MONTANA ADMINISTRATIVE REGISTER

1982 ISSUE NO. 18
SEPTEMBER 30, 1982
PAGES 1715-1811

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

IN THE MATTER of the proposed amendments of ARM 8.14.601 subsections (2), (4)(b) concerning applications; 8.14.603 subsections (2)(b), (11)(a) concerning school requirements; 8.14.606 subsections (4), (4)(a), (5)(b), (6)(a)(i) concerning student registration; 8.14.608 subsection (7) concerning instructor requirements for teacher training units; 8.14.805 subsection (9) concerning applications for out-of-state operators; 8.14.806 subsection (1) concerning individuals licensed without examination, reciprocity; 8.14.812 subsection (2) concerning duplicate licenses; 8.14.813 subsection (6) concerning lapsed licenses; 8.14.814 concerning the fees; 8.14.815 subsection (6) concerning continued education for instructors; proposed repeal of 8.14.811 concerning manager operators; and proposed adoption of a new rule under subchapter 10 which sets out a fee schedule for electrolysis.	NOTICE OF PROPOSED AMENDMENTS OF ARM 8.14.601 APPLICATIONS; 8.14.603 SCHOOL REQUIREMENTS; 8.14.606 STUDENT REGISTRATION; 8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING UNITS; 8.14.805 APPLICATION - OUT-OF-STATE OPERATORS; 8.14.806 LICENSED WITHOUT EXAMINATION - RECIPROCITY; 8.14.812 DUPLICATE LICENSES; 8.14.813 LAPSED LICENSES; 8.14.814 FEES, GENERAL INITIAL AND ANNUAL RENEWAL FEES; 8.14.815 CONTINUED EDUCATION - INSTRUCTORS; PROPOSED REPEAL OF 8.14.811 MANAGER OPERATORS AND PROPOSED ADOPTION OF A NEW RULE UNDER SUB-CHAPTER 10,FEE SCHEDULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1982 the Board of Cosmetologists proposes to amend, repeal and adopt the above stated rules.

2. The proposed amendment of 8.14.601 amends subsection (1) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.601 APPLICATION (1)...

(2) A personal survey form will be mailed to the applicant requesting detailed information as to the applicant's education and training, previous experience in conducting a school or former teaching employment, evidence of good moral character, and the ability to conduct a school. ~~The statement must be attested to by a Notary Public with the seal affixed.~~

(3)...

(4)...

(b) a detailed floor plan of the school showing adequate floor space of at least ~~1,500~~ 120 square feet per student,

which may include locker room and office space, with an effective date of 14 months from date of rule adoption.

(c) Applicants must provide signed petitions from the majority of licensed practitioners to agree to a new school in the specified location.

~~(c)~~ (d) ..."

3. The board is proposing the amendment to conform to law changes and as part of a general review of the rules. The authority of the board to make the proposed change is based on section 37-31-203, MCA and implements sections 37-31-301, 302, 304, and 311, MCA.

4. The proposed amendment of 8.14.603 will amend subsections (2)(b) and (11) (a) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.603 SCHOOL REQUIREMENTS (1)...

(2)...

~~(b) --it shall be strictly prohibited to advertise prices for clinical services.~~

(3)...

(11) ...

(a) Students shall ~~not~~ be limited ~~allowed more than~~ to 8 hours per day ~~for the first 300 hours~~ of ~~basic~~ training.

(12)..."

4. The board is proposing the amendment to conform to law changes and as part of a general review of the rules. The authority of the board to make the proposed change is based on section 37-31-203, MCA and implements sections 37-31-301, 304, 311, MCA. The deletion of subsection (2)(b) is also proposed at the suggestion of the legislative auditors as restricting competition.

5. The proposed amendment of 8.14.606 will amend subsections (3), (4), (4)(a), (5)(b), (6), (6)(a), (6)(a)(i) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.606 STUDENT REGISTRATION (1)...

(3) A student in good standing desiring to transfer to another school must present a verified statement indicating the number of hours which the student has had in training with all monies paid to the disenrolling school before credit can be given for past training.

~~(4) A student will not be permitted to transfer to a different school in the same city unless the school has been licensed to operate and has been in operation for at least 2 years.~~

~~(a)~~ A student who transfers to another school within the same city ~~must take the 300 hours of basic training in the new school before being allowed to work on the public~~ will forfeit 80 hours of accumulated credit.

(5)...

(b) ~~If a~~ Each time a student withdraws and re-enrolls in the same school, he is ~~not~~ required to pay the

registration fee again.

(6) ~~Credit for past training will not be granted to a student who delays over a period of 60 days before re-enrolling in a school.~~

~~(a) When an out-of-state student who has not completed the necessary hours re-enrolls in a Montana school within 60 calendar days from the date of last attendance, that student will be allowed full credit for hours accumulated in the prior school.~~

~~(i)~~ Those out-of-state All students who have been out of school for a period of time in excess of 60 calendar days would forfeit 80 hours of accumulated credit for each month or fraction thereof since the last day of attendance in a beauty school.

(7)... "

6. The board is proposing the amendments to conform to law changes and is also revising the rules after a review by the board. The authority of the board to make the proposed changes is based on section 37-31-203, MCA and implements sections 37-31-203, 323, 134, MCA.

7. The proposed amendment of 8.14.608 amends subsection (7) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING UNITS (1)...

(7) Daily records of all subjects taught and practiced by the cadet teacher shall be kept and such records shall be signed by the cadet teacher and the instructor, then submitted to the office of the department prior to the 10th of each month.

(8)..."

8. The board is proposing the amendment to conform to law changes and as part of a general review of the rules. The authority of the board to make the proposed change is based on section 37-31-203, MCA and implements sections 37-31-305, 311, MCA.

9. The proposed amendment of 8.14.805 will repeal subsection (9) and renumber subsection (10) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.805 APPLICATION - OUT-OF-STATE OPERATORS (1)...

~~(9) Only operator licenses shall be issued to cosmetologists who qualify for licensure from out of state.~~

~~(10)~~ (9)..."

10. The board is proposing the amendment due to a legislative change in the law. The authority of the board to make the proposed amendment is based on section 37-31-203, MCA and implements section 37-31-303, 304, 306, 307, 308, MCA.

11. The proposed amendment of 8.14.806 amends subsection (1) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.806 LICENSED WITHOUT EXAMINATION - RECIPROCITY (1) Any person who is licensed to practice cosmetology in another state upon meeting the following requirements and passing an examination on Montana law and rules may, at the discretion of the board, be licensed to practice in the state of Montana without examination provided the state in which such person is licensed, grants the same privilege to persons licensed in the state of Montana seeking a license in that state.

(a)..."

12. The board is proposing the amendment to conform to law changes and as part of a general review of the rules. The authority of the board to make the proposed change is based on section 37-31-203, MCA and implements section 37-31-306, MCA.

13. The proposed amendment of 8.14.812 will amend subsection (2) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.812 DUPLICATE LICENSES (1)...

(2) Any cosmetologists may receive a duplicate of their ~~operator,~~ manager operator, or instructor license upon the payment of a proper fee and a verified statement as to why such a duplicate license is needed."

14. The board is proposing the amendment to reflect legislative changes. The board no longer issues an operator license. The authority of the board to make the proposed amendment is based on section 37-31-203, MCA and implements section 37-31-313, MCA.

15. The proposed amendment of 8.14.813 will amend subsection (6) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.813 LAPSED LICENSES (1)...

(6) In the event that a license shall have lapsed for over 10 years, for any reason, it is required that such a person must take a course of 300 hours of training in a properly licensed school of cosmetology, providing certification thereof, ~~must~~ make application, pay the proper fees and take the written and practical examination."

16. The board is proposing the amendment to conform to law changes and as part of a general review of the rules. The authority of the board to make the proposed change is based on section 37-31-203, MCA and implements section 37-31-322, MCA.

17. The proposed amendment of 8.14.814 will read as follows: (new matter underlined, deleted matter interlined)

"8.14.814 FEES, GENERAL INITIAL, RENEWAL AND LATE RENEWAL FEES (1) Fees - general

(a) Student registration fees shall be ~~$3.50~~ 5.00 for initial enrollment plus $5.00 for each re-enrollment

following a withdrawal.

(b) Temporary license fee shall be ~~$4.00~~ 6.00.

(c) Applicant for examination to practice shall pay ~~$20.00~~ $30.00 ~~plus $6.00 operator license fee.~~

(d) Applicant for examination to teach shall pay ~~$30.00~~ $75.00 plus ~~$10.00~~ $15.00 instructor license fee.

(e) Applicant for itinerant license shall pay ~~$50.00~~ $70.00 plus ~~$10.00~~ $15.00 manager-operator license fee.

(f) Applicant for reciprocal license shall pay ~~$50.00~~ $75.00 plus ~~$6.00~~ $30.00 ~~operator~~manager-operator license fee.

(g) Duplicate license fee shall be $4.00.

(h) Initial inspection fee, for a salon shall be $30.00.

(2) Renewal fees:

(a) All cosmetology licenses are to be renewed on or before December 31st of each year except the manager operator license which shall be subject to a 2-year renewal.

~~(b) Operator license fee shall be $6.00.~~

(b) ~~(c)~~ Manager operator license fee shall be ~~$20.00~~ $30.00 for a 2-year renewal and must be renewed on or before December 31st.

(i) New applicants for manager operator license must apply for a 2-year license, however, the renewal must be made on December 31st of the second year following the original date of issue.

(c) ~~(d)~~ Cosmetology salon license fee shall be ~~$10.00~~ $15.00.

(d) ~~(e)~~ Instructor license fee shall be ~~$10.00~~ $15.00.

(e) ~~(f)~~ Cosmetology school license fee shall be $50.00.

(f) ~~(g)~~ Advanced training license fee shall be $50.00.

(g) ~~(h)~~ Teacher-training license fee shall be $50.00.

(3) Late renewals

(a) A fee of ~~$10.00~~ $15.00 for each year shall be levied for late renewal of all licenses, in additions to the license fee.

~~(b) A fee of $20.00 shall be levied for late renewal of manager-operator licenses for each 2-year period of non-renewal, in additions to the license fee.~~ "

18. The board is proposing the amendment to set fees commensurate with program costs, as well as to conform to recent law changes. The authority of the board to make the proposed change is based on section 37-31-203, MCA and implements sections 37-1-134 and 37-31-323, MCA.

19. The proposed amendment of 8.14.815 amends subsection (6) and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.815 CONTINUED EDUCATION - INSTRUCTORS (1)...

(6) An instructor license will be renewed only if the cosmetologist renews ~~an operator license or~~ manager-operator license."

20. The board is proposing the amendment to conform to law changes. The authority of the board to make the proposed amendment is based on section 37-31-203, MCA and implements section 37-31-322, MCA.

21. The proposed repeal of 8.14.811 repeals the rule in its entirety.

"8.14.811 MANAGER OPERATOR ~~(1)--A-manager-operator license-will-not-be-issued-unless-an-affidavit,-current operator-license-and-the-required-manager-operator--license-fee-is-submitted-to-the-office-of-the-department.~~

~~(a)--The-affidavit-must-be-completed-by-a-manager operator-and-notarized,-stating-that-the-applicant-has worked-for-1-year-in-the-state-of-Montana-under-their-direct-supervision-in-a-salon.~~

~~(i)--A-year-shall-constitute-52-active-weeks-at-40-hours per-week-of-2,000-hours-as-a-cosmetologist.~~

~~(b)--The-affidavit-must-give-the-name-of-the-salon, current-license-number,-name-of-manager-operator-and-his or-her-current-license-number.~~

~~(c)--The-applicant's-current-operator-license-must accompany-the-affidavit.~~

~~(2)--Cosmetologists-may-not-hold-both-a-manager-operator license-and-an-operator-license-at-the-same-time.~~"

22. The rule is proposed for repeal due to legislative deletion of the requirement that a manager operator applicant must have been engaged in or teaching the practice of cosmetology for 1 year. The authority of the board to make the proposed repeal is based on section 37-31-203, MCA. The rule formerly implemented section 37-31-302, MCA.

23. The proposed new rule for electrology fees under sub-chapter 10 will read as follows:

I. "FEE SCHEDULE

(1) Applicant for examination to practice shall pay $30.00 plus $15.00 license fee.

(2) Applicant for examination to teach shall pay $75.00 plus $15.00 instructor license fee.

(3) Applicant for reciprocal license shall pay $75.00 plus $15.00 license fee.

(4) Duplicate license fee shall be $4.00.

(5) Renewal fees:

(a) All electrology licenses are to be renewed on or before December 31st of each year.

(b) Electrology salon license fee shall be $15.00.

(c) Electrolysis instructor license fee shall be $15.00.

(d) Electrology school license fee shall be $50.00.

(6) Late renewals:

(a) A fee of $15.00 for each year shall be levied for late renewal of all licenses, in addition to the license fee."

24. The board is proposing the new rule to set fees

commensurate with program costs. The authority of the board to adopt the new rule is based on sections 37-1-134, MCA and 37-32-201, MCA. The proposed rule implements sections 37-1-134, and 37-32-305, MCA.

25. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeal and adoption in writing to the Board of Cosmetologists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than October 28, 1982.

26. If a person who is directly affected by the proposed amendments, repeal and 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 written comments he has to the Board of Cosmetologists, 1424 9th Avenue, Helena, Montana 59620-0407, no later than October 28, 1982.

27. If the board receives requests for a public hearing on the proposed amendments, repeal and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeal and 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 public 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 154.

28. The authority and implementing sections are listed after each proposed change.

BOARD OF COSMETOLOGISTS
JUNE BAKER, PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 20, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

IN THE MATTER of the proposed amendment of ARM 8.18.407 concerning the fee schedule.

NOTICE OF PROPOSED AMENDMENT OF ARM 8.18.407 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1982, the State Electrical Board proposes to amend rule 8.18.407 concerning the fee schedule.

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

"8.18.407 FEE SCHEDULE

(1)	Examination fee	~~$5.00~~ 25.00
(2)	Application fee (non-refundable)	~~5.00~~ 10.00
(3)	Original licenses:	
(a)	Contractor	75.00
(b)	Master	25.00
(c)	Journeyman	10.00
(d)	Residential	10.00
(4)	Annual renewal fee:	
(a)	Contractor	50.00
(b)	Master	20.00
(c)	Journeyman	7.50
(d)	Residential	7.50
(5)	Reciprocity	10.00
(6)	Late renewal fee	5.00"

3. The amendment is being proposed as the board is now using a national examination and the examination fee proposed is the fee the national organization charges per exam. The increase in the application fee is due to the added cost to the board for the additional responsibilities involved with national exams, such as security, additional examinations given.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the State Electrical Board, 1424 9th Avenue, Helena, Montana 59620-0407, no later than October 28, 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 State Electrical Board, 1424 9th Avenue, Helena, Montana 59620-0407, no later than October 28, 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 public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the board to make the proposed amendment is based on sections 37-1-134, MCA and 37-68-201, MCA and implements sections 37-1-134, 37-68-304, 306, 309, 310, 311, 312, 313, MCA.

STATE ELECTRICAL BOARD
CHARLES POWELL, PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 20, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF REALTY REGULATION

IN THE MATTER of the proposed amendment of 8.58.412 concerning inactive licenses) NOTICE OF PROPOSED AMENDMENT OF ARM 8.58.412 INACTIVE LICENSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 30, 1982 the Board of Realty Regulation proposes to amend rule 8.58.412 concerning inactive licenses.

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

"8.58.412 INACTIVE LICENSES (1) A salesman who is unemployed at the time of renewal must renew his license on an inactive basis by:

(a) paying the required fee in accordance with section 37-51-311 (2), MCA;

(b) forwarding the license to the board office for cancellation of active license; and

(c) indicating on the renewal application 'inactive at present' instead of the signature of the employing broker.

(d) A real estate licensee who has caused his real estate license to be placed on inactive status with the board has the sole responsibility to keep the board informed as to any change of his residency or mailing address during the period of time the real estate licensee remains on inactive status.

(e) An inactive licensee may remain on inactive status for one year from the time of renewal. If the licensee does not go active at that time, his license will lapse.

(2) Effective December 4, 1976, the board through rule amendment process, deleted from its rules the status of non-resident real estate salesman. Those non-resident real estate salesmen licenses issued prior to that date and presently in existence will be re-issued as Montana real estate salesmen licenses upon application and payment of fees and will be retained as inactive in the state of Montana board of realty regulation office for one year from the time of renewal. ~~unless the salesperson moves to Montana and obtains a Montana sponsoring broker or unless that person, when he is in Montana, is under the sponsorship and supervision of a Montana resident broker.~~

(3) An out-of-state resident may be permitted to sit for the real estates salesman's exam and upon receiving a passing score and upon making the proper application for licensure will be issued a real estate salesman's license. He must be sponsored for licensure by a resident real estate broker. The real estate license of a non-resident will be activated when that person is actually in the state. When the person leaves the state, the sponsoring broker must return the license to the board office,

pay the fee for the license to be placed on inactive basis, where it will remain until ~~such time as the person again returns to Montana and both he and the sponsoring broker request the license to be reactivated~~ for one year from the time of renewal. If the licensee does reactive his license at that time, the license is lapsed."

3. The board is proposing the amendment because of the rapid changes in the real estate industry, they feel that after 1 year from the time of renewal most inactive licensees would loose touch with current real estate industry practices, as well as changes in the statutes and rules.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, no later than October 28, 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 Realty Regulation, 1424 9th Avenue, Helena, Montana 59620-0407, no later than October 28, 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 public 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 170 based on the approximately 1700 inactive licensees.

7. The authority of the board to make the proposed change is based on section 37-51-203, MCA and implements sections 37-51-302 and 311, MCA.

BOARD OF REALTY REGULATION
DEXTER DELANEY, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 20, 1982.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF RULES I - III specifying: the manner of recording and transferring livestock brands and of selling branded livestock	NOTICE OF PROPOSED ADOPTION OF RULES CONCERNING LIVESTOCK BRANDS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 4, 1982 the Board of Livestock proposes to adopt rules specifying the manner in which a livestock brand may be recorded; the manner in which a brand may be transferred; and the manner in which livestock bearing a brand may be sold.

2. The proposed rules provide as follows:

RULE I - Brand Ownership and Transfer

(1) Brand ownership is valid only if the owner's name is recorded in the department.

(2) Names may be recorded in the following manner only: "x and y", or "x or y".

(3) A brand may be transferred only if the signatures of all recorded owners or their assignees appear on the transfer.

(4) If possible, when recording a brand, the ownership interest should be identified (i.e., joint tenancy with right of survivorship, tenancy in common, etc.)

AUTH: Sec. 81-1-102 M.C.A.; IMP Sec. 81-1-102, 81-3-102, 81-3-103 M.C.A.

RULE II - Sale of Branded Livestock

(1) Except as provided in (3), ownership of livestock bearing a brand recorded in "x and y" may be transferred only if the transfer bears the signatures of all recorded owners or their assigns.

(2) Except as provided in (3), ownership of livestock bearing a brand recorded in "x or y" may be transferred if the transfer bears the signature of one recorded owner or his assigns.

(3) Recorded owner(s) of a brand may designate on the records of the department any person(s) who may transfer livestock bearing the brand of the recorded owner(s). Such designations are valid only if signed by all recorded owners of the brand at the time of the designation.

AUTH: Sec. 81-1-102 M.C.A.; IMP Sec. 81-1-102, 81-3-105 M.C.A.

RULE III - Changes in Brand Recording

If the department has begun processing a recording of a brand, any changes proposed in the original recording will be considered a new recording and a recording fee will be charged.

AUTH: Sec. 81-1-102 M.C.A.; IMP Sec. 81-1-102, 81-3-107 M.C.A.

3. The rules are proposed to be adopted to replace present department policy which, although identical to the above, does not provide an adequate enforcement capability and has proven in the past to be confusing because of its limited availability to livestock owners.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Administrator, Brands-Enforcement Division, Capitol Station, Helena, MT 59620, no later than October 31, 1982.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Administrator, no later than October 31, 1982.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having no less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed amendment is based on sections 81-1-102, 81-3-102, 81-3-103, 81-3-105, and 81-3-107 and implements the same.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: Les Graham
LES GRAHAM, Administrator
Brands-Enforcement Division

Certified to the Secretary of State September 20, 1982.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 32.3.2001 BRANDS AND EARMARKS	)))	NOTICE OF PROPOSED AMENDMENT OF RULE 32.3.2001 BRANDS AND EARMARKS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 4, 1982, the Board of Livestock proposes to amend rule no. 32.3.2001 which specifies certain livestock brands and earmarks which are to be used only by an official representative of the Montana Department of Livestock, Animal Health Division.

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

32.3.2001 BRANDS AND EARMARKS

(1)(a)(i) through (vi) remain the same.

(1)(a)(vii) ~~"G"~~  (spade mark) on right or left ~~side of neck~~ jaw designated officially spayed heifers.

(1)(a)(viii) through end of rule remain the same.

3. The rationale for the amendment is to be consistent with most other western states using this recommended brand.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Dr. James W. Glosser, Administrator & State Veterinarian, Department of Livestock, Animal Health Division, Capitol Station, Helena, MT 59620, no later than October 31, 1982.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to James W. Glosser, D.V.M., Administrator & State Veterinarian, no later than October 31, 1982.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having not less than 25 directly affected members, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority to make the proposed amendment is based on section 81-2-102 MCA and implements the same.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: Les Graham
LES GRAHAM, Administrator
Brands-Enforcement Division

Certified to the Secretary of State September 20, 1982.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 32.15.601 FEES FOR FILING NOTICES REGARDING SECURITY AGREEMENTS, raising the required fee.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 32.15.601 FEES FOR FILING NOTICES REGARDING SECURITY AGREEMENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 4, 1982 the Board of Livestock proposes to amend rule no. 32.15.601 which specifies the required fee for filing a security agreement. The amendment would raise the fee from $10 to $15.

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

32.15.601 FEES FOR FILING NOTICES REGARDING SECURITY AGREEMENTS Every person filing notice of a security agreement, assignment, renewal or satisfaction pursuant to section 81-8-301 must pay a fee of ~~$10.00~~ $15.00 for each brand listed. The fee shall be paid by check or money order made payable to the department of livestock. No filing with the department may be processed without the fee first being paid.

3. The rationale for the amendment is to allow recoupment of actual department costs up to $15 as is allowed by 81-8-304 M.C.A.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Les Graham, Administrator, Brands-Enforcement Division, Capitol Station, Helena, MT 59620, no later than October 31, 1982.

5. If a person who is directly affected by the proposed rules wishes to express his data, views, and arguments orally or in writing at a public hearing he must make written request for a hearing and submit this request along with any written comments he has to Les Graham, Administrator, no later than October 31, 1982.

6. The department believes that the number of directly affected persons exceeds 250 as this rule has potential impact on every cattle producer in the state. In the event that the department receives requests for public hearing from 25 persons directly affected, from the Administrative Code Committee of the legislature, from a governmental subdivision, or agency, or from an association having no less than 25 directly affected members, a hearing will be

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

7. The authority to make the proposed amendment is based on section 81-8-304 MCA and implements the same.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

By: Les Graham

LES GRAHAM, Administrator
Brands-Enforcement Division

Certified to the Secretary of State September 20, 1982.

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

In the matter of the adoption of rules pertaining to the food stamp program, pilot projects for retrospective budgeting and monthly reporting.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO THE FOOD STAMP PROGRAM.

TO: All Interested Persons

1. On October 21, 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 rules pertaining to the food stamp program, pilot projects for retrospective budgeting and monthly reporting.

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

RULE I FOOD STAMP PROGRAM, PILOT PROJECTS FOR RETROSPECTIVE BUDGETING AND MONTHLY REPORTING, PURPOSE

(1) Federal food stamp regulations require each state to implement a system of monthly reporting and retrospective budgeting (MRRB) by October 1983. The department will implement pilot MRRB systems in four (4) counties, Madison, Hill, Ravalli and Valley counties, on December 1, 1982.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

RULE II FOOD STAMPS, PILOT PROJECTS, DEFINITIONS

(1) "Beginning month" means the month in which the household applies for benefits and the month thereafter. A beginning month cannot be any month which immediately follows a month in which the household was certified.

(2) "Budget month" means the calendar month from which the department uses income, household composition, and other financial information concerning the household to calculate the household's food stamp allotment for the corresponding issuance month.

(3) "Issuance month" means the calendar month for which the department issues a food stamp allotment.

(4) "Prospective budgeting" means that the issuance month and the budget month are the same.

(5) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income, household composition and other financial information which existed in a previous budget month.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

RULE III FOOD STAMPS, PILOT PROJECTS, INTERVIEW, PURPOSE AND REQUIREMENTS FOR (1) The household shall be required to have an interview when they make their initial application for benefits. This requirement can be met by substituting a telephone or in-home interview for an office interview when:

(a) household members are unable to come to the county office because they are sixty (60) years of age or older, or mentally or physically handicapped and no other personal representative is able to come to the office;

(b) the household has no member who is able to come to the county office because of a lack of transportation or hardships such as illness, work hours which preclude office interviews or prolonged severe weather.

(2) The department may require an interview at the time of recertification or at other times deemed necessary by the department.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

RULE IV FOOD STAMPS, PILOT PROJECTS, DETERMINING ELIGIBILITY FOR BENEFITS (1) Eligibility shall be determined on a prospective basis.

(2) Households anticipating changes in their circumstances which will make them ineligible shall be given written notice of denial or written notice of the closure of their certification.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

RULE V FOOD STAMPS, PILOT PROJECTS, MONTHLY REPORTING REQUIREMENTS (1) Households shall be subject to monthly reporting requirements except:

(a) migrant farmworker households which are pursuing migrant farm work outside of their home area; and

(b) households in which all the members are without earned income and whose members are all at least sixty years of age or receive social security or supplemental security income benefits for disability or blindness.

(2) Households subject to monthly reporting shall be given a monthly report form at the time they normally receive their authorization to participate (ATP) card.

(3) In order to continue eligibility the household shall

be required to complete the monthly report, provide verifications of the information reported, and return the monthly report to the department by the report due date.

(4) The department shall notify a household within five (5) days when the household fails to return their monthly report by the report due date or when the household files a report with missing information. This notification shall inform the household about the nature of the missing report or information. The household shall have an additional ten (10) days from the date this notice is sent to file the complete monthly report.

(5) Households which fail to file a complete monthly report by their extended filing date shall have their case closed.

(6) Households closed for failure to report may reapply after closure but their benefits will continue to be calculated on the basis of a complete report for the month in which the household failed to report.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

RULE VI FOOD STAMPS, PILOT PROJECTS, DETERMINING BENEFITS (1) Except as provided in paragraph (2) below, household benefits shall be determined retrospectively on the basis of the households circumstances reported in their monthly report.

(2) Household benefits shall be determined prospectively in the following situations:

(a) in cases which involve migrant farmworkers who are pursuing migrant farmwork outside of their home area;

(b) in the first two months of eligibility following an initial application;

(c) in the first two months of eligibility when a currently certified household moves into a MRRB project county from a non MRRB county;

(d) when a new member begins to live with a household which is currently on retrospective budgeting, the income and resources of the new member shall be treated prospectively in the first two months of the new members eligibility; and

(e) in any month in which the household receives AFDC on a prospective budget basis.

(3) Income received in the first two months of eligibility which is no longer available shall not be included in retrospectively budgeted income in the third and fourth months' of eligibility.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

RULE VII FOOD STAMPS, PILOT PROJECTS, CERTIFICATION PERIODS (1) Households shall be certified for a period of at least six (6) months and for up to a maximum of twelve (12) months except that:

(a) households shall not be certified for over six months when their income or other circumstances are not stable.

The authority of the department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-201 and 53-2-306, MCA.

3. The department has proposed these new rules to initiate a pilot program in four counties to test a new system of eligibility determination for food stamps. This new system consists of monthly reporting and retrospective budgeting rather than our present statewide system of anticipating future circumstances. The reason for this pilot program is to test these procedures to determine if these procedures will be a more accurate and efficient method of determining Food Stamp eligibility. If proven superior, these procedures will be implemented statewide previous to October 1, 1983.

The department is considering a statewide change in Food Stamp eligibility determination procedures to fulfill its commitment to the U.S. Department of Agriculture to develop a new system which will minimize eligibility determination errors. The system chosen appears to be the most accurate method of determining Food Stamp eligibility and meets department objectives to minimize error in all programs. This system meets a second objective of the department to make the rules for various welfare programs consistent with each other, this is a goal that could not be developed previously due to differing regulatory restraints imposed by the several federal agencies involved with the different programs. More consistency allows claimants, workers and the general public to better understand the interrelation of the several welfare programs this department administers.

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 October 29, 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 September 20, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

IN THE MATTER of the adoption of a new sub-chapter 10, concerning rules of harness horse racing) NOTICE OF ADOPTION OF A NEW SUB-CHAPTER 10, HARNESS HORSE RACING RULES 8.22.1001 through 8.22.1025

TO: All Interested Persons:

1. On July 15, 1982, the Board of Horse Racing published a notice of public hearing on the rules of harness horse racing at pages 1337 through 1374, 1982 Montana Administrative Register, issue number 13.

2. The public hearing was held on August 11, 1982 in the METRA Building of the Fairgrounds, Billings, Montana. Fifty-nine persons attending the hearing, in addition to the officials. Three persons spoke in favor of harness racing. Six persons spoke against harness racing. One person spoke for purposes of providing information for the board.

The objections to the rules were that the board didn't have the authority to regulate harness racing, that the pari-mutuel handle would be hurt, that it would dilute the present market for horse racing, that harness racing revenue will not stay in the state and there will be no real contribution to the state's economy, that it would require separate and distinct race tracks because the present tracks are too narrow and tight, that it would also make the tracks too hard for other types of horse racing and that it will compound the confusion that already exists in horse racing in Montana.

The board also received comments from the Administrative Code Committee expressing some reservations regarding the authority of the board to adopt the proposed rules. The committee also questioned the inclusion of "undesirable person" in rule 8.22.1022 as to what was considered undesirable, as well as subsections (1) and (2)(i) in rule 8.22.1024. The board is amending those two rules in accordance with the code committee's comments, as shown below.

In adopting the rules the board recognizes the code committee's reservations. However, the board feels its duties and responsibilities mandate the regulation of race meets, and that racing and breeding are of paramount importance. The board feels there is no reason to exclude harness racing from "race meets" nor is there any compelling reason that breeding and racing of harness horses should be prohibited.

The board feels it must sanction such race meets and that this will stimulate the breeding of said horses. The boards action would be the same if the situation were reversed. If there were no "flat" race meets in Montana, but only harness meets, the same consideration would be given the flat racers to be included under the jurisdiction of the board. For the reasons stated above and those in the rule notice, the board is adopting the rules as proposed with the following changes:

"8.22.1022 GENERAL RULES - OTHER (1)...

(3) No persons shall associate or consort with~~:-(a)~~ a bookmaker, a tout or ~~undesirable persons,-of-(b)~~ a licensee ~~person~~ whose license from a turf authority has been revoked or suspended and whose privileges at the grounds of an association have been denied.

(4)..."

Rule 8.22.1024 will have subsection (1) deleted and each subsection thereafter will be renumbered. Subsection (2)(i) will become a part of subsection (h) and the following subsections will be renumbered.

"8.22.1024 OFFENSES ~~(1)--No person shall conduct himself in a manner that, in the opinion of the board of judges or the board of horse racing, is prejudicial to the best interests of horse racing.~~

~~(2)~~ (1) Without limiting the generality of subsection (1) above, Nno persons shall:

(a) ...

(h) offer or give a driver money or any other benefit, except an official prize, in relation to a race unless it is done as or on behalf of the owner or trainer of the horse driven in a race by that driver~~,~~.

~~(i)~~ If the person is approached with any offer or promise of a bribe, or a wager, or with a request or suggestion for a bribe, or for any ~~improper,~~ corrupt or fraudulent act in relation to racing, or to conduct a race other than fairly and honestly, ~~fail to~~ he or she shall report details of the matter on which he or she was approached immediately to the board of judges;

~~(j)~~ (i)..."

3. No other comments or testimony were received.

BOARD OF HORSE RACING
HAROLD HOPWOOD, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 20, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the amendment of ARM 8.28.418, subsection (3)) concerning inactive physician fees.)	NOTICE OF AMENDMENT OF ARM 8.28.418 ANNUAL REGISTRATION AND FEES

TO: All Interested Persons:

1. On July 29, 1982 the Board of Medical Examiners published a notice of amendment of ARM 8.28.418 subsection (3) at pages 1426-1427, 1982 Montana Administrative Register, issue number 14.

2. The board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS
THOMAS J. MALEE, M.D., PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 20, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PLUMBERS

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

TO: All Interested Persons:

1. On August 12, 1982 the Board of Plumbers published a notice of proposed amendment of 8.44.404 concerning examinations at pages 1499-1500, 1982 Montana Administrative Register, issue number 15.

2. The board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF PLUMBERS
DANIEL ANTONIETTI, CHAIRMAN

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, September 20, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
MILK CONTROL BUREAU

In the matter of Amendment of Rule 8.79.101 regarding Purchase and Resale: Rule 8.79.201 regarding Trade Practices	) NOTICE OF THE AMENDMENT OF) RULE 8.79.101 TRANSACTIONS) INVOLVING THE PURCHASE AND) RESALE OF MILK WITHIN THE) STATE: RULE 8.79.201 REG-) ULATION OF UNFAIR TRADE) PRACTICES

TO: All Interested Persons:

1. On August 12, 1982, the Department of Commerce published notice of proposed amendment to Rule 8.79.101 concerning Purchase and Resale and Rule 8.79.201 concerning Unfair Trade Practices at page 1503-1507, 1982 Administrative Register, issue number 15.

2. The department has amended the rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
GARY BUCHANAN
DIRECTOR

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

Certified to the Secretary of State September 20, 1982

STATE OF MONTANA
DEPARTMENT OF COMMERCE
MILK CONTROL BUREAU

In the matter of the Amendment of Rule 8.79.302 regarding Producer Assessments	)))	NOTICE OF THE AMENDMENT OF RULE 8.79.302 PRODUCER ASSESSMENTS

TO: All Interested Persons:

1. On August 12, 1982, the Department of Commerce published notice of proposed amendment to Rule 8.79.302, concerning additional Producer Assessments at page 1501-1502, 1982 Administrative Register, issue number 15.

2. The department has amended the rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
GARY BUCHANAN
DIRECTOR

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

Certified to the Secretary of State September 20, 1982

STATE OF MONTANA
DEPARTMENT OF COMMERCE
MILK CONTROL BUREAU

In the matter of the Amendment of Rule 8.86.301 regarding Boards Pricing Rules	NOTICE OF THE AMENDMENT OF RULE 8.86.301 PRICING RULES

TO: All Interested Persons:

1. On August 12, 1982, the Department of Commerce published notice of proposed amendment to Rule 8.86.301 regarding Pricing Rules at page 1508-1510, 1982 Administrative Register, issue number 15.

2. The department has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF MILK CONTROL
CURTIS C. COOK
CHAIRMAN

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

Certified to the Secretary of State September 20, 1982

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

In the matter of the amendment of rules 16.8.1423 and 16.8.1424 concerning new source performance standards and emission standards for hazardous air pollutants	)))))	NOTICE OF THE AMENDMENT OF RULES 16.8.1423 and 16.8.1424 (Air Quality)

TO: All Interested Persons

1. On May 27, 1982, the board published notice of proposed amendment of rules 16.8.1423 and 16.8.1424 concerning, respectively, new source performance standards and emission standards for hazardous air pollutants at page 1078 of the 1982 Montana Administrative Register, issue number 10.

2. The board has amended the rules as proposed.

3. No comments or testimony were received.

JOHN F. McGREGOR, M.D., Chairman

By JOHN J. DRYNAN, M.D., Director,
Department of Health and
Environmental Sciences

Certified to the Secretary of State September 20, 1982

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

In the matter of the amendment of rules 16.20.605 and 16.20.607 relating to surface water classifications	))))	NOTICE OF AMENDMENT OF RULES 16.20.605 AND 16.20.607 (Water Quality)

TO: All Interested Persons

1. On June 17, 1982, the board published notice of proposed amendment of rules 16.20.605 and 16.20.607 concerning surface water classifications at pages 1180 and 1181 of the 1982 Montana Administrative Register, issue number 11.

2. The board has amended the rules as proposed.

3. No comments or testimony were received.

JOHN F. McGREGOR, M.D., Chairman

By JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State September 20, 1982

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

In the matter of the amendment of rules 16.20.618, 16.20.619, 16.20.620, 16.20.621, 16.20.622, 16.20.623, 16.20.624, and 16.20.631 relating to surface water quality standards	))))))	NOTICE OF AMENDMENT OF RULES 16.20.618, 16.20.619, 16.20.620, 16.20.621, 16.20.622, 16.20.623, 16.20.624 and 16.20.631 (Water Quality)

TO: All Interested Persons

1. On July 15, 1982, the board published notice of proposed amendment of rules 16.20.618-16.20.624 and 16.20.631 relating to surface water quality standards at pages 1375 through 1378 of the 1982 Montana Administrative Register, issue number 13.

2. The board has amended rules 16.20.618 - 16.20.624 as proposed. It was pointed out at the hearing that the phrase "greater than 60° F." in subsection (2)(a) of ARM 16.20.631 is incorrect and should, instead, be "less than 60° F." This correction has been made.

3. No other comments or testimony were received.

JOHN F. McGREGOR, M.D., Chairman

By
JOHN J. DRYNAN, M.D., Director
Department of Health and
Environmental Sciences

Certified to the Secretary of State September 20, 1982

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

In the matter of the Adoption of Rules Pertaining to the Renewable Resource Development Program	NOTICE OF THE ADOPTION OF RULES PERTAINING TO THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM

TO: All Interested Persons

1. On April 15, 1982, the Board of Natural Resources and Conservation published Notice of the proposed adoption of rules pertaining to the Renewable Resource Development Program on page 651 of the 1982 Montana Administrative Register, issue number 7.

2. The Board has adopted the following rules with no changes:

Rule III	36.18.103
Rule IV	36.18.104
Rule VIII	36.18.203
Rule X	36.18.205
Rule XII	36.18.302
Rule XIII	36.18.303
Rule XIV	36.18.401
Rule XV	36.18.402
Rule XVII	36.18.501
Rule XVIII	36.18.502
Rule XIX	36.18.503

The Board has adopted the following rules with the following changes:

RULE I, (36.18.101) POLICY AND PURPOSE OF RULES (1) Section 90-2-101, MCA, provides the policy for the development of Montana's renewable resources: "In the development of the natural resources of the state, it is essential to distinguish between those which are and those which are not renewable; to make proper charges through taxation and otherwise for the depreciation of nonrenewable resources; and to invest a proper proportion of the tax and other revenues from nonrenewable resources that in the replacement thereof with developments of renewable natural resources that will preserve for the citizens the benefit of the state's natural heritage and to ensure that the quality of existing public resources such as land, air, water, fish, wildlife, and recreational opportunities are not significantly diminished by developments supported by this part."

(2) Adopted as proposed.

AUTH: 90-2-108, and 90-2-111, MCA IMP: 90-2-101,90-2-108, and 90-2-111, MCA

RULE II.(36.18.102) DEFINITIONS When used in these rules, unless a different meaning clearly appears from the context:

1-10. Adopted as proposed.

AUTH: 90-2-108 and 90-2-111, MCA IMP: 90-2-108 90-2-111, and 90-2-103, MCA

RULE V. (36.18.105) APPLICATION CONTENT FOR LOANS AND GRANTS All applications shall be made on Form 681 which may be obtained from the Water Development Bureau, Water Resources Division, Department of Natural Resources and Conservation, 28 South Rodney, Helena, Montana 59620, and shall contain:

1-12. Adopted as proposed.

AUTH: 90-2-108, and 90-2-113 90-2-111, MCA IMP: 90-2-103, 90-2-108, 90-2-111, and 90-2-113, MCA

RULE VI. (36.18.201) TECHNICAL FEASIBILITY OF PROJECTS Technical data and information to be provided in the application should include but is not limited to the following:

1-5. Adopted as proposed.

AUTH: 90-2-108, and ~~90-2-118~~ 90-2-111, MCA IMP: 90-2-103,90-2-108, 90-2-111, and 90-2-113, MCA

RULE VII.(36.18.202) ECONOMIC ASSESSMENT OF PROJECTS ~~(1) All projects which receive funding must provide a tangible return to the state or its citizens. Section 90-2-108, MCA.~~

~~(1) In most cases,~~ Applicants for loans or grants will be responsible for providing required data necessary to determine the costs , monetary and non-monetary, and benefits of a project.

(2) All benefit and cost data supplied by the applicant must be current. The applicant must document the cost data and may be required to document the benefit data.

AUTH: 90-2-108, and ~~90-2-118~~ 90-2-111, MCA IMP: 90-2-103,90-2-108, 90-2-111, and 90-2-113, MCA

RULE IX. (36.18.204) FINANCIAL FEASIBILITY FOR LOANS (1) A project for which a loan application has been made must be financially feasible. A project is financially feasible if sufficient funds can will be made available to complete the

project, and if sufficient revenues ~~can~~ will be obtained to repay the loan and to operate, maintain, and replace, if appropriate, the project. The Department may require access to the applicant's most recent financial statement, budget document or other documentation required by the Department to assess financial feasibility. Financial statements will be approved by a Certified Public Accountant or the Department, or both.

AUTH: 90-2-108, MCA IMP: 90-2-103 90-2-108 MCA

~~RULE XI, -SOLICITATION-OF-VIEWS-FROM-OTHER-INTERESTED-PARTIES (1) The Department shall solicit views of interested and affected parties during its evaluations of these proposed projects and activities.~~

~~AUTH: 90-2-108 and 90-2-111,MCA IMP: 90-2-104,90-2-107 90-2-111, MCA~~

RULE XVI.(36.18.403) INTEREST RATES FOR LOANS

(1) Adopted as proposed.

(2) The interest rate on loans made directly from the program's coal tax funds will be tied to the average on selected municipal bonds as reported by the Daily Bond Buyer (One State Street Plaza, New York, N.Y. 10004) in its Bond Buyer Indexes (11 bond index). The interest rate for the program will be adjusted quarterly to the previous three months' average. The interest rate for an individual loan will be that in effect at the time the loan is approved by the Department. The interest rate for loans which are made from bond proceeds will be that paid on the bond issue.

AUTH: 90-2-108, MCA IMP: 90-2-108, MCA

3. The following are summaries of the comments received and the Department's response to those comments:

Rule I Policy and Purpose of Rules

Comment:

When the law is quoted, it should be quoted verbatim.

Response:

The phrase "in the replacement thereof with developments of renewable natural resources that" has been added to make the quote complete.

Rule II Definitions

Comment:

(5) We believe some clarification is needed. As written, it would appear that projects being defined are only existing. We are sure that is not the intent of this definition.

Response:

The definition refers to a "planned, specific undertaking" which refers to new projects. The remainder of the definition refering to modification of existing projects is taken directly from the law and therefore needs to be left in the definition for completeness sake.

Comment:

The implementation authority should also include 90-2-103.

Response:

This addition has been made.

Rule IV. Statement of Intent for Loans And Grants

Comment:

In the first paragraph the address is 32 S. Ewing. This is not consistent with Rule III or Rule XX, or the address given on the applications. It should be 28 S. Rodney.

Response:

This address was changed to 28 S. Rodney before the proposed rules were submitted to the Secretary of State so no further change is necessary.

Rule V. Application Content for Loans and Grants

Comment:

Again, the address is listed as 32 S. Ewing. Comment on Rule IV applies.

Response:

This address has been changed to 28 S. Rodney. Response on Rule IV applies.

Comment:

The implementation reference should be 90-2-111, not 90-2-113.

Response:

This change has been made.

Rule VI Technical Feasibility of Projects

Comment:

The implementation reference should be 90-2-111 not 90-2-113.

Response:

This change has been made.

Rule VII. Economic Assessment of Projects

Comment:

Section 1 quotes the law with no expansion of the information and therefore, is unnecessary.

Response:

This section has been removed.

Comment:

Section 2 (now Section 1) should require all applicants to provide this information.

Response:

This change has been made and the qualifiying phrase "in most cases" has been removed.

Comment:

The authority reference should be 90-2-111 not 90-2-113.

Response:

This change has been made.

Rule XI Solicitation of Views from Other Interested Parties

Comment:

This rule is unnecessary as it merely repeats the law.

Response:

This rule has been removed.

Rule XIII. Criteria

Comment:

(4) This section discusses the Department entering into an agreement with financial institutions for servicing of loans. We believe some clarification would be helpful in this paragraph concerning the Department to contract with institutions with costs to be paid by the applicants after contract for loan is made. Would this be covered in the original contract with the applicants? No doubt this would be necessary or there could be a breach of contract.

Response:

If the Department should change to the use of financial institutions for loan service, the loans made prior to that time will continue to be serviced by the Department as defined in the original contract or additional costs will be paid by the Department.

Rule XVI Interest Rates for Loans

Comment:

The description of the procedure which will be used to determine the interest rate should be more explicit.

Response:

The rule has been expanded to include a reference for the Daily Bond Buyer and the specific index which will be used.

Rule XVII. Security for Loans

Comment:

States that the borrower shall be apprised of these procedures at the time of loan closure and shall be given adequate notice of the institution for foreclosure procedures. What is adequate notice? We would think it would be better to state some time element on this and if it is statutory, this should be stated as well.

Response:

The time prior to foreclosure will be in excess of that allowed by statute. A borrower will be warned of late payment and given a 14 day grace period before a penalty is imposed. Foreclosure proceedings will be instituted after that time but the Department does not want to be obligated to foreclose at any given time to allow for case by case consideration and the use of reasonable and prudent business procedures.

4. The authority of the Board to establish the proposed rules is granted by Section 85-1-612, MCA, and implements sections cited in each proposed rule.

Gordon G. Holte, Chairman

Certified to the Secretary of State September 13, 1982.

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

In the matter of the amendment of Rules 46.5.905, 46.10.404 and 46.10.512 pertaining to day care rates and earned income disregards.	)))))	NOTICE OF THE AMENDMENT OF RULES 46.5.905, 46.10.404 AND 46.10.512 PERTAINING TO DAY CARE RATES AND EARNED INCOME DISREGARDS

TO: All Interested Persons

1. On June 30, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.5.905, 46.10.404 and 46.10.512 pertaining to day care rates and earned income disregards at page 1263 of the 1982 Montana Administrative Register, issue number 12.

2. The agency has amended Rules 46.10.404 and 46.10.512 as proposed.

3. The agency has amended Rule 46.5.905 as proposed with the following changes:

46.5.905 DAY CARE RATES ~~(1)---General:~~

~~(a)--Day-care--rates-in-facilities-must-be-at-least-equal for-state-paid-day--care-recipients--and-public--day-care-consumers.--This-does-not-preclude-facilities-from-charging-higher rates-to--public-day-care-consumers-(those-persons-who-are-not receiving-payment-of-their-child-care-from-the-department).~~

~~(2)--Specific:~~

(a1) Full day care services are paid at a rate of ~~$6.00~~ $6.50 per day per child in care in day care homes. The maximum rate for group day care homes is ~~$6.50~~ $7.00 per child per day of care. The maximum rate for centers is ~~$7.00~~ $7.50 per child per day of care. These rate increases shall be paid retroactively beginning July 1, ~~1981~~ 1982.

(b2) Part-time care is paid at a rate of ~~60¢~~ 65¢ per hour per child in day care homes, ~~65¢~~ 70¢ per hour per child in group day care homes, and ~~70¢~~ 75¢ per hour per child in all centers up to a maximum of a full day or night care rate.

(c3) Extra meals are paid at a rate of 60¢ per child per meal. This is subject to written approval of the district office social worker supervisor III.

(d4) Special child or exceptional child day care is paid at a rate determined by the day care facility, parent of the child, and the social workers up to a maximum of $8 per day or per night care; and upon approval by the district social worker supervisor III. Part-time care may be provided at a rate of up to a maximum of $1 per hour per child, up to a maximum of a full day or night care special rate of $8 and subject to the same requirements as applied to the daily rate.

(e5) Day care operators will be allowed to claim a day's care only when actually provided to the child, unless the child is enrolled in the center.

4. The department received the following comment which was considered in the final amendment of the rules.

COMMENT: The Department does not have the authority to establish a minimum rate for public day care consumers.

RESPONSE: The Department never intended to set a minimum rate for public day care consumers. The Department agrees with this comment and is deleting subsection (1)(a).

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 20, 1982.

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

In the matter of the adoption of Rule 46.9.310 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 THE ADOPTION OF RULE 46.9.310 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 August 12, 1982, the Department of Social and Rehabilitation Services published notice of the proposed 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 at page 1515 of the Montana Administrative Register, issue number 15.

2. The department has amended Rules 46.9.301, 46.9.302, 46.9.304 and 46.9.305 as proposed.

3. The department has amended Rule 46.9.303 as proposed with the following changes.

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 rendered 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.

4. The department has adopted Rule 46.9.310 (RULE I) as proposed with the following changes:

46.9.301 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.

(d) Expenses associated with incidental record keeping and payment to clients in an approved work program are allowed for matching and emergency grant-in-aid purposes.

(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) costs associated with county work programs, such as a work supervisor or administrator or other personnel, material and supplies other than incidental record keeping expenses.

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

5. The department has thoroughly considered all verbal and written commentary received:

COMMENT: Several counties expressed concern over the lateness of the department in adopting the grant-in-aid rules.

RESPONSE: The department has had ongoing discussions with County Commissioners, County Welfare Directors, County budgeting personnel, and the Montana Association of Counties with regard to the development of the administrative rules covering matching and emergency grant-in-aid. It was a long process in identifying the various issues that should be recognized within the grant-in-aid rule. Although there is some lateness in developing these rules, there has been a good deal of guidance both this year and in previous years with regard to the allowability of certain expenditures under emergency grant-in-aid.

It was also felt that initially since the guidance was intra-departmental in nature that some areas may not be appropriate for inclusion in a rule as opposed to administrative guidance through other procedures. It finally became apparent that it was necessary to develop rules in light of the concerns expressed by various counties.

COMMENT: Several counties expressed concern over limitations placed on the contracting procedures specifically related to development of workfare programs.

RESPONSE: The department feels that in light of the criteria set forth in the statement of legislative intent to HB 291 that it is necessary to adhere to the same contracting procedures used by the state. In addition, it became apparent that administrative expenses over and above those necessary for the incidental record keeping of the payment and time keeping at the county level would not be recognized through the emergency or matching grant-in-aid. There are at least two levels of administrative expenses that would not be recog-

nized through the grant-in-aid process. One is the hiring of a work program coordinator that would be a combination work site development specialist, job interviewer, counselor and training person would not be recognized as a necessary expense for the operation of a work program. In addition the department has indicated that it would not participate in the administrative expenses associated with the hiring of additional supervisory personnel in other county departments. During the legislative testimony in conjunction with the passage of HB 7 and HB 13 the counties felt that they could operate a work program with current staffing levels. It was not anticipated that additional administrative expenses over and above those currently available within the counties would be made available to operate a work program.

COMMENT: Deputy county attorney hiring. Several counties felt that the department should recognize legal expenses associated with the operation of the local county department of public welfare.

RESPONSE: Montana state law requires that the county attorney serve as the ex officio legal counsel to the Board of County Commissioners serving in their capacity as the ex officio welfare board. The department's position is that the county attorneys, since they are legally mandated to perform this function, should also be in a position to pay for those services rendered. The department has indicated that to the extent a county develops a cost allocation plan approved by the department and to the extent that open ended funds are available, the department would claim federal funds for those expenditures. If the department allowed counties to hire attorneys there would be no control mechanism in place to control the number of attorneys or the number of dollars spent for legal services. It would also subvert the merit system, union agreement, and the paying of County Department of Public Welfare staff through the State payroll system.

COMMENT: Several counties expressed concern that the department does not recognize the interest on registered warrants as a reasonable and necessary legal expenditure from the Poor Fund.

RESPONSE: The department recognizes that the county budgeting law causes some problem with regard to cash flow in not only the Poor Fund, but other funds as well within the individual counties. It is felt that the grant-in-aid law is not the proper vehicle for addressing those concerns but rather that a more comprehensive approach should be developed to address the overall concern of cash flow problems within the county budgeting procedure.

COMMENT: There was concern over the department's position that all reserves in a particular county fund should be expended prior to requesting a grant-in-aid to the Poor Fund.

RESPONSE: 53-2-323(2), MCA, the law governing grant-in-aid, intends the department to pick up those costs that the county cannot pay for after all other available sources of revenue and an 8 mill threshold level of expenditure has been expended. Since the grant-in-aid, both emergency and matching, was intended to serve as a safety net for the counties, it is felt that all reserve funds, cash on hand, and appropriation authority for current year operation should be exhausted before emergency or matching grant-in-aid is requested.

COMMENT: One county wanted to include the coverage of personal care homes as a reimbursable expense under a grant-in-aid.

RESPONSE: One of the four criteria outlined in the statement of legislative intent to HB 291 covers the limitations for medical expenses consistent with Medicaid reimbursement rates. Since the operations of a personal care home do not currently fall within the scope of services provided under the Medicaid Program it is felt that we would be outside of legislative intent if we were to recognize these type of expenditures in a grant-in-aid.

COMMENT: Several participants at the hearing objected to the catch all phrase which dealt with all other expenditures deemed appropriate by the department may not be covered for purposes of grant-in-aid.

RESPONSE: Since the department is not familiar with all the types of expenditures that counties may try to include within a grant-in-aid request it was felt necessary to include a catch all phrase. On an individual case by case basis, counties can request a determination from the department as to what expenditures would be recognized under law for a grant-in-aid.

COMMENT: Comments were received with regard to the coverage of alcohol detoxification services in a non-medical setting.

RESPONSE: The department agrees that the governing language should be within the Medicaid rule which governs the scope, duration and amount of services. Rule 46.9.303 has been amended.

COMMENT: Why did the department specifically exclude in these rules payments for alcohol rehabilitation services?

RESPONSE: The department was attempting to make clear to the counties that payments for alcohol rehabilitation have been denied in the past by the Professional Service Review Organization (PSRO) as not "medically necessary" for Medicaid reimbursement. HB 291, statement of legislative intent, restricts grant-in-aid to only those services and costs allowed by Medicaid. The department will continue to follow the decisions of the PSRO, but has agreed to drop the language in this rule specifically excluding drug and alcohol rehabilitation in order to provide reimbursement for those services if the state and federal rules change to allow these payments.

Under current medicaid rules, no reimbursement is provided for drug and alcohol detoxification in nonhospital settings. Payments of inpatient hospital detoxification and rehabilitation will only be covered when approved by the PSRO. Currently, detoxification, only, is permitted for a 4 day period (except for extraordinary circumstances as determined by the PSRO) and nothing is provided for rehabilitation.

COMMENT: Some counties expressed concern over whether or not the 2.75 permissive mill levy provided for could be used to support a medical facility.

RESPONSE: The department interpretation of the law would indicate that, in fact, the 2.75 mills which are specifically provided for in the matching grant-in-aid law can be used for the support of a medical facility and would not be used in the consideration of the ultimate amount of grant-in-aid provided to a county. In other words, to the extent that this 2.75 mills is used to support a medical facility, the department through its auditing procedure would not consider those funds available for the general support of the poor fund.

COMMENT: One response was received indicating that we should amend the rule to specify that the rules apply only to grant-in-aid counties.

RESPONSE: Although it is the intention of the department in promulgating these rules to have them apply to grant-in-aid counties, it is theoretically possible for any county to be potentially at risk of being a matching or emergency grant-in-aid county and, therefore, would be subject to the restrictions and guidance contained in these rules.

COMMENT: Some comments were received with regard to foster care and the provision of clothing and transportation for foster children.

RESPONSE: The rules incorporate a provision that up to $250 of expenditures can be provided on an emergency basis. This provision was included to give counties flexibility in arriving at a reasonable amount for contingency problems which may come up or for emergency situations that are not specifically covered by the rules. It also gives county directors the flexibility necessary to administer the program at the local level and take care of the emergent needs of clients who are in need of services.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 20, 1982.

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

In the matter of the adoption of Rule 46.10.324 pertaining to coverage and conditions of AFDC eligibility, caretaker relative living in home of parent (pregnant minor or minor with child).	))))))	NOTICE OF THE ADOPTION OF RULE 46.10.324 PERTAINING TO AFDC ELIGIBILITY.

TO: All Interested Persons

1. On April 15, 1982, the Department of Social and Rehabilitation Services published notice of the adoption of a rule pertaining to coverage and conditions of AFDC eligibility, caretaker relative living in home of parent (pregnant minor or minor with child), at page 665 of the 1982 Montana Administrative Register, issue number 7.

2. The agency has adopted the rule with the following changes:

46.10.324 ~~PREGNANT-MINOR-OR-MINOR-WITH-CHILD~~ CARETAKER RELATIVE LIVING IN HOME OF PARENT

(1) A ~~minor--with-a-child-or-a-pregnant-minor~~ caretaker relative who is living in the home of a parent is eligible for AFDC when the parent is receiving AFDC in the ~~minor's~~ caretaker relative's behalf or when the ~~minor~~ caretaker relative can show that the parent is unable to provide support equivalent to AFDC.

(a) In determining whether the ~~minor's~~ caretaker relative's parents are able to provide equivalent support, the ~~minor's-parents'-income~~ free shelter supplied by the parents of the caretaker relative will be considered available to the ~~minor~~ caretaker relative ~~whether-or-not--actually-contributed~~ after the following disregards:

(i) $75 from earned income of the parents;

(ii) child care expenses of the parents not to exceed $160 per month per child;

(iii) the AFDC net monthly income standard as provided in ARM 46.10.403 for a family consisting of the ~~minor's~~ caretaker relative's parents and any ~~other~~ minors other than the ~~minor in-question~~ caretaker relative.

(b) If the ~~minor's~~ caretaker relative's parent is receiving AFDC in behalf of the ~~minor~~ caretaker relative, the ~~minor's~~ caretaker relative's children are added to the assistance unit.

~~(2)--If-neither--the-minor--nor-the--minor's--parents-are eligible-for-AFDC,-the-minor's-children-may--be-eligible-for-a child-only-grant.~~

~~(a)--In-evaluating-income-and-resources-in-this-case,-the minor's-income--and-resources-are--considered-available-to-the minor's-children-without-application-of-any-income-disregards. The-minor's-parents'-income-and--resources-are--not-considered available-to-the-minor's-children.~~

(32) A ~~pregnant-minor-or-a-minor-with-a-child~~ caretaker relative who is not living in the home of a parent is treated as a separate household. Parental income is counted only when actually contributed.

~~(a)--The--children-of-a--minor-are-eligible-for-AFDC-provided-all-other-eligibility-factors-are-met.~~

3. The department has thoroughly considered all verbal and written commentary received:

COMMENT: There is no statutory basis to distinguish between minor parents with needy, dependent children and non-minor parents with needy, dependent children.

RESPONSE: The department agrees with this comment. The rule has been modified to apply to all children regardless of age. Section 40-6-214, MCA, requires parents to support any child who cannot support himself. Section 40-6-211, MCA, requires parents entitled to the custody of a child to give him support.

COMMENT: The assumption of the availability of income, whether or not it is actually contributed, creates an irrebuttable presumption in that a parent of a caretaker relative could provide little or no support even though financially able.

RESPONSE: The rule has been amended to assume that parents of a caretaker relative is providing free shelter after deducting disregards. Sections 40-6-214 and 40-6-211, MCA, require parents to support their children.

COMMENT: The income disregards applied to the income of a minor's parents are too limited. The parents, even though their income is above the unit set by the regulation, could be financially incapable of supporting the minor parent and her child.

RESPONSE: The rule has been amended to assume that parents of a caretaker relative is providing free shelter after deducting disregards. These are the same disregards used in computing grants for stepchildren.

COMMENT: Income disregards should be applied to caretaker relative.

RESPONSE: The rule has been amended to assume only that free shelter is being provided by the parents, therefore, a caretaker relative will be eligible to receive a grant without shelter and any earnings the caretaker relative has will receive the earned income disregards.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 20, 1982.

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

In the matter of the adoption of Rules 46.10.601, 46.10.602, 46.10.603, 46.10.604, 46.10.605, 46.10.606, 46.10.607 and 46.10.608 pertaining to the AFDC work experience and training program.	))))))))	NOTICE OF THE ADOPTION OF RULES 46.10.601, 46.10.602, 46.10.603, 46.10.604, 46.10.605, 46.10.606, 46.10.607 AND 46.10.608 PERTAINING TO THE AFDC WORK EXPERIENCE AND TRAINING PROGRAM.

TO: All Interested Persons

1. On April 15, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to the AFDC work experience and training program at page 667 of the 1982 Montana Administrative Register, issue number 7.

2. The effective date for the adoption of the rules will be noticed at a later time in the Montana Administrative Register. This delay in specifying an effective date is necessary to allow the department to comply with 2-4-305(7), MCA. When final formal written permission is received from the federal government to allow the changes adopted in ARM 46.10.607 and when the federal government formally grants the department the special federal project funds to carry out the changes adopted in ARM 46.10.604, the department will formally notice an effective date.

3. The department has adopted Rules 46.10.601, GENERAL; 46.10.602, DEFINITIONS; 46.10.605, PARTICIPANT PROTECTION; 46.10.608, REAPPLICATION AFTER REFUSAL TO PARTICIPATE, as proposed.

4. The department has adopted Rules 46.10.603, 46.10.604, 46.10.606 and 46.10.607 as proposed with the following changes:

46.10.603 MANDATORY PARTICIPANT GROUP

(1) All mandatory WIN registrants who are listed as unassigned recipients will be subject to participation in the program. Exemptions to this requirement will be those WIN exemptions as listed in ARM 46.10.308. ~~In addition--to these exemptions individuals eligible for but not receiving an AFDC payment because the grant amount is under $10 are also exempt.~~

(2) Certain individuals exempt under WIN may nevertheless be required to participate in the program if:

(a) they are WIN exempted due to remoteness from a WIN site, or

(b) though they are WIN exempt as a caretaker relative of a child under 6 years old, the child is between 3 and 6 and

appropriate child care is available.

(3) Applicants for aid to families with dependent children are not required to participate in the program prior to application approval.

(4) Individuals whose expenses for transportation would exceed $25 per month are not required to participate in the program.

(5) Individuals with children requiring year around day care are not required to participate in the program.

(6) Individuals with significant physical or psychological problems documented by a medical or other pertinent professional are not required to participate in the program.

(7) An individual may contest a determination of WETP mandatory status through the fair hearing process.

(8) The WIN adjudication system will be used exclusively for dealing with grievances and sanctionable issues related to the actions of the WIN team.

(~~8~~9) An individual may volunteer to participate in the program provided that he or she is also registered under WIN.

(~~9~~10) Anything which affects the WETP program participation status must be reported to the WIN office within 3 working days.

46.10.604 PARTICIPANT REIMBURSEMENT (1) $25 per month will be allowed each participant to cover transportation and other costs of participation.

(2) Day care will be paid for children of participants at the rates outlined in ARM 46.10.404 for summer months only.

46.10.606 PARTICIPANT REQUIREMENTS (1) Each participant will be required to participate in the program for a maximum of 13 weeks during any one period of WETP participation with one employer with a possibility of an additional 13 weeks assignment to another employer. Total number of weeks of continuous participation may not exceed 26 weeks.

~~(2)--Hours of participation for any one participant shall not exceed 50 hours in any one month reporting period.~~

(2) Each participant will be required to participate in the program for three 8 hour days per week.

(3) Reporting periods shall run from the 11th of one month to the 10th of the following month.

46.10.607 FAILURE TO COMPLY (1) For each unexcused absence an amount of $15 per day of work missed, not to exceed the grant amount for one individual, will be deducted from the AFDC check to be received the month immediately following the reporting period end date.

(~~1~~2) If it is determined that a WETP mandatory participant ~~fails~~ has failed to comply with the requirements of the program without good cause WIN sanctions (ARM 46.10.310) will be applied.

(~~2~~3) Good cause is defined by WIN program regulations.

5. The department has thoroughly considered all verbal and written commentary received:

COMMENT: The rules do not specify whether or not the program will be limited to certain counties or operated statewide.

RESPONSE: ARM 46.10.603 states that all mandatory WIN registrants... will be subject to participation in the program. There are now only 11 counties in Montana in which participation in WIN is mandatory. These counties are Yellowstone, Cascade, Silver Bow, Lewis & Clark, Flathead, Missoula, Fergus, Gallatin, Hill, Lake and Lincoln Counties.

COMMENT: Do federal regulations governing CWEP allow participation to be limited within the state?

RESPONSE: Yes, 45 CFR 238.12 reads: "These may include all areas of the state or only certain sub-areas at the agency's discretion." This statement refers to the geographic scope required under CWEP.

COMMENT: The rules do not specify the types of jobs that participants would be placed into.

RESPONSE: The legislature mandated in HB 258 that the department provide occupations which will potentially improve the work habits and skill levels of the participant. This program will serve AFDC recipients with widely varying work experience and skill levels. In order to provide a wide range of possible occupational placements tailored to the individual participant's needs, specific types of employment have not been specified in the rules.

COMMENT: The rules state that caretaker relatives with children between the ages of three and six may be required to participate.

RESPONSE: The rules state that this recipient group may be required to participate. This statement is taken from CWEP regulations which allow mandatory participation of this group provided that day care is available. At the present time the department will not include this recipient group. However, these rules allow implementation in the future without a change to the rules.

COMMENT: The rules place a $25 limitation for costs of participation which isn't enough to pay day care expenses.

RESPONSE: Federal CWEP regulations do not currently allow federal financial participation for day care expenses. At present the department does not have sufficient monies appropriated to cover day care expenses from state funds only.

The department has requested special federal project funds to allow day care payments during the summer equivalent to those found in ARM 46.10.404. ARM 46.10.604 has been amended to reflect this change.

COMMENT: The rules are not clear as to why individuals requiring year around day care would be exempt.

RESPONSE: It is the intent of the department to provide day care coverage only during the summer months since only parents with school age children will be required to participate.

COMMENT: The rules do not specify a minimum length of participation.

RESPONSE: Each recipient will be required to participate for a thirteen week period. This is the maximum amount of time that the individual may participate with one employer. He may participate an additional thirteen week period with another employer. He may not participate more than twenty-six continuous weeks.

COMMENT: There is concern that ARM 46.10.608 will be used to systematically deny AFDC to eligible parents and children. The WIN standard from ARM 46.10.312(2) ought to be used.

RESPONSE: The WIN standard referenced here is the criterion which will be used in order to determine whether or not an individual may be accepted in WIN. Since participation in this program is required only of mandatory WIN registrants, an individual must first be accepted into WIN before he would be required to participate in WETP. WIN reserves the right to refuse reacceptance into the program as specified under ARM 46.10.312.

COMMENT: Sanctions appear to be quite severe for a program that intends to encourage individuals with no previous work experience or skills to enter the work force.

RESPONSE: The sanctions orginally outlined in these rules are those allowable under federal regulations. The department has requested a waiver to allow a graduated penalty. ARM 46.10.607 has been amended to reflect this change.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 20, 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 and 46.13.302 and 46.13.304 pertaining to the low income energy assistance program	NOTICE 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 AND 46.13.302 AND 46.13.304 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On August 12, 1982, the Department of Social and Rehabilitation Services published notice of 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 at page 1523 of the 1982 Montana Administrative Register, issue number 15.

2. The department has also amended Rules 46.13.302 and 46.13.304 which were not previously proposed for amendment. However, the amendments of those rules became necessary to lawfully incorporate changes to the low income energy assistance program requested by a wide group of the concerned public at both the public hearing and in written testimony. The low income energy assistance program, by its nature a seasonal program, could not start timely causing severe hardship without these further amendments at this time.

3. The department has amended Rules 46.13.201 and 46.13.204 as proposed.

4. The department has amended 46.13.203, 46.13.303, 46.13.305, 46.13.401, 46.13.402 and 46.13.403 as proposed with the following changes and 46.13.302 and 46.13.304 as follows:

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. APPLICANTS SIXTY OR MORE YEARS OLD AND HANDICAPPED INDIVIDUALS MAY APPLY THROUGH SENIOR CENTERS, HOME VISITS, BY PHONE OR MAIL.

Subsection (2) remains the same.

46.13.302 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) Except as provided below, households which consist solely of members receiving supplemental security income, aid to families with dependent children, or general assistance are automatically financially

eligible for low income energy assistance. "Members receiving SSI, AFDC, or general assistance" includes any financially responsible relative or individual whose income and resources were considered in determining eligibility for these programs.

(2) Households which consist of members receiving SSI, AFDC, or general assistance and other individuals whose income and resources were not considered in determining eligibility for SSI, AFDC, or general assistance are not automatically eligible for low income energy assistance but must meet the financial requirements set forth in this sub-chapter.

(3) Individuals living in licensed group-living situations ~~or subsidized housing~~, including recipients of SSI, AFDC, or general assistance, are not eligible for low income energy assistance.

(4) ELIGIBLE INDIVIDUALS LIVING IN RENTAL HOUSING WHO ALSO RECEIVE A HEATING SUBSIDY ARE ELIGIBLE FOR THE DIFFERENCE BETWEEN THE PORTION OF THAT HEATING SUBSIDY ATTRIBUTABLE TO THE SEVEN HEATING SEASON MONTHS AND THE LIEAP MATRIX BENEFIT WHEN THE LIEAP MATRIX BENEFIT EXCEEDS THE HEATING SUBSIDY BY $10.00.

(~~4~~5) Households which contain a member who is enrolled at least half time in an institution of higher education and who was claimed for the previous tax year as a dependent child for federal income tax purposes by a taxpayer who is not a member of an eligible household are ineligible for low income energy assistance.

(a) An institution of higher education means a college, university, or vocational or technical school at the post-high school level.

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)~~2) below are ~~125%~~ ~~$150%~~ 125% 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%~~ 125% of the 1982 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above ~~150%~~ 125% of the 1982 poverty level are ineligible for the program.

~~(4) Adjusted gross income standards for all households.~~

~~(4)~~2) ~~Benefits--award--will be commensurate with income level.~~

~~(a) Eligible households whose adjusted gross income is at or below column B 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 B 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~~	~~8,038~~
~~4~~	~~10,563~~
~~5~~	~~12,288~~
~~6~~	~~14,013~~
~~Each additional member~~	~~1,725~~

(2) INCOME STANDARDS FOR ALL HOUSEHOLDS

Family Size	~~A~~	B	~~C~~	~~D~~
1	~~$ 7,020~~	$ 5,850	~~$ 4,600~~	~~$ 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~~

46.13.304 INCOME (1) Definitions:

(a) Annual gross income ~~applies to households with~~

~~income--from--other--than-self-employment--only--and~~ means all non-excluded income ~~before--deductions,~~ including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, worker's compensation, unemployment compensation, and capital gains received by the members of the household in the twelve months immediately preceding the month of application.

(b) Annual gross receipts apply to households with income from self-employment and mean all income before any deductions, including any non-excluded income not from self-employment, which was received by members of the household in the twelve months immediately preceding the month of application.

(c) Medical deductions mean all medical payments for allowable medical costs, as described in (4), made by members of the household in the twelve months immediately preceding the month of application. Medical deductions ~~may~~ SHALL not include medical payments by the household which are reimbursable by a third party. MEDICAL DEDUCTIONS CAN ONLY BE SUBTRACTED FROM ANNUAL GROSS INCOME THAT IS 150% OR LESS OF THE 1982 U.S. GOVERNMENT OFFICE OF MANAGEMENT AND BUDGET POVERTY LEVEL FOR THE PARTICULAR HOUSEHOLD SIZE. HOUSEHOLDS MEETING THE INCOME STANDARDS IN 46.13.303(2) AFTER THIS ADJUSTMENT ARE ELIGIBLE FOR BENEFITS.

(d) Self-employment deductions means all costs, excluding depreciation costs, necessary for the creation of any income from self-employment.

(e) For households with self-employment income, annual ~~adjusted~~ gross income means annual gross receipts minus ~~medical-deductions-and~~ self-employment deductions. ~~For-all-other households,-annual-adjusted-gross--income--means--annual-gross income--minus--medical--deductions.~~ SEE SUBSECTION (1)(c) OF THIS RULE FOR MEDICAL DEDUCTION.

Subsections (2) through (3)(j) remain the same.

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~~ $5,000 for a single person, ~~$2,250~~ $7,500 for a couple, and ~~$100~~ $500 for each additional member. TO A MAXIMUM OF $10,000 PER HOUSEHOLD:

(a) cash on hand;

(b) certificate of deposits;

(c) savings accounts;

~~(d)--cash-value-of-life-insurance;~~

(ed) market value of stocks or bonds;

(e) EQUITY VALUE OF BUSINESS PROPERTY IN EXCESS OF $50,000.

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

(2) The benefit award 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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	276 ~~306~~	178 ~~213~~	235	352 ~~374~~	227 ~~262~~	299
Fuel Oil	825 ~~821~~	577 ~~574~~	701	1008 ~~1001~~	706 ~~701~~	857
Propane	641 ~~617~~	448 ~~432~~	544	783 ~~754~~	548 ~~520~~	665
Electricity M.P.C.	378 ~~376~~	264 ~~263~~	321	462 ~~459~~	323 ~~321~~	393
Electricity M.D.U.	716 ~~846~~	502 ~~592~~	609	875 ~~1042~~	613 ~~729~~	744
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	408 ~~425~~	267 ~~297~~	347	465 ~~475~~	306 ~~332~~	395
Fuel Oil	1146 ~~1100~~	803 ~~798~~	974	1283 ~~1100~~	899 ~~892~~	1091
Propane	890 ~~857~~	623 ~~601~~	756	996 ~~960~~	697 ~~672~~	847
Electricity M.P.C.	525 ~~521~~	367 ~~365~~	446	588 ~~585~~	412 ~~409~~	500
Electricity M.D.U.	995 ~~1100~~	696 ~~774~~	846	1114 ~~1100~~	780 ~~916~~	947
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	333 ~~303~~	214 ~~217~~	283	424 ~~385~~	274 ~~270~~	360
Fuel Oil	840 ~~803~~	585 ~~562~~	714	1027 ~~979~~	719 ~~685~~	873
Propane	653 ~~684~~	457 ~~479~~	555	798 ~~836~~	558 ~~585~~	678
Electricity	385 ~~383~~	269 ~~268~~	620	470 ~~468~~	329 ~~328~~	758
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	492 ~~448~~	321 ~~314~~	418	560 ~~509~~	369 ~~358~~	476
Fuel Oil	1168 ~~1100~~	817 ~~780~~	993	1308 ~~1100~~	915 ~~873~~	1112
Propane	906 ~~950~~	635 ~~666~~	770	1015 ~~1064~~	710 ~~745~~	863
Electricity	535 ~~531~~	374 ~~372~~	862	600 ~~596~~	420 ~~417~~	965
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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~~	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile Home~~	Mobile Home
Natural Gas	325	210	277	414	268	352
G.F.G.	~~283~~	~~190~~		~~363~~	~~254~~	
Natural Gas	297	191	252	378	264	321
M.P.C.	~~262~~	~~183~~		~~336~~	~~234~~	
Fuel Oil	737	516	627	901	631	766
	~~715~~	~~501~~		~~872~~	~~611~~	
Propane	565	396	480	690	483	587
	~~527~~	~~369~~		~~645~~	~~451~~	
Electricity	343	240	292	419	294	357
	~~340~~	~~239~~		~~417~~	~~292~~	
Coal	198	149	168	248	198	210
Wood	215	143	183	280	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile Home~~	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile Home~~	Mobile Home
Natural Gas	481	314	409	547	361	465
G.F.G.	~~424~~	~~296~~		~~484~~	~~339~~	
Natural Gas	441	309	375	499	349	424
M.P.C.	~~391~~	~~274~~		~~447~~	~~312~~	
Fuel Oil	1024	717	871	1147	803	975
	~~992~~	~~694~~		~~1100~~	~~778~~	
Propane	785	549	667	879	615	747
	~~733~~	~~513~~		~~820~~	~~574~~	
Electricity	477	334	405	534	374	454
	~~474~~	~~332~~		~~531~~	~~372~~	
Coal	297	248	252	347	297	295
Wood	356	286	304	429	358	365

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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	297 ~~262~~	191 ~~183~~	252	377 ~~336~~	244 ~~234~~	321
Fuel Oil	743 ~~733~~	520 ~~513~~	632	908 ~~895~~	636 ~~627~~	772
Propane	548 ~~568~~	348 ~~397~~	466	670 ~~694~~	469 ~~486~~	570
Electricity	343 ~~341~~	240 ~~239~~	292	419 ~~417~~	294 ~~292~~	357
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	438 ~~391~~	286 ~~274~~	373	499 ~~447~~	329 ~~312~~	424
Fuel Oil	1033 ~~1018~~	723 ~~713~~	878	1157 ~~1100~~	810 ~~798~~	983
Propane	761 ~~790~~	533 ~~552~~	647	853 ~~883~~	597 ~~618~~	725
Electricity	477 ~~474~~	334 ~~332~~	405	534 ~~531~~	374 ~~372~~	454
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas M.D.U.	229 ~~254~~	148 ~~177~~	195	292 ~~310~~	189 ~~217~~	248
Natural Gas M.P.C.	279	196	237	356	250	303
Fuel Oil	668 ~~631~~	468 ~~442~~	568	816 ~~771~~	571 ~~540~~	694
Propane	516 ~~513~~	361 ~~359~~	439	631 ~~626~~	442 ~~430~~	536
Electricity	314 ~~312~~	220 ~~219~~	267	383 ~~302~~	268 ~~267~~	326
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas M.D.U.	339 ~~352~~	221 ~~246~~	288	386 ~~395~~	254 ~~276~~	328
Natural Gas M.P.C.	414	289	352	472	363	401
Fuel Oil	929 ~~877~~	650 ~~614~~	789	1039 ~~902~~	728 ~~600~~	884
Propane	717 ~~712~~	502 ~~490~~	610	803 ~~796~~	562 ~~550~~	683
Electricity	436 ~~433~~	305 ~~304~~	370	488 ~~486~~	341 ~~340~~	415
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	311 ~~279~~	212 ~~196~~	264	396 ~~356~~	256 ~~250~~	337
Fuel Oil	760 ~~750~~	532 ~~525~~	646	929 ~~915~~	650 ~~640~~	790
Propane	628 ~~639~~	440 ~~448~~	534	768 ~~782~~	537 ~~548~~	652
Electricity	360 ~~358~~	252 ~~251~~	306	440 ~~441~~	308 ~~309~~	374
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	460 ~~414~~	301 ~~289~~	391	523 ~~472~~	345 ~~330~~	445
Fuel Oil	1056 ~~1042~~	740 ~~729~~	898	1183 ~~1100~~	828 ~~809~~	1006
Propane	872 ~~889~~	611 ~~623~~	741	977 ~~994~~	684 ~~696~~	830
Electricity	500 ~~497~~	350 ~~348~~	425	560 ~~558~~	392 ~~385~~	476
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	313 ~~279~~	202 ~~196~~	267	399 ~~356~~	258 ~~250~~	339
Fuel Oil	792 ~~732~~	555 ~~513~~	673	968 ~~893~~	678 ~~624~~	823
Propane	669 ~~623~~	468 ~~436~~	568	817 ~~761~~	572 ~~532~~	695
Electricity	363 ~~350~~	254 ~~251~~	308	443 ~~441~~	310 ~~309~~	377
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	463 ~~414~~	303 ~~289~~	394	528 ~~472~~	348 ~~330~~	448
Fuel Oil	1101 ~~1015~~	771 ~~711~~	936	1233 ~~1100~~	863 ~~788~~	1048
Propane	929 ~~865~~	650 ~~605~~	789	1040 ~~968~~	728 ~~678~~	884
Electricity	504 ~~497~~	353 ~~348~~	428	564 ~~550~~	395 ~~385~~	480
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT X

Lincoln, Flathead, Lake
and Sanders Counties

	1 Bedroom Home			2 Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile Home~~	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile Home~~	Mobile Home
Natural Gas	311 ~~281~~	200 ~~197~~	267	396 ~~359~~	256 ~~251~~	339
Fuel Oil	767 ~~788~~	537 ~~551~~	657	937 ~~961~~	656 ~~673~~	803
Propane	610 ~~645~~	427 ~~451~~	523	746 ~~788~~	522 ~~551~~	639
Electricity	363 ~~510~~	254 ~~358~~	362	472 ~~624~~	331 ~~437~~	442
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile Home~~	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile Home~~	Mobile Home
Natural Gas	459 ~~418~~	301 ~~293~~	394	523 ~~476~~	345 ~~333~~	448
Fuel Oil	1066 ~~1095~~	746 ~~767~~	913	1193 ~~1100~~	835 ~~857~~	1022
Propane	848 ~~895~~	593 ~~627~~	726	949 ~~1003~~	665 ~~702~~	813
Electricity	591 ~~708~~	414 ~~496~~	502	663 ~~802~~	464 ~~561~~	562
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	311 ~~279~~	200 ~~196~~	264	396 ~~356~~	256 ~~245~~	337
Fuel Oil	780 ~~756~~	546 ~~529~~	663	953 ~~924~~	667 ~~647~~	810
Propane	601 ~~605~~	421 ~~424~~	511	735 ~~740~~	515 ~~510~~	625
Electricity	360 ~~350~~	252 ~~251~~	306	440 ~~441~~	308 ~~309~~	374
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	450 ~~414~~	301 ~~289~~	391	523 ~~472~~	345 ~~330~~	445
Fuel Oil	1083 ~~1051~~	758 ~~736~~	921	1213 ~~1100~~	849 ~~815~~	1031
Propane	835 ~~840~~	585 ~~589~~	710	936 ~~941~~	655 ~~659~~	795
Electricity	500 ~~497~~	350 ~~348~~	425	560 ~~558~~	392 ~~385~~	476
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	311 ~~279~~	200 ~~196~~	264	396 ~~356~~	256 ~~250~~	337
Fuel Oil	767 ~~710~~	537 ~~503~~	652	937 ~~878~~	656 ~~615~~	796
Propane	637 ~~639~~	446 ~~448~~	541	778 ~~734~~	545 ~~513~~	662
Electricity	360 ~~358~~	252 ~~251~~	306	440 ~~441~~	308 ~~309~~	374
Coal	198	149	168	248	198	210
Wood	215	143	183	286	215	243

	3 Bedroom Home			4+ Bedroom Home		
Type Fuel	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home	Single Family Unit	Multi-Family Unit ~~or Mobile~~ Home	Mobile Home
Natural Gas	460 ~~414~~	301 ~~289~~	391	523 ~~472~~	345 ~~330~~	445
Fuel Oil	1066 ~~998~~	746 ~~699~~	906	1193 ~~1100~~	835 ~~774~~	1014
Propane	885 ~~889~~	619 ~~623~~	752	991 ~~994~~	693 ~~696~~	842
Electricity	500 ~~497~~	350 ~~348~~	425	560 ~~558~~	392 ~~385~~	476
Coal	297	248	252	347	297	295
Wood	358	286	304	429	358	365

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.~~

(32) 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.

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 FOR ELIGIBILITY PERIODS AFTER ~~as-of~~ September 30, ~~1982~~ 3 will ~~be-returned-to the-department-by-the-fuel-vendor~~ REMAIN IN THE RECIPIENT'S ACCOUNT AND WILL NOT BE CONSIDERED IN DETERMINATION OF FUTURE BENEFIT AWARDS.

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

5. The department amends these rules to change the low income energy assistance program by updating fuel prices, adopting a liquid resources eligibility requirement by raising the income guidelines easing program access to seniors and handicapped, allowing medical deductions for households over 125% but under 150% of poverty, raising the matrix benefit for mobile homes, allowing households who change residence or fuel vendor the opportunity for redetermination and by providing assistance to subsidized households to the extent they benefit less from their heating subsidy than LIEAP.

6. The department has thoroughly considered all verbal and written commentary received:

COMMENT: The income stepdown hurts many people whose gross income exceeds stepdown increments by only a few dollars yet assists those less in need (125% - 150% of poverty) only slightly.

The greatest need for assistance is in the income range of 1-125% of the poverty level. This need is reflected in the percentage of client income which is spent on fuel. We recommend that these people receive 100% of the department matrix award.

The income stepdown procedure is prohibitive in terms of administrative cost, most appreciably the cost of calculating medical expenses of clients in order to determine whether they may be included in the highest matrix payment bracket their annual gross income allows. Other costs reflect redetermination and reapplication procedures for the inevitable changes in monthly patterns of medical expenditures.

RESPONSE: The department agrees; Rule 46.13.303 has been amended. Households whose income is at or below 125% of poverty will receive 100% of matrix benefit amount.

COMMENT: We understand that federal law prohibits the payment of benefits to those with income exceeding 150% of the poverty level. In such cases, clients exceeding 125% of poverty, but not exceeding 150% of poverty, should be allowed to provide proof of nonreimbursable medical expenses. The sum of these expenses should be deductible from their gross income. This deduction will reflect an annual gross income which, in many cases, will qualify the client for fuel assistance. We emphasize that this provision is necessary if we are to reach a sector of the poor who are also suffering the burden of a selective economic pressure, that being, medical cost.

RESPONSE: The department agrees; Rule 46.13.304(1)(c) and (e) has been amended. Paid, nonreimbursable medical expenses will be an allowable deduction for households whose income is equal to or less than 150% of poverty for the purpose of meeting the 125% of poverty eligibility test.

COMMENT: Benefit award increases do not seem to reflect the most current fuel prices, specifically the 16% natural gas rate hike granted the Montana Power Company May 30, 1982.

RESPONSE: The rate tariffs currently used for regulated utilities were supplied by the Public Service Commission. The PSC assured us these rates will be in effect without change through the upcoming LIEAP heating season with the exception of Pacific Power and Light. Pacific Power and Light's rate increase will be reflected in the matrix used to calculate benefit award. The method of obtaining current and projected fuel prices for those fuels not regulated by the PSC was by phone survey. Fuel vendors for each fuel type were contacted in each heating district until a representation of 80% of LIEAP recipient's fuel vendors were surveyed. The fuel prices obtained from the various vendors were then averaged within each heating district.

It should be noted that in a few cases fuel prices actually declined slightly due to a drop in OPEC oil prices and Montana Dakota Utilities natural gas prices declined as the PSC recognized the profit by MPU of a natural gas contract with another utility.

COMMENT: The income test used by the department (12 month prior to date of application) is too restrictive.

RESPONSE: The department adopted the 12 month rule at the request of several Human Resource Development Councils. It was felt that by using a 90 day rule, many people who were typically seasonally unemployed during the winter qualified for assistance even though they historically made well above the annual poverty level.

Although this rule may adversely affect people who have recently lost their employment with no immediate possibility of re-employment, the department feels that two factors address this situation. First, all persons on General Assistance, SSI, or AFDC are categorically eligible. Secondly, the application period has been extended to April 30, 1982, with full benefits going to all eligible applicants. Persons ineligible in October can reapply in April, if their incomes have remained low.

COMMENT: The fact that a person has life insurance or accrued a small savings ($1,500) should not eliminate that person from receiving energy assistance.

RESPONSE: The department agrees; Rule 46.13.305 has been amended. Based on testimony, the resource limit for a single person household will be $5,000, $7,500 for a two member household and $500.00 additional allowance for each added household member up to a family limit of $10,000. The liquid assets limit will apply only to a) cash on hand, b) certificates of deposit, c) savings accounts, and d) market value of stocks or bonds. Notably excluded are cash value of life insurance and burial trust funds.

COMMENT: Interest accumulating in lines of credit accounts should be paid to customer accounts.

RESPONSE: The department has recognized the accumulation of interest in vendor accounts and for this reason makes no fewer than two payments on behalf of recipients.

The participating fuel vendors have extra administrative expenses as well as other costs associated with carrying many customers with back bills during winter months. The cooperation of the more than 600 fuel vendors is essential to the operation of LIEAP. To require calculating interest accumulation would be counter productive.

COMMENT: A gross income test for self-employed individuals is highly unfair and discriminates in favor of some businesses and against others. It is just not an adequate measure of need.

RESPONSE: The department agrees; Rule 46.13.305 has been amended. Households with equity value of up to $50,000 of business property will be eligible for LIEAP without regard to gross receipts.

COMMENT: People residing in Section 8 housing should receive the difference in heating benefit where LIEAP pays more.

RESPONSE: The department agrees; Rule 46.13.302(3) has been amended. Any LIEAP eligible household receiving rental subsidy and a heating matrix award which is less by $10.00 or more, than the LIEAP matrix award will receive the heating benefit difference.

The comparison of benefit for the purpose of determining benefit disparity will be 88% of annual heating matrix award without regard for heating water, cooking or other energy costs.

COMMENT: A person in a single-wide mobile home will be classified with multi-family units and receive less benefits even though, in fact, the energy use of such homes is much greater than most multi-family homes units.

RESPONSE: The department agrees; Rule 46.13.401 has been amended. Although both multi-family units and mobile home benefit awards were raised considerably last year, the facts are not available to substantiate the .7 factor consideration of mobile home heating requirements. Based on public testimony, single-wide mobile homes will receive 85% of the single family housing matrix benefit. A comprehensive analysis of actual mobile home consumption will be available later in the program year. A significant difference between benefit award and actual consumption findings may prompt a further rule amendment adjusting this level later in the program.

COMMENT: The wood matrix is not the BTU equivalent of other fuel type benefits.

RESPONSE: The value (heat content) of wood varies greatly by type, and end use efficiency much more than the other fuel types. Matrix allowance for wood exceeds 88% of the heating needs for households of different size as determined from the Bonneville Power Administrations study of Residential Energy - Survey.

COMMENT: The department should restore the automatic $1,000 medical deduction for senior citizens and handicapped persons.

RESPONSE: Last year the department expanded medical deductions to all persons, regardless of their age or physical handicap. This extension will allow more persons to potentially be able to participate in the program. The automatic medical deduction previously used was based on the premise that senior citizen and handicapped persons had a higher level of medical costs than other low income people. To bring that deduction in line with all other allowable deductions, proof of paid medical costs is now required.

It must be noted that in addition to expanding the potential for claiming medical deductions noted above, all persons on SSI, AFDC, or General Assistance, probably the three poorest classes of individuals, are automatically eligible for the program and have no need of any deductions whatsoever.

Paid non-reimbursable medical deductions are an income deductable expense for households whose income is above 125% of poverty but below 150% of poverty.

COMMENT: The department should report to the public on the final disposition of the 82 LIEAP program.

RESPONSE: The department will provide upon request any information that is not protected due to client confidentiality with regard to the operation and expenditure of LIEAP.

COMMENT: Preneed burial contract and trusts should not be considered as a resource.

RESPONSE: The department agrees. However, it must be noted that to be excluded as a resource money set aside for burial materials and services must be prepaid subject to a preneed contract.

COMMENT: There was concern expressed over the amount of carryover funds that the department held for start up of the FY83 LIEAP.

RESPONSE: The federal law governing the Low Income Energy Assistance gives states the flexibility to carry over 25% of the state's allocation to a subsequent year. In order to provide for an early start up, both in terms of allowing administrative expenses and in terms of making payments beginning in the month of October, the department chose to carry over the maximum amount of 25% for the FY83 program. In view of the increased number of potential applicants, the limited number of dollars anticipated for the next year program, and the increase in energy prices it was felt necessary to plan for these contingencies and carry over the maximum allowable under federal law.

COMMENT: Some comments were received with regard to the decision by the department to allow county commissioners to designate what organizational entity would act as the local eligibility unit in the administration of the Low Income Energy Assistance Program.

RESPONSE: The department based its decision on the assumption that since county commissioners are the locally elected public officials which can most adequately reflect the desires of their local residents that it was advisable to have the decision making at the lowest level possible. This was the principal reason for allowing county commissioners the decision making authority with regard to who could best run the Low Income Energy Assistance Program in their respective counties.

COMMENT: Several comments were received which indicated requests for additional public participation other than the formal rule making process. Some recommended that the depart-

ment consider setting up an advisory council and scheduling hearings in several locations around the state.

RESPONSE: The department concurs and during the next several months we will be setting up an informal advisory group that will serve as an advisory body to the Economic Assistance Division and the department in making recommendations on the ongoing FY83 program as well as making suggested changes for the program in the future years. Although it is not feasible this year to have hearing in several locations around the state because of the desire to implement the program beginning October 1, 1983, the department will attempt to solicit additional input through regionalized meetings for the upcoming year.

COMMENT: The department should undertake additional outreach efforts in order to make the FY83 Low Income Energy Assistance Program available to more eligible individuals.

RESPONSE: The department anticipates doing additional outreach in the form of an individualized mailing to each applicant for the FY82 program in addition to requiring that each local eligibility unit undertake outreach methods to reach the maximum number of eligible participants.

COMMENT: Application process. Several comments were received which would indicate that the department should make available the application process to locations other than the local eligibility units.

RESPONSE: The department realizes and recognizes the need for additional outreach, especially to insure that low income senior citizens and handicapped individuals gain accessibility to the program. To that end, the revisions to the rule have been written to reflect a requirement to be placed on local eligibility units to make the application process available at senior citizen centers, by phone or through the mail, and additional locations as deemed appropriate to insure that low income senior citizens and handicapped individuals have maximum potential for applying for benefits.

COMMENT: Payments made in cash rather than payments made directly to fuel vendors would be more appropriate for a payment system in the Low Income Energy Assistance Program.

RESPONSE: The department feels that because the Low Income Energy Assistance Program is designed to meet the home heating needs of low income indviduals, it is not inappropriate to make payments to individual fuel vendors on behalf of clients to insure that intent of the program is met. It is the department's position that payments will be made this year

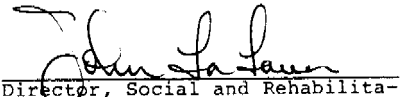
similar to last whereby direct payments from the department will be made to fuel vendors on behalf of clients in order to set up a line of credit in the name of the eligible individuals. There are additional capabilities for local eligibility units to write emergency payments for emergency situations where the standard payment procedure will not respond in a timely manner.

COMMENT: The department received several comments with regard to the anticipated method in which credit balances as of September 30, 1982, will be handled for the FY83 program.

RESPONSE: Since the line of credit issue came about as the result of a combination of the relatively large payments and a relatively mild winter during the FY81 Low Income Energy Assistance Program and that this was a one time problem that subsequent years' credit balances would not be taken into account in offsetting or reducing the benefit award available under the FY83 Low Income Energy Assistance Program.

COMMENT: Several comments were received with regard to giving special consideration for the individualized conditions of each home, and the turnaround time necessary for checks to get into the hand of individual vendors.

RESPONSE: Although the department realizes that individual homes may require additional heating, it is not administratively feasible to take into consideration the special conditions for each home occupied by each LIEAP recipient. The use of a matrix which takes into account the heating district, the fuel type, and the size of the home is administratively the most feasible way of handling the major conditions which affect the overall heating requirements of a family. The department, because it is now making payments based upon a computer system designed one year ago, will be in a much better position to insure that checks are sent to vendors shortly after the initial applications and eligibility determinations are made by the local eligibility units. It is anticipated that very shortly after the start of the FY83 Low Income Energy Assistance Program, around the middle part of October, that checks will be generated because of the operational computer system and because of the availability of the 25% carry over from the FY82 Low Income Energy Assistance Program.



Director, Social and Rehabilitation Services

Certified to the Secretary of State September 20, 1982.

VOLUME NO. 39 OPINION NO. 71

COUNTIES - Eligibility for state grants to district courts;
COUNTIES - Mill levy for district courts limited by budget law imposed on counties;
COURTS, DISTRICT - Eligibility for state grants to district courts;
DEPARTMENT OF ADMINISTRATION - District court grants--maximum mill levy not condition of eligibility for counties;
TAXATION AND REVENUE - Amount of county district court mill levy restricted by both budget law and statute establishing maximum permissible levy;
TAXATION AND REVENUE - District court mill levy;
ATTORNEY GENERAL OPINIONS - 39 Op. Att'y Gen. No. 25 (1981); 38 Op. Att'y Gen. No. 31 (1979); 37 Op. Att'y Gen. No. 37 (1977).
MONTANA CODE ANNOTATED - Sections 7-6-2352, 7-6-2511; Title 7, chapter 6, part 23.

HELD: The Department of Administration may not require a county to impose a maximum mill levy for district court expenses before it may be considered eligible for a state grant to district courts under section 7-6-2352, MCA.

3 September 1982

Morris L. Brusett, Director
Department of Administration
Mitchell Building
Helena, Montana 59620

Dear Mr. Brusett:

You have requested my opinion on the following question:

> May the Department of Administration properly make a maximum mill levy under section 7-6-2511, MCA, a condition of a county's eligibility for a state grant to district courts under section 7-6-2352, MCA?

Section 7-6-2352, MCA, authorizes the Department of Administration to make grants to counties for the district courts. No funds were appropriated when that section was enacted in 1979. The statute was amended and the program was funded for the first time in 1981. As amended, the statute

requires, rather than permits, the Department of Administration to make grants to the counties from funds appropriated for that purpose. See 39 Op. Att'y Gen. No. 25 (1981). If the requests received from the various counties exceed the funds appropriated, each grant is reduced proportionately.

A county may apply for a grant by filing a report with the Department for the previous fiscal year stating that the numerous statutory conditions set forth in section 7-6-2352(2) have been or will be met. The statute requires that the applicant state that: (1) the county's expenses exceeded "the sum derived from the mill levy provided for in section 7-6-2511;" (2) the expenses taken into account (a) arise from litigation, (b) do not include building, capital, and library maintenance, replacement, and acquisition expenses, but rather (c) include only those mandatory court expenses listed in section 7-6-2352(a); (3) all expenditures from the district court fund were lawfully made; (4) no transfers were made from the district court fund to any other fund; (5) no expenditures were made from the district court fund which were not specifically authorized by sections 7-6-2511 and 7-6-2351; and (6) any other information required by the Department of Administration.

Your question focuses on the language of section 7-6-2352(2)(a) requiring that the county district court expenses exceed "the sum derived from the mill levy provided for in 7-6-2511," and the language of section 7-6-2352(2)(e) requiring that a county in making its application submit "any other information required by the Department of Administration." Section 7-6-2511, MCA, authorizes the governing body of each county to levy and collect a tax for district court costs and establish a maximum levy which varies according to the class of county, i.e., six mills for first- and second-class counties, five mills for third- and fourth-class counties, and four mills for fifth-, sixth-, and seventh-class counties.

The requirement of the Department of Administration that a county must levy the maximum tax before it is eligible for a state district court grant is not totally unreasonable, nor completely without support. In fact, a requirement that the counties be responsible for all district court expenses up to the amount which would have been received from a maximum mill levy would place the counties on a more equal footing in relation to the expenses they must bear for district court costs and finds support in the minutes of the legislative committees which considered both the original and the

amended bill. See Minutes of the House Taxation Committee, 46th Legislature, April 6, 1979, in considering Senate Bill 463, and Minutes of the Senate Finance and Claims Committee of the 47th Legislature, of February 10, 11, and 20, 1981, in considering Senate Bills 300 and 373. Those minutes indicate an intent that the maximum mill levy provided in section 7-6-2511, MCA, establish a limit to district court expenses borne by the counties. As a practical matter a county might be required to pay an additional amount for district court expenses out of its general fund if the amount appropriated for state grants under section 7-6-2352, MCA, is less than the total grant requests received from the counties. See 38 Op. Att'y Gen. No. 31 (1979). In that case, the counties would share on a pro rata basis in the amount actually appropriated for grants. § 7-6-2352(1).

Section 7-6-2352(2)(e) does, of course, also permit the Department to impose additional informational requirements on the counties. The inequity which the Department has attempted to rectify by requiring that a county levy the maximum tax allowed under section 7-6-2511, MCA, in order to be eligible for a state grant is built into a system which requires the counties to bear the major burden of supporting a state court system. That inequity cannot be rectified by so simple a requirement of the Department. The requirement would force the counties to violate other statutes governing county budget and tax levy laws in order to be eligible for a state grant in case of budget overruns. It is, therefore, my opinion that a maximum mill levy under 7-6-2511, MCA, may not be required of any county as a condition of eligibility for a state district court grant under section 7-6-2352, MCA.

Section 7-6-2511, MCA, does not require a county to levy a tax equivalent to the maximum allowed by that statute. It simply establishes a maximum permissible levy. The tax which a county is permitted to levy at any particular time for district court expenses is limited, as are all other taxes which counties are permitted to levy, by the requirements of Title 7, chapter 6, part 23, MCA, which deals with county budget law. Under the statutory scheme, a district court judge's salary, as well as any actual and necessary travel expenses, is paid directly by the state. §§ 3-5-211, -213, and -215, MCA. All other district court expenses are statutorily imposed on the county although the district court is clearly a state court. See 37 Op. Att'y Gen. No. 37 (1977); 38 Op. Att'y Gen. No. 31 (1979).

The official in charge of the county-funded district court program must submit a budget to the county clerk and recorder estimating all anticipated sources of revenue other than taxation and all required expenditures for the next fiscal year by June 10 of each year. § 7-6-2311(1), MCA. The county commissioners then consider the proposed budgets of all county offices, including that of the district court to the extent it is to be funded by the county and arrives at a preliminary budget. § 7-6-2315, MCA. A copy of that preliminary budget is transmitted to the district court which may then make recommendations regarding changes in any portions of the preliminary budget relating to the court and considered necessary for it to discharge its obligations under the law. § 7-6-2351(1), MCA. No part of the district court fund may be used for construction or improvement of any building or for any purpose not statutorily authorized. § 7-6-2351(2), MCA.

The commissioners are then required to hold a public hearing on the proposed budget. § 7-6-2317, MCA. After the hearing, the commissioners again make a determination for each individual fund regarding sources of revenue and authorized expenditures as well as the amount of each fund which is to be paid for through a tax levy. §§ 7-6-2318, -2319, MCA. That information is then incorporated into the final budget which the commissioners adopt. § 7-6-2320, MCA.

The statutory scheme embodied in Title 7, chapter 6, part 23, MCA, does not permit the county commissioners to simply levy the maximum tax allowed for any purpose by law. In fact, section 7-6-2319(1) requires that they add the cash balance in a particular fund at the close of the preceding fiscal year to the amount of estimated revenues which are to accrue to the fund during the current fiscal year. That sum is then deducted from the total amount of appropriations and authorized expenditures to give the amount necessary to be raised by the tax levy. The amount to be raised by a tax levy may be increased by up to one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year less any amounts appropriated for election expenses and emergency warrants. § 7-6-2319(2). The additional amount permitted to be raised by levy is to serve as a reserve to meet expenditures to be made from the fund during the months of July through November of the next fiscal year. Id. The amount which the commissioners determine is to be raised for any fund by means of a tax levy is thus the result of a statutorily mandated calculation which may in no event exceed the maximum levy permitted by law.

§ 7-6-2319(3), MCA. Clearly, the amount authorized by the statutorily mandated calculation to be levied for any particular fund may well be less than the maximum and indeed, if the calculation computes to an amount requiring a less than maximum mill levy, the county commissioners have no authority to impose a greater or maximum mill levy. This is no less true for the tax to be levied for the district court fund than it is for any other tax levy.

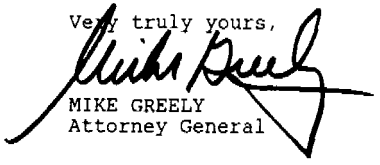
In providing the state grant to district courts, the legislature recognized that unanticipated, but nevertheless mandatory, expenses might be incurred in any particular year by the district court. The minutes of the Senate Finance and Claims Committee of the 47th Legislature, previously referred to in this opinion, indicate recognition that excessive and unanticipated expenses might arise in the prosecution of capital criminal offenses or simply from an unanticipated increase in the volume of cases. The counties are prohibited by law from levying a tax which exceeds either the maximum permitted by law (in this case determined by section 7-6-2511, MCA) or the amount determined necessary to be levied for a particular fund under the statutes relating to county budget law, Title 7, chapter 6, part 23, MCA. It is a general rule of statutory construction that statutory provisions dealing with the same subject matter are to be construed in harmony with one another. City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971). The condition imposed by the Department would make the statute authorizing state grants to district courts, section 7-6-2352, MCA, conflict with the statutes relating to county budget law, Title 7, chapter 6, part 23, MCA, and that authorizing a county levy for district court expenses, section 7-6-2511, MCA. There is no statutory authority for an automatic imposition of the maximum allowable mill levy by the county governing body.

Furthermore, the Department's requirement arbitrarily eliminates from eligibility for a state grant to district courts all counties which, in following the statutorily prescribed procedure in arriving at a district court mill levy, impose less than the maximum tax allowed by law. Section 7-6-2352(2), MCA, clearly specifies all conditions of eligibility which the legislature saw fit to impose. The authority granted the Department in 7-6-2352(2)(e) permits the imposition of additional informational requirements only, not of substantive eligibility conditions.

THEREFORE, IT IS MY OPINION:

The Department of Administration may not require a county to impose a maximum mill levy for district court expenses before it may be considered eligible for a state grant to district courts under section 7-6-2352, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 72

FIREFIGHTERS - Interpretation of Firefighters' Unified Retirement System;
RETIREMENT SYSTEMS - Firefighters' Unified Retirement System;
STATE AGENCIES - State Auditor's function with regard to Firefighters' Unified Retirement System;
MONTANA CODE ANNOTATED - Sections 19-11-606, 19-11-606(1), 19-13-1006;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 77 (1977);
1979 LAWS OF MONTANA - Chapter 14, section 13, chapter 457, section 2.

HELD: Section 19-13-1006, MCA, permits the payment of supplemental benefits to the recipients based on the monthly salary paid that same fiscal year to a confirmed active firefighter of the city that last employed him. The funds distributed to PERD for this purpose in subsection (2) should therefore be used to reimburse PERD for the payments made to the recipients in the previous fiscal year.

17 September 1982

M. Valencia Lane, Associate Counsel
Insurance and Legal Division
Department of Administration
Mitchell Building
Helena, Montana 59620

Dear Ms. Lane:

You have requested an opinion concerning interpretation of section 19-13-1006, MCA, which provides:

> Supplement to certain retirement allowances. The plan shall pay to each firefighter retired before July 1, 1973, or his surviving spouse and children a monthly retirement allowance of not less than one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city. In the case of volunteer firefighters, the retirement allowance

may not exceed $75 per month. Distribution of the funds provided for this purpose under 19-11-606(1) shall be made as follows:

(1) At the beginning of each fiscal year the administrator shall request and the state auditor shall issue from the earmarked revenue fund and deliver to the administrator an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding.

(2) The administrator shall use the funds to increase the monthly retirement allowances of the retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the respective city or town for the preceding year.

This section is part of the Firefighters' Unified Retirement System, Title 19, chapter 13, which was enacted in 1981. This system is administered by the Public Employees' Retirement Division (PERD) and it applies to first- and second-class cities with full-paid firefighters on a compulsory basis, and to other cities on a voluntary basis. The remaining cities participate in the old Firefighters' Retirement system, Title 19, chapter 11, MCA, which is administered by the relief associations of the individual cities.

Section 19-13-1006, MCA, is substantially the same as, and its language was in fact taken from, section 19-11-606, MCA, the corresponding provision in the old retirement system. The only difference is that under the old system, the money for the supplemental benefits is transferred by the State Auditor from the earmarked revenue fund to the individual cities and towns to be administered by their respective relief associations; under the new system, the money is transferred to PERD. Section 19-11-606, MCA, was enacted in 1975 and since that time has been administered as follows: The retiree's supplement is calculated according to the monthly salary paid to a confirmed active firefighter that same fiscal year. Thus when the firefighter's salary increases during any given month, the retiree's benefits increase accordingly at the same time. The money to pay for those increases will not have been received from the earmarked fund, however, because the statutory formula which

establishes the amount to be received each year from the earmarked fund is calculated based on salaries and benefits received by a confirmed active firefighter in the preceding fiscal year and does not take into account anticipated increases for the coming year. As a result, the relief associations have administered the program by covering current year increases from their own funds and then reimbursing their funds from the revenue received from the earmarked fund at the beginning of the new fiscal year.

I have been informed by PERD, and there appears to be no dispute, that the Firefighters' Unified Retirement System intended to continue the supplemental benefits under section 19-11-606, MCA, for firefighters transferring to the new system, including the manner in which the benefits were computed and administered. The same statutory language was adopted to ensure that continuity. However, PERD, in interpreting section 19-13-1006, MCA, did not agree that the statute authorized the supplemental benefits to be computed and distributed in the manner they had been under the old system. PERD believes that the statute requires the following application: At the beginning of each fiscal year, the State Auditor transfers to PERD an amount based on salaries and benefits received in the previous fiscal year; the amount of supplemental benefits to be received by the retirees is based on the regular monthly salary a confirmed active firefighter received in the previous fiscal year. Thus when a confirmed active firefighter receives a raise in salary, it will be reflected in the retiree's benefits in the following fiscal year. PERD reasons that subsection (2) of section 19-13-1006, MCA, provides that the money used for the supplemental benefits is given to PERD, not to "reimburse" PERD's retirement fund, but to supplement the benefits being received by the retirees, the amount of the supplement being "equal to one-half of the salary that was paid to a confirmed active firefighter in the respective city or town for the preceding year." In other words, the money for the supplemental benefits is not given to the retiree until it is received by PERD. The difference in interpretation affects the timing of an increase in benefits. Under the firefighters' interpretation, the retiree receives an increase in benefits at the same time the confirmed active firefighter receives a raise in salary. Under PERD's interpretation, the retiree's benefits will not reflect the raise until the next fiscal year.

Section 19-13-1006, MCA, has a dual purpose. The first paragraph is substantive and describes the supplemental

benefits to which the eligible recipients are entitled. The remainder of the section provides the procedure for its administration. The ambiguity lies in the wording of the first sentence of the substantive section: "The plan shall pay...a monthly retirement allowance of not less than one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city." (Emphasis added.) This language does not clearly express which year's salary is to be the basis of the retiree's allowance. The drafters of the new provisions intended that a recipient's allowance increase simultaneously with a confirmed active firefighter's salary increase. The relief associations adopted an interpretation of the administrative portion of the statute which permitted this simultaneous increase in benefits by advancing the funds needed for the increases and then reimbursing their own funds at the beginning of each fiscal year.

It is a fundamental rule of statutory construction that the intent of the legislature controls. State Bar of Montana v. Krivec, 38 St. Rptr. 1322, 632 P.2d 707 (1981). A statute should not be interpreted to defeat the legislature's object or purpose. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963). Furthermore, the legislature, in enacting section 19-13-1006, is presumed to have acted with full knowledge of the construction given to the predecessor statute, section 19-11-606, from which the wording of the present statute was adopted, and in enacting the new law is presumed to have adopted such construction. Helena Valley Irr. District v. State Highway Commission v. Yost Farm Co., 142 Mont. 239, 384 P.2d 277 (1963).

All subsections of the statute should be construed in harmony to effect the intent of the legislature when possible. Montana Auto Ass'n v. Greely, 38 St. Rptr. 1174, 632 P.2d 300 (1981). Section 19-13-1006 can be so construed and the administrative section can be construed in harmony with the substantive portion. The reenactment of the wording of the old statute is also an adoption of the construction placed on that section by the agencies and associations administering it. State ex rel. Lewis and Clark County v. State Board of Public Welfare, 141 Mont. 209, 376 P.2d 1002 (1962).

The need for corrective legislation is evident. Legislation authorizing the release of additional amounts of money from the earmarked revenue fund, which reflect estimated

anticipated raises in salaries of the confirmed active firefighters for the coming year, might be considered.

Similar problems arose with the Police Retirement system, Title 19, chapter 9, MCA. See 37 Op. Att'y Gen. No. 77 (1977). The problems inherent in those statutes were corrected through legislation. See 1979 Mont. Laws, chapter 14, § 13, chapter 457, § 2. Similar legislation might be appropriate here.

THEREFORE, IT IS MY OPINION:

Section 19-13-1006, MCA, permits the payment of supplemental benefits to the recipients based on the monthly salary paid that same fiscal year to a confirmed active firefighter of the city that last employed him. The funds distributed to PERD for this purpose in subsection (2) should therefore be used to reimburse PERD for the payments made to the recipients in the previous fiscal year.

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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