum mill levy allowed by 53-2-321, MCA as defined at ARM 46.9.303 (5).

(3) The amount of reimbursement due a county determined eligible for a grant-in-aid shall be based on an audit performed by the department at the close of the fiscal year. A county may receive interim reimbursement through the submission of monthly expenditures, on forms provided by the department, to the extent that such expenditures appear allowable after a desk audit. All findings of a desk audit are subject to a final audit.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.303 DEFINITIONS ~~"Indigent person" means any individual who is eligible for state or county financial or medical assistance under Title 53, MCA.~~

~~(2) "County facility" means a county hospital, county nursing home, or other facility operated by a county to provide health care services.~~

~~(3) "Medical services" includes any form of medical treatment or supplies, or care, normally provided to indigent persons under the medicaid program or county medical programs.~~

For the purpose of this sub-chapter, the following definitions apply:

(1) "Indigent person" means any individual determined to be indigent in accordance with the eligibility criteria set forth in the county general assistance or the county medical plan as approved by the department (see 53-3-301, MCA) and provided that no third party (medicaid, supplemental security income, medicare, workman's compensation, private insurance carrier and other) is liable for cost of general relief.

(2) "Medical services" includes only those services set forth at ARM 46.12.501(1) provided that such services are determined to be medically necessary and shall not include any services not reimbursable under the medicaid program (see ARM 46.12.502). Drug and alcoholic detoxification services ren-

dered in a nonhospital setting and drug and alcoholic rehabilitation services will not be recognized as medical services. The list set forth at ARM 46.12.502 is not meant to be all inclusive.

(3) "Reasonable expenditures for medical services" includes those expenditures for necessary services which do not exceed the amount, scope and duration of reimbursement to a medical provider for provision of such services by the Montana medicaid program.

(4) "Available resources resulting from a levy of 8 mills" includes all of the following:

(a) the resources from a levy of eight (8) mills regardless of the amount actually collected;

(b) any miscellaneous revenues properly recognizable in the fiscal year in accordance with 7-6-2319, MCA (e.g. corporate license tax, penalty and interest on delinquent taxes, motor vehicle taxes and fees due the poor fund in accordance with 61-3-509 MCA and reimbursement for expenditures received from the department or any third party). This list is not all inclusive; and

(c) the cash balance in the poor fund at the close of the preceding fiscal year to the extent that cash balance exceeds allowable poor fund expenditures incurred but not paid during the preceding fiscal year. The county shall demonstrate, on forms provided by the department, that all liabilities from the preceding fiscal year have been properly accrued against the revenues of that year.

(5) "Available resources resulting from the maximum mill levy allowed by 53-2-321, MCA" includes all of the following:

(a) the resources from a levy of 10.75 mills regardless of the amount actually collected if the county participates in a work program approved by the department;

(b) the resources from a levy of 13.5 mills regardless of the amount collected if the county does not participate in a work program approved by the department;

(c) any miscellaneous revenues properly recognizable in the fiscal year in accordance with 7-6-2319, MCA (e.g. corporate license tax, penalty and interest on delinquent taxes, motor vehicle taxes and fees due the poor fund in accordance with 61-3-509, MCA and reimbursement for expenditures received from the department or any third party). This list is not all inclusive;

(d) any funds received for matching grant-in-aid; and

(e) the cash balance in the poor fund at the close of the preceding fiscal year to the extent that the cash balance exceeds allowable poor fund expenditures incurred but not paid during the preceding fiscal year. The county shall demonstrate, on forms provided by the department, that all liabilities from the preceding fiscal year have been properly accrued against the revenues of that year.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.304 INFORMATION REQUIRED (1) An application by a county for ~~an emergency~~ a grant-in-aid must be submitted ~~a~~ on forms provided by the department ~~and must contain all information required by the form, including but not limited to the following:~~ using the modified accrual basis of accounting, as prescribed by generally accepted accounting principles for state and local governments. The application must document all information required by the department, including but not limited to the following:

~~(a) Detailed information and documentation to show:~~

~~(i)~~ (a) all sources of revenue to the county poor fund, ~~and~~ including all amounts received from each source during the county fiscal year for which the application is made, as well as the preceding fiscal year;

~~(ii)~~ (b) all expenditures and transfers from the county poor fund for the fiscal year in which the application is made, as well as the preceding fiscal year, including ~~both~~ the amount and purpose of the expenditures and transfers;

~~(iii)~~ (c) projected revenues to the poor fund during the remainder of the fiscal year for which the application is made, including both the amount and source of the projected revenues;

~~(iv)~~ (d) projected expenditures and transfers from the poor fund during the remainder of the fiscal year for which the application is made, including both the amount and purpose of the expenditures and transfers;

~~(v)~~ (e) an explanation of why the county is experiencing the county poor fund deficiency upon which ~~the application~~ an emergency grant-in-aid is based~~.~~;

~~(b)~~ (f) ~~Detailed documentation, including~~ all relevant fiscal information, to demonstrate that no part of the poor fund deficiency upon which the application is based was caused by expenditures for services, including medical services, to nonindigent persons~~.~~;

~~(c)~~ (g) ~~Detailed documentation, including~~ all relevant fiscal information to demonstrate that the rates for medical services, ~~including medical services, charged by a~~ including those provided by a county medical facility, to indigent persons do not exceed the lesser of the rates charged for like services for nonindigent persons or ~~up to but not more than~~ medicaid ~~reimbursement rates~~.

(2) If the county operates a county medical facility, the application must contain the following:

(a) the name of the facility;

(b) the fund used for fiscal operations of the facility; and

~~(c)--whether--or-not-the--facility--limits-admissions--or services-solely-to-indigent-persons;-and~~

~~(d)--if-the--facility-serves--or-admits-both-indigent-and nonindigent-persons;--percentage-of-the--facility's-admissions of;-and-other-services-provided-to-each.~~

(c) the percentage of the facility's admissions and services provided to indigents and nonindigents (others including medicaid).

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.305 CONDITIONS FOR GRANTS (1) A county will be ~~awarded-an-emergency~~ eligible for a grant-in-aid only if it supplies all information and meets all other conditions required by applicable Montana law and these rules.

~~(2)--A-county-which--operates-a--county--facility-will-be awarded--an--emergency--grant-in-aid--only--if--it--meets;--in addition--to-all-other--conditions-imposed-by-law;-one--of-the following-conditions:~~

~~(a)--the--county-must--limit-admissions--to--or--services provided-by-any-county-facility-solely-to-indigent-persons;-or~~

~~(b)--the-county-must-operate-any-county-facility-out-of-a fund-separate-and-distinct-from-the-county-poor-fund;-and-must bill-the-county-poor-fund-or-other-appropriate-party--(such-as medicaid)-for-services-provided-to-indigent-persons;-rates-for services-provided-to-indigent-persons--by-such-a--facility-may not-exceed--the-lesser-of-the-rates-for--like-services-charged to-nonindigent--persons-or--up-to-but--not-more--than-medicaid reimbursement-rates;-or~~

~~(c)--the-county;-if-it-operates-a--county-facility-out-of the-county-poor-fund;-must-use-a-fiscal-record--keeping-system by--which-it--can-demonstrate--that-no--part-of--the-poor-fund deficiency-upon-which--the-application--is-based-was-caused-by expenditures-for-services-for-nonindigent-persons;---Rates-for services-provided-to-indigent--persons-by--such-a-facility-may not-exceed-the-rates-for-like-services-charged--to-nonindigent persons;~~

~~(3)--Applications--which--fail--to--supply--all--required information;-or-meet-all-required-conditions-will-be-denied.~~

(2) A county is eligible for a matching grant-in-aid if the department determines that all of the following conditions have been met:

(a) the amount levied for allowable poor fund expenditures as defined at Rule I exceeds 8 mills;

(b) the amount actually expended for allowable poor fund expenditures exceeds all available resources resulting from a levy of 8 mills as defined at ARM 46.9.303 (4);

(c) the county participates in or operates a work pro-

gram approved by the department;

(d) the county has a general assistance and county medical plan approved by the department; and

(e) the county has submitted, on forms provided by the department, a budget for the poor fund in accordance with 53-2-322, MCA.

(3) A county is eligible for an emergency grant-in-aid if the department determines that all of the following conditions have been met:

(a) the amount levied for allowable poor fund expenditures as set forth in Rule I equals the maximum mill levy allowed by 53-2-321, MCA;

(b) the amount actually expended for allowable poor fund expenditures exceeds all available resources resulting from the maximum mill levy allowed by 53-2-321, MCA;

(c) the county has a general assistance and county medical plan approved by the department; and

(d) the county has submitted, on forms provided by the department, a budget for the poor fund in accordance with 53-2-322, MCA.

(4) A county which operates a county medical facility must meet one of the following conditions:

(a) the county operates the county medical facility out of an enterprise or special revenue fund separate and distinct from the poor fund and bills the poor fund and other appropriate third parties for services provided to indigent persons; or

(b) the county, if it operates a county medical facility out of the poor fund, uses a financial record keeping system that documents that all expenditures claimed for the purpose of receiving a grant-in-aid (either matching or emergency) are allowable in accordance with Rule I.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

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

RULE I ALLOWABLE POOR FUND EXPENDITURES (1) Allowable poor fund expenditures are those reasonable, necessary and legal expenditures incurred for:

(a) the provision of care and maintenance of the indigent sick;

(b) general relief activities of the county welfare department; and

(c) reimbursement to the department for the county's proportionate share of approved administrative costs for all public assistance of the county welfare department.

(2) All staff of the county department of public welfare

will be paid in accordance with 53-2-304, MCA. The staffing patterns and the filling of any vacant positions consistent with workload and caseload size must be approved by the department.

(3) All reimbursement of costs for services provided by consultants and for contracted services will be based on policies in effect at the time for the department.

(4) Reimbursement through a grant-in-aid will not be allowed for costs legally payable or reimbursable from another source.

(5) Expenditures for compensation to county physicians and ambulance services are allowable provided that:

(a) there is a written contract setting forth the services to be provided and the amount of compensation to be paid for such services;

(b) the services provided would be reimbursable under the Montana medicaid program and such expenditures are for services provided solely to the indigent sick;

(c) the amount of compensation does not exceed the amount reimbursed for such services under the Montana medicaid program.

(6) Expenditures for the following purposes will not be recognizable as allowable:

(a) payment for legal services;

(b) compensation to any employee not approved by the department;

(c) supplements to foster care payments;

(d) interest on registered warrants;

(e) expenditures to subsidize directly or indirectly a medical facility;

(f) transfers to any fund outside of the poor fund;

(g) expenditures incurred in any preceding fiscal year whether warrants for these expenditures have been registered or not;

(h) general assistance grants which do not conform to the approved county general assistance plan;

(i) expenditures for county medical assistance which do not conform to approved county medical plan or which are in excess of medicaid rates;

(j) expenditures for services rendered in a personal care facility;

(k) all other expenditures determined by the department to be not necessary, reasonable, or legal.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

4. The 1981 Montana Legislature enacted HB 291 which mandated that the department set criteria for grant-in-aid

based on reasonableness and necessity of county poor fund costs. The legislature went further and defined reasonable and necessary county medical costs to be those consistent with Medicaid reimbursement rates. The department earlier amended ARM 46.9.302-305 to implement HB 291 and now proposes these amendments and adoption to further implement the intent of the legislature.

The First Special Session of the 1981 Montana Legislature provided for an additional level of grant-in-aid in Section 2, Chapter 11, Special Laws 1981. These proposed amendments and adoption provide a means to implement that law consistent with HB 291.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 10, 1982.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 2, 1982.

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

In the matter of the amendment of Rules 46.13.201, 46.13.203, 46.13.204, 46.13.303, 46.13.305, 46.13.401, 46.13.402, and 46.13.403 pertaining to the low income energy assistance program	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.13.201, 46.13.203, 46.13.204, 46.13.303, 46.13.305, 46.13.401, 46.13.402, AND 46.13.403 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On September 7, 1982, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.13.201, 46.13.203, 46.13.204, 46.13.303, 46.13.305, 46.13.401, 46.13.402, and 46.13.403 pertaining to the Low Income Energy Assistance Program.

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

46.13.201 INTERVIEWS REQUIRED AND CONTENT OF INTERVIEWS (1) Rights and responsibilities explained.

(a) A staff member of the local contractor shall interview all applicants or persons authorized to act responsibly on behalf of applicants who contact the offices of the local contractor to apply for low income energy assistance. During the first interview, the staff member shall explain the person's rights, outline his responsibilities and describe the process in the system which may affect the client. (See ARM 46.13.203 for exceptions.)

(2) The staff member shall explain to the person applying all factors of eligibility which must be substantiated and assist the person to understand the regulations governing his eligibility and receipt of benefits. The staff member shall inform the client of the availability of the regulations affecting eligibility as found in the Administrative Rules of Montana, 46.13.101 through 46.13.501, copies of which are available and may be inspected in the offices of the clerk and recorder and the clerk of court in each county.

Subsection (3) remains the same.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

46.13.203 PLACE OF APPLICATION (1) The place of application shall ~~not be closed for any portion of the working day or working week,~~ be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for recognized holidays.

Subsection (2) remains the same.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

46.13.204 INVESTIGATION OF ELIGIBILITY (1) Investigations of eligibility will include securing information from the person applying for or receiving benefits and such other investigation as may be determined necessary by the department.

(a) Each application for assistance will be promptly and thoroughly investigated by a staff member of the local contractor. If a case is picked for quality control review, the client must cooperate or be subject to reduced or terminated benefit.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

46.13.303 TABLES OF GROSS RECEIPTS AND INCOME STANDARDS (1) The gross receipts standards in the table in (2) below are 250% of the 1982 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to households with income from self-employment. Self-employed households with annual gross receipts at or below 250% of the 1982 poverty level are financially eligible for low income energy assistance only if they further meet the adjusted gross income test as set forth in (3) and (4) below.

(2) Gross receipts standards for households with self-employment income:

Number of individuals in household	Annual gross receipts for self-employed households
1	~~$10,775~~ 11,700
2	~~14,225~~ 15,550
3	~~17,675~~ 19,400
4	~~21,125~~ 23,250
5	~~24,575~~ 27,100
6	~~28,025~~ 30,950
Each additional member	~~3,450~~ 3,850

(3) The income standards in the table in (4) below are ~~125%~~ 150% of the 1982 U.S. Government Office of Management and Budget poverty level for households of different sizes. This table applies to all households, including self-employed households that meet the gross receipts test set forth in (1) and (2) above. Households with ~~adjusted~~ annual gross income

at or below ~~125%~~ 150% of the 1982 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 150% of the 1982 poverty level are ineligible for the program.

~~(4)--Adjusted-gross-income-standards-for-all-households:~~

(4) Benefits award will be commensurate with income level.

(a) Eligible households whose adjusted gross income is at or below column D in subsection (c) below or households which consist solely of members receiving supplemental security income, aid to families with dependent children, or general assistance will receive 100% of the matrix benefit award.

(b) Eligible households whose adjusted gross income is above column D but at or below column C in subsection (c) below will receive 75% of the matrix benefit award.

(c) Eligible households whose adjusted gross income is above column C but at or below column B will receive 50% of the matrix benefit award.

(d) Eligible households whose adjusted gross income is above column B but at or below column A will receive 25% of the matrix benefit award.

~~Number of individuals in household~~	~~Annual adjusted gross income for all households~~
~~1~~	~~$ 5,300~~
~~2~~	~~7,113~~
~~3~~	~~8,930~~
~~4~~	~~10,563~~
~~5~~	~~12,200~~
~~6~~	~~14,013~~
~~Each additional member~~	~~1,725~~

Family Size	A	B	C	D
1	$ 7,020	$ 5,850	$ 4,680	$ 3,510
2	9,330	7,775	6,220	4,665
3	11,640	9,700	7,760	5,820
4	13,950	11,625	9,300	6,975
5	15,510	13,550	10,340	8,130
6	18,570	15,475	12,380	9,285
each additional member	2,310	1,925	1,540	1,155

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

46.13.305 RESOURCES ~~(1)--Financial-eligibility-for-the-low--income--energy--assistance--program--will--be--determined-without--consideration--of--real--or--personal,--tangible--or-intangible-assets-owned-by-members-of-the-household:~~

(1) The following property resources shall make a family unit ineligible when in total they exceed $1,500 for a single person, $2,250 for a couple, and $100 for each additional member:

(a) cash on hand;
(b) certificate of deposits;
(c) savings accounts;
(d) cash value of life insurance;
(e) market value of stocks or bonds.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (1)(g) remain the same.

(2) The benefit ward matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru April). The maximum benefit varies by type of primary heating fuel and in certain cases by vendor, the type of dwelling (single family unit, multi-family unit, mobile home), and the number of bedrooms in a shelter or rental unit and by income. The maximum benefit also varies by local contractor districts to account for weather differences across the state.

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICTS I, II & III

Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Rosebud, Treasure, Custer, Fallon, Powder River and Carter Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	276 ~~306~~	178 ~~213~~	352 ~~374~~	227 ~~262~~
Fuel Oil	825 ~~821~~	577 ~~574~~	1008 ~~1001~~	706 ~~701~~
Propane	641 ~~617~~	448 ~~432~~	783 ~~754~~	548 ~~520~~
Electricity M.P.C.	378 ~~376~~	264 ~~263~~	462 ~~459~~	323 ~~321~~
Electricity M.D.U.	716 ~~846~~	502 ~~592~~	875 ~~1042~~	613 ~~729~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	408 ~~425~~	267 ~~297~~	465 ~~475~~	306 ~~332~~
Fuel Oil	1146 ~~1100~~	803 ~~798~~	1283 ~~1100~~	899 ~~892~~
Propane	890 ~~857~~	623 ~~601~~	996 ~~960~~	697 ~~672~~
Electricity M.P.C.	525 ~~521~~	367 ~~365~~	588 ~~585~~	412 ~~409~~
Electricity M.D.U.	995 ~~1100~~	696 ~~774~~	1114 ~~1100~~	780 ~~916~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	333 ~~303~~	214 ~~217~~	424 ~~305~~	274 ~~270~~
Fuel Oil	840 ~~803~~	585 ~~562~~	1027 ~~979~~	719 ~~685~~
Propane	653 ~~604~~	457 ~~479~~	798 ~~836~~	558 ~~585~~
Electricity	385 ~~303~~	269 ~~268~~	470 ~~460~~	329 ~~320~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	492 ~~440~~	321 ~~314~~	560 ~~509~~	369 ~~350~~
Fuel Oil	1168 ~~1100~~	817 ~~780~~	1308 ~~1100~~	915 ~~873~~
Propane	906 ~~950~~	635 ~~666~~	1015 ~~1064~~	710 ~~745~~
Electricity	535 ~~531~~	374 ~~372~~	600 ~~596~~	420 ~~417~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

Glacier, Toole, Pondera, Teton,
Chouteau and Cascade Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	325	210	414	268
G.F.G.	~~283~~	~~190~~	~~363~~	~~254~~
Natural Gas	297	191	378	264
M.P.C.	~~262~~	~~183~~	~~336~~	~~234~~
	737	516	901	631
Fuel Oil	~~715~~	~~501~~	~~872~~	~~611~~
	565	396	690	483
Propane	~~527~~	~~369~~	~~645~~	~~451~~
	343	240	419	294
Electricity	~~340~~	~~239~~	~~417~~	~~292~~
Coal	198	149	248	198
Wood	215	143	280	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	481	314	547	361
G.F.G.	~~424~~	~~296~~	~~484~~	~~339~~
Natural Gas	441	309	499	349
M.P.C.	~~391~~	~~274~~	~~447~~	~~312~~
	1024	717	1147	803
Fuel Oil	~~992~~	~~694~~	~~1100~~	~~770~~
	785	549	879	615
Propane	~~733~~	~~513~~	~~820~~	~~574~~
	477	334	534	374
Electricity	~~474~~	~~332~~	~~531~~	~~372~~
Coal	297	248	347	297
Wood	356	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

Fergus, Judith Basin, Petroleum, Wheatland,
Golden Valley and Musselshell Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	297 ~~262~~	191 ~~183~~	377 ~~336~~	244 ~~234~~
Fuel Oil	743 ~~733~~	520 ~~513~~	908 ~~895~~	636 ~~627~~
Propane	548 ~~568~~	348 ~~397~~	670 ~~694~~	469 ~~486~~
Electricity	343 ~~341~~	240 ~~239~~	419 ~~417~~	294 ~~292~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	438 ~~391~~	286 ~~274~~	499 ~~447~~	329 ~~312~~
Fuel Oil	1033 ~~1018~~	723 ~~713~~	1157 ~~1100~~	810 ~~798~~
Propane	761 ~~790~~	533 ~~552~~	853 ~~883~~	597 ~~618~~
Electricity	477 ~~474~~	334 ~~332~~	534 ~~531~~	374 ~~372~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	229	148	292	189
M.D.U.	~~254~~	~~177~~	~~310~~	~~217~~
Natural Gas				
M.P.C.	279	196	356	250
	668	468	816	571
Fuel Oil	~~631~~	~~442~~	~~771~~	~~540~~
	516	361	631	442
Propane	~~513~~	~~359~~	~~626~~	~~438~~
	314	220	383	268
Electricity	~~312~~	~~219~~	~~382~~	~~267~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	339	221	386	254
M.D.U.	~~352~~	~~246~~	~~395~~	~~276~~
Natural Gas				
M.P.C.	414	289	472	363
	929	650	1039	728
Fuel Oil	~~877~~	~~614~~	~~982~~	~~688~~
	717	502	803	562
Propane	~~712~~	~~498~~	~~796~~	~~558~~
	436	305	488	341
Electricity	~~433~~	~~304~~	~~486~~	~~340~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	311 ~~279~~	212 ~~196~~	396 ~~356~~	256 ~~250~~
Fuel Oil	760 ~~750~~	532 ~~525~~	929 ~~915~~	650 ~~640~~
Propane	628 ~~639~~	440 ~~448~~	768 ~~782~~	537 ~~548~~
Electricity	360 ~~358~~	252 ~~251~~	440 ~~441~~	308 ~~309~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	460 ~~414~~	301 ~~289~~	523 ~~472~~	345 ~~330~~
Fuel Oil	1056 ~~1042~~	740 ~~729~~	1183 ~~1100~~	828 ~~809~~
Propane	872 ~~889~~	611 ~~623~~	977 ~~994~~	684 ~~696~~
Electricity	500 ~~497~~	350 ~~348~~	560 ~~558~~	392 ~~385~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	313 ~~279~~	202 ~~196~~	399 ~~356~~	258 ~~250~~
Fuel Oil	792 ~~732~~	555 ~~513~~	968 ~~893~~	678 ~~624~~
Propane	669 ~~623~~	468 ~~436~~	817 ~~761~~	572 ~~532~~
Electricity	363 ~~358~~	254 ~~251~~	443 ~~441~~	310 ~~309~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	463 ~~414~~	303 ~~289~~	528 ~~472~~	348 ~~330~~
Fuel Oil	1101 ~~1015~~	771 ~~711~~	1233 ~~1100~~	863 ~~788~~
Propane	929 ~~865~~	650 ~~605~~	1040 ~~968~~	728 ~~678~~
Electricity	504 ~~497~~	353 ~~348~~	564 ~~556~~	395 ~~385~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

Type Fuel	1 Bedroom Home		2 Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	311 ~~281~~	200 ~~197~~	396 ~~359~~	256 ~~251~~
Fuel Oil	767 ~~788~~	537 ~~551~~	937 ~~961~~	656 ~~673~~
Propane	610 ~~645~~	427 ~~451~~	746 ~~788~~	522 ~~551~~
Electricity	363 ~~510~~	254 ~~350~~	472 ~~624~~	331 ~~437~~
Coal	198	149	248	198
Wood	215	143	286	215

Type Fuel	3 Bedroom Home		4+ Bedroom Home	
	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	459 ~~418~~	301 ~~293~~	523 ~~476~~	345 ~~333~~
Fuel Oil	1066 ~~1095~~	746 ~~767~~	1193 ~~1100~~	835 ~~857~~
Propane	848 ~~895~~	593 ~~627~~	949 ~~1003~~	665 ~~702~~
Electricity	591 ~~700~~	414 ~~496~~	663 ~~802~~	464 ~~561~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	311 ~~279~~	200 ~~196~~	396 ~~356~~	256 ~~245~~
Fuel Oil	780 ~~756~~	546 ~~529~~	953 ~~924~~	667 ~~647~~
Propane	601 ~~605~~	421 ~~424~~	735 ~~740~~	515 ~~518~~
Electricity	360 ~~350~~	252 ~~251~~	440 ~~441~~	308 ~~309~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	450 ~~414~~	301 ~~289~~	523 ~~472~~	345 ~~330~~
Fuel Oil	1083 ~~1051~~	758 ~~736~~	1213 ~~1100~~	849 ~~815~~
Propane	835 ~~840~~	585 ~~589~~	936 ~~941~~	655 ~~659~~
Electricity	500 ~~497~~	350 ~~348~~	560 ~~558~~	392 ~~385~~
Coal	297	248	347	297
Wood	358	286	429	358

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

Powell, Granite, Deer Lodge, Silver Bow,
Beaverhead and Madison Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	311 ~~279~~	200 ~~196~~	396 ~~356~~	256 ~~250~~
Fuel Oil	767 ~~718~~	537 ~~503~~	937 ~~878~~	656 ~~615~~
Propane	637 ~~639~~	446 ~~448~~	778 ~~734~~	545 ~~513~~
Electricity	360 ~~358~~	252 ~~251~~	440 ~~441~~	308 ~~309~~
Coal	198	149	248	198
Wood	215	143	286	215

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	460 ~~414~~	301 ~~289~~	523 ~~472~~	345 ~~330~~
Fuel Oil	1066 ~~998~~	746 ~~699~~	1193 ~~1100~~	835 ~~774~~
Propane	885 ~~889~~	619 ~~623~~	991 ~~994~~	693 ~~696~~
Electricity	500 ~~497~~	350 ~~348~~	560 ~~558~~	392 ~~385~~
Coal	297	248	347	297
Wood	358	286	429	358

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

46.13.402 DETERMINING BENEFIT AWARD ~~(1)--Benefit-awards will-be--made-to-eligible--households--in-accordance--with-the~~

~~following, except that for households that are billed for energy costs directly by the primary fuel vendor and that also received assistance in the previous year only an adjusted award will be made. The adjusted award will be arrived at by subtracting from the household's benefit award any funds from the previous program year remaining in any of the household's fuel vendor accounts. This will be accomplished by subtracting from the household's benefit award the credit balances in any of the household's fuel vendor accounts as of September 30, unless the household can establish through documentation the amount of the credit balances which are not associated with last year's program funds.~~

~~(a)~~ (1) For applications filed during the period October 1, 1982 through April 30, 1983, households found eligible will receive the full amount of their applicable matrix.

(2) When a household changes residence or type of primary fuel during the heating season but continues to be served by the same fuel vendor, no change-in-circumstance adjustment will be made to the household's benefit award.

(3) When a household changes residence or type of primary fuel during the heating season and is also served by a different fuel vendor, the household may request to have its benefit award recomputed for the new circumstances. The benefit award for the new circumstances will be equal to the benefit award the household would have received had its original application been for the new circumstances times the unused portion of the original benefit award divided by the amount of the original benefit award. The unused portion of the original benefit award reverts to the department.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

46.13.403 METHOD OF PAYMENT Subsections (1) through (2)(a) remain the same.

(b) The amount of the benefit or adjusted award remaining after the application of (a) will be paid by check directly to the fuel vendor and will be applied by the fuel vendor against any unpaid, including any future, eligible energy costs of the household in accordance with the department-provided vendor application and contract. Any credit balance attributable to the benefit or adjusted award as of September 30, 1982 3, will be returned to the department by the fuel vendor.

Subsection (3) and (3)(a) remain the same.

The authority of the department to amend the rule is based on Section 53-2-201, MCA and the rule implements Section 53-2-201, MCA.

3. The department proposes these amendments to slightly change the low income energy assistance program by updating fuel prices, tying benefit award to income level, adopting a liquid resources eligibility requirement and by raising the income guidelines to reflect the higher cost of living.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 15, 1982.

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

Director, Social and
Rehabilitation Services

Certified to the Secretary of State 8/2, 1982.

BEFORE THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the repeal of rule 2.23.504, the amendment of rules 2.23.304 and 2.23.920, and the adoption of a new rule 2.23.1306	)))))	NOTICE OF THE REPEAL OF RULE 2.23.504, THE AMENDMENT OF RULES 2.23.304 and 2.23.920, AND THE ADOPTION OF A NEW RULE 2.23.1306

To: All Interested Persons.

1. On June 17, 1982, the Montana Merit System Council published notice of proposed repeal of Rule ARM 2.23.504, amendment of Rules 2.23.304 and 2.23.920, and the adoption of a new rule 2.23.1306 concerning the operation of the Montana Merit System Council on page 1137A of the 1982 Montana Administrative Register, issue number 11.

2. The Council has repealed, amended and adopted the rules as proposed.

3. No comments on testimony were received.

Norman H. Grosfield
Acting Chairperson
Merit System Council

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the amendments of ARM 8.12.601 concerning applications and educational requirements, 8.12.603 concerning examinations, and 8.12.604 concerning temporary permits	NOTICE OF AMENDMENTS OF ARM 8.12.601 APPLICATION, EDUCATION REQUIREMENTS, 8.12.603 EXAMINATIONS, 8.12.604 TEMPORARY PERMIT

TO: All Interested Persons:

1. On June 30, 1982, the Board of Chiropractors published a notice of amendment of ARM 8.12.601 concerning applications and educational requirements, 8.12.603 concerning examinations and 8.12.604 concerning temporary permits at pages 1250 and 1251, 1982 Montana Administrative Register, issue number 12.

2. The board is amending the rules exactly as proposed.

3. No comments or testimony were received.

BOARD OF CHIROPRACTORS
CARROL ALBERT, D.C., PRESIDENT

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 2, 1982.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 18.8.514 regarding length for which Special Permits are issued.	))))	NOTICE OF THE amendment of rule 18.8.514, LENGTH

TO: All Interested Persons:

1. On April 15, 1982, the Department of Highways published notice of a proposed amendment to rule 18.8.514 concerning length at page 649 of the 1982 Montana Administrative Register, issue number 7.

2. The agency has amended the rule as proposed.

3. The principal reasons for the amendment of the rule are to clarify wording and to change dimensions to be consistent with section 61-10-124, MCA and other Department rules and to simplify the procedure for issuing the permits.

At the public hearing, Mr. Dennis Lopach, an attorney representing the Montana Motor Carrier's Association, testified in support of the amendment. He testified that the amendment of the rule would not change the substantive dimensional standards and would simplify the procedures for issuance of the permits.

Mr. Don Copley, Administrator of the G.V.W. Division also testified in support of the amendment. He stated that the amendment would allow no additional weight, length, or other dimensional sizes than those presently permitted and would provide for easier issuance of permits.

Beata Golda, an attorney for the Department of Highways likewise testified that the amendment would not allow the travel on Montana highways of any vehicle or combination of vehicles with dimensions greater than those presently allowed by statute or rule.

Representative Joe Brand, State Director of the United Transportation Union, testified in opposition to the amendment. He objected to rule changes in general and to increased height from 13½ feet to 14½ feet. He felt the law was 13½ feet and that the rule would change the law and increase the height as he believed section 61-10-124(2)(a) MCA related only to farm vehicles. He felt that the amendment would result in less revenue.

Mr. James Mular, representing the Brotherhood of Railway and Airline Clerks, testified as an "intervenor" and stated he was not in complete opposition to the amendment. He stated that he is concerned that the vehicle or load height could cause safety problems. He confirmed that the Department does have the authority to exceed the 13½ foot limit, but he believed that the authority was limited to single trip permits, not term permits.

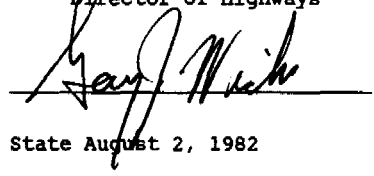
Letters received regarding the proposed amendment were primarily in opposition to dimensional increase. Two letters asserted that the Department would be exceeding its

authority by issuing term permits. One person was opposed to longer hours of travel and lack of warning lights.

The argument of Representative Brand and Mr. Mular and objections received by letter are overruled. Section 61-10-124 MCA does not limit restrictions to farm vehicles and specifically provides that the Department may issue term permits for a height of 13½ feet or a limit determined by the Department. The Department has been issuing term permits for 14½ feet height for at least 10 years under rule 18.8.512. The amendment does not increase dimensions beyond statutory limits and merely conforms the rule to statutes and regulations the Department has been operating under. The rule does not change warning light requirements or hours of safety problems or have travel restrictions. There was no evidence that the issuance of term permits rather than trip permits would cause safety problems or have any greater impact on Montana's highways or motorists. The argument that the amendment would result in less revenue was unsupported. The term permits cost $75; single trip permits are $10. Issuance of term permits will result in less paperwork and record keeping for the Department.

Because the amendment will simplify and clarify the rule as well as make it conform to existing statutes and rules, and because no evidence showing the amendment will result in greater hazards or detriment to the highway system or its users was presented, I am adopting the amended rule as proposed.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State August 2, 1982

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

In the matter of the repeal of Rules 46.9.501, 46.9.502, 46.9.503, 46.9.504, 46.9.505, 46.9.506, 46.9.507, 46.9.508 and 46.9.509 pertaining to the county medical program.	)))))))	NOTICE OF THE REPEAL OF RULES 46.9.501, 46.9.502, 46.9.503, 46.9.504, 46.9.505, 46.9.506, 46.9.507, 46.9.508 and 46.9.509 PERTAINING TO THE COUNTY MEDICAL PROGRAM

To: All Interested Persons

1. On June 17, 1982, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rules 46.9.501, 46.9.502, 46.9.503, 46.9.504, 46.9.505, 46.9.506, 46.9.507, 46.9.508 and 46.9.509 pertaining to the county medical program on page 1193 of the Montana Administrative Register, issue number 11.

2. The agency has repealed the rules as proposed.

3. No comments or testimony were received.

John L. Hamer
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 2, 1982.

VOLUME NO. 38 OPINION NO. 65

COUNTY COMMISSIONERS - Calculation of cost-of-living increase in salary;
COUNTY OFFICERS AND EMPLOYEES - Calculation of cost-of-living increase for officials;
COUNTY SUPERINTENDENTS OF SCHOOLS - Calculation of cost-of-living increase in salary;
SALARIES - Calculation of cost-of-living increase for county officials;
SHERIFFS - Calculation of cost-of-living increase in salary;
MONTANA CODE ANNOTATED - Sections 7-4-2107(1), 7-4-2503, 7-4-2504.

HELD: The cost-of-living increase authorized for county officials by section 7-4-2504(1), MCA, applies only to the annual base salary plus population increment established by section 7-4-2503(1), MCA, and not to the additional sums included in the salaries of the superintendent of schools, sheriff, and commissioners under sections 7-4-2503(2) and 7-4-2107(1), MCA.

16 July 1982

Board of County Commissioners
Lake County Courthouse
Polson, Montana 59860

Gentlemen:

You have asked for my opinion on the following question:

> Does the 7.28% cost-of-living increase for county officials, established according to the consumer price index formula in section 7-4-2504(1), MCA, apply to the total salary of each official, or only to the annual base salary plus population increment?

My opinion is that the cost-of-living increase is to be applied only to the annual base salary plus population increment.

In 1981, the Montana Legislature replaced the old formula for the determination of salaries for county officials, which was based on county population and taxable valuation, with a new system using annual base salaries plus population

increments. 1981 Mont. Laws, ch. 518 (Senate Bill No. 50). Under the new formula, the salaries of most county officials are computed by adding to an "annual base salary" of either $14,000 or $12,000, depending on the county's classification, a "population increment" of $10 or $20 per 100 persons, again depending on the county's classification. § 7-4-2503(1), MCA. The salary of the county superintendent of schools is this "base plus population" figure plus $400, § 7-4-2503(2)(a), MCA; the salary of the sheriff is "base plus population" plus $2,000, § 7-4-2503(2)(b), MCA; in most counties the salary of each county commissioner is also "base plus population" plus $2,000. § 7-4-2107(1), MCA.

At the same time, the Legislature replaced the former 7% yearly raise with a formula that tied any cost-of-living increase to the consumer price index. The new provision states:

> The county governing body shall by resolution, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index.

§ 7-4-2504(1), MCA (emphasis added). Earlier this year, the University of Montana Bureau of Business and Economic Research determined that "70% of the last previous calendar year's consumer price index" was 7.28%. Your question is whether this percentage should be applied only to the "base plus population" figure or should be applied to the total authorized salary including the additional sums for superintendent of schools, sheriff, and commissioners.

Under the former 7% cost-of-living provision, the 7% was to be applied to "the salary authorized for that official" during the previous year. That language was changed along with the 7% figure in 1981. The new law states clearly that the cost-of-living percentage is to be applied "to the annual salary established by 7-4-2503(1)." Section 7-4-2503(1), MCA, establishes only the "base plus population" figure, not the additional sums. The new provision is clear and unambiguous, and requires no interpretation. See Dunphy v. Anaconda Co., 151 Mont. 76, 79-81, 438 P.2d 660, 662 (1968). The 7.28% cost-of-living increase does not apply to the additional sums included in the salaries of the superintendent of schools, sheriff, and commissioners. This means that every county official in any given county receives the same dollar amount cost-of-living increase.

The Legislature's intent in this case is not only apparent from the plain language of the statute, but is also supported by the minutes of the legislative committees that considered Senate Bill No. 50. One of the main purposes of the Legislature in adopting Senate Bill No. 50 was to eliminate the inequities in salaries across the State, which had resulted from the heavy emphasis under the old system on taxable valuation, and from cost-of-living increases that were based on actual salary. See IV Minutes, House Local Government Committee, 3/12/81, p. 8; 3/26/81, pp. 11, 18. Sheriff Hammermeister, who chaired the County Compensation Board, which proposed the original version of Senate Bill No. 50, explained at one hearing:

> The intent of the County Compensation Board was that the base for all elected officials starts out at the $14,000 figure. We also want this cost of living to be kept so that the smallest county would get exactly the same cost-of-living raise as the largest county. A person who gets paid a good salary gets a high increase on a percentage basis, but a person who is paid nothing and you get a percentage of that you still get nothing. They average out all the monies for cost-of-living and give everyone the same amount of dollars. That was the intent. By basing the cost-of-living [on] one specific figure, $14,000, then every county official would get the same amount of cost-of-living increase.

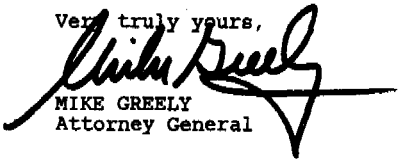
IV Minutes, House Local Government Committee, 3/12/81 p. 8; see also County Compensation Board Report for Senate Bill

50, p. 6. While the House Local Government Committee amended the Board's proposal to allow the cost-of-living increase to be based on annual base salary plus population increment, it did not go so far as to base the increase on total salary, despite the fact that witnesses asked the Committee to do so. See IV Minutes, House Local Government Committee, 3/12/81, p. 8 (John Scully representing the Montana Sheriffs and Peace Officers Association) and testimony on Senate Bill 50 of William L. Romine (representing the Montana Clerk and Recorders Association). The Legislature could have re-adopted language applying the cost-of-living increase to "the salary authorized for that official" during the previous year, but failed to do so.

THEREFORE, IT IS MY OPINION:

> The cost-of-living increase authorized for county officials by section 7-4-2504(1), MCA, applies only to the annual base salary plus population increment established by section 7-4-2503(1), MCA, and not to the additional sums included in the salaries of the superintendent of schools, sheriff, and commissioners under sections 7-4-2503(2) and 7-4-2107(1), MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 66

ALCOHOLIC BEVERAGES - Counting "floater" all-beverage licenses in quota of area to which transferred;
DEPARTMENT OF REVENUE - Inclusion of "floater" all-alcoholic beverages licenses in area quota;
LICENSES - Inclusion of "floater" all-alcoholic beverages licenses in area quota of area to which transferred;
REVISED CODES OF MONTANA, 1947 - Section 4-4-206(4);
MONTANA CODE ANNOTATED - Sections 16-4-201, 16-4-204(6)(c).

HELD: Section 16-4-204(6)(c), MCA, requires all "floater" all-alcoholic beverages licenses transferred between quota areas pursuant to section 16-4-204(6)(a), MCA, to be counted in the all-alcoholic beverages license quota five years after the date of transfer.

21 July 1982

Ellen Feaver, Director
Department of Revenue
S.W. Mitchell Building
Helena, Montana 59620

Dear Ms. Feaver:

You have requested my opinion on the following question:

> Does section 16-4-204(6)(c), MCA, require all "floater" all-alcoholic beverages licenses transferred between quota areas pursuant to section 16-4-204(6)(a), MCA, to be counted in the all alcoholic beverages license quota five years after the date of transfer?

To fully answer this question, it is necessary to briefly trace the history of Montana's liquor license quota system.

The basic policy underlying liquor laws passed during the 1930's in Montana was regulation and limitation on the manufacture and sale of alcoholic beverages within the State. State v. Driscoll, 101 Mont. 348, 365, 54 P.2d 571, 578 (1936). This policy is today embodied in section 16-1-104, MCA, which provides in pertinent part:

> The purpose and intent of this code are to prohibit transactions in liquor which take place

> wholly within the state of Montana except under state control as specifically provided by this code, and every section and provision of this code shall be construed accordingly.

The intent of the Legislature in enacting such restrictions was to preserve the health, welfare, and safety of the people of Montana. § 16-1-103, MCA.

In 1947, the Legislature established what has come to be known as the quota system, which limits the number of retail beer and liquor licenses which may be issued for a particular area. Today, Montana's all-beverages license quota is incorporated in section 16-4-201, MCA, which authorizes issuance of such licenses on the basis of population within a given area.

The 1947 Act contained a "grandfather clause," which has been carried over in section 16-4-201(3), MCA:

> Retail all-beverages licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

The grandfather clause, coupled with rapid population growth between census years in some areas, has resulted in grossly unequal ratios of licenses per inhabitants in various areas throughout Montana. For example, as of the 1980 census, Virginia City has one license for every 48 inhabitants, while Billings has one license for every 1,173 inhabitants (DOR printout). One consequence of this unequal distribution of licenses in Montana is a huge disparity in the market price for a license, depending on whether an area has an excess or a paucity of licenses.

In 1975, the Legislature established "floater" all-beverage liquor licenses in an effort to facilitate more equal distribution of licenses throughout the State. Chapter 387, section 88 of the 1975 Montana Laws, amended section 4-410, R.C.M. 1947 (renumbered section 4-4-206(4), R.C.M. 1947) to allow a license to be transferred from one quota area to another in certain instances:

> (a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least twenty-five percent (25%) in the most recent census; and
(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than twenty-five percent (25%) in the most recent census; and
(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

The obvious purpose of the 1975 "floater" amendment was to permit the transfer of licenses from areas which have an excess of licenses into areas which are experiencing a shortage of licenses. However, subsection (b) of section 4-4-206(4), R.C.M. 1947, placed certain restrictions on a license once it was floated into an area. The transferred license could not be mortgaged or pledged as security, and it could only be transferred to another person by inheritance upon the death of the licensee. The purpose of these restrictions was to prevent windfall profits. For example, without the restrictions, a person could purchase a "floater" license at a cheap price in a community which is over quota and sell it at a huge profit in an area which is experiencing a shortage of licenses.

In 1981, the Legislature further modified this statute. Section 16-4-204(6)(a), MCA, now provides that a license may be transferred out of an area which is at least 25% over quota and into an area which is not more than 33% over quota. The percentage was increased from 25% to 33% apparently to allow more licenses to be floated into areas which are growing rapidly, such as Billings and Bozeman. In addition, section 16-4-204(6)(a), MCA, now provides that the restrictions on "floater" licenses shall only apply for five years after the date of transfer. After five years, such licenses can be mortgaged, pledged as security, or transferred to another person. However, section 16-4-204(6)(d), MCA, added a new restriction to "floater" licenses. Once a license is transferred into a new quota area, it cannot be transferred out again.

The apparent intent of the Legislature in lifting the restrictions on "floater" licenses after five years from the date of transfer was to encourage redistribution of existing licenses. If the restrictions were maintained indefinitely,

there would be very little incentive for someone to buy a "floater" and move it to another area, because the profit motive would be absent. Similarly, the apparent reason for the one remaining restriction on "floater" licenses, which mandates that they shall remain within the quota area to which they are once transferred, is to further the ultimate goal of the "floater" license amendment, redistribution of licenses throughout the State. The very purpose of transferring a license into a new quota area is to increase the number of licenses in that area. To allow the transfer of that license out of the area would defeat the purpose of the "floater" system.

In interpreting statutes, it is necessary to determine what in terms or in substance is contained therein and not to insert what has been omitted. § 1-2-101, MCA; Dunphy v. Anaconda Co., 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). Nothing in the Montana Alcoholic Beverage Code can be construed to require the exclusion of "floater" all-alcoholic beverage licenses from the all-alcoholic beverages quota for a particular area. Presently, it is the policy of the Department of Revenue to exclude "floaters" when determining the quota for a particular area, probably because, prior to the 1981 amendment to the statute, "floaters" had certain negative characteristics which distinguished them from regular licenses. Since the 1981 amendments, however, those distinguishing characteristics cease to exist at the end of five years. "Floater" licenses must, therefore, be counted, just as any other all-alcoholic beverages licenses, in determining the quota for that area. To decide otherwise would be to insert a requirement which does not exist in the present statutes.

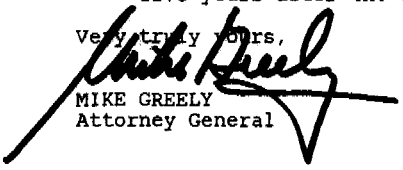
This interpretation is consistent with the general policy underlying the Montana liquor license quota system, which seeks to assure that the number of liquor licenses is commensurate with the population in a particular area. It is also compatible with the legislative intent embodied in the "floater" amendment, which was enacted to encourage redistribution of existing licenses in the State.

THEREFORE, IT IS MY OPINION:

Section 16-4-204(6)(c), MCA, requires all "floater" all-alcoholic beverages licenses transferred between

quota areas pursuant to section 16-4-204(6)(a), MCA, to be counted in the all-alcoholic beverages license quota five years after the date of transfer.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 67

EDUCATION - Protection of teachers against employment discrimination based on relationship by marriage;
EMPLOYEES, PUBLIC - Application of nepotism laws and Human Rights Act to employment involving relationships by marriage;
MARRIAGE AND DIVORCE - Relationship by affinity;
NEPOTISM - Nepotism law impliedly repealed by Human Rights Act;
SCHOOL DISTRICTS - Nepotism laws as affecting employment of teachers;
SCHOOL DISTRICTS - Human Rights Act, preventing employment discrimination;
TEACHERS - Human Rights Act, protection against employment discrimination for employees related by marriage;
MONTANA CODE ANNOTATED - Sections 1-1-219, 2-2-302, Title 40, 49-2-303(1)(a), 49-3-101(1)(b), 49-3-201(1), 72-11-105;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 49.

HELD: The Human Rights Act prohibits the board of trustees of a school district from refusing employment to a teacher solely on the basis of her relationship by affinity to a board member.

21 July 1982

James C. Nelson, Esq.
Glacier County Attorney
P.O. Box 1244
Cut Bank, Montana 59427

Dear Mr. Nelson:

You requested an opinion concerning whether a board of trustees for a school district would be in violation of the nepotism law if it hired as a teacher the sister-in-law of one of the members of the board.

Section 2-2-302, MCA, of the nepotism statutes prohibits any person or any member of a governmental agency to "appoint to any position of trust or emolument any person related or connected by...affinity within the second degree." The language of this section appears, on its face, to clearly prohibit the hiring in question. However, the Human Rights Act, Title 49, MCA, appears to conflict with this nepotism law with respect to employment of persons related by

marriage. Section 49-2-303(1)(a), MCA, provides in pertinent part:

> (1) It is an unlawful discriminatory practice for: (a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, marital status, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, or sex distinction. (Emphasis added.)

Section 49-3-201(1) of the Governmental Code of Fair Practices provides in pertinent part:

> (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. (Emphasis added.)

School boards are governed by the latter section, as well as the former. § 49-3-101(1)(b), MCA.

The Montana Supreme Court has recently construed these two sections as they apply to employment of persons related by marriage. In Thompson v. Board of Trustees, School District No. 12, 38 St. Rptr. 706, 627 P.2d 1229 (1981), two school administrators (a principal and a superintendent) had wives who were tenured teachers in the school district. The board terminated the superintendent and demoted the principal because of a school district policy prohibiting school administrators from having spouses employed by the school system. The Supreme Court broadly construed the term "marital status" in the above-quoted sections and held that "a liberal definition of the term 'marital status' includes the identity and occupation of one's spouse." The court rejected a narrower interpretation of the term, concluding that it would lead to absurd results: "if plaintiff and his wife were simply to dissolve their marriage, both could keep their jobs. But for the fact this plaintiff is married, he would still be working. The term 'marital status' as a

protected classification in the statutes was included to cover this type of unjustified discrimination."

The facts in issue in Thompson led to a holding that addressed employment situations involving spouses. It is my opinion that the protection afforded under the Human Rights Act on the basis of marital status cannot be strictly limited to spouses, or relationship by affinity in the first degree, because such a narrow construction would lead to absurd results, and would be in contravention of the objectives of the Human Rights Act as well as the nepotism law.

A husband and wife are related by affinity in the first degree. A person and his brother-in-law or sister-in-law are related by affinity in the second degree. §§ 1-1-219, 72-11-105, MCA.

The nepotism statute prohibits the hiring of a person related by affinity within the second degree. Thus, if the Human Rights Act were construed to protect only the hiring of a person related by affinity of the first degree, the result would be that an employer may have to hire his wife in a situation where he would be prohibited from hiring his wife's sister. The nepotism law was enacted to prevent abuses by public officials appointing relatives to the public payrolls, on the basis of relationship rather than merit. 38 Op. Att'y Gen. No. 49. Clearly there is a greater potential for such abuse between spouses than in-laws. The Human Rights Act was enacted to promote hiring based on merit. Clearly the nepotism law's prohibition against hiring an in-law contravenes that objective.

Another difficulty that arises with a limited construction of the Human Rights Act is the inconsistent effect of the test in Thompson upon employment situations involving relationships in the second degree of affinity. The Court held that the employment practice was discriminatory because "but for the fact this plaintiff is married he would still be working." Strict application of this test will protect only half of the applicants related in the second degree of affinity. For example, assume Mr. X is a member of the school board. His brother's wife applies for a job with the school system. "But for the fact that she is married" to her spouse she would be hired. However, assume that Mr. X's wife's brother applies for a job. In this situation the applicant's marriage is not the cause of his problem, rather Mr. X's marriage is. In this situation the "but for" test does not fit, and the applicant is not protected under the

limited construction of the Human Rights Act, even though he is related to Mr. X in the second degree of affinity, the same as the applicant in the first example. Such inconsistent application of statutory protections against employment discrimination cannot be the intent of either the Legislature or the Supreme Court.

The reasonable construction of "marital status" in the Human Rights Act is any marital relationship that, but for its existence, the applicant would be employed. This interpretation is consistent with the objectives of the Human Rights Act as well as the decision in Thompson. Employers would be further encouraged to consider the merits of the applicant as opposed to relationships. The holding in Thompson does not appear to be self-limiting. The Court held that the term "marital status" includes the identity and occupation of one's spouse. It did not expressly limit the definition of the term. It is readily apparent that the definition of "marital status" must be flexible for further interpretation as the need arises, to further the objectives of the Human Rights Act.

The nepotism law was not at issue in Thompson, however, and consequently the conflict between the nepotism law and the Human Rights Act was not addressed. The Supreme Court did however address a similar problem, a conflict between the Human Rights Act and the mandatory retirement law for teachers, section 20-4-203(2), MCA, in Mary Dolan v. School District No. 10, 38 St. Rptr. 1093 (1981). That section provided for mandatory retirement for teachers at age 70; it also permitted the schools to retire the teachers at age 65. The Human Rights Act, however, forbids employment discrimination based on age unless there is bona fide occupational qualification. §§ 49-2-303, 49-3-103, 49-3-201, MCA.

In dealing with these conflicting statutes, the Supreme Court applied several considerations.

It first noted that the mandatory retirement law was enacted before the Human Rights Act. It also noted that the Human Rights Act is general legislation, of which one facet concerns the area of employment, whereas section 20-4-203(2) is a specific one. The Court considered two pertinent rules of statutory construction: (1) where statutes irreconcilably conflict, the later statute supersedes the earlier, and (2) specific statutes normally prevail over general ones. If the first rule were applied, the Human Rights Act

prevails; if the second were applied, the retirement law prevails. The Court then turned to the guidance of a quotation from 50 Am. Jur. at 566-567, cited in State v. Board of Examiners of State, 121 Mont. 402, 194 P.2d 633 (1948):

> [A] later statute general in its terms and not expressly repealing a prior special or specific statute, will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both, or unless there is something in the general law or in the course of legislation upon its subject matter that makes it manifest that the legislature contemplated and intended a repeal. 121 Mont. at 417, 194 P.2d at 641. (Emphasis added.)

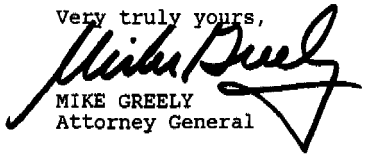
The Court concluded that the rule that the later legislative enactment prevails over the earlier was the better rule to apply because to hold otherwise "would materially dilute the effect of Montana's antidiscrimination legislation." The Court explained that the legislative intent of the Human Rights Act is that "[t]here shall be no discrimination in certain areas of the lives of Montana citizens, employment being one of such area, except under the most limited of circumstances." The retirement law clearly violates this intention because it permits discrimination in employment based solely upon age. The Court concluded that the mandatory retirement law was impliedly repealed by the Human Rights Act. This same reasoning guides my conclusion that the Human Rights Act must prevail over the nepotism law. The nepotism law was enacted in 1933 and 1935; the Human Rights Act in 1974 and 1975. The earlier act is specific, and the later one general. The intent of the Human Rights Act is stated above. The nepotism law clearly violates that intent because it permits discrimination in employment based solely on marital status. On this basis, the Human Rights Act must prevail over the nepotism law.

The Legislature may want to review the conflicts between these two acts to accomplish their stated goals while avoiding inconsistent applications of their statutory protection.

THEREFORE, IT IS MY OPINION:

The Human Rights Act prohibits the board of trustees of a school district from refusing employment to a teacher solely on the basis of her relationship by affinity to a board member.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend or repeal 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 existing or proposed rules. The address is Room 128, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definition: Administrative Rules of Montana (ARM) is a loose-leaf 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 statute 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 General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.
Department	2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
	3. Locate volume and title.
Subject Matter and Title	4. Refer to topical index, end of title, to locate rule number and catchphrase.
Title Number and Department	5. Refer to table of contents, page 1 of title. Locate page number of chapter.
Title Number and Chapter	6. Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing rule.)
Statute Number and Department	7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule in ARM	8. Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1982. This table includes those rules adopted during the period July 1, 1982 through September 30, 1982, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1982, 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 1982 Montana Administrative Registers.

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