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MONTANA ADMINISTRATIVE REGISTER

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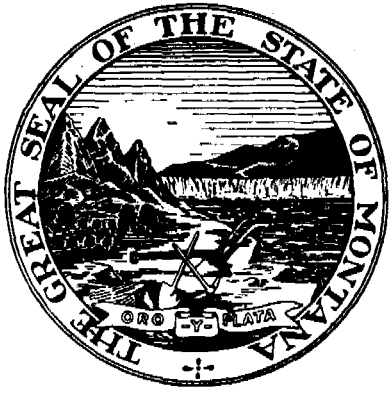

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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. Notices and tables are inserted at the back of each register.

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NOTICE SECTION

RULE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of rule 2.11.103 providing for tour guide service for the capitol building	NOTICE OF PROPOSED REPEAL OF A RULE 2.11.103, Capitol Building Tour Guide Service NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 17, 1982, the Department of Administration proposes to repeal rule 2.11.103 providing for tour guide service to the capitol building.

2. The rule proposed to be repealed is on page 2-319 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because the tour guide function will be transferred to the Montana Historical Society.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to M. Valencia Lane, Attorney, Department of Administration, Room 155, Mitchell Building, Helena, Montana 59620 no later than May 14, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to M. Valencia Lane, Attorney, Department of Administration, Room 155, Mitchell Building, Helena, Montana 59620, no later than May 14, 1982.

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

7. The authority of the department to repeal this rule is based on section 2-17-111, MCA, and the rule implements section 2-17-111, MCA.

MORRIS L. BRUSETT, DIRECTOR
DEPARTMENT OF ADMINISTRATION

By: Morris L. Brusett

Certified to the Secretary of State March 29, 1982.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of amendment of Rule 2.21.6704, relating to the state employee incentive awards program.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 2.21.6704 RELATING TO THE STATE EMPLOYEE INCENTIVE AWARDS PROGRAM.
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 17, 1982, the Department of Administration proposes to amend Rule ARM 2.21.6704, which pertains to the state employee incentive awards program.

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

2.21.6704 CREATION OF THE STATE INCENTIVE AWARDS ADVISORY COUNCIL (1) The director of the department of administration shall appoint ~~nine~~ eight members to an incentive awards advisory council under 2-15-122, MCA.

(2) The composition of the advisory council shall consist of six ~~members from the executive branch,~~ state employees, ~~two members from the legislature, two members representing public employee unions,~~ one member from the ~~private sector,~~ general public, and one ex-officio non-voting member.

(3) Members shall be appointed for a term to end June 30, 1983.

(4) The program administrator will serve as an ex-officio member of the council with no voting privileges.

(5) The incentive awards advisory council shall:

(a) meet whenever scheduled by the program administrator and consult with the program administrator to review all suggestions evaluated by the agencies and to review employee appeals on the general operation and administration of the program;

(b) in reviewing suggestions and appeals, the advisory council shall evaluate the arguments for and against approval as presented by the agencies and by the employee; and

(c) recommend which course of action to be taken on each suggestion and appeal reviewed.

(6) Recommendations of the council shall be in the form of votes cast by those members present. At least ~~six~~ five members shall be present, otherwise, the meeting shall be rescheduled since no action can be taken unless two-thirds of the members are present. The council shall make a concerted effort to resolve the tie votes including rescheduling consideration of the suggestion or appeal. However, if this is not possible, tie votes shall be recorded as such.

(AUTH. Sect. 2-18-1103 and IMP. Sect. 2-18-1104 MCA)

3. This rule is proposed to be amended to provide a more workable incentive awards advisory council.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to:

Dennis M. Taylor, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than May 15, 1982.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to: Dennis M. Taylor, Administrator, Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana, 59620, no later than May 15, 1982.

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

7. The authority of the agency to make the proposed amendments is based on Section 2-18-1103, MCA, and the rule implements Section 2-18-1104, MCA.

BY: Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State April 5, 1982.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 4.9.513 through 4.9.524 (Food and Fuels Program)	) NOTICE OF PROPOSED REPEAL) OF ARM 4.9.513 THROUGH) 4.9.524 (FOOD AND FUELS) PROGRAM))) NO PUBLIC HEARING) CONTEMPLATED

TO: All Interested Persons.

1. On May 17, 1982 the Department of Agriculture proposes to repeal ARM 4.9.513 through 4.9.524 (Food and Fuels Program).

2. The rules are proposed for repeal in that they were originally adopted as a new set of rules to replace an outdated set on the same subject, were incorrectly adopted by the Department of Agriculture, and should have been adopted by the Wheat Research and Marketing Committee.

Identical rules, only under authority of that Committee, are proposed for adoption in this issue of the register, and therefore the existing set need be removed by this repeal.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than May 15, 1982.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620, no later than May 15, 1982.

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

6. The authority of the Department of Agriculture to make the proposed repeal is Section 80-11-205 and 80-22-222, MCA.

W. Gordon McOmber, Director
Montana Department of Agriculture

Certified to the Secretary of State Apr. 15, 1982.

BEFORE THE WHEAT RESEARCH & MARKETING COMMITTEE
OF THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules replacing existing rules implementing Sec. 80-11-222, MCA (Food and Fuels Program).	NOTICE OF PROPOSED ADOPTION OF NEW RULES REPLACING EXISTING RULES IMPLEMENTING SEC. 80-11-222, MCA (FOOD AND FUELS) PROGRAM NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On May 15, 1982 the Wheat Research & Marketing Committee, Department of Agriculture proposes to adopt new rules to replace existing rules implementing Sec. 80-11-222, MCA, as amended in the 1981 Montana Legislative Session. The existing rules have been proposed for repeal by the Department of Agriculture in MAR issue No. 4, 1982, at p. 322.

2. The replacement rules listed in I through XII below are proposed because the existing rules have become outdated by virtue of a 1981 amendment to the statutory Section which the rules implemented, (Section 80-11-222 MCA.)

The new rules were once previously adopted as the replacement rules. (MAR issue No. 4, 1982, p. 377; note that the rule numbers used in that adoption, 4.9.310-321 were changed in the replacement pages to 4.9.513-524 because the original location was not in logical chapter sequence.) However, due to procedural deficiencies only, regarding rule adoption authority, these rules are being re-noticed through the rule adoption process, under authority of the Wheat Research and Marketing Committee rather than the department.

Simultaneously, the aforementioned adoption, (MAR issue No. 4) is being proposed for repeal by the department by separate notice in this issue.

I. PURPOSE OF RULES (1) Senate Bill 520 enacted by the 1979 Montana Legislature which provided for funding through the Department of Agriculture for research relating to development, production and marketing of fuels and food products derived from Montana wheat and barley. This statute was amended by the 1981 Legislature to remove fuels from the law. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

II. DEFINITIONS Unless the context requires otherwise, as used in the act and in these rules:

(1) "Act" means Chapter No. 530, Montana Session laws of 1979 (also referred to as the "Wheat Research and

Marketing Act"), Section 80-11-206 et seq., MCA, as amended.

(2) "Fuel" means ethanol or other energy source derived from Montana produced agricultural grain crops, mainly wheat or barley.

(3) "Food and feed" means a source of energy to be consumed by humans or animals, produced as a by-product in the process of manufacturing ethanol or other energy sources.

(4) "Department" means Montana Department of Agriculture.

(5) "Contract" means to award grants for marketing development, research or construction of facilities for the production of feed or food in Montana using Montana produced products.

(6) "Application" means a written proposal to the department for grants under the terms of the act and these rules.

(7) "Research" means an extensive, systematic study to discover or revise facts or theories and which would bring to a more advanced state, the capabilities, availability and suitability for marketing of or production of feed and food from wheat and barley.

(8) "Person" means a natural person, corporation, partnership, or other business entity, association, cooperative, trust, foundation, any educational or scientific institution, or any governmental unit.

(9) "Develop or development" means a project which utilizes the basic results of research or available knowledge and applies these results or knowledge to the actual development of hardware. The term also includes the establishment of manufacturing or processing facilities to produce feed and food from wheat and barley.

(10) "Demonstrate" or "demonstration" means an extensive, systematic plan and follow through to establish that specific theories and processing or manufacturing techniques are practical and can be made to work reliably over long periods of time. These projects are primarily physical models which can be observed or examined. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

III. STATEMENT OF ADMINISTRATIVE POLICIES (1) It is the intention of the department to conduct the funding program in such a manner as to obtain the maximum amount of research and development possible for the moneys expended and, in addition to attract the maximum amount of federal and/or private matching funds which can be utilized in the funding program.

(2) It is the objective of the department to only grant funding for applications which are submitted by persons who are residents of the state of Montana, and only for projects conducted in Montana. "Conducted" means that the research and development project will be headquartered in Montana and that all development will be built in Montana. This condition does not prohibit the use of expertise from outside the state of Montana.

(3) Persons who are employees or contractors of the department, relations of such persons by consanguinity within the fourth degree or by affinity within the second degree, and public utility companies are not eligible for funding.

(4) The department will solicit comment from the Wheat Research and Marketing Committee and other farm organizations and individuals as to which applications should be considered for funding. Final decision will be made by the department. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

IV. APPLICATIONS - GENERAL REQUIREMENTS (1) Any Montana resident may make application for a grant to fund a proposal or project under the Act and these rules. The applicant should submit ten copies of the application at the time of filing to the Department of Agriculture, Agriculture/Livestock Building, 6th & Roberts Street, Helena, Montana 59620, in a format consistent with these rules. A lesser number of copies may be submitted upon prior approval of the department.

(2) The application should meet the following requirements:

(a) The application should be typed, printed or otherwise legibly reproduced on 8½" x 11" paper. Maps, drawings, charts, or other documents bound in an application should be cut or folded to 8½" x 11" size. Maps, drawings, or charts may accompany an application as separate exhibits.

(b) Typed or offset material should have a one (1) inch margin on all sides.

(c) All pages in an application will be consecutively numbered. Maps, drawings, or charts accompanying the application as exhibits should be identified as "Exhibit __", and if comprising more than one sheet should be numbered "sheet __ of __".

(3) (a) The application shall state the name, title, telephone number, and post office address of the person to whom communication in regard to the application should be made.

(b) The application shall contain a statement agreeing that all materials submitted by the applicant to the Department are subject to public scrutiny.

(4) Changes in applications may be authorized at discretion of department. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

V. APPLICATION CONTENT (1) An application shall include a general declaratory statement indicating whether the applicant is seeking funds for marketing, research, development or construction project.

(a) The proposed research methods and construction methods if construction is a factor;

(b) The proposed facilities and equipment needed, including physical dimensions, diagrams and photographs;

(c) The proposed time schedule for project development;

(d) A description of the proposed anticipated results;

(e) A statement indicating where the project will be carried out or constructed, and why that particular site is suited to the proposed project;
(f) A statement indicating who will work on the project, and what their various qualifications are;
(g) A statement of the role of the project in meeting future energy and food needs;
(h) A statement of how the project will be feasible and applicable;
(i) An estimate of the net production yield of the project per unit of time;
(ii) An estimate of the by-products and their utilization.
(2) The application shall include an estimated maximum budget which may not be exceeded, which shall contain:
(a) The wages and salaries of all research personnel, clerical help, craftsmen, etc. (itemized);
(b) A list of employee benefits;
(c) A list of building costs;
(d) A list of equipment costs (equipment generally are permanent items);
(e) A list of administrative and overhead costs;
(f) A list of the cost of supplies (supplies generally are exhaustible items);
(g) A list of communication and travel costs;
(h) A list of any other expenses.
(3) The application should contain a copy of all contracted or subcontracted work, including budgets, who is to do the work, and what work is to be done. Above information may be submitted later with department permission. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

VI. APPLICATION SUBMITTAL DEADLINES Applications for fiscal 1980 funding shall be submitted by November 30, 1981 and June 30th thereafter. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

VII. APPLICATION EVALUATION (1) Applications will be reviewed and evaluated by the department or consultants selected by the department. Technical evaluations will be done on an anonymous and confidential basis and the results will be disclosed to the applicant upon request.
(a) The department may request the applicant to include a patent search which cost may be included in the project funding. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

VIII. AWARDING GRANTS - CRITERIA (1) The grant period will be one (1) year. Longer grant periods, extensions or renewals may be granted when justified at discretion of the department.
(2) By law, all information resulting from research, development, or demonstration projects funded by the

department under the Act and these rules shall be made available to the public and may not become the private property of or under the exclusive control of any one company or person.

(3) The department is under no requirement to expend or commit available funds when in its judgement such expenditures or commitments would be unproductive. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

IX. CONDITIONS UNDER WHICH GRANTS MAY BE USED AND OTHER CONDITIONS (1) Applicants shall enter into a contract grant agreement with the department if funded, under such terms and conditions the department considers appropriate.

(2) Grant recipients shall submit periodic progress reports as specified by the department, and shall submit final reports to the department at end of grant period.

(3) Funds granted under the terms of the Act and these rules may be used only for the purposes outlined and described in the application and approved by the department, and detailed records shall be kept by the recipient for all expenditures. Transfers among the budget catagories expenditures will be allowed only on the approval of the department.

(4) The grant recipient shall maintain an accounting system which adequately accounts for expenditures in a manner acceptable to the department. Records, expenditures, bookkeeping etc., for funded projects are subject to audit by the Office of the Legislative Auditor and the department.

(5) Arrangements shall be made to assist, guide, and inform the department during on-site investigations. The department will make such investigations at its discretion. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

X. PAYMENT OF GRANTS (1) Payments shall be made on a monthly or quarterly basis to be established in the contract.

(2) Payments may be withheld pending compliance of grant and contract provisions. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

XI. PROJECT ADMINISTRATION (1) The results of all research, development or demonstration projects shall be made to the department of their designee.

(2) Persons receiving funds may be required to make their projects open to the public during reasonable hours for a period of time specified by the department.

(3) The department may inspect and monitor all projects on a regular basis during and after completion of the projects. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11-222, MCA.)

XII. CONFIDENTIALITY Upon submitting an application to the department pursuant to these rules the application becomes a government document subject to public scrutiny. The applicant waives any claim of confidentiality by filing

an application with the department. Applicant and application will be subject to all applicable State and Federal laws and rules. (History: Sec. 80-11-205, MCA; IMP, Sec. 80-11,222, MCA.)

3. The foregoing rules as proposed are to assist persons interested in obtaining grants as to the formalities required to comply with the 1981 Legislative enactment of section 80-11-222, MCA.

4. If a person who is directly affected by the proposed repeal or adoption 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 Robert Brastrup, Wheat Research & Marketing Committee, P.O. Box 3024, Great Falls, Montana, 59603, no later than May 15, 1982.

5. If the agency receives requests for a public hearing on the proposed repeal of old rules and adoption of new rules from at least 25 persons who are directly affected by the proposed repeal or adoption; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association not having less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The agency was unable to estimate a number equal to 10% of the people directly affected by the proposed repeal and adoption.

6. The authority of the agency to make the proposed adoption is based on Sec. 80-11-205, MCA, and the new rules will implement Sec. 80-11-222, MCA.

Ed Kiel

Ed Kiel, Chairman
by Bob Brastrup, Executive Secretary
Wheat Research & Marketing Committee

Certified to the Secretary of State, April 5, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the proposed amendment of ARM 8.18.403 concerning general responsibilities	)))	NOTICE OF HEARING ON PROPOSED AMENDMENT OF ARM 8.18.403 GENERAL RESPONSIBILITIES

TO: All Interested Persons:

The notice of proposed board action published in the Montana Administrative Register on February 11, 1982 at pages 122 and 123, is amended as follows because the Administrative Code Committee requested the board hold a public hearing.

1. On Friday, May 7, 1982, at 10:00 a.m., a public hearing will be held in Rooms 330 and 331 of the State Capitol Building, Helena, Montana to consider the amendment of ARM 8.18.403 concerning general responsibilities of electricians.

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

"8.18.403 GENERAL RESPONSIBILITIES (1) Licensed journeyman or master electricians, shall have their license on their person at all times when employed at the trade.

(2) Electrical contractors shall have their contractors license posted at their place of business.

(3) No holder of a master electrician's license shall be named as the master electrician for more than one contractor, and the master named, shall be actively engaged in a full time capacity with that contracting company.

(a) For residential construction consisting of less than 5 living units in a single structure, subsection (3) above shall also apply to the holder of a journeyman electrician's license.

~~(3)~~ (4) No electrical contractor shall allow any person in his employ to perform electrical work unless properly licensed or working on a temporary permit.

~~(4)~~ (5) A licensed master electrican is required to sign all permit applications, certificates, countersign all tags and should ascertain that all such electrical installations meet the minimum safety standards as prescribed by the board.

(a) The licensed master electrican may be relieved from further responsibility under any application, certificate or tags countersigned by him if he has left or been discharged from the employ of an electrical contractor, provided he sends a notice in writing to that effect within 5 days to the state electrical board."

3. The board is proposing the amendment as master electricians are representing one or more companies and are not aware of the work being done or the quality of workmanship by those companies.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the State Electrical Board, 1424 9th Avenue, Helena, Montana 59620-0407, no later than May 15, 1982.

5. The board or its designee will preside over and conduct the hearing.

6. The authority of the board to make the proposed amendment is based on section 37-68-201 (4)(a), MCA and implements section 37-68-103 (4), MCA.

STATE ELECTRICAL BOARD
ALBERT BERSANTI, PRESIDENT

BY: _____
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 5, 1982.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 12.9.201 relating to Augusta Game Preserve	))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL OF RULE 12.9.201 -- AUGUSTA GAME PRESERVE

TO: All Interested Persons.

1. On May 13, 1982 at 7:00 p.m., a public hearing will be held in the commission room of the Department of Fish, Wildlife, & Parks building, 1420 East 6 Avenue, Helena, Montana, to consider the repeal of Rule 12.9.201.

2. The rule proposed to be repealed can be found on page 12-612 of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because the game preserve is a haven for deer which cause damage to adjacent haystacks and fields. This condition has developed over a long period of time. The Fish & Game Commission plans to open the area to hunting of deer only and then only by bow and arrow and shotguns, when necessary.

4. Interested persons may present their data, views or arguments orally or in writing at the hearing. Written data, views or arguments may also be submitted to F. W. Wright, Department of Fish, Wildlife, & Parks, 1420 E. 6 Ave., Helena, MT 59620, no later than May 13, 1982.

5. F. W. Wright has been designated to preside over and conduct the hearing.

6. The authority of the agency to repeal the rule is based on sections 87-1-301 and 87-5-402 and the rule implements sections 87-1-305 and 87-5-401, MCA.

Spencer S. Hegstad

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

James W. Flynn

James W. Flynn, Director
Department of Fish, Wildlife, & Parks

Certified to Secretary of State March 26, 1982.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 12.6.901 relating to water safety regulations	)))	NOTICE OF PROPOSED AMENDMENT OF A RULE RELATING TO WATER SAFETY REGULATIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. At its first meeting after May 17, 1982, the Montana Fish and Game Commission proposes to amend Rule 12.6.901 relating to water safety regulations.

2. The rule as proposed to be amended provides as follows: (The interlined and underlined portions are the only affected portions of the rule.)

12.6.901 WATER SAFETY REGULATIONS (1)(a) and (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Broadwater County	(A)on Canyon Ferry Reservoir:White Earth and Goose Bay, within 300 feet of dock or as buoyed;
Carbon County:	(A)on Cooney Reservoir:all of Willow Creek arm as buoyed;
Daniels County:	(A)Whitetail Reservoir;

(remainder of rule remains the same)

3. The proposed amendment is made to protect public safety, and protection of private and public property in a small reservoir in northeastern Montana. The reservoir was developed for fishing by a private landowner and the state. Large boats have caused bank erosion, disturbed the fishing resource, and disrupted fishing activity on the reservoir.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment, in writing, to Bob Miller, Department of Fish, Wildlife, & Parks, 1420 E. 6 Avenue, Helena, MT 59620, no later than May 17, 1982.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written comments to Bob Miller at the above address no later than May 17, 1982.

6. If the commission receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the 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 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the commission to make the proposed amendment is based upon 87-1-303 and 23-1-106(1), MCA, and implements sections 87-1-303 and 23-1-106(1), MCA.

Spencer S. Hegstad, Chairman
Montana Fish & Game Commission

Attest:

James W. Flynn, Secretary
Montana Fish & Game Commission

Certified to Secretary of State March 23 ,1982

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

In the matter of the adoption of a rule providing for the issuance of general MPDES permits and the amendment of rule 16.20.902, defining the term "MPDES permit"	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE AND AMENDMENT OF RULE 16.20.902 (Water Quality)

To: All Interested Persons

1. On May 21, 1982, at 10:00 a.m., or as soon thereafter as the matter may be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of a rule providing for the issuance of general permits under the Montana Pollutant Discharge Elimination System (MPDES) and to consider the related matter of amending rule 16.20.902(13) to include general permits within the definition of "MPDES permit". The rule to be amended is on pages 16-983 and 16-984 of the Administrative Rules of Montana.

2. The proposed rule provides as follows:

RULE I (16.20.914) GENERAL PERMITS (1) Unless clearly superceded by the following subsections, the MPDES rules of sub-chapter 9, chapter 20, Title 16, ARM, shall apply to general MPDES permits.

(2) The department may issue general permits for the following categories of point sources which the board has determined are appropriate for general permitting under the criteria listed in 40 CFR 122.59:

(a) Cofferdams or other construction dewatering discharges;

(b) Groundwater pump test discharges;

(c) Fish farms;

(d) Placer mining operations;

(e) Suction dredge operations using suction intakes no larger than 4" in diameter;

(f) Oil well produced water discharges for beneficial use;

(g) Animal feedlots;

(h) Common facultative sewage lagoons;

(i) Sand and gravel mining and processing operations

(3) Although general MPDES permits may be issued for a category of point sources located throughout the state, they may also be restricted to more limited geographical areas.

(4) Prior to issuing a general MPDES permit, the department shall prepare a public notice which includes the equivalent of information listed in 40 CFR 124.10(d)(1) and shall publish the same as follows:

(a) Prior to publication, notice to the U.S. Environmental Protection Agency;

(b) Direct mailing of notice to the Water Pollution Control Advisory Council and to any persons who may be affected by the proposed general permit;

(c) Publication of notice in a daily newspaper in Helena and in other daily newspapers of general circulation in the state or affected area;

(d) After publication, allowance for a 30-day comment period as provided in 16.20.905(6), (7)(a) through (c), (8), (9), (10), and 16.20.912(2), and 16.20.913.

(5) A person owning or proposing to operate a point source who wishes to operate under a general MPDES permit must complete a standard MPDES application form available from the department. The department shall, within 30 days of receiving a completed application, either issue to the applicant an authorization to operate under the general MPDES permit or shall notify the applicant that the source does not qualify for authorization under a general MPDES permit, citing one or more of the following reasons as the basis for denial:

(a) The specific source applying for authorization appears unable to comply with the requirements listed in 16.20.905(2)(a) through (g);

(b) The discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the general MPDES permit;

(c) An MPDES permit or authorization for the same operation has previously been denied or revoked.

(d) The discharge sought to be authorized under a general MPDES permit is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101 et seq, MCA;

(e) The point source will be located in an area of unique ecological or recreational significance. Such determination shall be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC 1274.

(6) Where authorization to operate under a general MPDES permit is denied, the department shall proceed, unless the application is withdrawn, to process the application as an individual MPDES permit under ARM 16.20.904 and 16.20.905.

(7) Every general MPDES permit shall have a fixed term not to exceed 5 years. Except as provided in subsection (10) of this rule, every authorization to operate under a general MPDES permit shall expire at the same time the general MPDES permit expires.

(8) Where authorization to operate under a general MPDES permit is issued to a point source covered by an individual MPDES permit, the department shall, upon issuance of the authorization to operate under the general MPDES permit, terminate the individual MPDES permit.

(9) Any person authorized or eligible to operate under a general MPDES permit may at any time apply for an individual MPDES permit according to the procedure in ARM 16.20.904. Upon issuance of the individual MPDES permit, the department shall terminate any general MPDES permit authorization held by such person.

(10) The department, on its own initiative or upon the petition of any interested person, may modify, suspend, or revoke in whole or in part a general MPDES permit or an authorization to operate under a general MPDES permit during its term in accordance with the provisions of sections 75-5-403 and 75-5-404, MCA, for cause, including but not limited to:

(a) An adoption of or change in applicable effluent standards, federal regulations, or applicable water quality standards such that the terms and conditions of the general MPDES permit no longer are adequate to insure compliance with federal or state requirements;

(b) The approval of a water quality management plan containing requirements applicable to point sources covered in the general MPDES permit;

(c) Determination by the department that the discharge from any authorized source is a significant contributor to pollution as determined by the factors set forth in 40 CFR 122.57(c)(2); or

(d) A change in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to a source or to a category of sources;

(e) Occurrence of one or more of the circumstances listed in ARM 16.20.907(1)(c).

(11) The department may reissue an authorization to operate under a general MPDES permit provided that the requirements for reissuance of MPDES permits specified in ARM 16.20.911(1) through (3) have been met.

(12) The department shall maintain and make available to the public a register of all sources and activities authorized to operate under each general MPDES permit including the location of such sources and activities and shall provide copies of such registers upon request.

(13) For purposes of this rule, the board hereby adopts and incorporates by reference:

(a) 40 Code of Federal Regulations (CFR) section 122.59 which sets forth criteria for selecting categories of point sources appropriate for general permitting;

(b) 40 CFR section 124.10(d)(1) which sets forth minimum contents of public notices;

(c) 40 CFR section 122.57(c)(2) which sets forth criteria for determining when a point source is considered a "significant contributor of pollution";

(d) 16 United States Code (USC) section 1132 (wilderness area designations); and

(e) 16 USC section 1274 (wild and scenic river designations).

(f) Administrative Rules of Montana (ARM) sections 16.20.905(6), (7)(a) through (c), (8), (9), and (1) which set forth minimum requirements for the receipt of public comment and requests for public hearing;

(g) ARM sections 16.20.912(2) and 16.20.913 which set forth minimum requirements for the circulation and distribution of public notices;

(h) ARM sections 16.20.905(2)(a) through (g) which set forth the criteria used to make tentative determinations on MPDES permit applications;

(i) ARM section 16.20.907(1)(c) which sets forth various ground for suspension, modification or revocation of MPDES permits;

(j) ARM sections 16.20.911(1) through (3) which set forth procedures for requesting reissuance of MPDES permits.

Copies of these laws and regulations may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTHORITY: Sec. 75-5-401, MCA
IMPLEMENTING: Sec. 75-5-401, MCA

3. Rule 16.20.902, definitions, as proposed to be amended, provides as follows:

16.20.902 DEFINITIONS

(1) through (12) no change

(13) "MPDES permit means any individual or general permit, authorization, ~~or~~ equivalent document or requirements issued by the department to regulate the discharge of pollutants from point sources into state waters.

(14) through (29) no change

AUTHORITY: Sec. 75-5-401, MCA
IMPLEMENTING: Sec. 75-5-401, MCA

4. The Board is proposing this rule and the associated amendment in order to establish a general permit program, recently authorized by federal NPDES regulations at 40 CFR 122.59, to become part of the current system of issuing water pollution discharge permits under MPDES. The proposed rule would allow the Department, under prescribed conditions, to issue one general permit for a category of minor sources and then issue authorizations to individual applicants under a streamlined review procedure. The general permit program would maintain the same control over discharges as is currently secured under MPDES but would significantly streamline the processing MPDES applications for numerous minor sources. The general permit program will substantially reduce the paperwork and the current administrative burden on the Department.

5. A copy of an explanation sheet may be obtained by contacting the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620 (phone: 449-2406).

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Room C216, Helena, Montana 59620 no later than May 20, 1982.

7. Sandra R. Muckelston, Esq., Helena, Montana, has been designated to preside over and conduct the hearing.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State April 5, 1982

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

In the matter of the amendment of rule 16.8.1109, stating conditions which must be met prior to issuance of an air quality permit	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.8.1109 (Conditions for Issuance of Permit)

TO: All Interested Persons

1. On May 21, 1982, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.8.1109.

2. The proposed amendments replace, in part, present rule 16.8.1109 found in the Administrative Rules of Montana. The proposed amendment would eliminate a provision allowing a source not meeting air quality standards to be granted an air quality permit so long as it adhered to a compliance schedule; add a requirement that anyone wishing a permit to construct or alter a source within a non-attainment area must ensure all other sources owned, etc. by that person or entity are in compliance with all air quality standards; and allow a permit for a new or altered source to be issued for a non-attainment area only if the implementation plan for that area is being carried out.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.8.1109 CONDITIONS FOR ISSUANCE OF PERMIT

(1) Same as existing rule.

(2) An air quality permit to construct ~~shall~~ may not be issued to a new or altered source~~, except as provided in subsection (5) of this rule~~ unless the applicant demonstrates that the source or stack can be expected to operate in compliance with the standards and rules adopted under the Montana Clean Air Act and the applicable regulations and requirements of the Federal Clean Air Act.

(3) A new or altered source shall not commence operation~~, except as provided in subsection (5) of this rule~~, unless the information submitted by the applicant demonstrates that construction has occurred in compliance with the permit and that the source can operate in compliance with applicable rules and standards of the permit.

(4) Same as existing rule.

~~(5) The department may issue an air quality permit for a source or stack which cannot immediately comply with an applicable rule or standard. Any permit issued under this sub-section shall be issued with a compliance schedule specifying interim construction and modification requirements that must be satisfied to achieve compliance~~

~~with applicable rules and standards. Such a compliance schedule permit shall only be issued if it is demonstrated that the source or stack can operate or be expected to operate in compliance with applicable rules and standards within two (2) years after the date of issuance of the permit.~~

~~(6)~~ (5) Same as existing rule.

(6) Any owner or operator of a new or altered source or stack proposing construction or alteration within any area designated as non-attainment in 40 CFR 81.327 for any air contaminant must demonstrate that all major stationary sources, as defined in ARM 16.8.901(14), owned or operated by such person, or by any entity controlling, controlled by, or under common control with such person, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in this chapter.

(7) An air quality permit for a new or altered source or stack may be issued in an area designated as non-attainment in 40 CFR 81.327 only if the applicable implementation plan approved in 40 CFR Subpart BB is being carried out for the non-attainment area in which the proposed source is to be constructed or altered.

(8) The board hereby adopts and incorporates by reference 40 CFR Subpart BB, which describes Montana's state implementation plan for control of air pollution in Montana; 40 CFR 81.327, which sets forth air quality attainment status designations for the state of Montana; and ARM 16.8.901(14), which defines "major stationary source". Copies of 40 CFR Subpart BB, 40 CFR 81.327, and ARM 16.8.901(14) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

4. The Board is proposing this amendment to the rule to meet objections by the federal Environmental Protection Agency to Montana's review program of new sources of air pollution and to correct deficiencies in order to ensure that the mandates of the federal Clean Air Act and rules are adequately met and that the Montana State Implementation Plan is fully approved.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Room C216, Helena, Montana, 59620, no later than May 21, 1982.

6. Sandra R. Muckelston, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on sections 75-2-111 and 75-2-204, MCA, and the rule implements sections 75-2-204 and 75-2-211, MCA.

In the matter of the amendment of rule 16.8.1114, setting conditions on transfers of air quality permits from locale to locale or person to person	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.8.1114 (Transfer of Permit)

TO: All Interested Persons

1. On May 21, 1982, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.8.1114.

2. The proposed amendment replaces present rule 16.8.1114 found in the Administrative Rules of Montana. The proposed amendment would specifically state conditions under which transfer of an air quality permit from location to location or person to person will be allowed.

3. The rule as proposed to be amended provides as follows (matter to be stricken is interlined, new material is underlined):

16.8.1114 TRANSFER OF PERMIT (1) ~~After approval by the department, an~~ An air quality permit may be transferred from one location to another ~~or from one person to another~~ if:

(a) written notice of intent to transfer location is sent to the department, along with documentation that the permittee has published notice of the intended transfer by means of a legal publication in a newspaper of general circulation in the area to which the transfer is to be made, such notice including the statement that public comment will be accepted for 15 days after the date of publication by the Air Quality Bureau, Cogswell Building, Helena, Montana 59620;

(b) the source is temporary; and

(c) the source will not have any significant impact upon any non-attainment area as defined by 40 CFR 81.327 nor upon any of the following areas:

(i) Bob Marshall Wilderness Area,
(ii) Anaconda Pintlar Wilderness Area,
(iii) Cabinet Mountains Wilderness Area,
(iv) Gates of the Mountains Wilderness Area,
(v) Glacier National Park,
(vi) Medicine Lake Wilderness Area,
(vii) Mission Mountains Wilderness Area,
(viii) Red Rock Lake Wilderness Area,
(ix) Scapegoat Wilderness Area,
(x) Selway-Bitterroot Wilderness Area,
(xi) UL Bend Wilderness Area,
(xii) Yellowstone National Park,
(xiii) Northern Cheyenne Reservation,
(xiv) Flathead Reservation.

(2) An air quality permit may be transferred from one person to another if the person to whom the permit is to be transferred demonstrates that all major stationary sources, as defined in ARM 16.8.901(14), owned or operated by such person, or by any person controlling, controlled by, or under common control of such person, are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable air quality emission limitations and standards contained in this chapter.

(3) The department will approve or disapprove a permit transfer within 30 days after receipt of a complete notice of intent as described in subsections (1)(a) or (2)(a) above.

(4) The board hereby adopts and incorporates by reference 40 CFR Sec. 81.327, which sets forth air quality attainment status designations for the state of Montana; and ARM 16.8.901(14), which defines "major stationary source". Copies of 40 CFR Sec. 81.327 and ARM 16.8.901(14) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

4. The Board is proposing this amendment to the rule to meet objections made by the federal Environmental Protection Agency to the original rule, and thereby to ensure that the permit transfer rule adequately complies with the standards of the federal Clean Air Act and its rules, and that the Montana State Implementation Plan is fully approved by EPA.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Room C216, Helena, Montana, 59620, no later than May 21, 1982.

6. Sandra R. Muckelston, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on sections 75-2-111 and 75-2-204, MCA, and the rule implements sections 75-2-204 and 75-2-211, MCA.

In the matter of the repeal of rule 16.8.706, concerning air pollution control or process equipment malfunctions, and the adoption of rule 16.8.705, concerning the same subject matter	NOTICE OF PUBLIC HEARING ON REPEAL OF RULE 16.8.706 (Malfunctions) AND THE ADOPTION OF RULE 16.8.705 (Malfunctions)

To: All Interested Persons

1. On May 21, 1982, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena,

Montana, to consider the repeal of rule 16.8.706 setting standards for dealing with malfunctions of air pollution control or process equipment, and its replacement by a revised rule on the same subject matter.

2. The rule proposed to be repealed can be found on page 16-159 of the Administrative Rules of Montana.

3. The Board is proposing this repeal and adoption of a new rule because the federal Environmental Protection Agency has objected to the present malfunction rule as failing to meet the requirements of the federal Clean Air Act and rules and has therefore only conditionally approved the Montana State Implementation Plan; the revised rule should meet EPA's objections and allow full approval of the SIP.

4. The proposed rule provides as follows:

16.8.705 MALFUNCTIONS (1) "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment, or a process when it affects emissions, to operate in a normal manner. A failure caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown is not a malfunction.

(2) The air quality bureau of the department must be notified promptly by phone (406-449-3454) whenever a malfunction occurs that can be expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than 4 hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

(a) identification of the emission points and equipment causing the excess emissions;

(b) magnitude, nature, and cause of the excess emissions;

(c) time and duration of the excess emissions;

(d) description of the corrective actions taken to remedy the malfunction and to limit the excess emissions;

(e) documentation that the air pollution control equipment, process equipment, or processes were at all times maintained and operated to the maximum extent practicable in a manner consistent with good practice for minimizing emissions;

(f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point.

(3) Upon receipt of notification pursuant to subsection (2) above, the department shall promptly investigate and determine whether a malfunction has occurred.

(4) If a malfunction occurs and creates emissions in

excess of any applicable emission limitation, the department may elect to take no enforcement action if:

(a) the owner or operator of the source submits the notification required by subsection (2) above,

(b) the malfunction does not interfere with the attainment and maintenance of any state or federal ambient air quality standards, and

(c) the owner or operator of the source immediately undertakes appropriate corrective measures.

(5) Within one week after a malfunction has been corrected, the owner or operator must submit a written report to the department which includes:

(a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter;

(b) a specific statement of the causes of the malfunction; and

(c) a description of the preventive measures undertaken and/or to be undertaken to avoid such a malfunction in the future.

(6) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction did occur.

(7) No person may falsely claim a malfunction has occurred or submit to the department information, pursuant to this rule, which is false.

AUTHORITY: Sec. 75-2-111 and 75-2-203, MCA
IMPLEMENTING: Sec. 75-2-203, MCA

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandra R. Muckelston, Cogswell Building, Room C216, Helena, Montana, 59620, no later than May 21, 1982.

6. Sandra R. Muckelston, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the Board to repeal the rule and to adopt the replacement rule is based on sections 75-2-111 and 75-2-203, MCA, and the new rule implements section 75-2-203, MCA.

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 April 5, 1982

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 18.8.514 regarding Length for which Special Permits are issued.	))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 18.8.514, LENGTH

TO: All Interested Persons:

The notice of proposed agency action published in the Montana Administrative Register on February 25, 1982, is amended as follows because the required number of persons have requested a public hearing:

1. On May 10, 1982, at 9:00 A.M. a public hearing will be held in the auditorium of the Department of Highways building, to consider the admendment of rule 18.8.514 regarding length for which special permits are issued.

2. The proposed amendment provides as follows:

"18.8.514 LENGTH (1) A ~~Single Trip or~~ Term Length Permit may be issued up to and including ~~70~~ 85 feet in length.

(2) A Term Length Permit shall not be issued to a single powered vehicle ~~in excess of 50 feet in length.~~

~~(3) A Term Length Permit shall not be issued to a single powered vehicle~~ including load, in excess of 50 feet in length.

(3) ~~(4)~~ A Trip or Term Length Permit may be issued for travel on Saturdays, Sundays, holidays and at night, to and including 70 feet in length, provided the load shall have lights full width at the extreme rear of the load and the vehicle and load do not exceed ~~the statutory~~ 9 feet in width and 14.5 feet in height.

(4) ~~(5)~~ Trip or Term Length Permits may be issued for travel on Saturdays, Sundays, holidays and at night for car carriers consisting of truck and semi trailer with vehicle length up to 70 feet and load length up to 75 feet.

~~(6) A Term Length Permit may be issued for a long combination of vehicles over 70 feet to a maximum of 85 feet, provided vehicle and load do not exceed statutory width.~~

~~(7) Application must be made by letter, which shall state the following: Necessity for use of the vehicle; Detailed route or routes to be travelled; License number of each vehicle (If not licensed, VIN numbers and complete description of each vehicle); and cargo to be hauled.~~

~~(8) The letter must be accompanied by a drawing of the combination showing the following: Total overall length of the combination; Tire size or sizes; and distance between each axle.~~

~~(9) Each application must be accompanied by a fee of $6.00.~~

~~(10)--These-permits-may-be-issued-only-by-the-G.V.W. Division-Helena-Office.~~

(5) ~~(11)~~ Violations of the permit will be recorded on the permit. Three violations and the permit will be confiscated and cannot be reissued, except by the Helena G.V.W. Office."

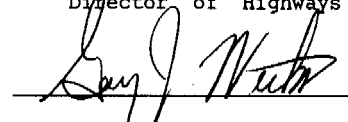
3. The rule is proposed to be amended to clarify wording and change dimension to 85 feet to be consistent with section 61-10-124, MCA. Paragraphs 6, 7, 8, 9, and 10 are proposed to be deleted since the above-mentioned statute allows these permits to be issued without these administrative requirements.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Gary J. Wicks, Director, Department of Highways, 2701 Prospect, Helena, Montana 59620, no later than May 14, 1982.

5. James R. Beck, Administrator, Legal Division, Department of Highways, 2701 Prospect, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

6. The authority of the department to make the proposed amendment is implied in sections 61-10-121 and 61-10-122, MCA, and the rule implements sections 61-10-101 through 61-10-148, MCA.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State April 5, 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 Resources Development Program	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO THE RENEWABLE RESOURCES DEVELOPMENT PROGRAM

TO: All Interested Persons

1. On May 5, 1982, at 7:30 p.m., in the auditorium, New Highway Building, 2701 Prospect Avenue, Helena, Montana, a public hearing will be held to consider the adoption of new rules pertaining to the Renewable Resources Development Program set out in Title 90 Chapter 2, Part 1, MCA.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I. 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 portion of the tax and other revenues from nonrenewable 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) The purpose of these rules is to implement the renewable resource development grant and loan program set out by Title 90, Chapter 2, Part 1, by prescribing the form and content of applications; providing guidelines and procedures for the preparation, evaluation and administration of those applications; setting the interest rate for loans pursuant to 90-2-108 (3), MCA; providing for the servicing of loans and grants including arrangements for obtaining security interests for loans; and prescribing the terms and conditions for making grants and loans, the security instruments, and agreements necessary; and providing monitoring procedures for funded projects.

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

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

(1) "DEPARTMENT" means the Department of Natural Resources and Conservation.

(2) "DEVELOPMENT" means the activity, process, plan, study or result which conserves, manages, makes available or useable, utilizes, acquires, improves, preserves or promotes the maturation or growth of renewable resources that make up the state's natural heritage. The term does not mean efforts which primarily involve research or education.

(3) "MULTIPLE USE" means a project which has more than one use and may include but is not limited to timber stand improvement, water or air quality improvement, flood control, soil conservation, recreational use, fish and wildlife, or water storage.

(4) "PRIMARY BENEFITS" mean those net values attributable to a project which result in an increase in products or services or result in a reduction in costs, damages, or losses to primary beneficiaries, or both.

(5) "PROJECT" means a planned, specific undertaking or expansion of, modification of, rehabilitation of, improvement to, or addition to an existing undertaking which involves one or more renewable resources at an identified site or location in Montana.

(6) "PUBLIC BENEFITS" means those benefits that accrue to persons other than the grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, air or water quality improvement, flood control, soil conservation, erosion reduction, agricultural flood damage reduction, water quality enhancement, forest improvement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(7) "PUBLIC INTEREST" means benefits that meet or enhance the common well-being of the people of Montana.

(8) "RENEWABLE RESOURCE" means a natural feature, value, or quality including but not limited to air, land, soil, vegetation, water, fish, wildlife, forests and recreation, capable of being renewed or sustained indefinitely by natural processes or management.

(9) "SECONDARY BENEFITS" mean net values to persons other than primary beneficiaries induced by or stemming from a project. An example of secondary benefits is increased economic activity at the local level resulting from new employment associated with the project.

(10) "TANGIBLE RETURNS" mean those marketable and non-marketable benefits that can be expressed in monetary terms and may include both primary and secondary benefits.

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

RULE III. APPLICATION PROCEDURE (1) A statement of intent to apply for a grant or loan shall be made on Form 680 obtained from and submitted to the Water Development Bureau, Water Resources Division, Department of Natural Resources and Conservation, 28 South Rodney, Helena, Montana 59620. This statement of intent will be used to determine whether a proposed project passes preliminary screening and merits further review. The Department may waive the statement of intent if the information is available to complete preliminary screening without this statement.

(2) Upon written notification by the Department that the proposal has passed preliminary screening and may be considered for funding under the Renewable Resource Development Loan and Grant Program, the applicant may make formal application using Form 681, and return it to the Department at the address listed in subsection 1.

(3) The Department will specify application periods as necessary. Public notice will be given of any application period.

(4) The Department shall return an insufficient or incomplete application for correction or completion. The Department shall provide the applicant with reasons for the application's return and a brief description of the information required in order to make the application correct or complete, or both. If these corrections or completions, or both, are not made, the proposal will not be evaluated.

(5) Proposals which more closely fit the legislative authority of another loan or grant program within state government will be referred to that program for review. For those projects considered feasible, coordination will be made among appropriate programs and the appropriation of Renewable Resource funds may be recommended.

(6) The applicant may request assistance from the Department in completing the application. The Department will provide such assistance, the level of which will be determined by availability of staff and funds.

(7) The Department will solicit and consider public views regarding proposed projects and activities.

(8) After Department review procedures are complete, proposed projects will be ranked according to the criteria described in Rule XIII and recommendations for funding priority will be made as described in Rule XII. The Department's recommendations will be submitted to the Governor and the Legislature for approval. The applicant will receive written notification from the Department of the action taken on the proposal by the Department, Governor, or the Legislature.

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

RULE IV. STATEMENT OF INTENT FOR LOANS AND GRANTS The statement of intent must be made on Form 680 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 must contain:

(1) Name, address, and telephone number of applicant or applicant's authorized representative, or both.

(2) Title or name of proposed project.

(3) Location of proposed project.

(4) Description of the proposed project and the desired accomplishment.

(5) Preliminary estimate of project costs and tangible benefits. The estimate should include primary and secondary purposes and the benefits resulting from each.

(6) Approximate amount of loan or grant money, or both, to be requested.

(7) Statement of applicant's willingness to prepare required engineering, environmental, economic and financial feasibility studies of the project as part of an application for a loan or grant, or both, if initial review indicates a proposal merits further review. This will not be required of applications for feasibility studies.

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

RULE V. 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) Name, address, and telephone number of applicant or applicant's authorized representative, or both.

(2) Title or name of proposed project.

(3) Location of proposed project.

(4) Description of the proposed project and the desired accomplishments.

(5) Amount of money to be requested for a loan or grant, or both. A statement as to whether money from other sources is available and whether it has been sought. If it has, the applicant must discuss the process and its results; if not, the applicant must give the reasons.

(6) A brief description of the history and background of the project.

(7) A discussion of the need and urgency for the project.

(8) Discussion of why the project is the best means to achieve the desired result, description of other alternatives and the applicant's consideration of those alternatives, description of why the proposed alternative is the most efficient use of natural resources.

(9) Proof, where appropriate, that the applicant holds or can acquire all necessary lands, other than public lands, and interests therein and water and other rights necessary for the construction, operation, and maintenance of the proposed project.

(10) A statement that the applicant, if successful, is able and willing to enter into a contract with the Department for repayment of loan funds or utilization of grant funds.

(11) A statement regarding the benefits which would accrue to the public as a result of the proposed project.

(12) Since the size and complexity of proposed projects will vary greatly, the detail of the information required for evaluation - technical, economic, environmental, financial and legal will vary among proposed projects. Before a formal application is submitted, the Department will advise the applicant of the informational detail in each of these areas. In general information described in Rule VI through Rule X will be requested.

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

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

(1) A detailed and thorough discussion of the plan of development including the purpose, location, function and schedule of all activity measures and project civil works.

(2) A descriptive listing of all design calculations, soils, geologic, hydrologic, and other appropriate data and criteria used to substantiate the technical feasibility. This description should document all field investigations, research information, specific assumptions, and reference to use of state of the art methodology in support of all final design criteria. For projects, detailed feasibility and design information shall be provided for all civil works.

(3) Maps, drawings, charts, tables, etc., used as a basis for the feasibility analysis.

(4) A description of the water and land rights associated with the project, if appropriate; and

(5) The Department may request any additional information deemed necessary to document technical feasibility.

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

RULE VII. ECONOMIC ASSESSMENT OF PROJECTS (1) All projects which receive funding must provide a tangible return to the state or its citizens. Section 90-2-103, MCA.

(2) 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.

(3) 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 90-2-113, MCA IMP: 90-2-103,90-2-108, 90-2-111, and 90-2-113, MCA

RULE VIII. ENVIRONMENTAL COMPATIBILITY OF PROJECTS (1) The Department will assess each proposal for environmental compatibility. This assessment will consider whether the benefits of the project outweigh the impacts and the plan of development minimizes adverse impact on the environment. To assist the Department in determining environmental acceptability, the applicant must demonstrate the probable environmental and ecological consequences of the project by considering all areas of study identified on an environmental checklist supplied by the Department. The Department will assess these results to determine if a proposed project or activity is environmentally acceptable.

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

RULE IX. 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 be made available to complete the project, and if sufficient revenues can 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 X. LEGAL (1) The applicant shall certify that the applicant will comply with applicable statutory and regulatory standards such as those protecting the quality of resources such as air, water, land, forest, fish, wildlife and recreational opportunities.

AUTH: 90-2-108 and 90-2-111, MCA IMP: 90-2-103, 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 XII. RANKING OF FEASIBLE PROJECTS OR ACTIVITIES TO DETERMINE FUNDING PRIORITIES (1) The Department will utilize a point scoring system to rate all feasible projects in regard to how well they meet the criteria for the program.

(2) The results of this scoring will determine the funding priority for recommendations to be made to the Governor.

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

RULE XIII. CRITERIA The Department will consider the following criteria in prioritizing proposed projects for funding recommendations. Feasible projects that best meet these criteria will be recommended for funding. Project comparison will be implemented using a point scoring system.

(1) Projects which assist the program in filling one of the target categories defined by law. These categories are: 15% for timber stand improvement or related purposes, 40% for water development projects, 15% for improvement on agricultural lands, 10% for conservation districts for development of their water reservations and 20% for such other projects as the Department considers appropriate.

(2) Projects which will provide for multiple uses.

(3) Projects which will most enhance the quality of existing public resources such as land, air, water, fish, wildlife, and recreational opportunities.

(4) Projects which will provide the most tangible return to the state or its citizens.

(5) Projects which will optimize public benefits.

(6) Projects which will provide geographic balance to the Renewable Resource Development Program.

(7) Projects which will best promote the conservation and efficient use of the resource.

(8) Projects which have not received funds from the program previously.

(9) Projects whose results have a potential for being applied in other areas of the state.

(10) Projects which have an immediate need and urgency.

(11) Projects which meet environmental acceptability tests.

AUTH: 90-2-108 and 90-2-111, MCA IMP: 90-2-103,90-2-107, 90-2-111 and 90-2-113, MCA

RULE XIV. REPORTING AND MONITORING PROCEDURES (1) The Department will require periodic progress and fiscal reports from the project sponsor. The Department will also make a minimum of annual periodic field inspections and may require the project sponsor to procure the services of a qualified expert so as to ensure that plans and specifications are being followed, and that

the works, if any, are being constructed in accordance with sound engineering and technical principles and practices. The Department will bring to the attention of the sponsor, the project engineer or the project director any unapproved variances from the approved plans and specifications. The sponsor, project engineer, project director, or Department shall initiate necessary corrective action. Contractual agreements will contain procedures for this corrective action. These procedures will include provisions for renegotiation of the contract and methods to withhold funds if contractual agreements are not being met.

AUTH: 90-2-108 and 90-2-111, MCA IMP: 90-2-108,90-2-110, and 90-2-111, MCA

RULE XV. FINANCIAL ARRANGEMENTS FOR LOANS (1) The Department will service all loans made using Renewable Resource Development Program funds except as provided in paragraph (4) of this rule.

(2) The Department will notify the applicant of loan approval with a commitment letter from the Department. The applicant and the Department may then enter into a loan agreement if the following conditions are met:

(a) funds are available;

(b) security is offered by the applicant and accepted by the Department;

(c) appropriate permits have been obtained;

(d) report for title insurance on the security is obtained;

(e) both parties are willing to sign the loan agreement; and

(f) other conditions that the Department shall consider appropriate have been met.

(3) A loan agreement must be entered into between the Department and the project sponsor. This agreement shall contain at least:

(a) a detailed scope of work and budget which have been agreed upon by the applicant and the Department.

(b) a disbursement schedule for these loan funds which will be dependent on progress of the proposed project or activity, and an administrative procedure by which these funds will be disbursed.

(c) a loan repayment period which will be 30 years or the useable life of the project, whichever is less.

(d) a loan repayment procedure and schedule.

(e) other information the Department shall consider appropriate.

(4) The Department may enter into agreements with financial institutions for servicing of loans if it becomes more efficient or economical to do so. This change to the use of financial institutions may be made at any time. This service may include credit and risk assessment, loan closure, establishing repayment periods and schedule, required accounting service, making proper

repayments to the renewable resource development account or clearance fund account and conducting foreclosure procedures. If the Department uses financial institutions, applicants will pay for these services. The rate paid to financial institutions will be one agreed upon contractually between the Department and the institutions.

AUTH: 90-2-108, MCA IMP: 90-2-108 through 90-2-110, MCA

RULE XVI. INTEREST RATES FOR LOANS (1) In setting the interest rates, the Board of Natural Resources and Conservation will consider:

(a) the cost of capital to the program; and

(b) effect of the interest rate on accomplishing the objectives of the program.

(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 in its Bond Buyer Indexes. 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

RULE XVII. SECURITY FOR LOANS (1) As required by law, the Department must obtain security which is at least equal to 125% of the value of the loan.

(2) Real property used for securing the loan must have been appraised by an appraiser acceptable to the Department, or by a Department appraiser within one year of the date of the application. Appraisal results need not accompany the application but must be supplied to the Department when needed for application evaluation. Such appraisal shall be supplied within 30 days of request.

(3) Foreclosures on delinquent loans will be made in accordance with applicable state law governing foreclosure of mortgages and liens. The borrower shall be apprised of these procedures at the time of loan closure and shall be given adequate notice of the institution of foreclosure proceedings.

AUTH: 90-2-108, MCA IMP: 90-2-108 and 90-2-109, MCA

RULE XVIII. USE OF FUNDS FOR GRANTS VERSUS LOANS (1) The Department will, in the absence of extenuating circumstances, recommend appropriation of funds such that grant funds are used to finance:

(a) feasibility studies;
(b) projects with no real repayment capacity;
(c) up to 50% of the total cost of projects with repayment capacity.

(2) The Department will recommend appropriation of loan funds for projects with repayment capacity or for any of the three grant categories above as requested.

AUTH: 90-2-108 AND 90-2-111, MCA IMP: 90-2-107 AND 90-2-111, MCA

RULE XIX. FEES (1) A loan applicant will bear the cost of appraisal of offered security and filing or related costs necessary to protect the security interest.

(2) If an environmental impact statement is required pursuant to the Montana Environmental Policy Act and the Department's rules (ARM 36.2.601-36.2.608), the applicant must bear the cost of the environmental impact statement. These MEPA rules set out a fee schedule which will be used for this program.

AUTH: 90-2-108 and 90-2-111, MCA IMP: 90-2-103,90-2-108 90-2-110 and 90-2-111, MCA

RULE XX. FORMS The following forms are used in the administration of these rules:

(1) Statement of intent Form 680;
(2) Application Form 681.

These forms can be obtained from the:

Water Development Bureau
Water Resources Division
Department of Natural Resources and Conservation
28 South Rodney
Helena, Montana 59620
449-3760

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

4. The Board of Natural Resources and Conservation is preparing these rules to implement the Renewable Resource Development Program. The proposed rules describe the form and content of applications; provide guidelines and procedures for the preparation, evaluation, and administration of those applications; set the interest rates for loans pursuant to 90-2-108(3), MCA; provide for the servicing of loans and grants including arrangement for obtaining security interest for loans; prescribe the terms and conditions for making grants and loans, the security instruments, and agreements necessary; and provide monitoring procedures for funded projects.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mark O'Keefe, Chief, Water Development Bureau, Department of Natural Resources and Conservation, 32 S. Ewing, Helena, Montana 59620, no later than May 13, 1982.

6. Mark O'Keefe has been designated to preside over and conduct the hearing.

7. The authority and implementing sections are listed at the end of each rule.

BY: for Leo Berry, Jr.
Director
Department of Natural
Resources and Conservation

Certified to the Secretary of State April 5, 1982.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE Amendment of 42.15.111 concerning the taxation of military pay by the State of Montana.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 42.15.111, concerning the taxation of military pay by the State of Montana.

TO: All Interested Persons:

1. On May 14, 1982, at 9:30 a.m., a public hearing will be held in Room 159 of the Mitchell Building, Helena, Montana, to consider the amendment of rule 42.15.111 relating to the taxation of military pay received by National Guardsmen and Reservists in the State of Montana.

2. The rule proposed to be amended can be found at page 42-1511, ARM. The Department proposes to amend 42.15.111 as follows:

42.15.111 MONTANA MILITARY PERSONNEL (1) Residents of Montana who enter the Armed Forces of the United States do not lose their residence or domicile in Montana solely by reason of being absent from this state in compliance with military orders. Accordingly, such persons remain subject to this tax in the same manner and to the same extent as other persons who are residents of Montana.

(2) However, effective with taxable years ending after December 31, 1974, compensation for active duty service as a member of the regular Armed Forces is exempt from tax.

(3) Residents will be considered members of the Armed Forces on active duty when they are called to duty under Title 10, U.S.C.A. Montana National Guard members and others serving under another authority are subject to the tax.

(4) Effective for taxable years beginning after December 31, 1981, members of each reserve component, as listed under Title 10, U.S.C. 261(a), are subject to state income tax.

AUTH: 15-30-305; IMP: 15-30-101(15) and 15-30-116.

3. The Attorney General of Montana in an opinion dated December 11, 1981, held that the term duty "in the regular Armed Forces", does not include duty in the Reserve components. Reserve components are the reserve units of the Army, Air Force, Navy, Marines and Coast Guard as designated by 10 U.S.C. §261(a). As a result, all pay received by a National Guardsman or a member of a Reserve component for such things as weekend drills and annual training duty is subject to state income tax.

Section 15-30-116(2) provides that the salary received from the Armed Forces while on active duty is exempt from state income taxes. This rule is necessary to clarify that salary from the Armed Forces does not include salary from the National

Guard or a Reserve component.

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 no later than May 15, 1982 to:

R. Bruce McGinnis
Tax Counsel
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

5. Mr. Roy Andes, Agency Legal Services, Office of the Attorney General, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed amendment is found at 15-30-305, MCA. The section to be implemented is 15-30-116(2), MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 4/5/82

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

NOTICE OF PUBLIC HEARING ON
PROPOSED REVISION OF LIQUOR
[DISTILLED SPIRITS AND SOME WINES]
PRICING FORMULA FOR PURPOSES OF
MONTANA LIQUOR PRICES FOUND IN
Title 16, MCA

TO: All Interested Persons:

1. On April 23, 1982, at 1:30 p.m., a public hearing will be held in the First Floor Conference Room, Room 159, Mitchell Building, Helena, Montana, to consider the revision of the liquor [distilled spirits and some wines] pricing formula for purposes of Montana liquor [distilled spirits and some wines] prices found in Title 16, MCA. This notice supplements notice of hearing which appears in newspapers of general circulation in the State of Montana.

2. The revision of the liquor [distilled spirits and some wines] pricing formula is proposed as a result of the 47th Legislative Session mandating the Department, in HB 500, to achieve a net liquor sales profit goal of not less than 15% of net liquor sales and not less than $13,000,000 during the 1983 biennium.

3. The Department's proposed revision of the liquor [distilled spirits and some wines] pricing formula may be reviewed by interested parties at the Department's Liquor Division, Room 375, Mitchell Building, Helena, Montana, during normal business hours.

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 no later than April 22, 1982, to:

Michael G. Garrity
Tax Counsel
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

5. Ellen Feaver, Director of Revenue, will preside over and conduct the hearing.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 4/5/82

7-4/15/82 MAR Notice No. 42-2-190

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

In the matter of the adoption of a rule pertaining to coverage and conditions of AFDC eligibility, pregnant minor or minor with child.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE PERTAINING TO AFDC ELIGIBILITY.

TO: All Interested Persons

1. On May 5, 1982, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the adoption of a rule pertaining to coverage and conditions of AFDC eligibility, pregnant minor or minor with child.

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

RULE I (46.10.324) PREGNANT MINOR OR MINOR WITH CHILD

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

(a) In determining whether the minor's parents are able to provide equivalent support, the minor's parents' income will be considered available to the minor whether or not actually contributed after the following disregards:

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

(ii) child care expenses 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 parents and any other minors other than the minor in question.

(b) If the minor's parent is receiving AFDC in behalf of the minor, the minor'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.

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

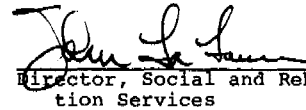
(a) The children of a minor are eligible for AFDC provided all other eligibility factors are met.

3. The authority of the agency to adopt the rule is based on Section 53-4-212, MCA and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

4. The proposed rule clarifies current policy in regard to coverage of pregnant minors or minors with children. This rule provides guidelines for determining whether or not the minor's parents can be determined financially able to support the minor living in their home. If it is determined that the parents of the minor can support him, then the minor is not eligible for AFDC payments.

5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana, no later than May 13, 1982.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State 4-2, 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 AFDC work experience and training program	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO WORK EXPERIENCE AND TRAINING PROGRAM

TO: All Interested Persons

1. On May 5, 1982, at 10:30 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 AFDC work experience and training program.

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

RULE I (46.10.601) GENERAL (1) The department of social and rehabilitation services and the department of labor and industry shall jointly operate a program in which an employable or potentially employable person may be required to participate as a condition of eligibility for AFDC payments.

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

RULE II (46.10.602) DEFINITIONS (1) "AFDC" means aid to families with dependent children as defined in the Federal Social Security Act. 42 USC 601 through 626.

(2) "Board" means the board of social and rehabilitation appeals.

(3) "Departments" means the department of social and rehabilitation services and the department of labor and industry.

(4) "WETP" means the work experience and training program established under this part.

(5) "Project" means a place, approved by the departments, at which a recipient of AFDC payments may receive work experience or training.

(6) "WIN" means the federal work incentive program provided for in 42 USC 630 through 644.

(7) "Unassigned Recipient" means all WIN registrants who are AFDC recipients and who are neither:

(a) working registrants;

(b) in part time employment status;

(c) in a component; nor

(d) in another WIN noncomponent activity.

(8) "Component" means a structured, regularly scheduled WIN activity for WIN certified registrants.

(9) "Other WIN Noncomponent Activity" means all activities dealing with job development, counseling, and informal adjudication and/or reassessment wherein the WIN staff maintains periodic contact (at least monthly) with the registrant. It includes: receipt of employment assistance such as job development, referrals and counseling; informal adjudication and 30 day counseling; reassessment and testing; registrants engaged in non-WIN funded education or training activities who are not assigned to the suspense component but whose activities are part of the employability plan (EP); registrants awaiting assignment to a component or non-WIN educational or training activity; registrants awaiting availability of separate administrative unit (SAU) services certified as arranged; or registrants awaiting resolution of a non-WIN related matter within a short time period.

(10) "Mandatory" means an AFDC applicant or recipient who is required to register for WIN as a condition of eligibility for AFDC.

(11) "WIN Sanctions" means deregistration from the WIN program for non-participation without good cause and denial of reregistration for a period of time during which the individual is ineligible for an AFDC grant.

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

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

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

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

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

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

RULE V (46.10.605) PARTICIPANT PROTECTION (1) Worker's compensation will be provided in behalf of program participants.

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

RULE VI (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 58 hours in any one month reporting period.

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

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

RULE VII (46.10.607) FAILURE TO COMPLY (1) If a WETP mandatory participant fails to comply with the requirements of the program without good cause WIN sanctions (ARM 46.10.310) will be applied.

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

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

RULE VIII (46.10.608) REAPPLICATION AFTER REFUSAL TO PARTICIPATE (1) Participants who have been terminated for refusal to participate without good cause may reapply for AFDC after the sanction period has elapsed.

(2) WIN may, at its discretion, refuse to register recipients who have previously been sanctioned for noncooperation.

The authority of the agency to adopt the rule is based on Section 53-2-707, MCA and the rule implements Section 53-2-707, MCA.

3. HB 258, Chapter 390 of the Session Laws of the 47th Legislature, requires the Department of Social and Rehabilitation Services and the Department of Labor and Industry to jointly establish a work experience and training program in order to provide AFDC recipients an opportunity to contribute their efforts to society, to improve their skills, and increase their employment opportunities, to promote their self-sufficiency and to provide a basis on which expansion of this program to include recipients of other forms of assistance might be evaluated. Therefore, the rules above are proposed to be adopted.

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, no later than May 13, 1982.

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

John LaFaver
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 5, 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 community services block grants to counties	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO THE COMMUNITY SERVICES BLOCK GRANTS TO COUNTIES

To: All Interested Persons

1. On May 6, 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 community services block grants to counties.

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

RULE I (46.9.601) PURPOSE (1) The purpose of the community services block grant to counties is to alleviate the causes of poverty within the state.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

RULE II (46.9.602) DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Act" means the Omnibus Budget Reconciliation Act of 1981.

(2) "CSBG" means the community services block grant.

(3) "Director" means the director of the department of social and rehabilitation services.

(4) "Poverty line" means the official poverty line established by the director of the federal office of management and budget.

(5) "Department" means the department of social and rehabilitation services.

(6) "County" means the board of county commissioners.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

RULE III (46.9.603) COUNTY PLAN (1) To receive its allotment of CSBG funds, as determined under Rule VI (ARM 46.9.606), each county must submit, by July 1 of each year, its plan to the department for review and approval.

(a) If two or more counties choose to join in multi-county or regional efforts, one plan for all participating counties may be submitted.

(b) If the federal CSBG appropriation has not been determined to such a degree that estimates of county allocations are unfeasible, the submittal date in subsection (1) above will be revised accordingly.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

RULE IV (46.9.604) COUNTY PLAN ASSURANCES AND CONTENT

(1) A county must assure in its plan that it will only use the funds:

(a) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

(b) to provide activities designed to assist low-income participants including the elderly poor:

(i) to secure and retain meaningful employment;

(ii) to attain an adequate education;

(iii) to make better use of available income;

(iv) to obtain and maintain adequate housing and a suitable living environment;

(v) to obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, family needs, including the need for health services, nutritious food, housing and employment related assistance;

(vi) to remove obstacles and solve problems which block the achievement of self-sufficiency;

(vii) to achieve greater participation in the affairs of the community; and

(viii) to make more effective use of other programs related to the purpose of this subchapter.

(c) to provide on an emergency basis for the provision of such supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor;

(d) to coordinate and establish linkages between governmental and other social services programs to assure the effective delivery of such services to low-income individuals; and

(e) to encourage the use of entities in the private sector of the community in efforts to ameliorate poverty in the community.

(2) Not all of items in subsections (b) through (e) above must be proposed in a county plan. However, the county does have to certify that it is providing a range of services and activities having a measurable and potentially major impact on the causes of poverty in its community, commensurate with the amount of money received.

(3) The plan shall contain the additional assurances that:

(a) CSBG funds will not be used to provide voters and prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration activity;

(b) CSBG funds will be used to provide for coordination between anti-poverty programs and, where appropriate, with emergency energy crisis intervention programs under Title XXVI of the Act (relating to low-income home energy assistance) conducted in the county;

(c) fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for CSBG funds;

(d) the county will prepare and submit to the state, at least once every two years, an independent audit of the CSBG funds;

(e) amounts found not to have been expended in accordance with the Act or the county plan will be repaid to the state;

(f) no person shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded, in whole or in part, with CSBG funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity;

(g) CSBG funds will not be used for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repair) of any building or other facility;

(h) it will permit and cooperate with any federal or state investigation related to the CSBG.

(4) The county plan must contain:

(a) evidence that an assessment of needs has been undertaken to determine the best expenditures of CSBG funds;

(b) a description of which services and activities will be carried out and the means to be used to provide those services and activities. Such description shall also include the geographic areas to be served, and categories or characteristics of individuals to be served. If direct services are planned, only individuals with income below the poverty line are eligible;

(c) a proposed budget describing how the CSBG funds will be used during the program period;

(5) The program period will begin October 1 and end on September 30 of the following year. All plans/budget mate-

rial must be proposed for completion during that period. Should unusual or extraordinary circumstances occur, the department will entertain requests for amendment(s) to the county plan.

(6) The county plan shall be submitted on forms provided by the department.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

RULE V (46.9.605) PLAN APPROVAL, DISAPPROVAL, AMENDMENTS (1) The department will, within 45 working days of plan receipt, notify the county of approval/disapproval of each plan.

(2) The department will base its review of the plan on whether or not:

(a) the plan demonstrates that it provides a range of services and activities having a measurable and potentially major impact on causes of poverty in the community, or those areas of the community where poverty is a particularly acute problem;

(b) all assurances and requirements of Rule IV (ARM 46.9.604) have been met.

(3) If the plan is either partially or totally unacceptable, the department will work with the county to develop an acceptable proposal. If an acceptable proposal can not be developed within thirty days after notice of disapproval, CSBG funds reserved for the affected county shall be distributed to counties with approved plans.

(4) If a plan is disapproved, a county has the right to appeal to the Director. The Director's decision shall be the final administrative decision.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

RULE VI (46.9.606) COUNTY ALLOTMENTS (1) From the available CSBG funds, the department shall retain 5% for cost of administration of the grant and 5% for special projects. The remainder is allocated to county governments in the following proportions:

(a) 50% is allocated according to general population distribution as provided in subsection 2;

(b) 35% is allocated according to poverty population distribution as provided in subsection 3;

(c) 15% is used to assure a minimum grant equal to one half of one percent of CSBG funds for each county as provided in subsection 4 and to increase the grants for economically depressed counties as provided in subsection 5.

(2) General population allocation: Each county shall receive an amount equal to the county's 1980 census population less the county's Indian population living on reservations divided by Montana's 1980 census population less the state's Indian population living on reservations times the amount available for allocation according to general population distribution in subsection (1)(a).

(3) Poverty population allocation: Each county shall receive an amount equal to the county's 1980 census of poverty less the county's Indian population living on reservations below poverty population divided by Montana's 1980 census of poverty population less Montana's Indian population living on reservations below poverty times the amount available for allocation according to poverty population distribution in subsection (1)(b).

(4) Minimum allocation: If the sum of the allocations as provided in subsection (2) and (3) is less than one half of one percent of CSGB funds for a county, then an amount is added to the allocations in subsections (2) and (3) for that county to yield a minimum allocation of one half of one percent of CSGB funds.

(5) Economically depressed county allocation:

(a) The amount available for increasing grants to economically depressed counties is the amount remaining after the funds necessary to insure that all counties have a minimum allocation as provided in subsection (4) has been deducted.

(b) If a county qualifies as an economically depressed county, then an amount is added to that county's allocations as provided in subsections (2), (3) and (4) equal to the county's 1981 relative unemployment rate divided by the sum of all qualifying counties' 1981 relative unemployment rate times the amount available for allocation to economically depressed counties.

(i) a county qualifies as an economically depressed county if its 1981 unemployment rate is more than one standard deviation above the mean of all counties' 1981 unemployment rate.

(ii) a qualifying county's relative unemployment rate is the qualifying county's 1981 unemployment rate less the unemployment rate at one standard deviation above the mean of all counties' 1981 unemployment rate.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

RULE VII (46.9.607) RELEASE OF COUNTY ALLOTMENTS

(1) Release of county allotments is contingent upon receipt by the department of the federal CSBG funds. As those funds are received, they will be disbursed by the department.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

RULE VIII (46.9.608) REPORTS (1) Within 90 days of the end of the grant period or the completion of a county's planned activities, whichever comes first, the county will submit to the department certification that all assurances and services or activities contained in its approved plan have been complied with and achieved.

(2) Upon request, the county will submit to the department a description of how the funds were expended and for which services or activities.

The authority of the department to adopt the proposed rule is based on Section 53-2-201, and the rule implements HB 2 of the First Special Session, 1982.

3. The Omnibus Budget Reconciliation Act of 1981, Title VI, Subtitle B, authorizes community service block grants to the states to alleviate the causes of poverty within the states. The First Special Session of the 47th Legislature in HB 2 approved Montana's assumption of the community service block grant, effective January 1, 1982. HB 2 mandated that, after FY 82, CSBG funds shall be implemented through the counties. These proposed rules provides a formula for distribution and operation of the community service block grants.

From the CSBG federal allocation for Montana for the period October 1, 1982 through September 30, 1983, the federal allocation for Indian reservations is deducted. The federal allocation of Indian reservations in Montana is 10.46349% of the state's total allocation. The federal government is responsible for administering the Indian reservation allocation. The department is responsible for administering the balance.

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 May 14, 1982.

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

John La Faver

Director, Social and Rehabilitation Services

Certified to the Secretary of State 4-5, 1982.

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

In the matter of the adoption of rules and the repeal of Rules 46.9.401, 46.9.402, 46.9.403, 46.9.404, 46.9.405 and 46.9.406 pertaining to general relief assistance	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULES AND THE REPEAL OF RULES 46.9.401, 46.9.402, 46.9.403, 46.9.404, 46.9.405 AND 46.9.406 PERTAINING TO GENERAL RELIEF ASSISTANCE

TO: All Interested Persons

1. On May 6, 1982 at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the adoption of rules and the repeal of Rules 46.9.401, 46.9.402, 46.9.403, 46.9.404, 46.9.405 and 46.9.406 pertaining to general relief assistance.

2. Rule 46.9.401 proposed to be repealed is on page 46-634 of the Administrative Rules of Montana.

3. The authority of the agency to repeal this rule is based on 53-3-102, MCA and the rule implements 53-3-102, MCA.

4. Rule 46.9.402 proposed to the repealed is on page 46-634 of the Administrative Rules of Montana.

5. The authority of the agency to repeal this rule is based on 53-3-102, MCA and the rule implements 53-3-102, MCA.

6. Rule 46.9.403 proposed to the repealed is on page 46-639 of the Administrative Rules of Montana.

7. The authority of the agency to repeal this rule is based on 53-3-102, MCA and the rule implements 53-3-102, MCA.

8. Rule 46.9.404 proposed to the repealed is on page 46-639 of the Administrative Rules of Montana.

9. The authority of the agency to repeal this rule is based on 53-3-102, MCA and the rule implements 53-3-102, MCA.

10. Rule 46.9.405 proposed to the repealed is on page 46-639 of the Administrative Rules of Montana.

11. The authority of the agency to repeal this rule is based on 53-3-102, MCA and the rule implements 53-3-102, MCA.

12. Rule 46.9.406 proposed to the repealed is on page 46-639 of the Administrative Rules of Montana.

13. The authority of the agency to repeal this rule is based on 53-3-102, MCA and the rule implements 53-3-102, MCA.

14. The rules as proposed to be adopted provided as follows:

RULE I COUNTY PLAN Counties shall write their own general assistance and medical rules which then must be approved by the Department to be effective prior to implementation.

(1) For general assistance, any county whose plan or portion thereof that has not been approved must use the maximum applicable criteria of the AFDC program for eligibility determination and furnishing assistance as described below:

(i) the AFDC eligibility and income standards as found in ARM 46.10.402, .403, .507, .511 and the resource standards as found at 46.10.406 and .407.

(2) For county medical assistance, any county whose plan or portion thereof that has not been approved must use the maximum income assets criteria of the medicaid program for eligibility determination and applicable criteria for furnishing assistance, except that medical assistance may not be provided to individuals whose income exceeds 300% of the AFDC standard.

(i) The medicaid eligibility and income standards as found at ARM 46.12 subchapter 34 and services as provided at ARM 46.12.501.

(3) Submission and amendment to the county plan must be provided to social and rehabilitation services 15 working days prior to the desired implementation date.

The authority of the agency to adopt the rule is based on Sections 53-3-102, 53-2-201 and 53-2-323 and the rule implements 53-3-301, 53-3-302, 53-2-321 and 53-2-323, MCA.

RULE II GENERAL ASSISTANCE (1) Each county that has a plan must have it approved by the department describing the scope and duration of assistance provided within the county which meets a minimal subsistence standard compatible with decency and health.

(2) The county plan must describe procedures for application and determination of eligibility for general assistance.

(i) Maximum allowable income and resources and appropriate disregards to those items must be designated.

(3) The county plan must provide for the following:

(i) provision of goods or services to meet a demonstrated need in the area of shelter, utilities, clothing, food, transportation and personal care items at a level that is reasonable and necessary but not to exceed the AFDC stand-

ard.

(ii) a method of appealing any decision made by the county board must be described and be consistent with 53-3-107, MCA.

(iii) provide for work registration at the job service office as mandated by 53-3-303, MCA.

(iv) provide for a penalty of one week for each refusal to accept work as mandated by 53-3-305, MCA.

(4) The county plan must describe procedure for providing the services described in (3) above and be consistent with 53-3-302, MCA.

(5) Any county to be eligible for a matching grant-in-aid must have county work program. The county plan must describe the policies and operation of the work program in the county. All work programs must:

(i) reimburse participants at the prevailing rate of wages paid by that county for similar work.

(ii) provide worker's compensation.

(iii) maintain a system of records whereby a review can be made of the number of applicants, number of participants, and estimated number of applicants who did not receive benefits due to refusal to work. These records must be available to the Department or its designee.

The authority of the agency to adopt the rule is based on Sections 53-3-102, 53-2-201 and 53-2-323 and the rule implements 53-3-301, 53-3-302, 53-2-321 and 53-2-323, MCA.

RULE III COUNTY MEDICAL ASSISTANCE (1) The county plan must provide:

(i) maximum allowable income and resources and appropriate disregards for eligibility determinations, except that medical assistance may not be provided to individuals whose income exceeds 300% of the AFDC standard.

(ii) retroactive coverage for services rendered prior to application not to exceed 90 days.

(iii) mandatory services to ensure that emergency health needs are covered as found at ARM 46.12.501 (1), (a), (b), (c), (d) and (f).

(iv) optional services as determined necessary or desirable by the county board.

(2) The county plan must describe the method of payment for medical services. For county to be eligible for matching or emergency grant-in-aid, reimbursement must not exceed medicaid limits nor services exceed those provided by the medicaid program.

The authority of the agency to adopt the rule is based on Sections 53-3-102, 53-2-201 and 53-2-323 and the rule implements 53-3-301, 53-3-302, 53-2-321 and 53-2-323, MCA.

15. The First Special Session of the 47th Montana Legislature enacted HB 7 which allowed county board's to establish their own rules and standards for general relief assistance. The department has the duty to review and approve or disapprove those rules and standards as a whole or in part. The reasonable and responsible lawful expectations of the department to be utilized in this review process have been set out in these rules. With the adoption of these new rules, the department's existing general relief assistance rules would be unnecessary and are therefore proposed to be repealed.

The First Special Session of the 47th Montana Legislature also enacted HB 13 which requires a county to have a work program to receive a matching grant-in-aid. Parameters have been set out in these proposed rules to outline what a minimally acceptable work program must consist of.

16. 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, MT 59604, no later than May 14, 1982.

17. The Office of Legal Affairs, 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 April 5, 1982.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to alternate work schedules	)))))	NOTICE OF THE ADOPTION OF RULES RELATING TO ALTERNATE WORK SCHEDULES 2.21.1601 THROUGH 1606; 2.21.1611

TO: All Interested Persons.

1. On January 28, 1982, the Department of Administration published notice of a proposed adoption of rules concerning alternate work schedules at page 56 of the 1982 Montana Administrative Register, issue number 2.

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

2.21.1605 (RULE V) ALTERNATE SCHEDULE LIMITATIONS Where alternate schedules are adopted:

(1)-(5) Same as proposed rule.

2.21.1606 (RULE VI) CRITERIA FOR ALTERNATE SCHEDULES

(1) Where appropriate, supervisory staff shall be scheduled so that someone with supervisory authority is in the general work area at all times during the extended day. Because four, 10-hour days create special problems of supervisory coverage, such a schedule shall not be approved for a supervisor, unless the entire work unit supervised shifts to this schedule~~.~~ , or unless alternate supervision is approved.

(2)-(4) Same as proposed rule.

3. The agency has received the following written comments:

COMMENT: (Dave Mott, Department of Fish, Wildlife and Parks): Rule VI should be amended to add "or unless alternate supervision is approved."
(David L. Hunter, Department of Labor and Industry): More supervisory flexibility is needed.
RESPONSE: The department agrees and the rule has been modified to reflect this change.

COMMENT: (Tom Gooch and Virgil Dixon, Department of Institutions; Lynda Brown, University of Montana): Certain provisions of the rules are not applicable to the agency's operation. Agencies should be able to develop their own policies on alternate scheduling.

RESPONSE: The rules provide that before any system of alternate work schedules is implemented by an agency, that agency must establish its own guidelines in an agency policy based on these rules. Implementation of alternate schedules in a facility or work unit is entirely within the discretion of the agency.

COMMENT: (Russell McDonald, Department of Highways): Add the phrase "Where alternate schedules are adopted" at the beginning of Rule V.
RESPONSE: The department agrees and the rule has been modified to reflect this change.

COMMENT: (David L. Hunter, Department of Labor and Industry): Twenty-four hour notice of a change in schedule may create hardship for an employee and should be left up to the agency.
RESPONSE: The 24-hour notice requirement sets the minimum standard. The agency is free to adopt an alternative notice period in its own guidelines which does not conflict with the minimum.

COMMENT: (David L. Hunter, Department of Labor and Industry): Omit parts 1, 3, and 4 in Rule VI. These sections should be left up to the agency.
RESPONSE: The department disagrees. The provisions set minimum standards which the agency must take into consideration when adopting alternate work schedules. The ways in which these considerations are implemented are at the discretion of the agency.

By: Morris L. Brusett
Morris L. Brusett, Director
Department of Administration

Certified to Secretary of State April 5, 1982

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.2.303 concerning necessity for EIS	)))))	NOTICE OF AMENDMENT OF RULE 4.2.303, DETERMINATION OF NECESSITY FOR ENVIRONMENTAL IMPACT STATEMENT

TO: All Interested Persons.

1. On February 25, 1982, the Department of Agriculture published a notice of proposed amendment of rule 4.2.303, determination of necessity for environmental impact statement, at page 320, 1982 Montana Administrative Register, issue number 4.

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

3. No comments, requests for hearing or testimony were received.

W. GORDON MCOMBER, Director
Department of Agriculture

Certified to Secretary of State Apr. 5, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF BARBERS

In the matter of the amendment of ARM 8.10.802 concerning sanitation requirements.	NOTICE OF AMENDMENT OF ARM 8.10.802 SANITATION REQUIREMENTS

TO: All Interested Persons:

1. On February 25, 1982 the Board of Barbers published a notice of proposed amendment of ARM 8.10.802 concerning sanitation requirements at pages 324 & 325, 1982 Montana Administrative Register, issue number 4.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the amendment of ARM 8.22.701 concerning trainers	NOTICE OF AMENDMENT OF ARM 8.22.701 TRAINERS

TO: All Interested Persons:

1. On February 25, 1982, the Board of Horse Racing published a notice of proposed amendment of ARM 8.22.701 concerning trainers at pages 326 and 327, 1982 Montana Administrative Register, issue number 4.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the adoption of a new rule setting a fee schedule	NOTICE OF ADOPTION OF A NEW RULE 8.18.407 FEE SCHEDULE

TO: All Interested Persons:

1. On February 11, 1982, the State Electrical Board published a notice of proposed adoption of a new rule setting a fee schedule at pages 122 and 123, 1982 Montana Administrative Register, issued number 3.
2. The board has adopted the rule exactly as proposed.
3. No comments or testimony were received on this rule. A hearing was requested by the Administrative Code Committee on the proposed amendment of 8.18.403 which was noticed with the above stated rule. The information regarding the hearing is noticed in this register.

BY: 
GARY BUCHANAN, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 5, 1982.

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

In the matter of the amendment of rule 16.8.1405 relating to open burning restrictions	)))	NOTICE OF REJECTION OF PROPOSED AMENDMENT OF ARM 16.8.1405 (Open Burning Restrictions)

TO: All Interested Persons

1. On July 30, 1981, and again on February 11, 1982, the board published notice of a proposed amendment of rule 16.8.1405 concerning open burning restrictions, at page 708 of the 1981 Montana Administrative Register, issue number 14, and at page 143 of the 1982 Montana Administrative Register, issue number 3, respectively.

2. The board has declined to make the proposed amendment (proposed by Representative Chris Stobie) to ARM 16.8.1405, now repealed, or to incorporate it into the rules replacing ARM 16.8.1405, notice of adoption of which is published in this issue of the Montana Administrative Register.

3. Comments in support of the amendment were received from:

(a) Rep. Dean Switzer on grounds of reducing regulation of private businesses, assisting the depressed wood products industry, and the contention that wood products industry burning would not be as polluting as home wood heating burning;

(b) Rep. Gary Devlin on ground that mobile sawmills cannot purchase a wood waste burner and remain in business;

(c) Robert N. Helding, executive director of the Montana Wood Products Association, on grounds that only very small amounts of residue wood, with small pollution potential, were involved and which were too small in quantity to be burned by a teepee burner; that members of the wood products industry were in far too poor financial shape to build teepee burners to burn the residue in any case; and that most particulate pollution was not caused by industry;

(d) T. Millar Bryce, owner of Flodin Lumber and Manufacturing Co., on grounds it was prohibitively expensive to gather wood scrap from all over his approximately 100 acres to burn it in his teepee burner;

(e) Laura Marich, representing Vinson Timber Products, because she felt burning at least twice per year was the only way of disposing of their wood waste;

(f) Cal Troutman, mill manager of W.I. Forest Products, Inc., Thompson Falls Division, on grounds it would not be feasible to feed accumulated tree bark, etc., to a teepee burner;

(g) Dale Reller, of R & R Industries, Inc., on grounds the business is too small to send its waste to Missoula markets or to install incinerator devices.

The department of health and environmental sciences opposed the amendment on ground that wood waste burning can be

a substantial source of pollution; the amendment could influence some sawmills to abandon existing teepee burners and avoid the standards in the wood waste burner rule; most sawmills were located near cities and towns, usually under the inversion layer; and, in spite of the economic malaise of the wood products industry, protection of public health requires some sort of controls on when, how, and where to burn, rather than the blanket exemption requested. The board agreed and rejected the amendment.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State April 5, 1982

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

In the matter of the repeal of rule 16.8.1405, setting restrictions on open burning	)))	NOTICE OF THE REPEAL OF RULE 16.8.1405 (Open Burning Restrictions)

TO: All Interested Persons

1. On October 15, 1981, the board published notice of a proposed repeal of rule 16.8.1405 concerning restrictions on open burning at page 1164 of the 1981 Montana Administrative Register, issue number 19.

2. The board has repealed rule 16.8.1405, found on page 16-229 of the Administrative Rules of Montana.

3. Comments made relating to repeal of this rule necessarily also relate to the proposed replacement rules, notice of adoption of which is included in this issue of the Montana Administrative Register. Therefore, the comment section of the latter notice should be referred to for comments relevant to the repeal of ARM 16.8.1405.

In the matter of the adoption of rules setting restrictions on open burning	)))	NOTICE OF ADOPTION OF RULES RESTRICTING OPEN BURNING

To: All Interested Persons

1. On October 15, 1981, the board published notice of a proposed adoption of rules concerning restrictions on open burning at page 1164 of the 1981 Montana Administrative Register, issue number 19.

2. The board has adopted the rules with the following changes:

16.8.1301 (RULE I) DEFINITIONS (1) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed ~~major~~ open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts ~~and modeling techniques~~ , utilizing predictive modeling results performed by and available from the department to minimize smoke impacts, limiting the amount of burning to be performed during any one period of time, using ignition and burning techniques which minimize smoke production,

selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air to fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative treatments and uses of materials to be burned. In the case of essential agricultural open burning during September or October, or prescribed wildland open burning during September, October, or November, BACT ~~constitutes~~ includes burning only during the time periods specified by the department, which may be determined by calling 406 - 449-3454 or a toll-free number available from the county sheriff's office. In the case of wildland open burning during December, January or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling 406 - 449-3454.

(2) through (4) Same as proposed.

(5) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires, ~~or~~ construction site heating devices used to warm workers, or safety flares used to dispose of dangerous gases at refineries, gas sweetening plants, or oil and gas wells.

(6) through (9) Same as proposed.

(Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

16.8.1302 (RULE II) PROHIBITED OPEN BURNING (1) The board hereby adopts and incorporates by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes. A copy of 40 CFR Part 261 may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

(2) The following material may not be disposed of by open burning:

~~(1)~~ (a) Any waste~~, including wood waste,~~ which is moved from the premises where it was generated, including that moved to a solid waste disposal site, except as provided for in ~~Rules VII or VIII~~ ARM 16.8.1307 or 16.8.1308.

~~(2)~~ (b) Food wastes.

~~(3)~~ (c) Styrofoam and other plastics.

~~(4)~~ (d) Wastes generating noxious odors.

~~(5)~~ (e) Wood and wood byproducts other than trade wastes, such as papers, cardboard, or tree limbs, unless a public or private garbage hauler, or rural container system, is unavailable.

~~(7)~~ (f) Poultry litter.

~~(8)~~ (g) Animal droppings.

~~(9)~~ (h) Dead animals or dead animal parts.
~~(10)~~ (i) Tires.
~~(11)~~ (j) Rubber materials.
~~(12)~~ (k) Asphalt shingles, except as provided in ~~Rule-VI~~ ARM 16.8.1306.
~~(13)~~ (l) Tarpaper, except as provided in ~~Rule-VI~~ ARM 16.8.1306.
~~(14)~~ (m) Automobile bodies and interiors.
~~(15)~~ (n) Insulated wire, except as provided in ~~Rule-VI~~ ARM 16.8.1306.
~~(16)~~ (o) Oil or petroleum products, except as provided in ~~Rule-VI~~ ARM 16.8.1306.
~~(17)~~ (p) Treated lumber and timbers.
~~(18)~~ (q) Pathogenic wastes.
~~(19)~~ (r) Hazardous wastes as defined by 40 CFR Part 261.
~~(20)~~ (s) Trade wastes, except as provided in ~~Rules-VII or-VIII~~ ARM 16.8.1307 or 16.8.1308.
~~(21)~~ (t) Any materials resulting from a salvage operation.
~~(22)~~ (u) Chemicals. (Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

16.8.1303 (RULE III) MINOR OPEN BURNING SOURCE REQUIREMENTS

A minor open burning source need not obtain an air quality open burning permit, but must:

(1) Comply with all rules within this sub-chapter with the exception of ~~Rule-IV~~ ARM 16.8.1304.

(2) Comply with any requirements or regulations relating to open burning established by any agency of local government, including local air pollution agencies established under section 75-2-301, MCA, of the Montana Clean Air Act or any other municipal or county agency responsible for protecting public health and welfare.

(3) If it desires to conduct essential agricultural open burning during September or October or prescribed wildland open burning during September, October, or November, adhere to the time periods set for burning by the department and available by calling 406 - 449-3454 or a toll-free number available from the county sheriff's office.

(4) If it desires to conduct prescribed wildland open burning during December, January, or February, adhere to the time periods set for burning by the department and available by calling 406 - 449-3454. (Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

16.8.1304 (RULE IV) MAJOR OPEN BURNING SOURCE RESTRICTIONS Entire rule same as proposed. (Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

16.8.1305 (RULE V) SPECIAL BURNING PERIODS

(1) Essential agricultural open burning may be conducted only during the months of March through October.

(2) Prescribed wildland open burning, open burning performed to train fire fighters under ARM 16.8.1306 and open burning authorized under the emergency open burning permit provisions set forth in ARM 16.8.1308 may be conducted during the entire year.

~~(2)~~ (3) Open burning other than ~~prescribed wildland open burning and essential agricultural open burning~~ those categories listed in subsections (1) and (2) above may be conducted only during the months of March through August. (Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

16.8.1306 (RULE VI) FIREFIGHTER TRAINING

Entire rule same as proposed.

(Authority: Sec. 75-2-111, 75-2-103, MCA; Implementing: Sec. 75-2-203, MCA.)

16.8.1307 (RULE VII) CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) The department may issue a conditional air quality open burning permit as a temporary measure for the disposal of:

(a) wood and wood byproduct trade wastes by any business, trade, industry, or demolition project if it determines that:

(i) ~~alternative methods of disposal would result in extreme economic hardship to the generating entity;~~ open burning constitutes BACT; and

(ii) emissions from such open burning do not endanger public health and welfare or cause a violation of any Montana or federal ambient air quality standards~~; and~~ .

~~(iii) the entity generating trade waste proposes to the department the means for ultimately terminating the open burning within 2 years of issuance of the conditional permit.~~

(b) Untreated wood waste at licensed landfill sites if:

(i) alternative methods of disposal would result in extreme economic hardship to the solid waste management system owner or operator;

(ii) emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or federal ambient air quality standard; and

(iii) prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the department or its designated representative and no prohibited materials listed in ~~Rule II~~ ARM 16.8.1302, other than wood waste, are present.

(2) An air quality open burning permit issued under this Rule is valid for the following periods:

(a) wood and wood byproduct trade waste - one year, annually renewable ~~for one additional year~~.

(b) untreated wood waste at licensed landfill sites -- single burn. A new permit must be obtained for each burn.

(3) The department may place any reasonable requirements in a conditional air quality open burning permit that it determines will reduce emissions of air pollutants or will minimize the impact of said emissions, and the recipient of such a permit must adhere to those conditions. In the case of a permit granted pursuant to subsection (1)(a) above, BACT for the year covered by the permit will be set out within the terms of the permit, with the proviso that the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign priorities if other sources in the area request to burn on the same day. Approval may be obtained by calling the Air Quality Bureau at 406 - 449-3454.

(4) An application for a conditional air quality open burning permit must be made on a form provided by the department.

(5) A conditional air quality open burning permit granted pursuant to subsection (1)(a) above is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(6) The department must be reasonable when determining whether open burning constitutes BACT under subsection (1)(a)(i) above. (Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

16.8.1308 (RULE VIII) EMERGENCY OPEN BURNING PERMITS

Entire rule same as proposed.

(Authority: Secs. 75-2-111, 75-2-203, MCA; Implementing: Sec. 75-2-203, MCA.)

3. Rep. Chris Stobie had requested, previously in a rule-making petition for a change in the existing open burning rule and also as a comment on the proposed new package of replacement open burning rules adopted in this notice, that burners of wood trade waste be allowed to do so without restriction or permit, on grounds that the forest products industry was in bad shape, wood was probably the cleanest burning of the trade wastes, burning constitutes the cheapest and most efficient method of disposal, the rule required control devices too expensive for the depressed wood product industry to use, and the rule allowed substances potentially more polluting than wood trade waste to be burned. The board declined to eliminate permit

requirements for wood trade waste for the reasons stated in the comment section of the notice in this issue of the Montana Administrative Register entitled "Notice of Rejection of Proposed Amendment of ARM 16.8.1405 (Open Burning Restrictions)".

E. Randall Adams, manager of F.H. Stoltze Land and Lumber Co., favored the adoption of the new rules because they read more easily, but proposed that wood waste burners be allowed to burn whenever there was good ventilation, rather than having to show "extreme economic hardship". Rep. Robert Marks was concerned that the 2-year limit on granting of conditional permits for wood trade waste would be a hardship for, particularly, small mill owners in that they are presently financially in bad shape and likely as unable to install, for example, an incinerator or teepee burner after two years as during the 2-year permit period. He suggested that annual burning permits to open burn small amounts of wood waste be indefinitely available. He was joined in his concern by Rep. Stobie and Robert Helding, representing the Montana Wood Products Association, and ultimately suggested the board adopt a tiered approach to regulating wood trade waste, requiring the most stringent controls of large producers and the least of small ones, e.g. mandating large burners to check by phone with the department of health and environmental sciences to set burning times during periods of good ventilation, and extending the mandate to both large and small burners during periods of poor ventilation.

Rep. Stobie also requested that:

(a) "poor economic effectiveness" be substituted for "extreme economic hardship" as a standard in proposed Rule VII(1)(a)(i) on grounds that the cost of disposal of wood in a manner other than open burning would be out of proportion to the resulting reduced amount of air pollution;

(b) small transient or semi-portable sawmills be exempted from permit requirements because a teepee burner or other control device would be prohibitive to install in each site.

As a result of the above comments, the board decided to eliminate the 2-year limit on conditional permits for burning wood trade waste, allowing them to be renewed annually, and also adopted the department's proposal that language be added to the conditional permit rule (Rule VII) making clear that such a permit would nevertheless still be regarded as a temporary measure until alternative means of disposal were available. The board declined the suggestion that good ventilation be the only factor to consider in granting of such a permit, finding that more controls on the time and nature of such a burn needed to be applied to adequately protect public health. Instead, the board adopted the department's suggestion to substitute application of the "best available control technology" for

the "extreme economic hardship" standard as the primary condition upon which grant of a conditional permit would be based, since the BACT definition more specifically outlines the factors which could be included in such a permit in a given case; probably is a less severe standard to meet than "extreme economic hardship", while still effectively controlling burn emissions; and facilitates tailoring controls to those reasonable for each individual source, such as transient sawmills, who could not reasonably construct teepee burners.

The department recommended, as a result of negotiations with Mssrs. Stobie, Marks, and Helding, that language be added to Rule I making it clear that cost to a source would be a factor in determining BACT for that source; and to Rules I and VII stating that any modeling done under the BACT requirement would be performed by the department, and that the department's determination of BACT in each case would be reasonable; to which the board agreed.

The tiered approach was rejected by the board because of the difficulty of getting reliable, consistent information on the size of wood products businesses, the fact that the small burners still have potential to impact populated areas and need controls, and the lack of sufficient data upon which to rationally construct a tiered enforcement program. However, the board agreed to reconsider a tiered program after the new rules had one year's application, giving the department time to accrue data and analyze the feasibility of such a program.

The Lewis and Clark City-County Health Department expressed support of the board's proposed rules, especially in view of inversion problems in the Helena Valley and the real possibility wood waste burning will increase in this area, and particularly urged retention of the following: a BACT requirement for major burners and conditional permits for wood trade waste and landfill burns; permit requirements for all wood trade waste and landfill burns, regardless of size; inspection of landfill areas prior to granting a conditional permit for burning untreated wood waste; ability to reasonably alter permit terms or to tailor burn controls to conditions existing at the time of a burn; allowance of burning of wood trade waste only as a temporary measure until improved disposal methods can be implemented. All of the above provisions were, as noted above, in essence retained by the board, with the understanding that landfill burns, though not explicitly subject to BACT, are subject to its equivalent by the Rule VII provision allowing imposition of permit conditions to reduce emissions or their impact.

The Department of State Lands and Tom Costen, Regional Forester, noted confusion in the language of Rules I(1), III(3), and V(1), concerning whether essential agricultural burning was to be allowed in November. The board amended these rules to make clear that such burning was allowed only

from March through October. State Lands and Mr. Costen also recommended retaining the language in the current open burning rule, proposed to be repealed and replaced, which required notification of the responsible wildland protection agency prior to ignition of an open fire, plus obtaining a permit from the responsible fire control agency during the closed or extended fire season. That language had been left out of the proposed rules because it related to fire safety rather than to prevention of pollution and was deemed, therefore, probably beyond the scope of the board's authority. The language, for that reason, was not reinstated. Mr. Costen also suggested Rule IV be amended so that naturally occurring fires in areas where the Forest Service plans to let burning continue under prescribed conditions would not be subject to the paragraph (2) written permit requirement since the permit information would not be known until after the fire started. The suggested language was considered unnecessary since such burns would already be covered by the regional permit for prescribed open burning, which designated areas within which, and the conditions under which, natural burning will be allowed to continue.

Paul and Bernice Wilhelm of Great Falls objected to allowing burning in landfills under any circumstances because of the nuisance, health hazards, and damage to property values. The proposed new rules allow such burning only under the restricted circumstances of economic hardship, the absence of danger to the public health and welfare or air quality standards, and pile inspection prior to burning to ensure no prohibited substance is included. The board retained the proposed allowance for landfill burning since it felt special circumstances sometimes justified such burning and the conditions under which such burns could occur were so strict that landfill burning would occur only rarely and under supervision sufficient to ensure the cleanest possible burn.

Lincoln County requested extension of the open burning season into September since it believed September to be a characteristically good ventilation month in that county and, since August usually is a high fire danger month during which not much burning would occur, without September, it may be difficult to burn off wood waste in preparation for the winter, placing an extra burden on the solid waste management program. In addition, they felt the extension would be fairer to small burners, since most burning is forestry-related and can occur year-round. The board rejected the suggestion because the department presented information that, as a pattern, spring and summer are good dispersion periods, while September is a transition month, inconsistent in its dispersion patterns; and because it would not be a great burden for most burners to haul the wood and weed waste to the landfill or to save it till the

spring burning season. In addition, it was noted that though most burning is in fact forestry-related, the non-forestry and non-agricultural burning tends to be performed on valley floors and near human population centers, increasing the impact on humans, and is performed by many more individuals, which would necessitate phone expense the department cannot handle since fall burning must be controlled by phone checks with the department to determine proper time periods for burning.

Lincoln County also asked that landfills be allowed to burn wood waste, rather than cover it, in order to ease the financial burden on Lincoln County residents. The board declined to allow landfills to burn as a matter of course since burning dumps have long been a pollution problem which eventually, hopefully, may not ever be necessary, and the provision in the proposed rules allowing a conditional permit for wood waste burning in dumps under specific circumstances provides enough flexibility to meet Lincoln County's needs.

Exxon requested that refinery flares be added to the exceptions from the open burning definition, on grounds that they created no health hazard and were necessary for safety. The department concurred, with the support of Don Allen, Executive Director of the Montana Petroleum Association. The board agreed and made the requested change.

The department requested language be added to Rule V clarifying the intent that wildland open burning, firefighter training burning, and emergency open burning could take place year around. The board agreed that was the intent and made the change.

The department also requested the BACT definition be amended to clearly specify that BACT for wildland open burning during December, January, or February would include burning only during time periods specified by the department, and that the same requirement be attached to Rule III (minor open burning source requirements). The board agreed.

Finally, the department asked that conditional permits be allowed only for wood and wood byproduct trade wastes, and no other trade wastes, since other varieties of trade waste are not presently allowed to be burned and there is no good reason to allow them in the future. The board agreed and made the modification to correct the oversight.

Don Allen, Executive Director of the Montana Petroleum Association, requested that emergency permits (Rule VIII) be available by phone on a 24-hour basis. No change was made in the rule since the department clarified that the Air Quality Bureau office phone would be available from 8 to 5 only, but that home phones of Air Quality staff would be and had been distributed to members of the petroleum industry.

Jack Boley of Texas Oil and Gas Corp. requested that pipeline right-of-way clearing by burning should require only a phone call for permit issuance, similar to the procedure for emergency open burning permits. The request was not accepted because such right-of-way burning could potentially be a a major source, there was no inherent need for quick, on-the-spot, consideration and granting of a permit justifying permitting by phone call, and there were no grounds for treating a pipeline differently from any other open burning source.

David Niss, of the Legislative Council legal staff, suggested that the phrase "including wood waste" in Rule II(1) [now 16.8.1302(a)] might lead to confusion between that paragraph and Rule II(19) [now 16.8.1302(s)]. The board accepted his advice and deleted the phrase. Mr. Niss also suggested clarification of which conditional permit (Rule VII) conditions would be set from the moment the permit was granted and remain constant throughout the year, and which required checking with the department prior to each burn. The department recommended clarifying language, which was adopted by the board.

In the matter of the amendment of rules 16.8.701, definitions for air quality rules; and 16.8.1102, delineating when an air quality permit is required and when it is not	)	NOTICE OF THE AMENDMENT OF RULE 16.8.701, DEFINITIONS, AND RULE 16.8.1102, WHEN PERMIT REQUIRED--EXCLUSIONS

TO: All Interested Persons

1. On October 15, 1981, the board published notice of proposed amendments of rule 16.8.701 concerning air quality rule definitions, and rule 16.8.1102, delineating when air quality permits are required, at page 1170 of the 1981 Montana Administrative Register, issue number 19.

2. The board has amended the rules as proposed.

3. No comments or testimony were received.

JOHN F. McGREGOR, M.D., Chairman

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

Certified to the Secretary of State April 5, 1982

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of adoption of Rule 18.6.244 relating to cultural signs	)))	NOTICE OF THE ADOPTION OF RULE 18.6.244

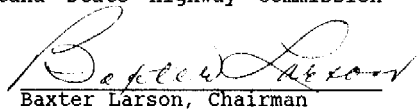
TO: All Interested Persons:

1. On February 2, 1982, the Montana State Highway Commission published notice of a proposed adoption of a rule concerning cultural signs at page 332 of the 1982 Montana Administrative Register, issue number 4.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

Montana State Highway Commission

By: 
Baxter Larson, Chairman

Certified to the Secretary of State April 5, 1982

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the Amendment of Rules 18.8.505 and 18.8.1001 regarding Oversize Permits and Fees charged.	))))	NOTICE OF THE AMENDMENT OF RULE 18.8.505, FEE FOR PERMITS, AND RULE 18.8.1001, OVERSIZE PERMIT.

TO: All Interested Persons:

1. On February 25, 1982, the Department of Highways published notice of proposed amendments to Rule 18.8.505 which specifies the fees for oversize permits and Rule 18.8.1001 regarding oversize permits issued to mobile homes at pages 337, 338, and 339 of the 1982 Montana Administrative Register, issue number four.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

In the matter of the Amendment of Rule 18.8.422 regarding fees and conditions of issuance of Temporary Trip Permits.	))))	NOTICE OF THE AMENDMENT OF RULE 18.8.422, TEMPORARY TRIP PERMITS.

TO: All Interested Persons:

1. On February 25, 1982, the Department of Highways published notice of a proposed amendment to Rule 18.8.422 which specifies the fees and conditions for issuance of Temporary Trip Permits at pages 340, 341, and 342 of the 1982 Montana Administrative Register, issue number four.

2. The agency has amended the rules as proposed.

3. No comments or testimony were received.

The amendment of Rule 18.2.101 pertaining to the adoption of the Attorney General's model rules.	))))	THE AMENDMENT OF RULE 18.2.101, MODEL PROCEDURAL RULES.

TO: All Interested Persons:

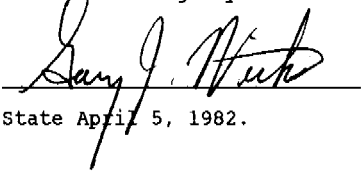
1. On February 25, 1982, the Department of Highways published notice of a proposed amendment to rule 18.2.101

concerning the model procedural rules at page 331 of the 1982 Montana Administrative Register, issue number 4.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State April 5, 1982.

BEFORE THE DEPARTMENT OF INSTITUTIONS

OF THE STATE OF MONTANA

In the matter of the adoption of rules concerningresident reimbursement at community correctional centers	))))	NOTICE OF THE ADOPTION OF RULES (Resident Reimbursement - Community Correctional Centers)

To: All Interested Persons. 20.7.201 through 20.7.204

1. On February 24, 1982, the Department of Institutions published notice of a proposed adoption of rules concerning the charging of reasonable rates for board and room to the persons residing in community correctional centers at page 343 of the 1982 Montana Administrative Register, issue number 4.

2. The agency has adopted the rules I, II, and III as proposed. Rule IV will be adopted with the additional subsection (2) which addresses a concern of the legislative committee on administrative rules; the new subsection (2) reads: "A resident who is unable to pay any personal expenses under this rule may request a waiver from the program manager and the department."

3. No comments or testimony were received.

4. The authority for the rules is Section 53-1-501, MCA and the rules implement Section 53-1-501,MCA.

Carroll V. South, Director
Department of Institutions

By: Carroll V. South

Certified to the Secretary of State April 5, 19 82.

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

In the matter of the Amendment of ARM 36.12.102 and ARM 36.12.103 pertaining to revised forms and increased application fees for beneficial water use permits	)))))	NOTICE OF THE AMENDMENT OF ARM 36.12.102 FORMS AND ARM 36.12.103 APPLICATION FEES

TO: ALL INTERESTED PERSONS

1. On December 17, 1981, the Department of Natural Resources and Conservation (Department) published notice of proposed amendment of ARM 36.12.102 and ARM 36.12.103 pertaining to revised forms and increased application fees, respectively, for beneficial water use permits at pages 1671-1675 of the Montana Administrative Register, issue number 23.

2. The Department has amended ARM 36.12.102 as proposed. The Department has amended ARM 36.12.103 as proposed with the following changes to further simplify and clarify the rule (deletions interlined and additions underlined):

36.12.103 APPLICATION AND SPECIAL FEES (1) A fee, if required, shall be paid at the time the application is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper application fee with an application or within 30 days after notice shall result in a determination that the application is not in good faith and does not show a bona fide intent to appropriate water for a beneficial use, and the application shall be terminated. A fee paid on an application is a one-time filing and processing fee paid at the time of making the application, and the fee will not be returned once the application has been filed with the department, except as noted below. If an applicant withdraws an application, he shall be entitled to a refund, or, ~~If~~ if an applicant inadvertently files the wrong form, the applicant may apply the fee paid to the correct form for his purpose and pay the difference due or be entitled to a refund, if overpayment is made. However ~~in this latter instance~~, no refund upon withdrawal or no exchanges of fees from one form to another or a refund, if otherwise justified, will be made in any case once the newspaper publication of the application has been initiated, or substantial direct processing costs have been accrued in making the application correct and complete prior to publication or department waiver of publication. When an application needs to be republished due to an applicant's error or request for republication, the applicant shall pay the direct cost of the new republication. The fees cover direct costs for newspaper publication, individual notices, county recording fees, hearing costs, computer processing, and other miscellaneous direct costs connected with the permit process.

(a) For an Application for Beneficial Water Use Permit, Form No. 600, there shall be a fee charge based on the following rate schedule:

0 - less than 25	acre-feet per year . . .	$ 50
25 - less than 100	acre-feet per year . . .	100
100 - less than 500	acre-feet per year . . .	150
500 - less than 1,000	acre-feet per year . . .	200
1,000 or more	acre-feet per year . . .	250

(b) For an Application for Beneficial Water Use Permit, Form No. 600, there shall be a fee charge based on the following rate schedule when filing an application for non-consumptive ~~hydro-power generation or fish propagation~~ uses:

0 - less than 1,000	acre-feet per year . . .	$ 50
1,000 - less than 10,000	acre-feet per year . . .	100
10,000 or more	acre-feet per year . . .	200

For any application with a combination of consumptive and non-consumptive uses the rate schedule shown in (a) above shall apply.

(c) For any request for an Interim Permit to drill and test only, there shall be ~~an additional~~ a fee of $10 in addition to the rate schedules shown in (a) or (b) above.

(d) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use less than 100 gpm), Form No. 602, there shall be a flat rate fee of $10.

(e) For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, there shall be a flat rate fee of $10.

(f) For an Application for Change of Appropriation Water Right, Form No. 606, there shall be a flat rate fee of $50, except:~~.~~

~~(i) For any change application for a place of diversion change only there shall be a flat rate fee of $10.~~

~~(ii)~~ ~~For~~ for any change application concerning a replacement well or reservoir in the same source for domestic or stock-watering purposes, there shall be a fee of $10.

(g) For a Notice of Transfer of Appropriation Water Right, Form No. 608, there shall be a flat rate fee of $5.

(h) For an Application to Sever or Sell Appropriation Water Right, Form No. 609, there shall be a flat rate fee of ~~$100~~ $50.

~~(i) For an Objection to Application, Form No. 611, there shall be a flat rate fee of $2.~~

~~(j)~~ (i)For a Petition to the Board of Natural Resources and Conservation for Controlled Groundwater Area, Form No. 630, there shall be a fee of $100 for filing this petition form, plus the petitioner shall also pay reasonable costs of giving notice, holding the hearing, conducting investigations, and making records pursuant to Sections 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

(2) There shall be no fees charged for filing the following forms:

(a) Form No. 603, Well Log Report.

(b) Form No. 607, Application for Extension of Time.

(c) Form No. 611, Objection to Application.

~~(c)~~ (d) Form No. 614, Statement of Conditional Agreement.

~~(d)~~ (e) Form No. 617, Notice of Completion of Permitted Water Development.

~~(e)~~ (f) Form No. 618, Notice of Completion of Change of Appropriation Water Right.

(3) The following special fees must be paid for the described public service:

(a) For microfilm, reader-printer copies . . . . . ~~$.50~~ $.25 per sheet

(b) For photostatic copy, letter and legal size. . ~~$.25~~ $.15 per sheet.

(c) For computer services requested. . . . . reasonable costs.

(d) For making a blueprint of any tracing. . . . . $1.00 per sheet.

(e) For making a hearing transcript. . . . . reasonable costs, not to exceed. . . $1.00 per page.

3. No comments or testimony were received.

4. The authority of the Department to make the amendments is based on Section 85-2-113, MCA, and implements Section 85-2-113, MCA, for both rules.

Gordon G. Holte, Chairman
Department of Natural Resources
and Conservation

Certified to the Secretary of State March 23, 1982

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULES 42.22.105 and 42.22.111 and the adoption of New Rule I (42.22.106) concerning the reporting requirements for centrally assessed companies found in Title 42, Chapter 22, ARM.	NOTICE OF AMENDMENT OF RULES 42.22.105 and 42.22.111 and the adoption of New Rule I (42.22.106) concerning the reporting requirements for centrally assessed companies found in Title 42, Chapter 22, ARM.

TO: All Interested Persons:

1. On January 28, 1982, the Department of Revenue published notice of the proposed amendment of rules 42.22.105 and 42.22.111 and the adoption of Rule I (42.22.106) concerning the reporting requirements for centrally assessed companies at pages 87-90 of the 1982 Montana Administrative Register, issue no. 2.

2. The Department has amended rules 42.22.105 and 42.22.111 as originally proposed. The Department has adopted Rule I (42.22.106) as set out below:

RULE I (42.22.106) ADDITIONAL REPORTING REQUIREMENTS FOR CENTRALLY ASSESSED RAILROADS (1) Each year all centrally assessed railroads shall submit by April 15 a report of operations for the preceeding year containing in addition to that information required by 42.22.105 the following information and items:

(a) copies of all Montana valuation maps;

(b) copies of all Montana track charts;

(c) a statement setting forth by individual counties the total acreage of Montana real property and right-of-way;

(d) a statement setting forth by individual state the total acreage of all system real property and right-of-way;

(e) a statement of all track in Montana listing the pattern weight, number of miles, and location by railroad segment and milepost;

(f) a statement of all agreements authorizing the longitudinal use of Montana right-of-way, including for each agreement the names of the parties to the agreement, a summary of its terms, the amounts paid thereunder, the longitudinal use contemplated, and the location and length of right-of-way covered;

(g) a statement of all monthly bad order ratios for cars and locomotives in Montana;

(h) a statement by network segment of Montana gross and net tons hauled during the year and a copy of any chart setting forth this information;

(i) a statement by network segment of system gross and net tons hauled during the year, and a copy of any chart setting

forth this information;

(j) a copy of the company's freight car diagram book;

(k) a statement setting forth all locomotive tonnage ratings;

(l) a copy of Montana employee timetables for the year;

(m) a copy of Montana operating rules;

(n) a copy of freight train schedules for the year;

(o) a list of all Montana equipment and repair shops and yards.

(2) Information which is of a static nature need not be re-submitted on an annual basis as specified in paragraph (1). Each railroad shall have a continuing obligation to provide updated information whenever static information is changed, amended, revised, rescinded, or revoked.

(3) This rule shall be effective for all reporting years ending December 31, 1981, and thereafter.

AUTH: 15-23-108; IMP: 15-23-201, MCA.

3. Two parties appeared at the hearing and three written comments were received by the Department.

The Butte, Anaconda and Pacific Railway Company objected to the amendments and to the new rule because (1) the additional reporting requirements would be burdensome, (2) the additional reporting requirements would constitute an unwarranted expense, and (3) the Interstate Commerce Commission is presently decreasing, rather than increasing, the reporting requirements for Class III railroads.

Burlington Northern, Inc. objected to the amendments and to the new rule for two reasons. First, it is contended that the amendments and the new rule are violative of Montana law. In the opinion of the company, Montana case law has forbidden the use of net liquidation methodology as a means of valuation for railroads. Second, the argument continues, such a methodology is irrational as applied to railroads because a railroad has value only as a "going concern". If it is valued in any other manner, the mandate of 15-23-202, MCA, that the franchise value of railroads be determined for ad valorem tax purposes, is violated. Third, the action of the Department is nothing more than an attempt to avoid the provisions of §306 of the Railroad Revitilization and Regulatory Reform Act of 1976. That law protects railroads from discriminatory action. It is contended that since the new reporting requirements would apply only to railroads and not to other centrally assessed properties, they are discriminatory in nature. Fourth, the amendments and the new rule impose reporting requirements which are unnecessary and burdensome. Those requirements are unnecessary since the information sought is then utilized for computation of net liquidation value which is proscribed by Montana law. The requirements are burdensome since it would cost the railroad an additional $100,000 per year in order to provide the information to the Department.

The Union Pacific Corporation objected to the amendments and to the new rule for four reasons. First, the utilization of net

liquidation methodology for purposes of ad valorem taxation is forbidden by Montana case and statutory law. It is contended that only the unitary methodology may be lawfully used. Second, rule-making by the Department when the same issues have been raised in pending litigation in Federal District Court, is inappropriate and constitutes an interference with judicial process. Third, information sought is to be used for purposes other than establishing value through unitary methodology. Such action, it is argued, is contrary to law, as previously discussed. Fourth, much of the material being sought has a static composition, or is unchanging in nature. Accordingly, annual submission of the same information is burdensome.

4. I have carefully considered the comments which were submitted and have concluded as follows:

In adopting a rule which utilizes various methodologies as a basis for assessments, the Department has acted in accordance with both Montana statutory and case law. The chief responsibility of the Department is to insure that railroads are assessed according to the fair market value of their properties. §15-8-111(2), MCA. Arriving at a fair market value is a matter left to the discretion of the Department. Thus, it has never been held that one particular methodology must be applied in assessing railroad property.

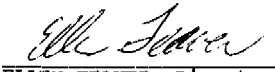
In suggesting that a railroad only has value as a "going concern", the railroads offer a specious argument. All tangible property has a value. This is true whether it is property used to conduct a business, whether it is property utilized for investment purposes, whether it is property which is pledged as collateral, or indeed, whether it is property held by a trustee during the course of bankruptcy proceedings. Thus, it is groundless to argue that a railroad property has value only when it is used by an operating railroad subject to regulatory constraints. Additionally, a careful reading of §15-23-202, MCA, reveals that the term franchise value appears nowhere in that statute. Rules of statutory construction dictate that extraneous terms should never be implied. §1-2-101, MCA. Hence, the argument that the taxing authority has some obligation to determine franchise value is a misleading one and one which has no relevancy in Montana law whatsoever. In Montana, assessment is to be accomplished for one purpose only - to establish fair market value. §15-8-111, MCA.

The anti-discrimination provisions of the Railroad Revitalization and Regulatory Reform Act as set forth in §306 are a guarantee that railroads will not be taxed at a higher rate than that which is applied to other commercial and industrial property. However, it is one matter to say that taxing authorities may not tax a railroad in an unequal fashion and quite another to imply therefrom that a state may not change its reporting requirements so as to insure that all taxable railroad property is properly assessed according to its fair market value. The amendments and the new rule seek to insure that the Department has in its possession all necessary and relevant information for purposes of assessing railroad property. There is no intention to discriminate against any railroad.

With respect to the allegation that it would be unduly burdensome for railroads to submit information which is of a static composition on an annual, repetitive basis, I have concluded that a degree of modification is in order. Therefore, all information required to be submitted on an annual basis as mandated by Rule I and which is of a static (unchanging) composition, need not be resubmitted each year. It shall be sufficient for purposes of compliance with the rule, that such static information be updated wherever a change should occur in the information. I am confident that this modification will alleviate any undue burden in terms of annual submissions.

Finally, the responsibility of the Department to administer and to enforce the revenue laws of this State is a continuing one. It is a responsibility which does not abate when the Department may be involved in some facet of litigation. Accordingly, whenever I determine it to be in the best interests of the State of Montana and its citizens to adopt a rule in order to fulfill our statutorily mandated responsibility, I shall do so. This is not an interference with the judicial process since the courts are an independent branch of government and will proceed in that fashion wholly irrespective of executive activity.

5. Authority to make the rule and the additional amendments is found in §§15-1-201 and 15-23-108, MCA.



ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 4/5/82

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

In the matter of the adoption of Rules 46.5.914, 46.5.915, 46.5.916, 46.5.917, 46.5.918, 46.5.919, 46.5.920, 46.5.921, 46.5.922 and 46.5.923 and the amendment of Rules 46.5.912 and 46.5.913 pertaining to day care center licensing, eligibility and program requirements	NOTICE OF THE ADOPTION OF RULES 46.5.914, 46.5.915, 46.5.916, 46.5.917, 46.5.918, 46.5.919, 46.5.920, 46.5.921, 46.5.922 AND 46.5.923 AND THE AMENDMENT OF RULES 46.5.912 AND 46.5.913 PERTAINING TO DAY CARE CENTERS

TO: All Interested Persons

1. On February 11, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules 46.5.914, 46.5.915, 46.5.916, 46.5.917, 46.5.918, 46.5.919, 46.5.920, 46.5.921, 46.5.922, and 46.5.923 and the proposed amendment of Rules 46.5.912 and 46.5.913 pertaining to day care center licensing, eligibility and program requirements at page 189 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has amended Rules 46.5.912 and 46.5.913 as proposed.

3. The agency has adopted Rules 46.5.914, DAY CARE CENTERS, PROGRAM REQUIREMENTS; 46.5.915, DAY CARE CENTERS, DISCIPLINE; 46.5.916, DAY CARE CENTERS, SCHEDULING; 46.5.917, DAY CARE CENTERS, SPACE AND EQUIPMENT; 46.5.918, DAY CARE CENTERS, STAFF SPACE AND EQUIPMENT; 46.5.919, DAY CARE CENTERS, MATERIALS; 46.5.920, DAY CARE CENTERS, CHILDREN'S ACTIVITIES; 46.5.921, DAY CARE CENTERS, NIGHT CARE AND SHIFT; and 46.5.923, DAY CARE CENTERS, PARENT INFORMATION as proposed.

4. The agency has adopted Rule 46.5.922 as proposed with the following changes:

46.5.922 DAY CARE CENTERS, STAFFING REQUIREMENTS

(1) Child/staff ratio.

(a) 4:1 for infants 0-2 years;

(b) ~~1~~0~~8~~:1 for children 2-6~~3~~ years;

(c) 10:1 for children 4-6 years;

(~~c~~d) 14:1 for children over 6 years

(~~d~~e) centers may have only one provider whenever the number of children in attendance is less than seven.

(~~e~~f) only the provider, primary caregiver(s) and aides may be counted as staff in determining the staff ratio.

(2) Qualifications of staff.

(a) The director shall have an associate degree in a related field plus one year experience in child care or child development associate certification (CDA) or three years experience in child care. Existing directors are exempt from this requirement.

(b) The primary caregiver shall meet all of the qualifications of an aide plus the following:

(i) ~~six months~~ two years experience as a licensed or registered group or family day care home provider or day care center staff person or a bachelor of arts in education or a related field.

(ii) trained in cardio-pulmonary resuscitation or multimedia first aid.

Subsection (3) remains the same as proposed.

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

COMMENT: There should be a rule relating to the transportation of children by day care center providers.

RESPONSE: The consideration of rules not contained in the public notice is not appropriate.

COMMENT: The disparity in the requirement that a primary caregiver have a bachelor of arts degree or six months experience as a licensed day care home provider is too great. Also the experience qualification should be satisfied by having been a provider in any type of day care facility.

RESPONSE: Rule 46.5.922 is being changed to require a primary caregiver to have a bachelor of arts degree in education or a related field or two years experience as a licensed or registered group or family day care provider.

COMMENT: The staffing requirement of one caregiver per ten children between the ages of 2 and 6 is inadequate.

RESPONSE: The comment is well-founded so the ratio is being changed to 8:1 for children 2-3 years and 10:1 for children 4-6 years.

COMMENT: There should be a minimum age of 18 for staff personnel.

RESPONSE: Rule 46.5.908 sets 18 as the minimum age for licensees and 16 as the minimum age for employees of day care centers.

COMMENT: Age grouping is important. Children between the ages of 6 weeks-2 years should be in separate facilities.

RESPONSE: The proposed rules for infant care (MAR Notice 46-2-323) provide that age grouping is to take place within the facility so that infants (6 weeks to 2 years old) are to have play and sleep areas distinct from those of older children.

Director, Social & Rehabilitation Services

Certified to the Secretary of State April 5, 1982.

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

In the matter of the adoption of Rules 46.5.924, 46.5.925, 46.5.926, 46.5.927, 46.5.928, 46.5.929, 46.5.930, 46.5.931, 46.5.932, 46.5.933, 46.5.934, 46.5.935, 46.5.936 and 46.5.937 pertaining to group day care home program requirements	NOTICE OF THE ADOPTION OF RULES 46.5.924, 46.5.925, 46.5.926, 46.5.927, 46.5.928, 45.5.929, 46.5.930, 46.5.931, 46.5.932, 46.5.933, 46.5.934, 46.5.935, 46.5.936, and 46.5.937 PERTAINING TO GROUP DAY CARE HOMES

TO: All Interested Persons

1. On February 11, 1982, the Department of Social and Rehabilitation Services published the notice of the proposed adoption of Rules 46.5.924, 46.5.925, 46.5.926, 46.5.927, 46.5.928, 46.5.929, 46.5.930, 46.5.931, 46.5.932, 46.5.933, 46.5.934, 46.5.935, 46.5.936 and 46.5.937 pertaining to group day care home program requirements at page 214 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has adopted Rules 46.5.927, GROUP DAY CARE HOMES, SAFETY REQUIREMENTS; 46.5.928, GROUP DAY CARE HOMES, OTHER FACILITY REQUIREMENTS; 46.5.929, GROUP DAY CARE HOMES, EQUIPMENT; 46.5.932, GROUP DAY CARE HOMES, SWIMMING; 46.5.933, GROUP DAY CARE HOMES, NUTRITION; 46.5.934, GROUP DAY CARE HOMES, TRANSPORTATION; 46.5.935, GROUP DAY CARE HOMES, SPECIAL PROGRAM REQUIREMENTS; 46.5.936, GROUP DAY CARE HOMES, APPLICATION AND ADMISSION; and 46.5.937, GROUP DAY CARE HOMES, ADDITIONAL REQUIREMENTS.

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

46.5.924 GROUP DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care provider's absence must be at least 18 years of age.

(2) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a ~~family day care home and~~ group day care home.

Subsections (3) through (5) remain as proposed.

(6) The provider shall attend a basic day care orientation or its equivalent within the first ~~year~~ 60 days of certification.

Subsection (7) remains as proposed.

46.5.925 GROUP DAY CARE HOMES, BUILDING REQUIREMENTS (1) The day care home must have a minimum of 35 square feet of usable space per child.

(2) All areas used for day care purposes must have at least one door for egress of not less than ~~24~~ 34 inches wide and a minimum of one other means of egress ~~with a minimum of 5.7 square feet~~ of at least 24 inches high by 20 inches wide of full clear opening. All exits must be unobstructed at all times.

Subsections (3) through (10)(d) remain as proposed.

46.5.926 GROUP DAY CARE HOMES, FIRE SAFETY REQUIREMENTS

Subsections (1) through (3) remain as proposed.

(4) All wood burning stoves must be properly installed and inspected by the local fire marshal. ~~They must be protected by a guard railing of a noncombustible material~~ If used during the hours of care, the stove must be provided with a protective enclosure.

Subsections (5) and (6) remain as proposed.

46.5.930 GROUP DAY CARE HOMES, PROGRAM REQUIREMENTS

Subsection (1) remains as proposed.

(2) The ~~family day care or group day care~~ provider:

Subsections (2)(a) through (3)(c) remain as proposed.

46.5.931 GROUP DAY CARE HOMES, HEALTH CARE REQUIREMENTS

(1) All family members and other children residing in the facility under 12 years of age shall be immunized against tetanus, rubella, diptheria, polio, measles, and, if under 5 years of age, whooping cough. Any child with a history of measles is considered immunized. Such medical and immunization history will be recorded on forms provided by the department and on file.

(2) No child shall be admitted to a ~~family day care or~~ group day care home except in an emergency before obtaining from the parent the "Medical Record of Children Receiving Day Care" prescribed by the department stating that he is free from communicable disease and that he has been immunized or is in the process of being immunized against diptheria, tetanus, polio, measles, rubella, and, if under five years of age, whooping cough. Any child with a history of measles is considered immunized. These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. Such medical records shall be on file at the home for each child.

Subsection (3) remains as proposed.

(4) If a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

(5) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may

be properly protected. If it is a suspected, reportable communicable disease, the provider shall so inform the health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that his return will not harm him or the other children. Disease charts that identify the reportable diseases are available from the health department.

(6) All adults at the home shall not be in contact with the children in care whenever any ~~contagious or infectious~~ reportable, communicable condition of their own exists or is suspected of existing.

Subsections (7) through (14)(b) remain as proposed.

(c) Use of Hhome canned foods ~~of low acid content are~~, other than jams, jellies and fruits is prohibited. ~~(Example: Foods that require pressure canning.)~~

Subsections (14)(d) through (15)(b) remain as proposed.

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

COMMENT: There are several places in the rules that refer to both group day care homes and family day care homes.

RESPONSE: Since these rules apply only to group day care homes, all references to family day care homes are being deleted.

COMMENT: Staff/child ratio is unclear in how it applies to infant care.

RESPONSE: There are proposed rules governing facilities caring for infants (MAR 46-2-323) and would apply, in addition to these rules, to any group day care home caring for infants. The infant rules provide for a 4:1 infant to staff ratio. That staff person could not be responsible for other children also.

COMMENT: Providers should not have to give a copy of the handbook of day care regulations to every parent using day care.

RESPONSE: Informing parents of the regulations governing day care is of utmost importance in keeping parents well informed and interested in the care of their children.

COMMENT: Providers should be required to basic orientation prior to being certified. Additionally, the qualifications for providers need to be greater and better defined.

RESPONSE: Some areas of the state do not have day care orientation on a regular basis but the department is moving to

change that. The rule will be changed to require orientation within the first 60 days of certification.

COMMENT: The state building code requires exit doors to be at least 36 inches wide. To stipulate a means of egress to be 5.7 square feet could allow for a very long, narrow opening unusable for egress. Others commented that the opening requirement was excessive since children could get out of a smaller opening.

RESPONSE: Rule 46.5.925 is being changed to provide for exit doors of 34 inches wide so as not to exclude all older homes. Another means of egress must be at least 24 inches high by 20 inches wide which is sufficient to allow entrance by a fireman in full regalia.

COMMENT: Wood burning stoves should have protective enclosures.

REPONSE: Rule 46.5.926 is being changed to provide for protective enclosures during the hours of care.

COMMENT: If a provider must have safety restraints in the car for every child, she could only take three children since most cars have only four seat belts.

RESPONSE: Because of the substantial risk to children to not have safety restraints, the rule is remaining the same.

COMMENT: Rubella and tetanus should be included regarding the list of diseases against which a child is to be immunized.

RESPONSE: Rule 46.5.931 is being so changed.

COMMENT: References to "communicable disease" is ambigious and is too broad since it would include simple colds.

RESPONSE: Rule 46.5.931 is being changed to refer to only those communicable diseases which are reportable to the health department.

COMMENT: Local health officers don't want to be bothered by calls reporting every disease a child gets.

RESPONSE: Charts of what diseases must be reported to health officers are available from health departments. Reporting is mandatory by health department rules also.

COMMENT: Rule 46.5.930 should only limit children's television viewing, not the providers.

RESPONSE: The rule remains as proposed since while children are in care, the provider should be caring for them, not watching television.

COMMENT: The minimum age for providers or those responsible for the children in the absence of the providers should be 16.

RESPONSE: The rule remains the same although under existing Rule 46.5.908, an assistant caregiver or helper may be 16.

COMMENT: Protective receptacle covers often are removed by children.

RESPONSE: The providers handbook will outline types of covers that can be used but are not easily removed by children.

COMMENT: What is meant by not using home canned foods of low acid content is not clear.

RESPONSE: The wording of the rule is changed to exclude the use of home canned foods other than jams, jellies, and fruits.

COMMENT: Providers should post written pre-plans on where and how children will be taken in case of emergencies.

RESPONSE: This recommendation will be made in the policy manual.

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 5, 1982.

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

In the matter of the adoption of Rules 46.5.938, 46.5.939, 46.5.940, 46.5.941, 46.5.942, 46.5.943, 46.5.944, 46.5.945, and 46.5.946 pertaining to family day care home program requirements.	))))))))	NOTICE OF THE ADOPTION OF RULES 46.5.938, 46.5.939, 46.5.940, 46.5.941, 46.5.942, 46.5.943, 46.5.944, 46.5.945, AND 46.5.946 PERTAINING TO FAMILY DAY CARE HOMES

TO: All Interested Persons

1. On February 11, 1982 the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules 46.5.938, 46.5.939, 46.5.940, 46.5.941, 46.5.942, 46.5.943, 46.5.944, 46.5.945 and 46.5.946 pertaining to family day care home program requirements at page 207 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has adopted Rules 46.5.941, FAMILY DAY CARE HOMES, SAFETY REQUIREMENTS; 46.5.942, FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS; 46.5.943, FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS; 46.5.945, FAMILY DAY CARE HOMES, TRANSPORTATION; and 46.5.946, FAMILY DAY CARE HOMES, DROP-IN CARE.

3. The agency has adopted rules with the following changes:

46.5.938 FAMILY DAY CARE HOMES, PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care provider's absence must be at least 18 years of age.

(2) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children within a family day care home. ~~and group day care home.~~

Subsections (3) through (6) remain as proposed.

46.5.939 FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS (1) All areas used for day care purposes must have at least one door for egress of not less than ~~24~~ 34 inches wide and a minimum of one other means of egress ~~with a minimum of 5.7 square feet~~ at least 24 inches high by 20 inches wide of full clear opening. All exits must be unobstructed at all times.

Subsections (2) through (9)(d) remain as proposed.

46.5.940 FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS Subsections (1) through(3) remain as proposed.

(4) All wood burning stoves must be properly installed and inspected by the local fire marshal. If used during the

hours of child care, the stove must be provided with a protective enclosure.

Subsections (5) and (6) remain as proposed.

46.5.944 FAMILY DAY CARE HOMES, HEALTH CARE REQUIREMENTS (1) All family members and other children residing in the facility under 12 years of age shall be immunized against rubella, tetanus, diptheria, polio, measles, and, if under 5 years of age, whooping cough. Any child with a history of measles is considered immunized. Such medical and immunization history will be recorded on forms provided by the department and on file.

(2) No child shall be admitted to a family day care ~~or group day care~~ home except in an emergency before obtaining from the parent the "Medical Record of Children Receiving Day Care" prescribed by the department stating that he is free from communicable disease and that he has been immunized or is in the process of being immunized against diptheria, tetanus, polio, measles, rubella, and, if under five years of age, whooping cough. Any child with a history of measles is considered immunized. These requirements would be waived only in the case of a signed statement by a physician indicating that immunizations would be contra-indicated for health reasons. Such medical records shall be on file at the home for each child.

(3) If a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

(4) All adults at the home shall not be in contact with the children in care whenever any contagious or infectious condition reportable to the health department of their own exists or is suspected of existing.

Subsections (5) through (8)(b) remain as proposed.

(c) Use of ~~H~~home canned foods, ~~of low acid content are~~ other than jams, jellies and fruits is prohibited. ~~(Example: Foods that require pressure canning).~~

Subsections (8)(d) through (8)(h) remain as proposed.

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

COMMENT: There are several places in the rules that refer to both group day care homes and family day care homes.

RESPONSE: Since these rules apply only to family day care homes, all references to group day care homes are being deleted.

COMMENT: Staff/child ratio is unclear in how it applies to infant care.

RESPONSE: There are proposed rules governing facilities caring for infants (MAR 46.2.323) and would apply, in addition to these rules, to any family day care home caring for infants. The infant rules provide for a 4:1 infant to staff ratio. That staff person could not be responsible for other children also.

COMMENT: The state building code requires exit doors to be at least 36 inches wide. To stipulate a means of egress to be 5.7 square feet could allow for a very long, narrow opening unusable for egress. Others commented that the opening requirements was excessive since children could get out of a smaller opening.

RESPONSE: Rule 46.5.939 is being changed to provide for exit doors of 34 inches wide so as not to exclude all older homes. Another means of egress must be 24 inches high by 20 inches wide which is sufficient to allow entrance by a fireman in full regalia.

COMMENT: In Rule 46.5.939(3) there should be dimensional specifications for the window usable for rescue. The minimum dimensions should be 24 inches high by 20 inches wide.

RESPONSE: Rule 46.5.939(1) is being changed to require any area used for day care purposes to have a means of egress of the suggested dimensions.

COMMENT: Wood burning stoves should have protective enclosures.

RESPONSE: Rule 46.5.940 is being changed to provide for protective enclosures during the hours of care.

COMMENT: If a provider must have safety restraints in the car for every child, she could only take three children since most cars have only four seat belts.

RESPONSE: Because of the substantial risk to children to not have safety restraints, the rule is remaining the same.

COMMENT: Rubella and tetanus should be included in the list of diseases against which a child is to be immunized.

RESPONSE: Rule 46.5.944 is being so changed.

COMMENT: References to "communicable disease" is ambiguous and is too broad since it would include simple colds.

RESPONSE: Rule 46.5.944 is being changed to refer to only those communicable diseases which are reportable to the health department.

COMMENT: Requiring medical records and immunization of children prior to entrance into care is unnecessary.

RESPONSE: Requiring basic immunization provides protection to all the children in care while knowledge of a child's medical history is necessary in emergency situations.

COMMENT: Local health officers don't want to be bothered by calls reporting every disease a child gets.

RESPONSE: Charts of what diseases must be reported to health officers are available from health departments. Reporting is mandatory by health department rules also.

COMMENT: The minimum age for providers or those responsible for the children in the absence of the providers should be 16.

RESPONSE: The rule remains the same although under existing Rule 46.5.908, an assistant caregiver or helper may be 16.

COMMENT: Protective receptacle covers often are removed by children.

RESPONSE: The providers handbook will outline types of covers that can be used but are not easily removed by children.

COMMENT: What is meant by not using home canned and low acid content is not clear.

RESPONSE: The wording of the rule is changed to exclude the use of home canned foods other than jams, jellies, and fruits.

COMMENT: Providers should post written pre-plans on where and how children will be taken in case of emergencies.

RESPONSE: This recommendation will be made in the policy manual.

COMMENT: The program requirements are totally inadequate. Because more children are cared for in family day care homes than other kinds of facilities, more than their health and safety needs to be promoted. These rules should contain program requirements similar to those for group day care homes. (MAR 46-2-325). There should also be rules governing nutrition, laundry, swimming, and expectations of parents.

RESPONSE: The department feels the rules as proposed accu-

rately reflect the legislative intent in enacting Sections 53-4-501 et seq. and moving away from licensing of family day care homes to simple registration of the homes.

COMMENT: The rules as proposed do not require any particular training or continuing education for providers. Training is essential to ensure quality care of children and should cover early childhood development, nutrition, child abuse, cognitive development, fire safety and guiding child behavior.

RESPONSE: Rule 46.5.938 does require a provider to have experience in the care and supervision of children. This is felt to be sufficient since it is the department's belief that the legislature intended family day care homes to emphasis the family environment with standards to ensure health and safety only.

COMMENT: In addition to prohibiting discipline in the form of spanking, the use of "verbal demeaning statements causing irrevocable psychological and emotional damage" should be prohibited.

RESPONSE: The suggested language is too ambiguous for use in a rule although provider manuals will discuss appropriate discipline methods.

COMMENT: Toys or objects with a diameter of less than 1½ inches, not 1 inch should be prohibited since many acceptable toys are only 1 inch.

RESPONSE: The rule only prohibits toys or objects of less than 1 inch. This is a well-accepted safety standard since toys or objects any smaller can be swallowed by children.

COMMENT: An operator of a motor vehicle should be required to not only have a license but also insurance.

RESPONSE: By state law, every operator of a motor vehicle must have insurance.

COMMENT: The rules should require an adequate and safe water supply.

RESPONSE: Rule 46.5.942 does require the homes to have hot and cold running water plus at least one toilet.

John L. Hansen

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 5, 1982.

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

In the matter of the adoption of Rules 46.5.947, 46.5.948, 46.5.949, 46.5.950, 46.5.951, 46.5.952, 46.5.953, 46.5.954, 46.5.955, 46.5.956, 46.5.957 and 46.5.958 pertaining to special requirements for day care facilities caring for infants	)	NOTICE OF THE ADOPTION OF RULES 46.5.947, 46.5.948, 46.5.949, 46.5.950, 46.5.951, 46.5.952, 46.5.953, 46.5.954, 46.5.955, 46.5.956, 46.5.957 AND 46.5.958 PERTAINING TO DAY CARE FACILITIES CARING FOR INFANTS

TO: All Interested Persons

1. On February 11, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules 46.5.947, 46.5.948, 46.5.949, 46.5.950, 46.5.951, 46.5.952, 46.5.953, 46.5.954, 46.5.955, 46.5.956, 46.5.957 and 46.5.958 pertaining to special requirements for day care facilities caring for infants at page 199 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has adopted Rules 46.5.949, DAY CARE FACILITIES CARING FOR INFANTS, CLOTHING; 46.5.951, DAY CARE FACILITIES CARING FOR INFANTS, BATHING; 46.5.953, DAY CARE FACILITIES CARING FOR INFANTS, TRANSPORTATION; 46.5.954, DAY CARE FACILITIES CARING FOR INFANTS, ACTIVITIES; and 46.5.956, DAY CARE FACILITIES CARING FOR INFANTS, EQUIPMENT as proposed.

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

46.5.947 DAY CARE FACILITIES CARING FOR INFANTS, PHYSICAL EXAMINATION (1) Physical examination.

(a) Each infant shall have a preadmission physical within two weeks of admission including a statement by a physician or county health nurse concerning any special needs of the infant.

(b) Health examinations shall be repeated each three months during the infant's first year and each six months during the infant's second year. The date and results of health examinations shall be submitted by the parent to the day care facility.

46.5.948 DAY CARE FACILITIES CARING FOR INFANTS, DIAPERING AND TOILET TRAINING (1) A sufficient supply of clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the infant's family may be used although disposable diapers are recommended. If the parent documents that non-disposable dia-

pers should be used, the facility may launder the diapers using a germicidal process approved and available from the state or local health department.

(2) Soiled reusable diapers shall be placed into separate cleanable covered containers provided with waterproof liners prior to transport to laundry, parent, or acceptable disposal. These containers shall be emptied, cleaned and disinfected ~~at least~~ daily. Soiled disposable diapers shall be disposed of immediately into an outside trash disposal or put in a securely tied plastic bag and discarded indoors until outside disposal is possible. Reusable diapers shall be removed from the facility daily.

Subsections (3) through (7) remain as proposed.

~~(8) There shall be posted in a conspicuous place in diapering, feeding and toilet areas a reminder that employees must wash their hands before and after feeding infants and after changing diapers or using the toilet facilities.~~

(98) Toilet training shall be initiated when readiness is indicated for the child and in consultation with the child's parent(s) or placement agency. There shall be no routine attempt to toilet train infants under the age of 18 months.

46.5.950 DAY CARE FACILITIES CARING FOR INFANTS, FEEDING

Subsection (1) remains as proposed.

~~(2) Formula feedings of infants under one year of age shall be on a schedule agreed upon by the infant's parent(s), guardian or placement agency and the provider.~~

(32) A day's supply of formula or breast milk in nursing bottles or formula requiring no more preparation than dilution with water shall be provided by the parent(s). Bottles of formula or breast milk shall be clearly labeled with each infant's name and date, and immediately refrigerated. After use bottles shall be thoroughly rinsed before returning to the parent, at the end of the day. Special dietary foods required by the infant shall be prepared by the parent(s).

~~(4) Bottles shall be refrigerated immediately upon arrival at the facility. All bottles shall be returned to the parent at the end of the day.~~

(53) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings. Older infants and toddlers shall be fed in safe high chairs or at baby feeding tables. Infants six months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant. Bottles shall be taken from the infant when he/she finishes feeding, when the bottle is empty and while the infant is sleeping.

(64) If the parent is unable to bring sufficient or usable formula or breast milk, the facility may use commercially prepared and packaged formulas. Older infants shall be

provided suitable foods which encourage freedom in self-feeding. Unused infant food shall be stored in the original container and kept separate from other foodstuffs. Dry cereal, cookies, crackers, breads and similar foods shall be stored in clean, covered containers.

(7) If the container in which the formula was purchased does not include a sanitized bottle and nipple, then transfer of ready-to-feed formula from the bulk container to the bottle and nipple feeding unit must be done in a sanitary manner in the kitchen. Bottles filled on the premises of the facility should be refrigerated immediately if not used and contents discarded if not used within 12 hours.

~~(8) Any formula provided by the parent(s), guardian, placement agency or provider shall be in a ready-to-feed strength or require no preparation other than dilution with water at the day care facility.~~

(9) If bottles and nipples are to be used by the facility, they must be sanitized by boiling for 5 minutes or more just prior to refilling. Terminal (one-step) sterilization of bottles, nipples and formula is acceptable.

46.5.952 DAY CARE FACILITIES CARING FOR INFANTS, SLEEPING Subsections (1) and (2) remain as proposed.

(3) Cribs shall be made of ~~wood, metal or approved plastic~~ durable, cleanable, nontoxic material and have secure latching devices. Cribs shall have no more than 2 and 3/8 inches of space between the vertical slats. Mattresses shall fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses shall be waterproof and easily sanitized. Cribs, cots or mats shall be thoroughly cleansed before assignment to another infant.

Subsections (4) through (6) remain as proposed.

46.5.955 DAY CARE FACILITIES CARING FOR INFANTS, BUILDING AND SPACE (1) Infants shall be protected from draft and prolonged exposure to direct sunlight.

~~(2) The play areas for infants shall be separate from older children's play areas, or not be used for any other group of children while being used for infants. Sleeping areas shall be separate from play areas.~~

(3) The outdoor activity area shall be adjacent to the facility, fenced and free of hazards which are dangerous to the health and life of infants. The outdoor area shall be designed so that all parts are always visible to and easily supervised by staff.

(4) Adequate protection against insects shall be provided.

(5) Provision shall be made for both sunny and shady areas.

46.5.957 DAY CARE FACILITIES CARING FOR INFANTS, STAFF REQUIREMENTS Subsections (1)(a) and (1)(b) remain as proposed.

(c) There shall be sufficient staff so that an adult is always present and supervising. ~~when infants are sleeping.~~

46.5.958 DAY CARE FACILITIES CARING FOR INFANTS, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS

Subsections (1) through (3) remain as proposed.

(4) Play areas for infants shall be separate from older children's play areas, or not be used for any other group of children while being used for infants. Sleeping areas shall be separate from play areas.

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

COMMENT: The requirement of a preadmission physical with a statement from the physician as to special needs does not account for well-child health examinations that are done by county health nurses and should meet the requirement.

RESPONSE: The rule is being changed to allow the statement as to special needs to be from either a physician or county health nurse.

COMMENT: The rules do not indicate a minimum age of infants. Six weeks old is recommended.

RESPONSE: Existing Rule 46.5.902(19) defines an infant as being between 6 weeks and 24 months of age.

COMMENT: Doctors like to see infants at 2, 4, 6, 10, 15 and 18 months.

RESPONSE: The rule requiring health exams each three months for the first year and each six months for the second year remains the same since that is the minimum amount that will insure the health safety of the infant and others while alerting the provider to any special health needs of the infant.

COMMENT: Department of Health and Environmental Sciences day care center rules allow laundering of diapers on the premises.

RESPONSE: Rule 46.5.948 is being changed to comply with the Department of Health rule and will apply to all facilities.

COMMENT: In Rule 46.5.948(2), delete "at least" as the word "daily" is sufficient.

RESPONSE: The rule is being so changed.

COMMENT: Physicians no longer recommend boiling of nipples.

RESPONSE: After consultation with the Department of Health, the rule will remain the same since boiling is still the safest method when bottles and nipples may be used by different infants at different times.

COMMENT: There is no need to post a sign reminding employees to wash their hands after toileting, diapering, and before and after feeding. This is something everyone already knows.

RESPONSE: Because the washing of hands is a well-known rule of hygiene, the posting of a sign to that effect will not be required.

COMMENT: Because infant feeding schedules vary, a written plan is unworkable.

RESPONSE: The department feels it is necessary for parents to have control and be informed of their child's feeding scheduled even if the schedule has some built-in flexibility.

COMMENT: The rule pertaining to feeding is too long and provisions are contradictory.

RESPONSE: The rule is not as clear as it might be so it is being shortened and made more understandable without changing the substance.

COMMENT: The bathing rule should be consistent with those of the Department of Health and Environmental Sciences.

RESPONSE: The bathing rule is consistent with the Department of Health rules but are more detailed. The detail is necessary because of the health and safety risks to the infant.

COMMENT: It is more accurate from a health or safety standpoint to require cribs to be of "durable, cleanable, nontoxic material" than of "wood, metal, or approved plastic".

RESPONSE: The rule is being changed to require cribs to be of durable, cleanable, nontoxic material since health and safety are the reasons behind the rule.

COMMENT: Sleeping rooms should be well-ventilated and allow sunlight.

RESPONSE: Infant rules are in addition to other facility rules. Each of the types of facilities have rules requiring a window allowing ventilation in napping rooms.

COMMENT: The first two sentences of Rule 46.5.953(d), Transportation, contradict each other.

RESPONSE: The second sentence requires two adults in a vehicle if transporting more than two infants. Thereafter, there shall be one adult per four infants as required by the first sentence.

COMMENT: The minimum age of staff should be addressed in the rule.

RESPONSE: Rule 46.5.908 currently provides that holders of day care registration certificates or licenses must be at least 18 whereas assistant caregivers or helpers must be at least 16.

COMMENT: The rules do not provide any training requirements for staff.

RESPONSE: These rules are in addition to the family day care home rules, the group day care home rules, and the day care center rules. The staff training requirements in each of those rules would apply.

COMMENT: Why can't infants use blankets provided at the facility.

RESPONSE: Most infants have their favorite blankets from home and the caregiver should not have the responsibility of laundering the blankets or the cost of providing them.

COMMENT: The infant to staff ratio should be 3:1.

RESPONSE: The infant to staff ratio will remain at 4:1 since that still will maintain quality, individualized care.

COMMENT: The requirement that an adult be present and supervising should apply to all times not only when infants are sleeping.

RESPONSE: The rule is being changed to apply to all times.

COMMENT: Facilities should only be able to care for infants so they get the special, individualized treatment they require.

RESPONSE: The special rules for infant care were proposed to insure that any facility that provides care to infants will meet the special needs of them. This was felt to be more appropriate than restricting facilities to taking only infants or only older children. That would often split up siblings and defeat the home atmosphere in family and group day care homes.

COMMENT: Restricting infants to separate play areas is not possible in family day care homes where there may be one provider or group day care homes where there may be only two providers. It would prohibit the adequate supervision of the infants and children.

RESPONSE: The requirement that infants have separate play areas is being moved into Rule 46.5.958 which applies only to day care centers.

COMMENT: The day care laws should be part of the rule so the reasons for implementing the rules are clear.

RESPONSE: The inclusion of statutes in rules is not appropriate but the provider manuals will contain relevant statutes.

Director, Social & Rehabilitation Services

Certified to the Secretary of State April 5, 1982.

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

In the matter of the amendment of Rules 46.12.101, 46.12.102, 46.12.201, 46.12.202 and 46.12.3803, the adoption of Rules 46.12.3001, 46.12.3002, 46.12.3003, 46.12.3004, 46.12.3201, 46.12.3202, 46.12.3203, 46.12.3204, 46.12.3205, 46.12.3206, 46.12.3401, 46.12.3402, 46.12.3403, 46.12.3404, 46.12.3601, 46.12.3602, 46.12.3603, 46.12.3604, 46.12.3801, 46.12.3802, 46.12.3804, 46.12.3805, 46.12.3808, 46.12.4001, 46.12.4002, 46.12.4003, 46.12.4004, 46.12.4005, 46.12.4006, 46.12.4007, 46.12.4008 and 46.12.4009 and the repeal of Rules 46.12.203 and 46.12.217 pertaining to medicaid eligibility	) NOTICE OF THE AMENDMENT) OF RULES 46.12.101,) 46.12.102, 46.12.201,) 46.12.202 AND 46.12.3803,) THE ADOPTION OF RULES) 46.12.3001, 46.12.3002,) 46.12.3003, 46.12.3004,) 46.12.3201, 46.12.3202,) 46.12.3203, 46.12.3204,) 46.12.3205, 46.12.3206,) 46.12.3401, 46.12.3402,) 46.12.3403, 46.12.3404,) 46.12.3601, 46.12.3602,) 46.12.3603, 46.12.3604,) 46.12.3801, 46.12.3802,) 46.12.3804, 46.12.3805,) 46.12.3808, 46.12.4001,) 46.12.4002, 46.12.4003,) 46.12.4004, 46.12.4005,) 46.12.4006, 46.12.4007,) 46.12.4008 AND 46.12.4009,) AND THE REPEAL OF RULES) 46.12.203 AND 46.12.217) PERTAINING TO MEDICAID) ELIGIBILITY

TO: All Interested Persons

1. On February 11, 1982, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.101, 46.12.102, 46.12.201, 46.12.202 and 46.12.3803, the adoption of Rules 46.12.3001, 46.12.3002, 46.12.3003, 46.12.3004, 46.12.3201, 46.12.3202, 46.12.3203, 46.12.3204, 46.12.3205, 46.12.3206, 46.12.3401, 46.12.3402, 46.12.3403, 46.12.3404, 46.12.3601, 46.12.3602, 46.12.3603, 46.12.3604, 46.12.3801, 46.12.3802, 46.12.3804, 46.12.3805, 46.12.3808, 46.12.4001, 46.12.4002, 46.12.4003, 46.12.4004, 46.12.4005, 46.12.4006, 46.12.4007, 46.12.4008 and 46.12.4009, and the repeal of Rules 46.12.203 and 46.12.217 pertaining to medicaid eligibility at page 245 of the 1982 Montana Administrative Register, issue number 3.

2. The agency has amended Rules 46.12.101, 46.12.102, 46.12.201, 46.12.202 and 46.12.3803 as proposed.

3. The agency has repealed Rules 46.12.203 and 46.12.217 as proposed.

4. The agency has adopted Rules 46.12.3001, APPLICATION; 46.12.3002, DETERMINATION OF ELIGIBILITY; 46.12.3003, REDETERMINATION OF ELIGIBILITY; 46.12.3004, FURNISHING ASSISTANCE; 46.12.3201, CITIZENSHIP AND ALIENAGE; 46.12.3202, RESIDENCY; 46.12.3203, APPLICANT'S CHOICE OF CATEGORY; 46.12.3204, LIMITATION ON THE FINANCIAL RESPONSIBILITY OF RELATIVES; 46.12.3205, APPLICATION FOR OTHER BENEFITS; 46.12.3206, ASSIGNMENT OF RIGHTS TO BENEFITS; 46.12.3401, GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN; 46.12.3402, NON-FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN; 46.12.3403, FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN; 46.12.3404, THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN; 46.12.3601, GROUPS COVERED, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES; 46.12.3602, NON-FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES; 46.12.3603, FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES; 46.12.3604, THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES; 46.12.3801, GROUPS COVERED, NON-INSTITUTIONALIZED MEDICALLY NEEDY; 46.12.3802, NON-FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED MEDICALLY NEEDY; 46.12.3804, INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY; 46.12.3805, RESOURCE STANDARDS, NON-INSTITUTIONALIZED MEDICALLY NEEDY; 46.12.4001, DEFINITIONS RELATING TO INSTITUTIONAL STATUS; 46.12.4002, GROUPS COVERED, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS; 46.12.4003, GROUPS COVERED, SSI-RELATED INSTITUTIONALIZED INDIVIDUALS; 46.12.4004, NON-FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS; 46.12.4005, NON-FINANCIAL REQUIREMENTS, SSI-RELATED INSTITUTIONALIZED INDIVIDUALS; 46.12.4006, FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS; 46.12.4007, FINANCIAL REQUIREMENTS, SSI-RELATED INSTITUTIONALIZED INDIVIDUALS; 46.12.4008, POST-ELIGIBILITY APPLICATION OF PATIENT INCOME TO COST OF CARE and 46.12.4009, PROHIBITED COVERAGE as proposed.

5. The agency has adopted Rule 46.12.3808 as proposed with the following changes:

46.12.3808 THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Three month retroactive coverage will be provided to individuals ~~determined non-financially eligible for medicaid under this subchapter in the month of application~~ if:

(1)(a) through (1)(c)(iii) remains the same as proposed.

(2) Under subsection (1), medicaid will pay only unpaid bills for services:

(a) incurred in ~~the retroactive period and not used to meet the incurment requirement~~ any of the three retrospective

months if the individual was also non-financially eligible for that month;

(b) not used to meet the incurment requirement;

(bc) provided for in this chapter; and

(cd) for which no third party payment is available.

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

COMMENT: The retroactive coverage rule may make it possible for payment to be made for medical bills during time periods that an individual is ineligible.

RESPONSE: The department has changed 46.12.3808(2)(a) to allow retroactive medical assistance only in those months that an applicant meets the non-financial as well as financial criteria for the Medicaid Program.

Director, Social and Rehabilitation Services

Certified to the Secretary of State April 5, 1982.

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

In the matter of the adoption of Rules 46.13.101, 46.13.102, 46.13.104, 46.13.105, 46.13.106, 46.13.107, 46.13.201, 46.13.202, 46.13.203, 46.13.204, 46.13.205, 46.13.206, 46.13.207, 46.13.301, 46.13.302, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402, 46.13.403, 46.13.404, 46.13.501 pertaining to the low income energy assistance program.	)	NOTICE OF THE ADOPTION OF RULES 46.13.101, 46.13.102, 46.13.104, 46.13.105, 46.13.106, 46.13.107, 46.13.201, 46.13.202, 46.13.203, 46.13.204, 46.13.205, 46.13.206, 46.13.207, 46.13.301, 46.13.302, 46.13.303, 46.13.304, 46.13.305, 46.13.401, 46.13.402, 46.13.403, 46.13.404, 46.13.501 PERTAINING TO THE LOW INCOME ENERGY ASSISTANCE PROGRAM.

TO: All Interested Persons

1. On February 25, 1982, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules pertaining to the low income energy assistance program at page 348 of the Montana Administrative Register, issue number 4.

2. The agency has adopted Rules 46.13.101, SAFEGUARDING/SHARING INFORMATION; 46.13.102, ROLE OF THE LOCAL CONTRACTOR; 46.13.104, FAIR HEARINGS; 46.13.105, REFERRALS TO THE DEPARTMENT OF REVENUE; 46.13.106, FRAUD; 46.13.107, OVERPAYMENTS AND UNDERPAYMENTS; 46.13.201, INTERVIEWS REQUIRED AND CONTENT OF INTERVIEWS; 46.13.202, APPLICATIONS TO BE VOLUNTARY; 46.13.203, PLACE OF APPLICATION; 46.13.204, INVESTIGATION OF ELIGIBILITY; 46.13.205, PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS; 46.13.206, NOTIFICATION OF ELIGIBILITY; 46.13.207, NOTICE OF ADVERSE ACTION; 46.13.301, DEFINITION OF HOUSEHOLD; 46.13.302, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS; 46.13.303, TABLES OF GROSS RECEIPTS AND INCOME STANDARDS; 46.13.304, INCOME; 46.13.305, RESOURCES; 46.13.404, ADJUSTMENT OF PAYMENTS TO AVAILABLE FUNDS; 46.13.501, EMERGENCY ASSISTANCE; as proposed.

3. The agency has adopted Rules 46.13.401, 46.13.402 and 46.13.403 as proposed with the following changes:

46.13.401 BENEFIT AWARD MATRICES Subsections (1)(a)(b)-(c)(d)(e)(f) and (g) remains the same.

(2) The benefit ward matrices which follow establish the maximum benefit available to an eligible household for a full winter heating season (October thru **March** 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. The maximum benefit also varies by local contractor districts to account for weather differences across the state.

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

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

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	306 ~~270~~	213 ~~194~~	374 ~~340~~	262 ~~238~~
Fuel Oil	821 ~~746~~	574 ~~522~~	1001 ~~910~~	701 ~~637~~
Propane	617 ~~561~~	432 ~~393~~	754 ~~685~~	528 ~~480~~
Electricity M.P.C.	376 ~~342~~	263 ~~239~~	459 ~~417~~	321 ~~292~~
Electricity M.D.U.	846 ~~769~~	592 ~~538~~	1042 ~~947~~	729 ~~663~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	425 ~~386~~	297 ~~270~~	475 ~~432~~	332 ~~302~~
Fuel Oil	1100 ~~1000~~	798 ~~725~~	1100 ~~1000~~	892 ~~811~~
Propane	857 ~~779~~	601 ~~546~~	960 ~~873~~	672 ~~611~~
Electricity M.P.C.	521 ~~474~~	365 ~~332~~	585 ~~532~~	409 ~~372~~
Electricity M.D.U.	1100 ~~1000~~	774 ~~704~~	1100 ~~1000~~	916 ~~833~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IV

Liberty, Hill and Blaine Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	303 ~~275~~	217 ~~197~~	385 ~~350~~	270 ~~245~~
Fuel Oil	803 ~~730~~	562 ~~511~~	979 ~~890~~	685 ~~623~~
Propane	684 ~~622~~	479 ~~435~~	836 ~~760~~	585 ~~532~~
Electricity	383 ~~348~~	268 ~~244~~	468 ~~425~~	328 ~~298~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	448 ~~407~~	314 ~~285~~	509 ~~463~~	358 ~~325~~
Fuel Oil	1100 ~~1000~~	780 ~~709~~	1100 ~~1000~~	873 ~~794~~
Propane	950 ~~864~~	666 ~~605~~	1064 ~~967~~	745 ~~677~~
Electricity	531 ~~483~~	372 ~~338~~	596 ~~542~~	417 ~~379~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT V

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

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	283	198	363	254
G.F.G.	~~257~~	~~180~~	~~330~~	~~231~~
Natural Gas	262	183	336	234
M.P.C.	~~238~~	~~166~~	~~305~~	~~213~~
	715	501	872	611
Fuel Oil	~~650~~	~~455~~	~~793~~	~~555~~
	527	369	645	451
Propane	~~479~~	~~335~~	~~586~~	~~410~~
	340	239	417	292
Electricity	~~310~~	~~217~~	~~379~~	~~265~~
	198	149	248	198
Coal	~~180~~	~~135~~	~~225~~	~~180~~
	215	143	280	215
Wood	~~195~~	~~130~~	~~260~~	~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	424	296	484	339
G.F.G.	~~385~~	~~269~~	~~440~~	~~308~~
Natural Gas	391	274	447	312
M.P.C.	~~355~~	~~249~~	~~406~~	~~284~~
	992	694	1100	778
Fuel Oil	~~902~~	~~631~~	~~1000~~	~~707~~
	733	513	820	574
Propane	~~666~~	~~466~~	~~745~~	~~522~~
	474	332	531	372
Electricity	~~431~~	~~302~~	~~483~~	~~338~~
	297	248	347	297
Coal	~~270~~	~~225~~	~~315~~	~~270~~
	356	286	429	358
Wood	~~325~~	~~260~~	~~390~~	~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VI

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

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	262 ~~230~~	183 ~~166~~	336 ~~305~~	234 ~~215~~
Fuel Oil	733 ~~666~~	513 ~~466~~	895 ~~814~~	627 ~~570~~
Propane	568 ~~516~~	397 ~~361~~	694 ~~631~~	486 ~~442~~
Electricity	341 ~~310~~	239 ~~217~~	417 ~~379~~	292 ~~265~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	391 ~~355~~	274 ~~249~~	447 ~~406~~	312 ~~284~~
Fuel Oil	1018 ~~925~~	713 ~~648~~	1100 ~~1000~~	798 ~~725~~
Propane	790 ~~718~~	552 ~~502~~	883 ~~803~~	618 ~~562~~
Electricity	474 ~~431~~	332 ~~302~~	531 ~~483~~	372 ~~338~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VII

Sweetgrass, Stillwater, Carbon,
Yellowstone and Big Horn Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	254	177	310	217
M.D.U.	~~231~~	~~161~~	~~282~~	~~197~~
Natural Gas	279	196	356	250
M.P.C.	~~254~~	~~178~~	~~324~~	~~227~~
	631	442	771	540
Fuel Oil	~~574~~	~~402~~	~~701~~	~~491~~
	513	359	626	438
Propane	~~466~~	~~326~~	~~569~~	~~398~~
	312	219	382	267
Electricity	~~284~~	~~199~~	~~347~~	~~243~~
	198	149	248	198
Coal	~~180~~	~~135~~	~~225~~	~~180~~
	215	143	286	215
Wood	~~195~~	~~130~~	~~260~~	~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	352	246	395	276
M.D.U.	~~320~~	~~224~~	~~359~~	~~251~~
Natural Gas	414	289	472	363
M.P.C.	~~376~~	~~263~~	~~429~~	~~300~~
	877	614	982	688
Fuel Oil	~~797~~	~~558~~	~~893~~	~~625~~
	712	498	796	558
Propane	~~647~~	~~453~~	~~724~~	~~507~~
	433	304	486	340
Electricity	~~394~~	~~276~~	~~442~~	~~309~~
	297	248	347	297
Coal	~~270~~	~~225~~	~~315~~	~~270~~
	358	286	429	358
Wood	~~325~~	~~260~~	~~390~~	~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT VIII

Lewis & Clark, Jefferson and
Broadwater Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	279 ~~254~~	196 ~~178~~	356 ~~324~~	250 ~~227~~
Fuel Oil	750 ~~682~~	525 ~~477~~	915 ~~832~~	640 ~~582~~
Propane	639 ~~581~~	448 ~~407~~	782 ~~711~~	548 ~~498~~
Electricity	358 ~~325~~	251 ~~228~~	441 ~~401~~	309 ~~281~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	414 ~~376~~	289 ~~263~~	472 ~~429~~	330 ~~300~~
Fuel Oil	1042 ~~947~~	729 ~~663~~	1100 ~~1000~~	809 ~~735~~
Propane	889 ~~808~~	623 ~~566~~	994 ~~904~~	696 ~~633~~
Electricity	497 ~~452~~	348 ~~316~~	558 ~~507~~	385 ~~350~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT IX

Meagher, Gallatin and Park Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	279 ~~254~~	196 ~~178~~	356 ~~324~~	250 ~~227~~
Fuel Oil	732 ~~665~~	513 ~~466~~	893 ~~812~~	624 ~~568~~
Propane	623 ~~566~~	436 ~~396~~	761 ~~692~~	532 ~~484~~
Electricity	358 ~~325~~	251 ~~228~~	441 ~~401~~	309 ~~281~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	414 ~~376~~	289 ~~263~~	472 ~~429~~	330 ~~300~~
Fuel Oil	1015 ~~923~~	711 ~~646~~	1100 ~~1000~~	788 ~~716~~
Propane	865 ~~786~~	605 ~~550~~	968 ~~880~~	678 ~~616~~
Electricity	497 ~~452~~	348 ~~316~~	558 ~~507~~	385 ~~350~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

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	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	281 ~~255~~	197 ~~179~~	359 ~~326~~	251 ~~228~~
Fuel Oil	788 ~~716~~	551 ~~501~~	961 ~~874~~	673 ~~612~~
Propane	645 ~~586~~	451 ~~410~~	788 ~~716~~	551 ~~501~~
Electricity	510 ~~464~~	358 ~~325~~	624 ~~567~~	437 ~~397~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	418 ~~380~~	293 ~~266~~	476 ~~433~~	333 ~~303~~
Fuel Oil	1095 ~~995~~	767 ~~697~~	1100 ~~1000~~	857 ~~779~~
Propane	895 ~~814~~	627 ~~570~~	1003 ~~912~~	702 ~~638~~
Electricity	708 ~~644~~	496 ~~451~~	802 ~~729~~	561 ~~510~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XI

Mineral, Missoula and Ravalli Counties

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	279 ~~254~~	196 ~~178~~	356 ~~324~~	245 ~~227~~
Fuel Oil	756 ~~687~~	529 ~~481~~	924 ~~840~~	647 ~~588~~
Propane	605 ~~550~~	424 ~~385~~	740 ~~673~~	518 ~~471~~
Electricity	358 ~~325~~	251 ~~228~~	441 ~~401~~	309 ~~281~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	414 ~~376~~	289 ~~263~~	472 ~~429~~	330 ~~300~~
Fuel Oil	1051 ~~955~~	736 ~~669~~	1100 ~~1000~~	815 ~~741~~
Propane	840 ~~764~~	589 ~~535~~	941 ~~855~~	659 ~~599~~
Electricity	497 ~~452~~	348 ~~316~~	558 ~~507~~	385 ~~350~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

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

	1 Bedroom Home		2 Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	279 ~~254~~	196 ~~178~~	356 ~~324~~	250 ~~227~~
Fuel Oil	718 ~~653~~	503 ~~457~~	878 ~~798~~	615 ~~559~~
Propane	639 ~~581~~	448 ~~407~~	734 ~~667~~	513 ~~466~~
Electricity	358 ~~325~~	251 ~~228~~	441 ~~401~~	309 ~~281~~
Coal	198 ~~180~~	149 ~~135~~	248 ~~225~~	198 ~~180~~
Wood	215 ~~195~~	143 ~~130~~	286 ~~260~~	215 ~~195~~

	3 Bedroom Home		4+ Bedroom Home	
Type Fuel	Single Family Unit	Multi-Family Unit or Mobile Home	Single Family Unit	Multi-Family Unit or Mobile Home
Natural Gas	414 ~~376~~	289 ~~263~~	472 ~~429~~	330 ~~300~~
Fuel Oil	998 ~~907~~	699 ~~635~~	1100 ~~1000~~	774 ~~704~~
Propane	889 ~~808~~	623 ~~566~~	994 ~~904~~	696 ~~633~~
Electricity	497 ~~452~~	348 ~~316~~	558 ~~507~~	385 ~~350~~
Coal	297 ~~270~~	248 ~~225~~	347 ~~315~~	297 ~~270~~
Wood	358 ~~325~~	286 ~~260~~	429 ~~390~~	358 ~~325~~

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) For applications filed in October, November, and December, households found eligible will be awarded the full amount of the benefit award matrix.~~

~~(b) For applications filed in January, households found eligible will be awarded 2/3 of the full amount of the benefit award matrix.~~

~~(c) For applications filed in February, households found eligible will be awarded 1/2 of the full amount of the benefit award matrix.~~

~~(d) For applications filed in March, the last month in which applications may be filed for the current year's program, households found eligible will be awarded 1/3 of the full amount of the benefit award matrix.~~

(a) For applications filed during the period October 1, 1981 through April 30, 1982, households found eligible will receive the full amount of their applicable matrix.

Subsections (2) and (3) remain the same.

46.13.403 METHOD OF PAYMENT (1) Definitions:

(a) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. ~~and which, for applications filed after December 31, are delivered to the household no earlier than the month prior to the month of application. For applications filed after September 30, but before January 1,~~ eEnergy delivered by the household's fuel vendors prior to October 1, are ineligible for payment under the current year's program.

(i) Notwithstanding the above, eligible energy costs may include energy delivered ~~two months prior to the month of application for applications filed after December 31 and may include energy delivered~~ prior to October 1 for applications filed after September 30, ~~but before January 1,~~ when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.

Subsections (2)(a)(b) and (3)(a) remain the same.

4. The authority of the department to adopt the rule is based on Section 53-2-201, MCA and the rules implement Section 53-2-201, MCA.

5. The Department has thoroughly considered all oral and written comments received:

COMMENT: The department should have begun the rulemaking process prior to last fall rather than issuing an emergency rule and now a final rule. The department in effect manipulated the emergency rulemaking process to adopt rules which never received public comment as contemplated by the Montana Administrative Procedure Act.

RESPONSE: The department believes it is irresponsible to initiate formal rulemaking for programs for which funding is uncertain due to federal action. Further, the 47th Montana Legislature had previously stated that it would hold a special session if and when block grants were forthcoming. Legislative action did in fact determine how the 1981-82 LIEAP program would run. When funding was certain and responsible action could be taken it became necessary to formulate an emergency rule in order to provide these vital exigent services during the winter period, otherwise, the health of many Montana citizens would have been imperiled.

COMMENT: Further LIEAP rule changes should offer at least 30 days for public comment and more notice should be given to interested organizations prior to the hearing process.

RESPONSE: The department will attempt to give a longer comment period, however, at times the statutorily required period may be utilized when the exigencies require. The agency will cooperate with interested organizations and individuals as early in the rulemaking process as practically possible at their request.

COMMENT: The department should hold several hearings statewide to involve all low income people.

RESPONSE: The department would like to elicit all possible public input by holding several hearings. It is often impossible to justify the delay in implementation of a final rule and the administrative costs of holding several hearings. Written comments are welcomed from those who cannot attend Helena hearings. Several advocates and many witnesses well represented those Montana citizens who could not personally attend.

COMMENT: The rules are too complicated and do not conform in format to other agency rules.

RESPONSE: Programs affecting many people in all manner of situations are complicated, however, the department has attempted to say exactly what it intends in as few words as possible. The format will be reviewed along with possible other clarifications and necessary changes before the 1982-83 heating year.

COMMENT: Section 53-2-201, MCA and its statement of intent require the department to make rules consistent with state and federal law. The advent of the block grants leaves the department with no federal law to be consistent with. Further, there is no state law on LIEAP. Consequently, the department has no authority to adopt such broad rules.

RESPONSE: Section 53-2-201, MCA allows the department broad discretion in administering public assistance funds. The department has been given the authority by that section to do all things necessary in order to avail itself of federal aid. The department's LIEAP rules have been guided by agreements and understandings with the federal government and action by the first special session of Montana's 47th legislature. The department feels that the administration of LIEAP funds is vital to many Montanans and that 53-2-201, MCA gives quite adequate authority for the agency to responsibly disseminate those funds. Such a program cannot be administered without rules according to the Montana Administrative Procedure Act.

COMMENT: Not enough administrative funds were available for local agencies (HRDC) and too much was retained at the state level.

RESPONSE: HRDCs were asked to submit their proposed administrative requests to the department. All such requests for outreach and administrative personnel for the program period were granted. This year's local administrative funds will total over $600,000 which is greater than the amount spent last year. Further, this year's program covers only seven months as compared to last year's 12 month program. No reasonable request for additional administrative funds have been denied. Although the department's administrative costs have not been finally determined; they are estimated at between $200,000 and $300,000. As the department has assumed much of the administrative burden for this year's program from the local agencies, that figure will cover only those costs necessary to operate and manage the program.

COMMENT: The department will carryover more funds than are necessary for the 1983 program, unfairly treating 1982 clients.

RESPONSE: Historically, federal funds for the LIEAP have been extremely late in arriving. They have never been received prior to the start of the program and have been received as late as January. The use of a portion of this year's funds will insure that next year's program is delivered in a timely manner and that there are no delays in assistance to low income households.

The department is planning on extending this year's program until April, 1982, augmenting all matrices by 10% and allowing all eligible applicants to receive 100% of their benefit award regardless of application date during the eligibility period. These modifications will result in approximately 1.4 million dollars more than anticipated being expended for 1981-82 heating bills.

The Omnibus Budget Reconciliation Act of 1981, the authorizing legislation for LIEAP, allows states to carry over not more than 25% of their allotment for use in the succeeding year. This recognition, by Congress and the federal government, of the difficulty of starting a program designed to meet winter needs without timely federal assistance is welcome.

The proposed federal FY 1983 budget represents a 31% reduction from the 1982 level. Should this reduction occur, the possible FY 82 carryover may be even more desirable.

COMMENT: Some LIEAP recipients had credit balances with utility vendors on October 1, 1982, attributable to the 1980-81 LIEAP program. HHS required states that utilized lines of credit with fuel vendors to reconcile the amount of pre-payments to vendors by one of the following methods:

(1) Require the vendor to issue a check to the household for the remaining cash balance;

(2) Require the household to make arrangements with the vendor in the household's account;

(3) Require the vendor to issue a check to the state for the remaining unused cash balance for subsequent payment to the household.

The department's policy of subtracting the remaining household credit line balance from 1981-82 entitlements is contradictory to all of those options. These persons are being penalized for money they did not use last year.

RESPONSE: The department chose option number 2 listed above. HHS had a further requirement that requires funds from households that did not make the required arrangement to be

returned to the federal government. The agency is pursuing a follow-up policy to insure that all households make arrangements so that needy citizens of Montana will not lose the available federal money. We encourage maximum cooperation from the needy so that limited funds can be utilized to the fullest extent possible.

The agency chose the second option not to penalize households, but rather to best insure that a limited amount of heating related funds could be utilized by the maximum number of needy Montana citizens possible. Remaining credit balances were the result of an overestimation of heating needs due to a warm winter and from responsible conservation of a limited resource by good citizens. Those remaining balances allowed a greater amount of assistance available in the 1981-82 heating season with the additional result that an amount could be set aside when in all probability the federal program will again be late in starting and less federal funds will be available.

COMMENT: The amount of benefit awarded are too low to meet the needs of eligible clients.

RESPONSE: The LIEAP is not intended to completely meet a household's total energy costs. Rather, it is designed to assist households to meet the costs of heating or cooling their homes. Our calculations show that approximately 72% of a household's total energy consumption is attributable to heating. Consequently, it would be impossible for the LIEAP to totally meet a household's total energy needs and still be in compliance with federal law.

No evidence was presented, nor has there been any submitted prior to the hearing, that the matrices are inaccurate and were the result of faulty application of the formula which resulted in the figures represented by the matrices.

The matrices are being increased by 10% to reflect the fact that a longer period of the heating season will now be covered.

Montana's matrix and eligibility requirements delivers assistance to low income families based on size of house, type and cost of fuel, heating degree days and size of family. A detailed description is as follows:

MATRICES DEVELOPMENT
(Formulated Before New Changes)

Formula:

(1) Home Size x (2) Housing Type x (3) Annual Consumption x (4) 80% x (5) Fuel Cost x (6) Local Heating Degree Day Factor.

(2) Home Size
Square foot assumptions were adopted from the Housing and Urban Development (HUD) study based on heat loss tests by the Montana Power Company. The HUD study was used in previous year's fuel assistance matrix development. A translation from square feet to number of bedrooms was necessary due to the impractical alternative of measuring every eligible residence. The residence number of bedrooms is a useful common denominator. With the exception of mobile homes and multifamily dwellings the HUD study was used to provide the square feet to bedroom translation.

i.e.;	1 bedroom	900 sq. ft.
	2 bedrooms	1,100 sq. ft.
	3 bedrooms	1,250 sq. ft.
	4 bedrooms	1,400 sq. ft.

The superficial treatment of mobile homes in the HUD study, as well as the department decision to define multifamily as "two or more units" rather than "five or more units", as does the HUD study prompted a slight departure from the HUD estimates for multifamily and mobile homes.

For Mobile Homes the HUD study sq. ft. figures are:

1 bedroom	600 sq. ft. (67% of S.F.)
2 bedrooms	720 sq. ft. (65% of S.F.)
3 bedrooms	1,200 sq. ft. (96 1/10% of S.F.)
4 bedrooms	1,560 sq. ft. (114% of S.F.)

This study made generalized assumptions regarding mobile home heat loss characteristics. For example, the HUD study did not consider the much greater surface exposure of mobile homes nor the lack of heat retaining mass available to single family dwellings. In addition, the study used "identical insulation levels... for all living units", i.e.; R-11, 3½" in the walls and R-19, 6" in the ceilings. The National Center for Appropriate Technology's, Mobile Home Weatherization states, "many existing mobile homes have little or no insulation in the walls, floors, or ceilings. This, in combination with

the lack of thermal mass in mobile homes, often causes a mobile home to use more energy for heating than an equivalent sized conventional house".

While many single family residents have upgraded the insulation levels in their homes, this is not a viable option for most mobile home owners. Because of the diversity of makes, models, age, construction techniques, and the absence of adequate heat load information, it is difficult to estimate confidently the average mobile home heating needs.

Last year's LIEAP program allowed only one, two, and three bedroom benefit awards due to the unwarranted increase in sq. ft. the HUD study used for three and four bedroom mobile homes. This sq. ft. increase reflects the introduction of double-wide mobile homes into the calculation. The 1981-1982 LIEAP matrix response to these composite problems is to standardize mobile home treatment by allowing 70% of the single family benefit award for one, two, three, and four bedroom mobile homes and define double-wide mobile homes as single family dwellings. This year's program should yield valuable information necessary for a more precise mobile home determination.

Multifamily dwellings heating requirements differ from single family units as a result of the shared walls or "clustered" nature of multifamily structures. Although the HUD study used a general factor of .6 to discount heating need from single family costs, the department's decision to define multifamily as "one or more", rather than "five or more", as does the HUD study, promulgated an adjustment to a factor of .7. (The Pacific Northwest Residential Energy Survey estimates 2% of Montana residents inhabit structures of five or more units and 6% reside in 2-4 unit dwellings). While it is true that multifamily units share perimeter(s), the benefit derived varies greatly. The 5 or more unit multifamily structures share more walls, ceilings, and floors than do 2-4 unit structures. Information is not available regarding the relative benefit available per unit of multifamily structure. Here again, an analysis of actual consumption from this year's program should yield a better estimate of average consumption for this housing type.

(3) Annual Consumption
The estimate of average annual consumption was adopted from the HUD study as it was in every previous fuel assistance program. The Section 8, HUD utility allowance

study was prepared with the cooperation of the Montana Public Service Commission, Montana Power Compact, Montana Energy Advisory Council and the American Gas Association.

The average consumption figures were tested against actual consumption data available from preceding fuel assistance programs. These estimates were then confirmed for accuracy by Tim McKuen of MPC and Rick Itami of the Department of Natural Resources.

The average consumption is for space heat only or approximately 75% of home energy use. The state average consumption use by fuel type and home size are:

Natural Gas

1 bedroom	(900 sq. ft.)	90 mcf
2 bedrooms	(1,100 sq. ft.)	110 mcf
3 bedrooms	(1,250 sq. ft.)	125 mcf
4 bedrooms	(1,400 sq. ft.)	140 mcf

Bottled Gas (Propane)

1 bedroom	36 mcf x 27.03 = 973.08 gallons
2 bedrooms	44 mcf x 27.03 = 1,189.32 gallons
3 bedrooms	50 mcf x 27.03 = 1,351.5 gallons
4 bedrooms	56 mcf x 27.03 = 1,513.68 gallons

Fuel Oil

1 bedroom	- 90 mil btu's - 128,000 btu's/gal = 703 gal
2 bedrooms	- 110 mil btu's - 128,000 btu's/gal = 859 gal
3 bedrooms	- 125 mil btu's - 128,000 btu's/gal = 977 gal
4 bedrooms	- 140 mil btu's - 128,000 btu's/gal =1,094 gal

Electricity

1 bedroom	13,654 kwh
2 bedrooms	16,687 kwh
3 bedrooms	18,963 kwh
4 bedrooms	21,238 kwh

Wood	Single Family	Mobile/Multifamily
1 bedroom	3 cords	2 cords
2 bedrooms	4 cords	3 cords
3 bedrooms	5 cords	4 cords
4 bedrooms	6 cords	5 cords

Coal	Single Family	Mobile/Multifamily
1 bedroom	4 tons	3 tons
2 bedrooms	5 tons	4 tons
3 bedrooms	6 tons	5 tons
4 bedrooms	7 tons	6 tons

The Bonneville Power Administration's Residential Energy Survey provided the wood and coal heating season use estimates. Multifamily and mobile homes were not factored at .7 because these fuels are sold by the cord and ton, not easily divisible by percentage on delivery. One less cord/ton per bedroom was used to reflect the reduced need of mobile and multifamily homes. The value (heat content) of wood and coal varies by type and end use efficiency much more than electricity, natural gas, propane or fuel oil.

(4) 80%
In response to budget cuts and congressional intent, LIEAP will pay for home heating requirements for October through March (heating season). It was determined that 80% of heating needs fall within these six months by calculating heating degree days (HDD) applicable to this period. Missoula, Helena, and Billings area monthly heating degree day information provided the cross section test of heating needs for Montana. The 'Montana Solar and Weather Information' manual from Western Sun provided the HDD data used. For Missoula, annual HDD are 7931, of which 6829 fall within the LIEAP heating season or 79.29%. For Helena; 6531/8190 = 79.75%. For Billings; 5943/7265 = 81.80%. For Montana, the heating season is then 80.28%. Tim McKuen of MPC analyzed residential fuel use for these six months and confirmed the 80% figure. Likewise, the Department of Natural Resources, Rick Itami, arrived at the same 80%.

(5) Fuel Costs
Fuel prices were obtained from the ten Community Action Agencies' (CAA) poll of local fuel vendors. These prices were then averaged to arrive at a district by district cost by fuel type. For example, propane prices in District VI ranged from 68¢ to 70¢ a gallon, for an average of 69¢. The local fuel vendor prices were then double checked by department Field Supervisors. The major fuel suppliers or regulated utilities; Montana Power Company, Montana Dakota Utilities, and Pacific Power and Light, provided utility prices that include winter month rates and projected price increase set by the Montana Public Service Commission. PSC Utility Division economist Larry Finch confirmed all regulated utility prices.

(6) Local Heating Degree Day Factor
Montana experiences a variance of approximately 20% in climactic condition from the high and low HDD districts. To reflect this variance in our matrix equation the HDD's of each district were added together then divided by ten

to get the mean. Each district's HDD figures were then percentaged plus or minus in relation to the mean. The Montana Legislature assigned these HDD figures to each of the ten CAA's originally for purpose of weatherization fund distribution. The same HDD's were adopted by the first fuel assistance program as the only CAA district weather information available and have been used as a matrix consideration ever since.

Heating Degree Days by District

District I, II, III	8572/8050 =	+	6%
District IV	8700/8050 =	+	8%
District V	7750/8050 =	-	3.7%
District VI	7750/8050 =	-	3.7%
District VII	7049/8050 =	-	12. %
District VIII	8129/8050 =	+	1. %
District IX	8129/8050 =	+	1. %
District X	8191/8050 =	+	1.8%
District XI	8125/8050 =	+	1. %
District XII	8125/8050 =	+	1. %

COMMENT: The program does not cover a period long enough to meet the winter heating season or the potential shut-offs which may occur in April.

RESPONSE: The department agrees. The program has been extended so that applications will now be received through April 30, 1982. To compensate for this additional month, all matrices will be augmented by 10%.

COMMENT: The 40 year heating degree day average used by SRS is inappropriate in determining this year's needs.

RESPONSE: To develop a matrix which most accurately meets the needs, it is important not to be swayed by a previous year's climate which may be either extraordinarily cold or warm. To do so, would penalize or reward recipients the following year. An average which covers many years and typical or atypical winters is the only measure that makes common sense.

COMMENT: Mobile homes should be treated the same as single family dwellings.

RESPONSE: Double-wide mobile homes are treated the same as single family dwellings. Other mobile homes receive lower benefit awards because on the average they have fewer square feet to heat than a single family dwelling with the same number of bedrooms.

COMMENT: There should be no decline in the amount of benefit a person realizes if they apply late in the program. A person applying in March should receive the same benefit as a similarly situated person applying in November.

RESPONSE: The department agrees. The rules will be amended so that a person will realize the full amount of the applicable matrix regardless of the application date, as long as application was made during the October 1, 1981 - April 30, 1982 period.

COMMENT: Persons in Section 8 housing should be eligible.

RESPONSE: Persons living in Section 8 housing have two benefits awarded them that low income persons not living in Section 8 housing do not. Section 8 residents, regardless of their rent, pay no more than 25% of their income toward rent. Any rent amount over 25% is paid for by the federal government. Section 8 residents also receive, either directly or in the form of a further rent reduction, an allowance for energy costs. This allowance is provided throughout the year.

When these two factors are considered, Section 8 residents are more fully protected than similar non-Section 8 low income families. To provide further assistance has been deemed to be unfairly discriminatory to low income families unable to live in Section 8 units.

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

RESPONSE: The department has 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 was pointed out that the removal of the automatic deduction was penalizing low income senior citizens. 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.

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

RESPONSE: The department adopted the 12 months rule at the request of several Human Resource Development Councils. It was felt that by using the 90 day rule, many people who were typically seasonably 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 approved applications. Persons ineligible in October can reapply in April, if their incomes have remained low.

COMMENT: The department should not take into consideration a 1981 client's LIEAP balance in computing their 1982 benefit award.

RESPONSE: The 1981 plan specified that all credit balances existing after September 30, 1981 were to be returned to the federal government. The department applied for, and is awaiting final approval of, an amendment allowing those funds (approximately 1.8 million dollars) to be carried forward. If the amendment is not approved, those funds would have been lost to the people and the State of Montana.

For FY 1982, a person realizes the full amount of the matrix, regardless of date of application. This benefit may include the use of either or both FY 81 and FY 82 funds.

The intent is to insure that heating needs during the 1981-82 winter are met but not exceeded. This computation helps assure that happens.

COMMENT: The department should not pay vendors in more than one installment.

RESPONSE: There was concern raised by legislators and others that by paying 100% of authorized benefits in one initial payment to vendors, those vendors would be receiving what amounts to interest free payments which could be reinvested until such time that clients' bills required that money to pay for actual costs occurred.

Additionally, each of the department's local contractors, the state's Human Resource Development Councils, have direct access to a contingency revolving fund of $248,000. This fund can be used to pay for emergencies for individual clients or to allow the HRDC's to make direct payments to vendors requiring cash on delivery. There has been limited use of the contingency revolving fund.

COMMENT: The self-employed income levels were unrealistic.

RESPONSE: The self-employed figures were 250% of the poverty level. If a self-employed person with three dependents grossed less than $21,125, he would be potentially eligible for the program. The 250% figure is felt to be adequate to insure that the small businessperson could have the opportunity to participate while, at the same time, limiting this opportunity to only those persons who would be most likely to have need of the program's benefits.

COMMENT: If it is the department's intention that these rules apply only to the 1981-1982 heating season, it should be clearly stated.

RESPONSE: It is the department's intention that these rules apply only to the 1981 - 82 heating season. As stated in the rationale of the proposed rule, these rules govern the operation of the program until September 30, 1982. This intention need not be part of the rule since amendments will be necessary for the 1982 - 83 heating season.

COMMENT: Rule XXI, Method of Payment, is unclear in subsection (2) as to what course of action an eligible household which is billed directly for energy costs by the fuel vendor should take if the department chooses not to issue a check payable to the household.

RESPONSE: The rule is mute on this point because the department does not wish to place any limitation on courses of action available.

COMMENT: The rules are not clear and several terms are not defined such as "benefit award", and "adjusted benefit award".

RESPONSE: We have reviewed the terms in questions and believe their meaning to be self-evident.

COMMENT: Clarification is needed as to who the contractors are that are referred to in Rule II (46.13.102).

RESPONSE: For the 1981 - 82 program, "local contractor" means one of the state's ten Human Resource Development Councils.

COMMENT: Residents of group homes should be eligible for the program.

RESPONSE: $800,000 was transferred from the LIEAP program to the Title XX program to be used for residents of group homes.

COMMENT: The department was provided with a number of recommendations by the 10 HRDCs in Montana, but very few of these were accepted by the department. The HRDCs recommended the retention of the $1,000 automatic medical deduction, eligibility including Section 8 and public housing citizens, HRDCs make the payments to the vendors and that priority consideration be given to the elderly and handicapped people and the developmentally disabled group homes. The HRDCs had administered this program for the last four years and this was the department's first time working with this specific program. The department's unacceptance of the HRDCs expertise and wisdom has resulted in increased pressure and unnecessary hardships being borne by the low income, elderly and handicapped.

RESPONSE: The HRDCs advice was sought out by the department. To say that there was unanimous agreement of the HRDCs on every issue would not be accurate. However, the department did consider all recommendations made by them and since it, and not the HRDCs or any other organization, is the agency responsible to the federal government for operation of the program, the department had to weigh all the advantages and disadvantages of any recommendation and implement a program which, when consideration was given to all factors, was the best possible method to administer a responsible, effective program.

COMMENT: The program should be run the way it was previously and administered locally.

RESPONSE: This year, as last year, the state's ten HRDCs are responsible for outreach activities, application intake, verification and computation of benefits. The major difference is that funds for payments and the actual payments for most clients is handled by the department. The 45 day limit on application intake and notification of eligibility is as it has always been.

COMMENT: Cancelled checks shall be accepted as rent receipts.

RESPONSE: To insure that what is presented is actually payment for rent and not for some other matter, rent receipts are required.

COMMENT: An early firm commitment to the weatherization program by the department is strongly recommended. Weatherizing enables the low-income, elderly and handicapped to cut their consumption of energy thus reducing the cost of the heating bills. These persons do not have the accumulated savings or credit necessary to make the improvements that would result in significant conservation. Their future holds not only increasing energy bills, but also an ever increasing dependence on the fuel assistance program. The immediate transfer of funds to the weatherization program, the only long term solution, would result in reduced fuel assistance expenditures.

RESPONSE: The department has previously committed itself to transferring the total amount allowable by law (15%) from the LIEAP to the weatherization program.

COMMENT: No effort has been made by the state of Montana to implement energy-conservation education. Conservation education and increased awareness of energy use and alternatives should be made available to reduce energy consumption to low-income Montanans.

RESPONSE: LIEAP is limited to meeting heating needs of a low-income household. The department does operate a weatherization program to assist low-income people make their homes more energy efficient.

COMMENT: Additional LIEAP funds should be authorized for eligibles who can demonstrate that payments received to date are inadequate to pay 80% of actual heating bills for the heating season.

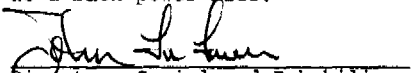
RESPONSE: The department can utilize no more than 10% of available LIEAP funds for administration costs. In order to base payments on actual billing the over 17,000 LIEAP applications would have to be reviewed for actual heating costs. That type of review would cost much more than the ceiling of 10% allowed. Further the payment of actual costs would provide for no incentive to recipients to conserve energy therefore causing the agency to be able to provide services to even fewer needy Montanans.

COMMENT: Persons ineligible for LIEAP funds due to their income falling between 125% and 150% of the poverty level should be determined eligible if they are in danger of having their utilities turned off due to an inability to pay.

RESPONSE: The LIEAP program is meant to serve the needs of the lowest income people. In order to serve those people the agency considered the funds available and projected that serving those with income over 125% of the poverty level would be impossible with current funds. To initially structure the program to serve only those individuals over 125% but less than 150% of the poverty level who later found themselves in danger of a utility shut off would be basically unfair. A statewide program cannot treat people similarly situated in a different manner.

COMMENT: The department should use LIEAP funds to avoid termination of service to clients and avoid an emergency.

RESPONSE: Emergencies are unforseen events which can not be predicted. Termination of services occur only after attempts by the vendors to secure payment have failed. LIEAP can assist households to meet their heating needs, but it is not designed to cover all a household's heating costs. The assistance LIEAP provides may make it possible for a household to use some funds it had budgeted for energy payments to be used for some other need such as a back power bill.



Director, Social and Rehabilitation Services

Certified to the Secretary of State April 5, 1982.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF DENTISTRY

In the matter of the application of James R. Hickman, D.D.S. for a declaratory ruling as to the application of section 37-4-503, MCA, to the repair and reconstruction of dentures.	DECLARATORY RULING

On December 9, 1981, James R. Hickman, D.D.S., petitioned the Board for a declaratory ruling that section 37-4-503, MCA, which requires that all non-metal dentures be identified with the name of the owner at the time of processing, applies to the initial fabrication, the relining, and the reprocessing of dentures but not to repairs which do not involve the substantial alteration of the denture base.

The Board gave notice to Dr. Hickman and to all other licensed dentists residing within Montana that it would consider the petition during its meeting in Helena, Montana on January 16, 1982. This meeting was subsequently rescheduled for February 8, 1982. Prior to its consideration of this matter, the Board received several oral and written comments from dentists both in support and in opposition to the proposed ruling. Additional oral comments offered at the February 8 meeting supported the proposal.

In reaching a decision in this matter the Board was primarily concerned with carrying out section 37-4-503's dual objectives of facilitating forensic identification and avoiding the confusion of dentures in nursing home situations. Consequently the Board agrees that the phrase "at the time of processing" must be construed to include not only the initial fabrication of dentures but also operations which involve their substantial modification. The Board finds that the modest additional cost and inconvenience of identifying dentures during such procedures is more than offset by the public benefits derived therefrom and that these benefits were contemplated by the 1979 Legislature in adopting section 37-4-503.

The Board finds further that limiting the application of section 37-4-503 to the initial fabrication of dentures would frustrate the purpose of the statute by permitting the obliteration of identifications initially placed in dentures when the dentures are subsequently relined or reprocessed.

THEREFORE IT IS RULED THAT

Section 37-4-503, MCA, which requires the identification of all non-metal full dentures at the time of processing, applies to the initial fabrication, the relining, and the reprocessing of dentures but not to repairs which do not involve a substantial alteration to the denture base.

DATED this 26th day of March, 1982.

BOARD OF DENTISTRY

Jeannette S. Buchanan, R.D.H.
President

VOLUME 39 OPINION NO. 55

MUNICIPAL CORPORATIONS - Authority to exceed maximum mill levy;
MUNICIPAL CORPORATIONS - Taxes paid under protest, authority to exceed maximum mill levy to compensate;
MUNICIPAL CORPORATIONS - Taxes paid under protest, use of funds when received;
TAXATION AND REVENUE - Authority of municipality to exceed maximum mill levy;
TAXATION AND REVENUE - Payment under protest, authority to exceed maximum mill levy to compensate;
TAXATION AND REVENUE - Payment under protest, use of funds when received;
MONTANA CODE ANNOTATED - Sections 7-6-4229 to 4232, 7-6-4235, 7-6-4251 to 4255, 7-6-4431 to 4437, 7-6-4451, 7-6-4452, 7-6-4502, 15-1-402, and 15-7-122;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 155 (1978).

HELD: 1. A municipality may not adopt a levy that is higher than the statutory maximum in order to compensate for the anticipated loss of expendable revenue due to payment of taxes under protest unless the voters approve under sections 7-6-4431 to 4437, MCA.

2. A municipality that receives back taxes that had previously been paid under protest shall deposit them to the credit of the fund or funds to which they would have been credited had they been timely received. If money remains in any fund at the end of the fiscal year in which it was received, that sum is part of the "cash balance," which is included in the calculations to determine the levy in the next year under sections 7-6-4229 to 4232, MCA.

19 March 1982

Robert L. Jovick, Esq.
City Attorney
P.O. Box 1245
Livingston, Montana 59047

Dear Mr. Jovick:

You have asked for my opinion on two questions, which I have stated as follows:

1. If a municipality anticipates that it will not collect a certain amount of taxes in the next fiscal year because the taxes are being paid under protest, may the municipality adopt a levy that is higher than the statutory maximum in order to compensate for the anticipated loss of expendable revenue?

2. If protested taxes are paid to the municipality in a future year, must the municipality use those funds to lower the levy in the year after their receipt?

Your letter indicates that the municipality uses an all-purpose annual mill levy in lieu of multiple levies, as authorized by section 7-6-4451, MCA. Section 7-6-4452, MCA, provides that "[t]he total of the all-purpose levy may not exceed 65 mills on the dollar." In the past, the municipality has fixed the all-purpose levy at 65 mills. Now, however, the muncipality is faced with the prospect that such a levy will not raise sufficient funds to cover the budget because a significant portion of the taxes levied will be paid under protest.

In your situation, a taxpayer obtained a court injunction prior to the payment of any of the contested taxes, and the taxes are being paid to the court. Under Montana's protest payment statute, section 15-1-402, MCA, a taxpayer who wishes to challenge a tax may make payment to the municipal treasurer under written protest, and subsequently pursue its legal remedies. The treasurer must deposit the money in a special protest fund. The effect of either procedure for payment of protested taxes is the same: the money is not available for municipal expenditures until the litigation has been resolved. This lack of funds may pose a serious problem if the litigation continues for many years. However, under Montana's present statutes, the problem does not relieve the municipality of its obligation to observe the strict statutory limitations on the mill levy.

Your letter suggests that section 15-7-122, MCA, allows a municipality to exceed the statutory limitations to compensate for the problem of taxes paid under protest. I cannot agree. Section 15-7-122, MCA, states:

> Taxing jurisdictions may adopt and levy for a budget equal to 105% of the preceding year's budget, statutory mill levy limitations notwithstanding, unless the taxable valuation therein has increased to a level which would allow statutory mill levies to produce a budget equal to 105% of the preceding year's budget.

This provision allows a municipality some discretion to exceed the mill levy maximum if the total taxable valuation of property has failed to increase. It plainly does not authorize the municipality to discount the taxable valuation of property for which taxes are being paid under protest. Section 15-7-122, MCA, was clearly intended to permit a waiver of the maximum mill levy for one purpose only: to compensate for a decline in taxable valuation. See 37 Op. Att'y Gen. No. 155, at 639 (1978). It does not address and therefore does not authorize such a waiver to compensate for a decline in expendable revenue due to tax protests. See Dunphy v. Anaconda Co., 151 Mont. 76, 79-81, 438 P.2d 660, 662 (1968).

However, section 7-6-4431, MCA, allows the voters of a municipality to authorize the governing body to exceed the statutory mill levy maximum. This authority is not confined to "certain cases," as is the authority in section 15-7-122, MCA, and may be granted by the voters for whatever reasons they find persuasive. In answer to your first question, it is my opinion that the municipality may not exceed the statutory mill levy maximum under the situation you have described unless the voters approve.

Your second question concerns the use of the protested taxes in the event the municipality is successful in the litigation and the taxes are finally made available for its use. Section 15-1-402(8)(a), MCA, provides that "the amount of the protested portions of the tax or license fee shall be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs." The money is then available to use for payment of outstanding warrants, see § 7-6-4502, MCA, expenditures for that fiscal year that have been appropriated as part of the budget, see § 7-6-4235, MCA, or emergency expenditures, see §§ 7-6-4251 to 4255, MCA. If money remains at the end of the fiscal year in which it is received, the sum remaining is considered part of the "cash balance," which is included in the calculations to determine the levy in the next year. Section 7-6-4230(1), MCA, states in part:

> [T]he council shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

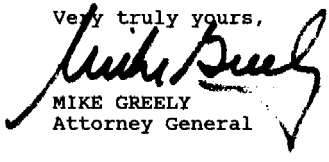
The effect of a high cash balance on the levy itself depends on the other factors in the calculation, including the size of the budget and the taxable valuation for that fiscal year. See § 7-6-4232(1), MCA.

THEREFORE, IT IS MY OPINION:

1. A municipality may not adopt a levy that is higher than the statutory maximum in order to compensate for the anticipated loss of expendable revenue due to payment of taxes under protest unless the voters approve under sections 7-6-4431 to 4437, MCA.

2. A municipality that receives back taxes that had previously been paid under protest shall deposit them to the credit of the fund or funds to which they would have been credited had they been timely received. If money remains in any fund at the end of the fiscal year in which it was received, that sum is part of the "cash balance," which is included in the calculations to determine the levy in the next year under sections 7-6-4229 to 4232, MCA.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 56

INSURANCE - Funding of employee health and disability insurance premiums;
SCHOOL DISTRICTS - Funding of employee health and disability insurance premiums;
TAXATION AND REVENUE - Authority to exceed maximum levy for insurance not applicable to employee benefits;
MONTANA CODE ANNOTATED - Sections 2-9-101 to 318, 2-18-702;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 109 (1978).

Held: The annual property tax allowed under section 2-9-212, MCA, may not be used to fund health and disability insurance premiums for school district employees.

25 March 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked for my opinion on the following question:

> May a school district fund health and disability insurance premiums for its employees under section 2-9-212, MCA?

Section 2-9-212 states:

> Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose. (Emphasis added.)

The term "as herein authorized" refers to authorization contained in the Montana Comprehensive State Insurance Plan and Tort Claims Act, 1973 Montana Laws, ch. 380, now codified at sections 2-9-101 to 318, MCA. See 37 Op. Att'y Gen. No. 109, at 471, 473 (1978).

That Act provides that "[a]ll political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part." § 2-9-211(1), MCA. The insurance plans authorized for political subdivisions are analogous to the Act's comprehensive State insurance plan. See 37 Op. Att'y Gen. No. 109 at 474. Provisions concerning that plan refer specifically to "insurance purchased for protection of the state," § 2-9-201(1), MCA, to "a comprehensive insurance plan for the state providing insurance coverage to the state," and to "property, casualty, liability, crime, fidelity, and any...other policies of insurance...." § 2-9-201(2), MCA. Both the State and political subdivisions are authorized to use deductible or self-insurance plans. §§ 2-9-202 and 211, MCA. In light of these provisions, it is apparent that the insurance authorized by the Act is insurance for the political subdivision itself, not insurance provided its employees as a negotiated benefit. See Hostetter v. Inland Development Corp., 172 Mont. 167, 171, 561 P.2d 1323, 1326 (1977).

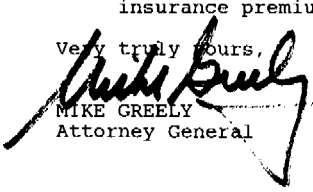
This conclusion is buttressed by the fact that authorization for insurance as an employment benefit is contained in a statute unrelated to the Montana Comprehensive Insurance Plan and Tort Claims Act, section 2-18-702, MCA. Clearly, such employee insurance does not fall within the category of "insurance...as herein authorized," which may be funded under section 2-9-212, MCA.

Volume 37 Op. Att'y Gen. No. 109 does not hold to the contrary. That opinion must be read in the context of the question presented in it: whether the tax permitted under section 2-9-212, MCA, may be used to fund property insurance for a school district as well as liability insurance for the district. Within that context, it is clear that the term "all policies of insurance" in the holding refers only to insurance for the subdivision, purchased for the protection of the subdivision. The term does not refer to insurance for employees, purchased as an employment benefit.

THEREFORE, IT IS MY OPINION:

The annual property tax allowed under section 2-9-212, MCA, may not be used to fund health and disability insurance premiums for school district employees.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 39 OPINION NO. 57

COUNTY SUPERINTENDENT OF SCHOOLS - The penalty a county superintendent must impose for district operating school buses beyond established routes is immediate suspension of all reimbursements and forfeiture of funds for excess mileage;
COUNTY TRANSPORTATION COMMITTEE - Committee decisions covered by phrase "transportation law" in section 20-10-104, MCA;
SCHOOL BUSES - School bus routes established by the county transportation committee must be complied with or penalty in section 20-10-104, MCA, applies;
SCHOOL TRANSPORTATION - School buses traveling outside routes established by county transportation committee trigger penalty in section 20-10-104, MCA;
MONTANA CODE ANNOTATED - Sections 20-10-104, 20-10-131, 20-10-132, 20-10-145 and 20-10-146.

HELD: The penalty for operating school buses in violation of or without approval of routes established by a county transportation committee is suspension of all reimbursements until the violation is corrected and forfeiture of funds for the miles traveled in violation of the committee's decisions.

1 April 1982

Ronald W. Smith, Esq.
Hill County Attorney
312 Third Street
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion on the following question:

> What is the penalty for operating school buses in violation of or without approval of routes established by a county transportation committee?

Bus transportation provided by school districts is governed by the statutes in Title 20, chapter 10, part 2, MCA. That part establishes a county transportation committee for each

county composed of various county officials, section 20-10-131, MCA. The purpose of this committee is to "coordinate the orderly provision of a uniform transportation program within a county under the transportation law, board of public education transportation policies, and the transportation rules of the superintendent of public instruction...." § 20-10-131, MCA. The duties of the committee, as set out in section 20-10-132, MCA, include the task of approving, disapproving or adjusting school bus routes. If the bus routes are approved by the county transportation committee and they comply with state transportation law, school districts become eligible for county and state transportation reimbursement. The amount of reimbursement available is set out in sections 20-10-145 and 20-10-146, MCA.

Your question regards the interpretation of section 20-10-104, MCA, which provides in part:

> Penalty for violating law or rules.... When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for bus miles actually traveled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.

Your question involves the penalty a county superintendent must impose on a school district which knowingly operates buses beyond routes established by a county transportation committee.

The penalty prescribed in section 20-10-104, MCA, applies to districts which "knowingly violate a transportation law or board of public education transportation policy...." While the latter term is self-explanatory, "transportation law" is not defined in the code. It is necessary, therefore, to look to rules of statutory construction for guidance in interpreting that term. The fundamental rule of statutory construction is that the intent of the Legislature controls.

Security Bank & Trust v. Conners, 170 Mont. 59, 550 P.2d 1313 (1976). That intent should be ascertained from the plain meaning of the words in the statute with the goal giving effect to the purpose of the statute. Dover Ranch v. Yellowstone County, 37 St. Rptr. ____, 609 P.2d 711 (1980). Viewing section 20-10-104, MCA, under the above rules it is my opinion that transportation law includes decisions made by the county transportation committee. This committee and its functions are mandated by law. §§ 20-10-131 and 132, MCA. The legislative intent ascertained from section 20-10-104, MCA, is to provide some penalty for violation of transportation laws. It gives the county transportation committee a method of enforcing its decisions. Otherwise the penalty section would have little, if any, direct effect on the school districts. These districts would be free to operate buses as they choose regardless of the county transportation committee's bus routes.

In addition the section discusses the penalty in terms of excess miles traveled. The only way to determine what constitutes excess mileage is to compare the mileage traveled under routes established by the county transportation committee with the actual miles traveled by a district's buses.

Turning to the question of the penalty itself, section 20-10-104, MCA, appears at first glance to require forfeiture of reimbursement for excess miles only. Upon reading the section as a whole, however, it is my opinion that the penalty provision is to be interpreted as follows: When a violation of a county transportation committee decision is discovered, the county superintendent must suspend all county and State reimbursements for transportation to the district. When the district corrects the violation the county superintendent shall resume paying reimbursements. The penalty prescribed is forfeiture of reimbursements for miles traveled in violation of transportation law or Board of Public Education policies. That means any miles traveled in excess of the routes established by the county transportation committee cannot be reimbursed. When the payment of reimbursements is resumed by the county superintendent all those miles traveled in compliance with the transportation committee's decisions during the suspension are to be repaid. Only the reimbursement for the excess miles is to be forfeited. The suspension of all payments is the Legislature's method of forcing compliance. With no transportation funds coming in, the district will be

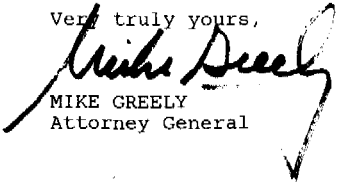
forced to comply with the law or face operating expenses far above their means.

To interpret section 20-10-104, MCA, otherwise is to reach absurd results. For example, if section 20-10-104, MCA, is interpreted to mean only the excess miles reimbursement is suspended the law provides no penalty. A district will never be reimbursed for those excess miles, so to suspend payment for them is to suspend nothing. On the other hand, to suspend all reimbursements and cause a district to forfeit the entire amount, beginning payments again when the violation is corrected, forces a district to bear transportation costs required by law to be reimbursed by the State and county. The suspension of all reimbursements until the violation is corrected with the forfeiture of reimbursement only for the excess miles provides a penalty section which a county transportation committee can readily enforce and which does not needlessly penalize.

THEREFORE, IT IS MY OPINION:

> The penalty for operating school buses in violation of or without approval of routes established by a county transportation committee is suspension of all reimbursements until the violation is corrected and forfeiture of funds for the miles traveled in violation of the committee's decisions.

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 138, 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 December 31, 1981. This table includes those rules adopted during the period January 1, 1982 through March 31, 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 December 31, 1981, 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 1981 and 1982 Montana Administrative Registers.

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